

Item No. 7.	Classification: Open	Date: 4 May 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Belushi's & St Christopher's Village, 161- 165 Borough High Street, London SE1 1HR	
Ward(s) or groups affected:		Chaucer	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Interpub Limited to vary the premises licence under the Licensing Act 2003 in respect of the premises known as Belushi's & St Christopher's Village, 161 – 165 Borough High Street, London SE1 1HR.
2. Notes:
 - a) This application seeks to vary existing licensable activities/conditions held under current legislation in respect of the premises known as Belushi's & St Christopher's, 161 – 165 Borough High Street, London SE1 1HR under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation 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 and the current premises licence are attached as Appendices A and B.
 - c) Paragraphs 12 to 18 of this report deal with the representations received to the variation of premises licence application. Copies of the relevant representations are attached as Appendix C.
 - d) Paragraph 23 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix D.
 - e) 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. The current licence in respect of the premises was issued on 9 January 2017. It allows the following licensable activities:

Films

Sunday to Thursday from 07:00 to 03:00
Friday and Saturday from 07:00 to 04:00

Indoor Sporting Event

Sunday to Thursday from 07:00 to 03:00
Friday and Saturday from 07:00 to 04:00

Live Music

Sunday to Thursday from 07:00 to 03:00
Friday and Saturday from 07:00 to 04:00

Recorded Music

Sunday to Thursday from 07:00 to 03:00
Friday and Saturday from 07:00 to 04:00

Performance of Dance

Sunday to Thursday from 07:00 to 03:00
Friday and Saturday from 07:00 to 04:00

Entertainment similar to live/recorded music

Sunday to Thursday from 07:00 to 03:00
Friday and Saturday from 07:00 to 04:00

Late Night Refreshment

Sunday to Thursday from 23:00 to 03:00
Friday and Saturday from 23:00 to 04:00

Sale by retail of alcohol to be consumed on/off the premises

Sunday to Thursday from 07:00 to 02:00

Friday and Saturday from 07:00 to 03:00

Opening hours of the premises

Sunday to Thursday from 07:00 to 03:00

Friday and Saturday from 07:00 to 04:00

9. A copy of the existing premises licence is attached as Appendix B.

The variation application

10. On 14 March 2017 Interpub Limited applied to this Council to vary the premises licence in respect of the premises known as Belushi's & St Christopher's Village, 161 - 165 Borough High Street, London SE1 1HR. The application seeks to remove condition 307 from annex 2 of the premises licence:
- That the maximum number of persons that may be accommodated within the premises at any one time shall not exceed 527, comprising of 177 on the ground floor and 350 in the basement area of the premises.
11. The premises licence application form provides the applicant operating schedule. Part 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.

Representations from responsible authorities

12. Representations were submitted by the Metropolitan Police Service, licensing as a responsible authority, health and safety and public health.
13. The police representation states that no explanation is contained within the application for the removal of this condition or a condition stipulating the new accommodation limit and would like to see a limit to avoid overcrowding and problems associated with this. The limit should be set in conjunction with relevant legislation around fire safety and the technical standards for place of entertainment.
14. Licensing as a responsible authority are concerned that the application does not offer any explanation or reasons why they propose to remove the accommodation figures for the premises or address the licensing objectives, no alternative accommodation figures have been offered. They also offer a number of reasons why it is reasonable and proportionate to set maximum accommodation limits on premises licences to promote the licensing objectives.
15. The representation from health safety state that the existing accommodation limit will form part of the system of management of health and safety at the premises, and any variation will have an impact on the management of health and safety in areas such as safe capacity limits, prevention of localised over crowding, crowd control and management of work related violence. No supplementary paperwork or updated risk assessments have been submitted indicating how these risks will be managed in the absence of the agreed accommodation limit. The applicant has not stated under the licencing objectives how they would promote the licensing objectives in the absence of this agreed accommodation limit. They also note that the premises is in the saturation zone and so the removal of this condition may further impact on the effectiveness of the saturation zone.

16. Public health state that the condition is imposed to ensure the capacity of the venue remains at a safe level and the applicant has not provided an alternative condition as to what the new capacity limit would be.
17. Copies of the representations and responses received from the responsible authorities are attached as Appendix C.

