

Item No. 5.	Classification: Open	Date: 30 March 2017	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Licensing Act 2003: Bola 8 Ltd T/A Faktory, Ground and First Floor, 113C Elephant Road, London SE17 1LB	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Bola 8 Ltd T/A Faktory, for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Bola 8 Ltd T/A Faktory, Ground and First Floor, 113C Elephant Road, London SE17 1LB.
2. This application was intended to be determined on 20 December 2016. However the management for the premises sought a postponement of the hearing from the licensing sub-committee in order to gain planning permission for the premises before proceeding with the licensing application. The postponement was granted and a new date of the 30 March 2017 was agreed. The applicant has since informed the licensing unit that a planning application has been made and awaiting the outcome. The licensing sub-committee will be notified of any updates on 30 March 2017.
3. 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 13 of this report provide a summary of the existing premises licence for consideration by the sub-committee. A copy of the premises licence is attached as Appendix B.
 - c) Paragraphs 14 to 17 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.
 - d) Paragraphs 18 to 32 of this report deals with the representations received regarding the premises licence application, the conciliation and withdrawal emails. Copies of the representations from the responsible authorities, conciliation statement and withdrawal are attached as Appendices C D & E.
 - e) Paragraph 33 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.
 - f) 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

4. The Licensing Act 2003 provides a regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
5. Within Southwark, the licensing responsibility is wholly administered by this council.
6. 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.
7. 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.
8. 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

Premises history

9. The premises has an existing licence number 835450. A licence was first issued to the premises on Bola 8 Ltd on September 2011 and Unit 122 Elephant Lane, London SE1, they have been the operators to date. There have been no complaints received by the licensing team. There have been no temporary event notices (TENs) submitted.

The current licence

10. The current licence in respect of the premises known as Bola 8, Unit 122 Elephant Road, London SE7 1LB was issued on 5 September 2011. Unit 112 forms part of the new application. The licence permits the following licensable activities:
 - **Recorded music (indoors)**
Monday to Sunday from 11:00 to 06:00
 - **Anything of similar description to the above**
Monday to Sunday from 11:00 to 06:00
 - **Late night refreshment (indoors)**
Monday to Sunday from 23:00 to 05:00
 - **The supply of alcohol (for consumption on the premises)**
Monday to Wednesday from 11:00 to 00:00
Thursday, Friday and Saturday from 11:00 to 03:00
 - **Operating hours**
Monday to Sunday from 11:00 to 06:00.
11. The current designated premises supervisor is Maria Elena Mejia who has a personal licence issued by Lambeth Council.
12. The current premises licence is attached as Appendix B to the report.
13. The intention is to surrender the licence on grant of this application.

The premises licence application

14. On 28 October 2016, Bola 8 Ltd T/A Faktory applied to this Council for the grant of a new premises licence in respect of the premises known as Bola 8 Ltd T/A Faktory, Ground and First Floor, 113C Elephant Road, London SE17 1LB.
15. The premises plan compasses of the existing unit 122 which is on the first floor level and is expanding the licensable area by adding Unit 113C which is on the ground floor, there will be an interconnecting door between the two levels and the main entrance to the premises will be from 113C Elephant Lane. The premises is described as a late night bar and restaurant.
16. The application is summarised as follows:
 - **Live music (indoors)**
Monday to Sunday from 11:00 to 02:00
 - **Recorded music (indoors)**
Monday to Sunday from 11:00 to 05:00
 - **Anything of similar description to the above**
Monday to Sunday from 11:00 to 05:00
 - **Late night refreshment (indoors)**
Monday to Sunday from 23:00 to 05:00

- **The supply of alcohol (for consumption on the premises)**

Sunday to Wednesday from 11:00 to 02:30

Thursday, Friday and Saturday from 11:00 to 04:30

- **Operating hours**

Sunday to Wednesday from 11:00 to 05:00

Thursday, Friday and Saturday from 11:00 to 05:30

17. The premises licence application form provides the applicant operating schedule. Parts E, F, H, I, 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

18. The designated premises supervisor Ricardo Carzon Medina who has a personal licence issued by Croydon Council.

Representations from responsible authorities

19. Representations were submitted by the Metropolitan Police Service, environmental protection team (EPT), licensing (as a responsible authority), health and safety, trading standards, public health authority, and planning authority.
20. The police state that the venue is described as a late night bar and restaurant and the target market would be young professionals from the new residential developments close to the elephant and castle. The new application is looking to expand the licensed area. If granted police would like to see a condition that the old licence be surrendered.
21. The police have also submitted conditions to be considered for the promotion of the four licensing objectives, in particular the prevention of crime and disorder. A number of the conditions were discussed and have been offered as part of the operating schedule but the wording is crucial to negate ambiguity.
22. The EPT objects to the application on the grounds of prevention of public nuisance and state that the application seeks to permit use of an additional floor and would recommend that the new licence does not take effect unless and until the current licence is surrendered. The premises appears not to have the benefit of planning consent for use as a nightclub and the EPT recommend that a condition is imposed on the licence prohibiting use for nightclub activities unless and until the licence holder obtains sui generis planning consent for use of the premises as a nightclub.
23. The EPT also state that new residential flats have recently been built nearby, and occupation will begin soon and recommend that a condition is imposed requiring entertainment noise from the premises to be inaudible at the façade of any residential premises after 23:00.
24. The licensing (as a responsible authority) representation states that the premises is situated in the Elephant and Castle major town centre area and under the Southwark statement of licensing policy 2016-2020 the appropriate closing times for restaurants

and cafes is 00:00 on Sunday to Thursday and 01:00 on Friday and Saturday. The appropriate closing times for public houses, wine bars or other drinking establishments is 23:00 on Sunday to Thursday and 00:00 on Friday and Saturday.

