

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 30 March 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX	
<b>Ward(s) of group(s) affected</b>		Faraday	
<b>From</b>		Strategic Director of Environment	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Curvingroad Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX.
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 responsible authorities and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 11 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 17 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted are attached to this report in Appendix B. A map showing the location of the premises is attached to this report 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 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 19 January 2017, Curvingroad Limited applied to this council for the grant of a premises licence in respect of Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX. The premises are described as being 'a community space within a Grade II listed building located in the centre of Burgess Park'. The premises will comprise of the following:
- A small performance studio
  - A theatre café
  - A rehearsal and events space.
9. The application and is summarised as follows:
- **The supply by retail of alcohol (on sales only)**
    - Monday to Wednesday 12:00 to 23:00
    - Thursday and Friday 12:00 to 00:30 (the following day)
    - Saturday 12:00 to 01:30 (the following day)
    - Sunday 12:00 to 22:00
    - On Sundays immediately prior to Bank Holidays, the applicant would like to request timings to replicate those of a regular Friday: 10:00 to 01:00 (the following day).

- **The provision of regulated entertainment in the form of plays (indoors and outdoors):**
  - Monday to Wednesday 13:00 to 23:00
  - Thursday to Friday 13:00 to 01:00 (the following day)
  - Saturday 10:00 to 01:00 (the following day)
  - Sunday 13:00 to 22:00
  - On Sundays immediately prior to Bank Holidays, the applicant would like to request timings to replicate those of a regular Friday: 10:00 to 01:00 (the following day).
- **The provision of regulated entertainment in the form of films (both indoors and outdoors):**
  - Monday to Wednesday 13:00 to 23:00
  - Thursday to Friday 13:00 to 01:00 (the following day)
  - Saturday 10:00 to 01:00 (the following day)
  - Sunday 0:00 to 22:00
  - On Halloween (31 October) the applicant seeks late night/midnight showings of films until 02:00 (the following day)
  - On Sundays immediately prior to Bank Holidays, the applicant would like to request timings to replicate those of a regular Friday: 10:00 to 01:00 (the following day).
- **The provision of regulated entertainment in the form of live music (both indoors and outdoors):**
  - Monday to Wednesday 13:00 to 23:00
  - Thursday to Friday 13:00 to 01:00 (the following day)
  - Saturday 10:00 to 02:00 (the following day)
  - Sunday 13:00 to 22:00
  - On Sundays immediately prior to Bank Holidays, the applicant would like to request timings to replicate those of a regular Friday: 10:00 to 01:00 (the following day)
  - During the summer, the applicant would like to stage live music in the 'patio' space immediately in front of the Old Library building in conjunction with wider Burgess Park activities (e.g. the Camberwell Fair) limited to May to September from 12:00 to 20:00.
- **The provision of regulated entertainment in the form of recorded music (indoors) and anything of a similar description (indoors) (described by the applicant as spoken word / poetry / live art / cabaret / comedy):**
  - Monday to Wednesday 10:00 to 23:00
  - Thursday to Friday 10:00 to 01:00 (the following day)
  - Saturday 10:00 to 02:00 (the following day)
  - Sunday 10:00 to 22:00

- On Sundays immediately prior to Bank Holidays, the applicant would like to request timings to replicate those of a regular Friday: 10:00 to 01:00 (the following day)
  - **The provision of regulated entertainment in the form of performances of dance (indoors):**
    - Monday to Thursday 13:00 to 23:00
    - Friday to Sunday 10:00 to 23:00.
  - **Opening hours:**
    - Monday to Wednesday 09:30 to 23:30
    - Thursday and Friday 09:30 to 01:00 (the following day)
    - Saturday 09:30 to 02:00 (the following day)
    - Sunday 09:30 to 22:30.
  - **Non standard timings as follows:**
    - On Sundays immediately prior to Bank Holidays, the applicant would like to request timings to replicate those of a regular Friday: 10:00 to 01:00 (the following day)
10. The proposed designated premises supervisor of the premises is Roland Smith who has been granted a personal licence by Brighton and Hove City Council.
  11. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures 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 any licence granted subsequent to the application. A copy of the application is attached to this report in Appendix A.

