

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 18 May 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Unit 8, 133 Copeland Road, London SE15 3SN	
<b>Ward(s) of group(s) affected</b>		The Lane	
<b>From</b>		Strategic Director of Environment & Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers whether an application made by Jonathan Wilson and Lorelie Wilson for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Unit 8, 133 Copeland Road, London SE15 3SN.
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 13 to 17 of this report deal with the representations submitted in respect of the application. Copies of the representations and related correspondence 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 2 November 2016 Jonathan Wilson and Lorelie Wilson applied to this council for the grant of a premises licence in respect of Unit 8, 133 Copeland Road, SE15 3SN.
9. The application and is summarised as follows:
- **Provision of plays, films, live music and recorded music**  
Monday to Sunday      12:00 to 00:00 (midnight)
  - **The sale of alcohol for consumption on the premises**  
Monday to Sunday      12:00 to 23:30
  - **Proposed opening hours of the premises**  
Monday to Sunday      12:00 to 00:00 (midnight)

**N.B.** The application was amended by the applicant to remove plays, live music and recorded music from the application, to change the hours in respect of films to 12:00 - 23:30 and to clarify the description of the premises as follows:

*“That the premises is to be a street food venue with various and changing food vendors providing food at the premises and a licensed bar to provide on sales of alcohol only. The premises are not a bar, nightclub, off licence, grocer, supermarket, convenience store or similar type of premises. The operation of the premises is food led with ancillary sales of alcohol to complement the food offering. Moveable tables and chairs are provided at the premises.”*

10. The premises licence application form provides the applicant's operating schedule. Parts A, B, E, F, 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 and is attached to this report as Appendix A.
11. **N.B.** The application attached as appendix A shows an application date of 10 October 2016, however plans were not submitted with the application and the application was therefore not full and proper at that time. Plans were received on 2 November 2016 and this is the date that the application was considered properly submitted.

#### **Designated premises supervisor**

12. The proposed designated premises supervisor (DPS) is Mr Garry Cottle.

#### **Representations from responsible authorities**

13. Representations have been submitted by the Metropolitan Police Service and this council's licensing responsible authority and public health director.
14. The representation from the Metropolitan Police Service notes that the premises are situated in the Peckham major town centre area (as defined by this council's statement of licensing policy) and also the Peckham cumulative impact policy(CIP) area. The representation suggests conditions that the police contend should be included in any premises licence issued subsequent to the application. The applicant amended the application to include the suggested conditions and the Metropolitan Police Service withdrew the representation.
15. The licensing responsible authority's representation was submitted in respect of the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation notes that the premises are situated in the Peckham CIP area. The representation states that, with reference to the Peckham CIP, the applicant has not addressed the presumption to refuse the application and the representation recommends refusal of the application unless the applicant can demonstrate that the premises will not contribute to crime and disorder and public nuisance within the Peckham CIP area. The representation also requests further information from the applicant, being an accommodation limit for the premises and a written dispersal policy for the premises.
16. The director of public health's representation was submitted in respect to the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation notes that the premises are situated in the Peckham CIP area and contends that the application has not adequately rebutted the presumption that this premises will add to the cumulative impact of late night establishments on the above licensing objectives. The representation also states that the applicant has not provided a clear enough description of the premises and intended activities and recommends that the application be rejected.

17. The representations submitted by responsible authorities and related correspondence are attached as Appendix B.
18. **N.B.** The applicant has provided further details as to the operation of the premises stating:

*“That the premises is to be a street food venue with various and changing food vendors providing food at the premises and a licensed bar to provide on sales of alcohol only. The premises are not a bar, nightclub, off licence, grocer, supermarket, convenience store or similar type of premises. The operation of the premises is food led with ancillary sales of alcohol to complement the food offering. Moveable tables and chairs are provided at the premises.”*
19. Paragraph 136 of this council’s Statement of Licensing Policy states that: *“The classes of premises to which the policy applies is defined as follows – night clubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores; and similar premises.”*
20. As the premises do not fall within one of the above stated categories the Peckham CIP does not apply and there is no presumption to refuse the application which is subject to representations. The presumption to grant the application applies, however the option to consider further licence conditions relevant to the proposed operation of the premises is open to the Licensing Sub-Committee.
21. Copies of the email confirming the amendments to the application are attached in appendix B.

