RECOMMENDATION

1. That the licensing sub-committee considers an application made by Union Viet Ltd, for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Union Viet Restaurant, 120 Union Street, London SE1 0FR.

2. Notes:

   a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from a responsible authority and other persons and is therefore referred to the sub-committee for determination.

   b) Paragraphs 8 to 10 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.

   c) Paragraphs 12 to 13 of this report deals with the representations received regarding the premises licence application. A copy of the representation from the responsible authority is attached as Appendix B. Copies of the relevant representations from other persons are attached as Appendix C.

   d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a licensing regime for:

   • The sale of and supply of alcohol
   • The provision of regulated entertainment
   • The provision of late night refreshment.

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:

- The prevention of crime and disorder
- The promotion of public safety
- The prevention of nuisance
- The protection of children from harm.

6. In carrying out its licensing functions, a licensing authority must also have regard to

- The Act itself
- The guidance to the act issued under Section 182 of the Act
- Secondary regulations issued under the Act
- The licensing authority’s own statement of licensing policy
- The application, including the operating schedule submitted as part of the application
- Relevant representations.

7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

**KEY ISSUES FOR CONSIDERATION**

**The premises licence application**

8. On 29 July 2015, Union Viet Ltd applied to this Council for the grant of a new premises licence in respect of the premises known as Union Viet Restaurant, 120 Union Street, London SE1 0FR.

9. The premises is described as a restaurant on ground and first floors of 120 Union Street which is beneath a block of residential flats. The use of the pavement area at the side of the property is also to be incorporated within the licensed area when a street trading licence is obtained. The outside area for the sale and consumption of food and alcohol also forms part of the application.

10. The application is summarised as follows:

Union Viet Restaurant will serve breakfast and lunches with a lighter menu and more substantial dinner in the evening. Off sales is sought to allow customers to purchase alcohol for consumption at home, such off sales will not be allowed to leave the property in open vessels or containers.

- The supply of alcohol (for consumption on and off the premises)
  Monday to Sunday from 10.30 to 22.30

- Operating hours
  Monday to Sunday from 08.00 to 23.00
11. The premises licence application form provides the applicant operating schedule. Parts J, K, L, and M set out the proposed operating hours and operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix A.

Designated premises supervisor

12. The proposed designated premises supervisor (DPS) is Nguyen Vo, who has a personal licence from Southwark Council.

Representations from responsible authorities

13. A representation was submitted by the Metropolitan Police Service. The Police concerns are regards to the objectives of prevention of crime and disorder. Recommended conditions have been submitted and agreed through the conciliation process and as such will form part of the granted licence. The representation and its following agreement and withdrawal is attached as Appendix B. The agreed conditions are listed below:

- That intoxicating liquor other than offsales in a sealed container shall not be sold or supplied on the premises otherwise than to persons taking a table meal and by consumption of such persons as an ancillary to their meal.

- That the premises will install a CCTV system and maintain this system in good working order, the system will be of evidential quality and should be able to capture a clear facial image of all persons that enter the venue. That all CCTV footage shall be kept for a period of 31 days and shall, upon request, be made immediately available for inspection to officers of the police and the council

- That there shall be at least on member of staff on duty at all times the premises are in operation under its licence trained and proficient in the operation of the CCTV system capable of operating and retrieving footage on request of the Police or other authorised officer.

- That a personal licence holder is on the premises and on duty at all times that intoxicating liquor is supplied.

- That all staff concerned in the sale or supply of intoxicating liquor undergoes a recognised training scheme for such duties. Records of such training should be kept and made available for inspection, on request by police or other authorised officers.

Representations from other persons

14. There are five representations received from other persons. They relate to public nuisance. They are concerned that the area is predominately residents and they will suffer noise disturbance and public nuisance due to the operation of the premises.

15. One of the other persons (party 4) has suggested a list of conditions (listed below) which have been forwarded to the applicant representative for their attention.
Copies of the representations are attached as Appendix C. The suggested conditions are as follows:

To prevent a nuisance to residents:

1. Alcohol should only be sold to customers taking table meals.
2. No tables and chairs outside.
3. No consumption of alcohol by customers outside the premises.
4. No consumption of food by customers outside the premises.
5. No smoking by customers or staff within 10 metres of the Rosler or Braque residential buildings.
6. No motorised vehicles permitted for operation of a delivery service to customers homes.
7. Later opening time at weekends.
8. No music to be played which can be heard by residents in the Rosler or Braque residential building.
9. Restrict hours for delivers to the premises to between 8.00 and 17.00 Monday to Friday and 9.00 to 13.00 on Saturday. No deliveries on Sunday.

Conciliation

16. The applicant has been forwarded the representations received and has been advised to address the concerns within the representations submitted. The application representative have liaised with the police and agreed the conditions as listed in the police representation above. This agreed conditions have been forwarded to parties concerned. The licensing committee shall be updated at the hearing on 17 September 2015.