### **Representations from responsible authorities**

12. Representations have been submitted by the Metropolitan Police Service and the public health authority, environmental protection team and the licensing authority.
13. The representation from the Metropolitan Police Service refers to this council's statement of licencing policy and notes that the proposed closing hours in respect of the premises fall outside of the closing hours suggested in the statement of licencing Policy. There are also concerns over a lack of dispersal policy and it is noted that public transport away from the premises are limited. The police have also requested the following additional conditions be added to the operating schedule.
  - 1) That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises and cover the main public areas.

- 2) That all CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council. There will be at least one person on duty at all times that is familiar with the operation of the CCTV and able to download the footage upon request immediately;
  - 3) That all staff are trained in their responsibilities under the licensing act 2003 and training records should be kept and signed, these records shall be updated every six months and shall, upon request, be made immediately available to officers of the police and the council.
  - 4) That customers shall use no outside area after 22:00 other than those that leave the premises to smoke a cigarette and limited to 10 persons. No beverages will be permitted outside of the premises after 22:00.
  - 5) That signage on entrance/exit requesting customers to respect neighbours and leave quietly.
  - 6) That on any night that the venue is in operation after 2300 hours the venue will employ at least 2 SIA registered door supervisors until the terminal hour or until all the patrons have left the premises. They will be briefed by the DPS or duty manager at the start of each tour of duty, their start time, details and badge numbers will be recorded in a register which will be available for inspection on request by the Police or authorised officer;
  - 7) That all licensable activities will cease at least 30 minutes prior to the terminal hour as per the premises licence.
14. The representation from the public health authority has been submitted in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation is concerned with the proposed hours for the sale of alcohol and states that that increased hours of alcohol sales are associated with increased alcohol consumption, alcohol related injuries and alcohol related harm. The representation requests an earlier end time in regards to the sale of alcohol to 23:00 daily.
  15. The representation from the environmental protection team has been submitted in respect of the prevention of public nuisance objective due to the proximity of the premises to residential dwellings and the times of the licensable activities applied for. The objector raises concerns that the applicant has not provided evidence that any proposed licensable activities will not cause a nuisance.
  16. The representation from the licensing authority is submitted under the prevention of crime and disorder and the prevention of public nuisance licensing objectives and has regard to the Southwark statement of licensing policy, stating that the appropriate closing times for restaurants, cafes, public houses, wine bars, other drinking establishments or for cinemas and theatres is 23:00 daily. Further information has been requested, namely:
    - To provide a written dispersal policy for the premises (to be conditioned).
    - To consider amending the application in to be in line with the opening hours recommended in the licensing policy (that the premises will close at 23:00 on each night) and to bring the other licensable activities in line with this.

- To consider that the sales of alcohol 'on sales' should cease at least half hour before the closing time of the premises on each night.
  - A response to the following additional condition to be added to the operating schedule:
    - That the accommodation limit for the premises shall not exceed 75 person (excluding staff)
17. Copies of the representations submitted by the responsible authorities and related correspondence are attached in Appendix B.

### **Representations from other persons**

18. No representations were submitted by other persons.

### **Conciliation**

19. The applicant was sent the representations that were submitted, and was advised to address the concerns within the representations.

### **Premises history**

20. The venue has not been in possession of a premises licence previously.

### **Temporary Event Notices (TENS)**

21. On 7 February 2017 Mr Roland Smith submitted a TEN in respect of an event to take place at the premises between 18:00 and 23:30 on Saturday 18 February and between 18:00 and 22:30 on Sunday 19 February. The TEN was to allow the sale of alcohol and the provision of regulated entertainment. Up to 499 people at any one time will be permitted at the premises. No objection or counter notices were served in respect of the TEN.
22. On 12 March 2017 Mr Roland Smith again submitted a TEN in respect of an event to take place at the premises between 18:00 and 23:30 on Saturday 18 March and between 18:00 and 22:30 on Sunday 19 March. The TEN was to allow the sale of alcohol and the provision of regulated entertainment. Up to 499 people at any one time will be permitted at the premises. No objection or counter notices were served in respect of the TEN.

### **Deregulation of entertainment**

23. 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 at on-licensed premises provided the audience does not exceed 500 people, 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').

