

Item No. 6.	Classification: Open	Date: 12 June 2017	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Best Food & Wine, 171 Queens Road, London SE15 2ND – Transfer Application	
Ward(s) or groups affected:		Nunhead	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATIONS

1. That the licensing sub-committee considers an application made by Pushparani Arulrajah to transfer a premises licence under the Licensing Act 2003 in respect of the premises known as Best Food & Wine, 171 Queens Road, London SE15 2ND.
2. This is an application to transfer the premises licence, submitted under Section 42 of the Licensing Act 2003. The application is subject to an objection notice from the Metropolitan Police Service and is therefore referred to the sub-committee for determination.
3. Paragraphs 12 to 15 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.
4. Paragraphs 16 to 27 of this report deals with the police objection notice received to the transfer application. A copy of the relevant police objection notice is attached as Appendix B.
5. 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

6. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
7. Within Southwark, the licensing responsibility is wholly administered by this council.
8. 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.
9. 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.
10. The application to transfer a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
 11. The police may submit an objection notice to an application to transfer a premises licence when relevant to the promotion of the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

Premises licence transfer

12. A premises licence transfer application was received on 3 May 2017 to remove Sawindar Singh Sandhu and Naresh Kumar as the premises licence holders of Best Food & Wine and to specify Pushparani Arulrajah as the new premises licence holder.
13. On 3 May 2017 consents were received from Sawindar Singh Sandhu and Naresh Kumar to transfer the premises licence for Best Food & Wine to Pushparani Arulrajah.
14. The effect of an application to transfer a premises licence is that it will have immediate interim effect unless an objection is received from the police.
15. A copy of this application is attached as Appendix A

The police objection

16. The police upon receipt of the application to transfer the premises licence holder from Sawindar Singh Sandhu and Naresh Kumar to Pushparani Arulrajah submitted an objection notice on 11 May 2017, on the grounds of crime and disorder.
17. The police state that on Thursday the 4 May 2017 the licensing sub - committee were set to hear evidence from the responsible authorities regarding a catalogue of breaches of the premises licence, and evidence of a number of criminal offences. The recommendation from all responsible authorities involved was that the premises licence be revoked.
18. Additionally the police state on the 3 May 2017 the day before the licensing sub committee hearing an application was received from Pushparani Arulrajah to transfer the premises licence.
19. The police state that under the licensing act 2003 an application to transfer the premises licence can become effective immediately. This then puts the applicant in the place of the premises licence holder, until either the licence is granted and the transfer is completed or the application is refused or withdrawn.
20. The police state that In effect if the review hearing were to go ahead then the review would be on the actions of the previous premises licence holder.

21. On the day of the hearing the police state that they were given a copy of a lease agreement between the applicant for the transfer and the current premises licence holders.
22. The police state that the lease was between the current premises licence holder Naresh Kumar and Paramjit Kaur and two individuals as detailed on the lease Ajanthini Arularajah and Geethanjali Arularajah. The applicant for the transfer gave their name as Pushparani Arularajah. The police state that whilst the surname appears to be the same, the applicant for the transfer and those detailed on the lease agreement don't seem to be the same people.
23. The police also state that the lease agreement had not been signed by the new tenants and therefore cannot be accepted as a full and proper lease agreement.
24. Of concern to the police is that the landlord for the premises known as Best Food & Wine remains to be the current premises licence holder Naresh Kumar. The police in their objection state this would still give Mr Kumar overall control of the premises.
25. The police state in the objection that in this case there are exceptional circumstances as to why this transfer should be refused, under the grounds that it would undermine the prevention of crime and disorder licensing objective.
26. The police state that the premises licence is subject to a review in relation to the prevention of crime and disorder. The application to transfer the licence was submitted a day before the hearing and the police believe this has been done to circumvent the licensing hearing process.
27. A copy of the police objection is attached as Appendix B.

Consideration by the sub-committee

28. It has not been possible to reach a negotiated outcome of this matter and the sub-committee is asked to consider whether the police objection notice is upheld under the necessity to promote the licensing objective of crime and disorder and refuse the application to transfer.

Operating History

29. A premises licence was issued to Naresh Kumar and Sawindar Singh in respect of the premises on 2 October 2005. Mr Kumar was specified, and remains, the DPS of the premises.
30. On 9 May 2011 this council's trading standards service submitted an application for the review of the premises licence issued in respect of the premises. A licensing sub-committee hearing was held on 29 June 2011 to determine the application. The licensing sub-committee modified the licence by imposing four conditions on the premises licence. A copy of notice of decision in regards to the hearing of 29 June 2011 is attached to this report as part of the licensing responsible authority's representation in Appendix B.
31. On 9 October 2008 a licensing inspection of the premises were undertaken. It was noted that the premises licence summary was not displayed at the premises and the premises licence was not available at the premises in breach of section 57 of the Licensing Act 2003. A warning letter was sent to the premises in regards to this matter. On 7 November 2008 a re-visit of the premises was undertaken and the premises were found to be being operated compliantly.