Representations from other persons

18. There are no representations received from other persons.

Conciliation

19. The representations were forwarded to the applicant. The applicant's solicitor has submitted a response and also a fire risk assessment. These form part of Appendix C. The licensing sub committee will be notified of any updates on 4 May 2017.

Premises History

20. The premises licence was carried over from the Justices and music and dancing licenses in the 2005 transition, the premises licence was first issued on 29 May 2005.
21. There has since been subsequent applications for variation of DPs and minor variations to comply with refurbishment and changes made to the premises.

Temporary event notices (TENs)

22. Below is the recent history of TENs for the last year in respect of the premises.

No.	Date of event	Time of event and activities
1	15/6/2016	02:00 – 04:00 Alcohol and late night refreshment (LNR)
2	1/10/2016	04:00 – 08:00 Alcohol and LNR
3	9/11/2016	02:00 – 06:00 Alcohol and LNR
4	11/12/16	03:00- 04:00 Alcohol and LNR
5	6/2/17	02:00- 06:00 Alcohol and LNR
6	2/4/2017	03:00- 04:00 Alcohol and LNR
7	3/4/2017	02:00- 05:00 Alcohol and LNR

The local area

23. A map of the area is attached to this report as Appendix D. The premises is identified by a triangle at the centre of the map. For purposes of scale-only the circle on the map has a 100-metre radius. The following licensed premises terminal hours are also shown on the map.
- Nelsons Café, 168 Borough High Street, London SE1 (Monday to Saturday until 00.30 and Sunday until 00.00)
 - Hiba 134-138 Borough High Street, London SE1 (Sunday to Thursday until 23.00 and Friday and Saturday until 00.00)
 - Roxy Bar & Screen, 128 Borough High Street, London SE1 (Sunday to Thursday until 23.30 and Friday and Saturday until 01.00)
 - Sainsbury's Local, 116 - 126 Borough High Street, London SE1 (24 hours)
 - Blue Eyed Maid, 173 Borough High Street, London SE1 (Monday to Saturday until 02:30 and Sunday until 01:30)
 - Hing Loong Chinese Restaurant, 159 Borough High Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 22.30)
 - Borough Off Licence & Mini Market, 151 Borough High Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 22.30)
 - Kings Arms, 65 New Comen Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 22.30)
 - Tesco, 127 -143 Borough Street, London SE1 (Monday to Sunday until 23:00)
 - Premier Inn, 135 Borough High Street, London SE1 (Monday to Sunday until 01:00)

Deregulation of entertainment

24. 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 and recorded amplified music is deregulated on licensed premises between 08:00 and 23:00 provided the audience does not exceed 500 people.
25. However, live and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review.

Borough and Bankside cumulative impact zone

26. 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.
27. 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.
28. The effect of this special policy is to create 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.
29. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

Southwark council statement of licensing policy

30. 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.
31. 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.
32. 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:
- Closing time for Restaurants and Cafes: Sunday to Thursday is 00:00 hours and for Friday and Saturday is 01:00 hours
 - Closing time for Public Houses Wine bars or other drinking establishments: Sunday to Thursday is 23:00 hours and for Friday and Saturday 00:00 hours.

Resource implications

33. A fee of £635 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 D.

Consultation

34. 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 exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

35. 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 governance

36. The sub-committee is asked to determine the application for a premises licence under section 34 of the Licensing Act 2003.
37. The principles which sub-committee members must apply are set out below.

Principles for making the determination

38. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
39. The general principle is that applications for variation 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.
40. 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 other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
41. 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:
- Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation

Conditions

42. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
43. The four licensing objectives are
- The prevention of crime and disorder;
 - Public safety
 - The prevention of nuisance

- The protection of children from harm.
44. 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.
 45. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
 46. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
 47. Members are also referred to the Home Office revised guidance on conditions.

Reasons

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

Hearing procedures

49. 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

50. This matter relates to the determination of an application to vary a premises licence under section 34 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

51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. 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

58. 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

59. 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 Revised 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	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application
Appendix B	Premises Licence
Appendix C	Representations from responsible authorities and responses
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Dorcas Mills Principal Licensing Officer	
Version	Final	
Dated	21 April 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	21 April 2017	