## Map

24. A map showing the location of the premises is attached to this report as Appendix C. The following licensed premises are in the vicinity of the premises application:

- **Emukay Restaurant, 91 Camberwell Road, London SE5 0EZ**, licenced for:
  - The sale of alcohol (on and off sales) Monday to Sunday from 10:00 to 02:00 (the following day)
  - The provision of late night refreshment (indoors) Monday to Sunday from 23:00 to 03:00 (the following day)
  - The provision of regulated entertainment in the form of live music, recorded music and performances of dance (indoors) Monday to Sunday from 20:00 to 02:30.
- **Burgess Park and Adventure Playground, Albany Road and Camberwell Road, London SE5 0AH**, licensed for:
  - The provision of regulated entertainment in the form of live music, recorded music, films and plays (indoors) Monday to Thursday from 10:00 to 21:00 and Friday to Sunday 10:00 to 22:00.
- **Canaan Restaurant, 163 Camberwell Road, London SE5 0HB**, licensed for:
  - The sale by retail of alcohol (on sales only) Monday to Saturday from 11:00 to 00:00 (midnight) and Sunday 12:00 to 23:30
  - The provision of late night refreshment (indoors) Monday to Saturday from 23:00 to 00:30 (the following day) and Sunday from 23:00 to 00:00 (midnight).
- **Legacy Restaurant, 53 Camberwell Road, London SE5 0EZ**, licenced for:
  - The sale by retail of alcohol (on sales) Monday to Thursday from 10:00 to 00:30 (the following day) and Thursday to Sunday from 10:00 to 02:30 (the following day)
  - The provision of late night refreshment (indoors) Monday to Thursday from 23:00 to 00:30 (the following day) and Thursday to Sunday from 23:00 to 02:30 (the following day)
  - The provision of regulated entertainment in the form of live music, recorded music and performances of dance (indoors) Monday to Thursday from 18:00 to 00:30 (the following day) and Thursday to Sunday from 18:00 to 02:30 (the following day).
- **Abokobi Ghanaian Restaurant, 33 Camberwell Road, London SE5 0EZ**, licensed for:
  - The sale by retail of alcohol (on sales only) Monday to Sunday from 12:00 to 23:30

- The provision of late night refreshment (indoors) Monday to Sunday from 23:00 to 23:30.
- **Red Sea, 85 Camberwell Road, London SE5 0EZ**, licensed for:
  - The sale by retail of alcohol (on sales only) Sunday to Thursday from 12:00 to 23:00, Friday from 12:00 to 00:00 (midnight) and Saturday from 12:00 to 02:00 (the following day)
  - The provision of late night refreshment (indoors) Friday 23:00 to 00:00 (midnight) and Saturday from 23:00 to 02:00 (the following day).

### **Southwark council statement of licensing policy**

25. Council assembly approved Southwark's Statement of Licensing Policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016. 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.
26. 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.

27. Within Southwark's statement of licensing policy, the premises are identified as being within a residential area. Relevant closing times recommended in the statement of licensing policy for licensed premises in residential areas are as follows:

- Restaurants, pubs, cafes, wine bars, theatres and cinemas: Monday to Sunday 23:00
- Night clubs (with Sui Generis planning classification) are not considered appropriate for residential areas.

### **Resource implications**

28. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value bands D/E.

### **Consultation**

29. 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 similar notices were exhibited outside of the premises for a period of 28 consecutive days.

### **Community impact statement**

30. 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**

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

### **Principles for making the determination**

33. 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.
34. 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.

35. 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**

36. 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.
37. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
38. 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.
39. 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.
40. 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**

41. 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**

42. 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.
43. 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**

44. 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.
45. 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.

46. 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.
47. 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.
48. 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.

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.

49. 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.
50. 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**

51. Members are required to have regard to the Home Office 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**

52. 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	Kirty Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Representations submitted by responsible authorities
Appendix C	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure		
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer		
<b>Version</b>	Final		
<b>Dated</b>	13 March 2017		
<b>Key Decision?</b>	No		
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>	
Director of Law and Democracy	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
<b>Cabinet Member</b>	No	No	
Date final report sent to Constitutional Team		17 March 2017	