32. On 8 October 2009 a licensing inspection of the premises was undertaken and the premises were found to be being operated compliantly.
33. On 4 February 2010 a licensing inspection of the premises was undertaken and the premises were found to be being operated compliantly.
34. On 3 February 2011 a licensing inspection of the premises was undertaken and the premises were found to be being operated compliantly.
35. On 22 June 2011 a licensing inspection of the premises was undertaken and the premises were found to be being operated compliantly.
36. On 28 March 2013 a licensing inspection of the premises was undertaken. Various breaches of the premises licence issued in respect of the premises and a potential breach of section 57 of the Act were noted.
37. No TEN's have been submitted in regards to the premises.
38. On 7 March 2017, an application was submitted by this council's trading standards service under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Sawindar Singh and Naresh Kumar in respect of the premises known as Best Food and Wine, 171 Queens Road, London SE15 2ND.
39. The review application was submitted in respect of the prevention of crime and disorder licensing objective and in summary states that the following has been witnessed and / or taken place at the premises:
 - Duty evaded alcohol for sale in contravention of The Customs and Excise Management Act 1979
 - Duty evaded alcohol for sale bearing counterfeit trademarks and "Duty Stamp" in contravention of the Trade Marks Act 1994 and Duty Stamp Regulations 2006
 - Offer to supply alcohol that cannot legally be sold in contravention of the Consumer Protection from Unfair Trading Regulations 2008
 - Offer for sale of unsafe goods in contravention of the Consumer Protection Act 1987.
40. The premises were the subject of a review on 29 June 2011 for alleged offences including the sale of counterfeit wine. Trading standards say that the licensees have learnt nothing since the last review of the premises licence.
41. The trading standards service in the review application stated that they do not have confidence in Mr Kumar's (joint licensee and DPS of the premises) management of the business. The option of a change of DPS is not recommended by trading standards because Mr Kumar acts as a sole trader and would still retain control of the premises. The trading standards service suggested in the review application that the licensing sub-committee consider the revocation of the premises licence.
42. Full details of the grounds for the review are attached as Appendix D.
43. On 4 May 2017 a licensing sub-committee was due to hear the review application submitted by trading Standards. On the 3 May 2017 a transfer application was submitted to Southwark Council licensing unit and the Review hearing listed for the 4 May 2017 was postponed.
44. The notice of postponement is attached to this report as Appendix E.

45. On the 12 May 2017 correspondence was received from the legal representative of the applicant in regards to the lease and agreement. This correspondence is attached to this report as Appendix F.
46. A copy of the Lease and agreement is attached to this report as Appendix G and Appendix H.
47. On the 17 May 2017 an application to change the Designated Premises Supervisor of the premises to Pushparani Arulrajah was received by Southwark Council licensing unit.
48. A copy of this Change of DPS application is attached to this report as Appendix I.

The local area

49. A map of the area is attached to this report as Appendix J. The premises is identified at the centre of the map.

Community impact statement

50. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the pursuit of the crime and disorder objective.
51. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

Southwark council statement of licensing policy

52. Council assembly approved Southwark's Statement of Licensing Policy 2011-14 on 12 October 2011. Sections of the statement that are considered to be of particular relevance to this application are:
 - Section 3 - 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.

53. 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

54. A fee of £23.00 has been paid by the applicant in respect of this application being the statutory fee payable for the transfer of a premises licence.

Consultations

55. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

56. The sub-committee is asked to determine the application for the transfer of a premises licence under Section 42 of the Licensing Act 2003.

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

Principles for making the determination

58. The general principle is that applications for the transfer of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.

59. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.

60. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

Reasons

61. If the sub-committee determines that it is necessary to refuse the application to transfer the premises licence, it must give reasons for its decision.

Hearing procedures

62. Subject to the licensing hearing regulations, the licensing sub-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.

63. This matter relates to the determination of an application for a premises licence under section 42 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

64. 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.
65. 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.
66. 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.

67. 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.
68. The sub-committee can only consider matters within the application that have been raised through the objection notice submitted by the police. This will be decided on a case to case basis.
69. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making objection 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.
70. All interested parties 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

71. Members are required to have regard to the DCMS 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

72. The head of community safety and enforcement has confirmed that the costs of this process 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 and Enforcement 160 Tooley Street London SE1 2QH	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Copy of the transfer application
Appendix B	Police objection
Appendix C	Copy of the premises licence
Appendix D	Trading standards review application
Appendix E	Notice of postponement of Hearing from licensing sub-committee on 4 May 2017
Appendix F	Submission from legal representative acting on behalf of transfer applicant
Appendix G	Lease
Appendix H	Agreement
Appendix I	Copy of change of designated premises supervisor application
Appendix J	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Richard Kalu, Licensing Enforcement Officer	
Version	Final	
Dated	22 May 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	26 May 2017	