25. The representation is also submitted with regards to crime and disorder and public nuisance as the later operation of the premises and people leaving the premises later at night would impact upon local residents.
26. Due to the limited information on the application form it seeks the applicant to provide the further information with regards to the accommodation limit and a written dispersal policy. It also request that the applicant considers amending the application to be in line with the opening hours recommended in the Southwark statement of licensing policy to promote the licensing objectives.
27. The health and safety representation seeks further information with regards to risk assessment and other health and safety issues and make recommendations where appropriate.
28. The trading standards representation welcomes the statements in the application to promote the four licensing objectives but for completeness and clarity have recommended additional conditions to address the potential for harm of selling alcohol to children and their well being.
29. The public health authority have concerns regarding the hours of alcohol sales requested and suggest an earlier finishing time for alcohol sales. They recommend that the end time for alcohol sales be changed to 23:00 on Sundays to Thursdays and 00:00 on Fridays and Saturdays, as per Southwark's statement of licensing policy.
30. The planning authority representation is made on the grounds of nuisance and that it is likely to result in criminal activity. The premises exits onto a narrow road where a large mixed use development has recently been completed. The immediate area is not well suited to quiet dispersal of patrons at 05:00 because of the side street nature of the road. The ground floor of the proposed premises is subject to a planning enforcement notice. The first requirement of the notice is to cease use of the property as a mixed use incorporating, a cafe snack bar, restaurant, bar and nightclub and any use including a bar or nightclub element.
31. Copies of the representations are attached as Appendix C.

Representations from other persons

32. There are no representations from other persons.

Conciliation

33. The applicant has been forwarded the representations received and has been advised to address the concerns within the representations submitted. A conciliation statement attached as Appendix D was issued and submitted to all parties concerned. The public health and trading standards representations have been withdrawn as the applicant has agreed to the proposed conditions. The withdrawal emails are attached as Appendix E.

The local area

34. A map of the area is attached to this report as Appendix F. 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.

Public houses

- Charlie Chaplin, 26 New Kent Road, London SE1 (Monday to Saturday till 01.30 and Sunday till 23.30)
- Coronet, 28 New Kent Road, London SE1 (Monday to Wednesday till 03:30, Thursday, Friday and Saturday till 07:30)

Off licences

- Davish News, 30 New Kent Road, London SE1 (Monday to Sunday till 23:00).

Deregulation of entertainment

35. On 6 April 2015 entertainment became deregulated and as a result:
- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music is deregulated between 08:00 and 23.00 provided the audience does not exceed 500 people.
36. 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').

Southwark statement of licensing policy

37. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Restaurants and cafes: 00:00 on Sunday to Thursday and 01:00 on Friday and Saturday
 - Public houses, wine bars or other drinking establishments is 23:00 on Sunday to Thursday and 00:00 on Friday and Saturday
 - Hotel bars and guest houses: No restrictions for residents
 - Night Clubs: 01:00 on Monday to Thursday, 03:00 on Friday and Saturday and 00:00 on Sunday
 - Off Licences and alcohol sales in grocers and supermarkets: 00:00 daily
 - Takeaways: 00:00 on Sunday to Thursday and 01:00 on Friday and Saturday
 - Cinema & Theatres: 02:00 daily

- Vessels: 23:00 daily
 - Members Club: 02:00 daily.
38. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
 - Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 – Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
 - Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
 - Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
 - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
39. 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

40. A fee of £190 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

41. 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

42. 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 Law and Democracy

43. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
44. The principles which sub-committee members must apply are set out below.

Principles for making the determination

45. 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.
46. 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.
47. 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

48. 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.
49. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
50. 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.
51. 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.
52. 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

53. 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

54. 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.
55. 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

56. 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.
57. 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.
58. 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.
59. 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.
60. 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.

61. 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.
62. 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.
63. 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

64. Members are required to have regard to the Home Office revised 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.

Strategic Director of Finance and Governance

65. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office guidance to the Act Secondary Regulations Southwark statement of licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London SE1 2QH	Kirby Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Existing licence
Appendix C	Representations from responsible authorities
Appendix D	Conciliation Statement
Appendix E	Withdrawal emails
Appendix F	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure		
Report Author	Dorcas Mills, Principal Licensing Officer		
Version	Final		
Dated	14 March 2017		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Law & Democracy	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
Cabinet Member	No	No	
Date final report sent to Constitutional Team		16 March 2016	