### **Representations from other persons**

22. No representations were submitted by other persons.

### **Conciliation**

23. The applicant was sent the representations and was advised to contact the responsible authorities directly who submitted the representations should the applicant wish to attempt to conciliate those responsible authorities. Following communication between the applicant and the Metropolitan Police Service, the Metropolitan Police Service withdrew their application.
24. The applicant was hopeful that the remaining representations could be conciliated and therefore the time limit to hold the hearing in respect of the application has been extended under section 11 of The Licensing Act 2003 (Hearings) Regulations 2005 as it is in the public interest to do so in that it was expected that the application would be determined without the requirement for a hearing.
25. Although further information has been provided by the applicant it has not been sufficient to allow the licensing responsible authority or public health director to withdraw their representations which remain outstanding at this time and therefore must be considered by the licensing sub-committee. At this time the applicant remains hopeful that the outstanding representations can be conciliated and that a hearing will not be required. The applicant intends to further communicate with the licensing responsible authority and public health director to this end. The licensing sub-committee will be informed of any further conciliation at the hearing to determine the application. An email from the licensing unit to the applicant confirming that the

time limit to hold a hearing has been extending to facilitate conciliation without the requirement for a hearing is attached as Appendix C.

### **Premises history**

26. No licensing authorisation has been issued in respect of the premises under the Licensing Act 2003 or any previous legislation.
27. No temporary event notices have been submitted in regards to the premises.
28. On 2 November 2016 Jonathan Wilson and Lorelie Wilson applied to this council for the grant of a premises licence in respect of Unit 8, 133 Copeland Road, London SE15 3SN.

### **Deregulation of entertainment**

29. 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.
30. 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**

31. A map showing the location of the premises is attached to this report as appendix D. The following licensed premises are also shown on the map and provide licensable activities as stated:
  - **PECKHAMPLEX, 95A Rye Lane, SE15 4ST** licensed for:  
  
Films: Sunday to Thursday from 09:00 to 00:00 (midnight) and Friday and Saturday from 09:00 to 02:00 the following day  
  
Sale of alcohol to be consumed on the premises: Monday to Thursday from 14:00 to 22:00 and Friday to Sunday from 12:00 to 23:00
  - **Roof B (Bussey Building), 133 Copeland Road SE15 3SN** licensed for:  
  
The sale of alcohol to be consumed on the premises: Monday to Friday from 17:00 and 22:30 and Saturday from 12:00 to 22:30  
  
Films: Monday to Sunday from 12:00 to 00:00  
  
The provision of live music: Monday to Sunday from 12:00 to 22:00  
  
The provision of plays: Monday to Sunday from 12:00 to 23:00

- **Forza Win Ltd, Unit 4.1, Copeland Industrial Park, 133 Copeland Road, SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises: Wednesday to Saturday from 12:00 to 23:30 and Saturday from 12:00 to 22:30

- **The Last Refuge Arts, 133 Unit, 9a Copeland Road, SE15 3SN** licensed for:

The provision of films: Monday to Friday from 18:00 and 00:00 and Saturday and Sunday from 12:00 to 00:00

The sale of alcohol and the provision of live music and recorded music: Monday to Friday from 17:30 to 00:00 and Saturday and Sunday from 14:30 to 00:00

The provision of plays: Monday to Friday from 19:30 and 22:30 and Saturday and Sunday from 14:30 to 22:30

- **Frank's Café, Levels 9 & 10, Peckham Multi Story Car Park, 95A Rye Lane, London, SE15 4ST** licensed for:

The sale of alcohol to be consumed on the premises: Monday to Sunday from 11:00 and 23:00

- **Frank's Café, Levels 7 & 8, Peckham Multi Story Car Park, 95A Rye Lane, London, SE15 4ST** licensed for:

The sale of alcohol to be consumed on the premises: Tuesday to Friday from 17:00 and 23:00, Saturday from 12:00 to 23:00 and Sunday from 12:00 and 22:00

- **Bold Tendencies, Levels 7 & 8, Peckham Multi Story Car Park, 95A Rye Lane, London, SE15 4ST** licensed for:

The provision of live and recorded music: Friday from 17:00 to 23:00, Saturday from 12:00 and 23:00 and Sunday from 12:00 to 22:00.

### **Southwark council saturation policy for Peckham**

32. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in November 2015 when full council assembly approved the 2016-2020 statement of licensing policy.
33. 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.
34. The effect of this special policy is that 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.

35. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

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

36. Council assembly approved Southwark's statement of licensing policy 2016 - 2020 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.
37. 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.
38. The premises are located in Peckham major town centre area. Closing times suggested in the statement of licensing policy for restaurants in the Peckham major town centre area are: Sunday to Thursday 00:00 and Friday and Saturday 01:00.

## **Resource implications**

39. A fee of £315 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 C.

## **Consultation**

40. 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**

41. 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**

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

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

44. 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.
45. 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
46. 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**

47. 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.
48. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
49. 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.
50. 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.
51. 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**

52. 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**

53. 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.
54. 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**

55. 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.
56. 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.
57. 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.
58. 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.

59. 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.

60. 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.
61. 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**

62. 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**

63. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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	Kirty Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Copy of the application
Appendix B	Copies of representations submitted by responsible authorities and related correspondence
Appendix C	Copy of an email from the Licensing Unit to the applicant
Appendix D	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	28 April 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
<b>Date final report sent to Constitutional Team</b>	5 May 2017	