Deregulation of entertainment

17. Entertainment deregulation came into force on 6 April 2015.

17. Live unamplified music is deregulated between 08.00 and 23.00 on any premises.

18. Live amplified music is deregulated between 08.00 and 23.00 provided the audience does not exceed 500 people.

19. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Temporary event notices

20. There have been no temporary event notices submitted for this address within the last 12 months.

Complaints

21. There have been no complaints received by the licensing team within the last 12 months.
The local area

22. A map of the area is attached to this report as Appendix D. The premises is identified at the centre of the map. For purposes of scale only the circle on the map has a 100 metre radius. There are several licensed premises within this 100 metre radius.

- Cafe 171, 171 The Jerwood Space Ltd Union Street, London SE1 0LN (Monday to Saturday till 23.00 and Sunday till 22.30)
- Charles Dickens, 160 Union Street, London SE1 0LH (Monday to Saturday till 23.00 and Sunday till 22.30)
- Spots and Stripes, Railway Arch 64 Ewer Street, London SE1 0NR (Monday to Sunday till 23.00)
- Union Newsagents, 77-79 Union Street, London SE1 (Monday to Saturday till 23.00 and Sunday till 22.30)
- The Union Theatre, 204 Union Street, London SE1 (Monday to Saturday till 23.00 and Sunday till 22.30)
- The Island Cafe, 1 Flat Iron Square Union Street, London SE1 (Monday to Sunday till 23.30)

Borough and Bankside Cumulative Impact Zone

23. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises (saturation/cumulative impact policy) on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.

24. The decision to introduce saturation policy was taken with regard to the committee’s concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.

25. The effect of this special policy is that it creates a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

26. The applicant has been advised to address the committee’s concerns around cumulative impact at the meeting.

Southwark council statement of licensing policy

27. Council assembly approved Southwark’s statement of licensing policy 2011-14 on 12 October 2011. Sections of the statement that are considered to be of particular relevance to this application are:

- Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives.
- Section 5 which sets out the council’s approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence.
• Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998.

• Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours.

• Section 8 provides general guidance on ensuring public safety including safe capacities.

• Section 9 provides general guidance on the prevention of nuisance.

• Section 10 provides general guidance on the protection of children from harm.

28. The purpose of Southwark’s statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

Resource implications

29. A fee of £100 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

Consultation

30. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

31. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

32. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

33. The principles which sub-committee members must apply are set out below.

Principles for making the determination

34. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
35. Relevant representations are those which:

- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious

36. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:

- To grant the licence subject to:
  - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
  - Any condition which must under section 19, 20 or 21 be included in the licence.

- To exclude from the scope of the licence any of the licensable activities to which the application relates.

- To refuse to specify a person in the licence as the premises supervisor.

- To reject the application.

**Conditions**

37. The sub-committee’s discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.

38. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

39. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.

40. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
41. Members are also referred to the Home Office revised guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

42. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

Hearing procedures

43. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:

- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations.
- Members of the authority are free to ask any question of any party or other person appearing at the hearing.
- The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
  - Address the authority
  - If given permission by the committee, question any other party.
  - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
- The committee shall disregard any information given by a party which is not relevant to the particular application before the committee and the licensing objectives.
- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

44. This matter relates to the determination of an application for a premises licence under section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council’s multiple roles and the role of the licensing sub-committee

45. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
46. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council’s broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council’s statement of licensing policy.

47. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.

48. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

49. Members will be aware of the council’s code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.

50. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.

51. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.

52. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the magistrates’ court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

53. Members are required to have regard to the Department for Culture, Media and Sport guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.
BACKGROUND DOCUMENTS

<table>
<thead>
<tr>
<th>Background Papers</th>
<th>Held At</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensing Act 2003</td>
<td>Southwark Licensing, C/O Community Safety &amp; Enforcement, 160 Tooley Street, London, SE1 2QH</td>
<td>Kirty Read Tel: 020 7525 5748</td>
</tr>
<tr>
<td>DCMS Guidance to the Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secondary Regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southwark statement of licensing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy Case file</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

APPENDICES

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix A</td>
<td>Application for a premises licence</td>
</tr>
<tr>
<td>Appendix B</td>
<td>Representation and withdrawal notice from responsible authority</td>
</tr>
<tr>
<td>Appendix C</td>
<td>Representations from other persons</td>
</tr>
<tr>
<td>Appendix D</td>
<td>Map of the local area</td>
</tr>
</tbody>
</table>

AUDIT TRAIL

<table>
<thead>
<tr>
<th>Lead Officer</th>
<th>Deborah Collins, Strategic Director of Environment and Leisure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report Author</td>
<td>Dorcas Mills, Principal Licensing Officer</td>
</tr>
<tr>
<td>Version</td>
<td>Final</td>
</tr>
<tr>
<td>Dated</td>
<td>4 September 2015</td>
</tr>
<tr>
<td>Key Decision?</td>
<td>No</td>
</tr>
</tbody>
</table>

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER

<table>
<thead>
<tr>
<th>Officer Title</th>
<th>Comments sought</th>
<th>Comments included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Legal Services</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Strategic Director of Finance and Corporate Services</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Cabinet Member</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Date final report sent to Constitutional Team</td>
<td>4 September 2015</td>
<td></td>
</tr>
</tbody>
</table>