

Item No. 5.	Classification: Open	Date: 15 June 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Adams News, 6 Coldharbour Lane, London SE5 9PR	
Ward(s) or groups affected:		Camberwell Green	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by this council's trading standards service under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Mohammed Javed Iqbal in respect of the premises known as Adams News, 6 Coldharbour Lane, London SE5 9PR.
2. Notes:
 - a) The grounds for the review are stated in paragraph 13 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The review application is supported by representations submitted by responsible authorities. Copies of the representations are attached as Appendix B. Details of the representations are provided in paragraphs 17 – 20.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C. A map of the area that the premises are located in is attached as Appendix D.
 - 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 applications 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. 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.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence allows the provision of licensable activities as follows:
- The sale of alcohol to be consumed off the premises: Monday to Sunday 00:00 to 00:00.
 - There are also no restrictions in respect of the premises' standard opening times (it can therefore be open 24hours-a-day).
10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix C.

Designated premises supervisor (DPS)

11. The current Designated Premises Supervisor (DPS) named on the licence is Mohammed Javed Iqbal. Mohammed Javed Iqbal is also the licensee of the premises.

The review application

12. On 1 April 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 Mohammed Javed Iqbal in respect of the premises known as Adams News, 6 Coldharbour Lane, London SE5 9PR.
13. The review application was submitted in respect of the prevention of crime and disorder and public safety licensing objectives and in summary states that the following has been witnessed and / or taken place at the premises:

Prevention of crime and disorder:

- Various breaches of premises licence conditions Including, but not limited to:
 - Condition 340: That sales after 00:00 are conducted through a secure window.

- Condition 336: That a personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.
 - Condition 225: That failure to examine at least annually/periodically test fire extinguishers.
 - Condition 311: That Failure to erect notice requesting customers leave quietly on a quiet and orderly manner
- Duty evaded alcohol offered for sale
 - Duty evaded alcohol bearing counterfeit trade marks and "Duty stamp"
 - Unauthorised licensable activity - failure to use secure window only after midnight (condition 340)
 - Employment of an illegal immigrant

Public safety

- Breach of Premise Licence conditions: fire extinguishers not maintained
 - Illegal unsafe novelty lighters
14. It is understood that whilst the premise has a 24/7 licence the current owner does not operate on a 24 hour basis, though of course is currently able to do so if he so wishes. In the event the licence is not revoked, trading standards would like the permitted licensable hours to be in accordance with Southwark's current licensing policy thereby making redundant the need for secure window service. It would also seek for the shop opening hours to be the same because trading standards do not have confidence the business would be able to operate correctly with different hours.
 15. Full details of the grounds for the review are provided within review the application. A copy of the review application is attached as Appendix A.

Representations from responsible authorities

16. Representations in support of the review application were submitted by the Metropolitan Police Service, environmental protection team (EPT), licensing (as a responsible authority) and public health.
17. The Metropolitan Police Service's representation state that the review application details a number of breaches of the premises licence and a number of offences with regard to duty evaded alcohol, consumer protection act and possible offences in regard to the employment of an illegal immigrant and recommend that the licence is revoked.
18. The EPT fully support the review having regards to the Licensing Act objectives and provide evidence from a police officer supporting the prevention of public nuisance licensing objective.
19. The licensing responsible authority's representation is submitted in respect of the prevention of crime and disorder and public safety licensing objectives. The representation states that it is concerned with the number and diversity of alleged criminal offences witnessed by trading standards officers and also that the premises has breached numerous licence conditions on more than one occasion and kept smuggled goods on the premises. They are of opinion that Mr Mohammed Javed Iqbal is not capable of running a licensed premises and promoting the licensing objectives and removing him as the DPS will not address these problems as he is the owners of the premises and premises licence holder and will have a controlling factor over a new DPS.
20. Public health's representation is 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 expresses concerns over the offences alleged in the review

application and fully support that the premises licence be reviewed by the licensing sub-committee.

21. Copies of the representations are attached as Appendix B.

Representations from other persons

22. No representations have been received by other persons.

Operating history

23. A premises licence was issued in respect of the premises on 17 September 2005.
24. The licence was transferred to the current licensee, Mohammed Javed Iqbal, on 22 June 2016. Mohammed Javed Iqbal was also specified as the premises' DPS on this date.
25. On 8 December 2016 trading standards and the Metropolitan Police Service carried out a joint visit as part of Southwark's programme of night-time economy visits. Multiple breaches of the premises licence were found at the premises. In addition, a large quantity of 'duty-evaded' product was seized by trading standards. Full information on this is available in the review application in Appendix A.
26. On 12 December 2016, Mohammed Javed Iqbal was interviewed under caution. Mr Iqbal claimed in the interview that the 'duty-evaded' products were purchased in a genuine cash and carry, but was unable to produce evidence to that effect.
27. On Friday 16 December 2017 into Saturday 17 December 2016, further observations were carried out of the business. The premises was again found to be breaching conditions of the premises licence requiring sales of alcohol to take place through a secure window after midnight.
28. On 20 February 2017, Mohammed Javed Iqbal was re-interviewed under caution. Transcripts are available in the application. Mr Iqbal again failed to produce the evidence required, leading trading standards to mistrust his responses. Mr Iqbal has since accepted a simple caution for knowingly having smuggled alcohol on his premises and for breaches of the premises licence.
29. No TEN's have been submitted in regards to the premises.
30. On 1 April 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 Mohammed Javed Iqbal in respect of the premises known as Adams News, 6 Coldharbour Lane, London SE5 9PR.

The local area

31. A map of the local area is attached as Appendix D. There are a number of licenced premises in the local area namely:

Art Deli Ltd. – 16a Cold harbour Lane, London SE5 9PR licensed for:

- The sale of alcohol to be consumed both on and off the premises:
 - Monday to Saturday 10:00 to 23:00
 - Sunday 12:00 to 22:30
- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 23:30

Indiaah Restaurant, 59 Denmark Hill, London SE5 8RS licenses for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday 11:00 to 00:00 (midnight)
 - Sunday 12:00 to 23:30

- The provision of late night refreshment (indoors):
 - Monday to Saturday 23:00 to 00:30 (the following day)
 - Sunday 23:00 to 00:00 (midnight)

Pizza Hut, 57 Denmark Hill, London SE5 8RS licensed for:

- The provision of late night refreshment (indoors):
 - Monday to Sunday 23:00 to 00:30 (the following day)

Chicken Express, 53 Denmark Hill, London SE5 8RS licensed for:

- The provision of late night refreshment (indoors):
 - Monday to Sunday 23:00 to 01:00 (the following day)

Joiners Arms, 35 Denmark Hill, London SE5 8RS licensed for:

- The sale of alcohol to be consumed both on and off the premises:
 - Sunday to Thursday 10:00 to 00:00 (midnight)
 - Friday and Saturday 10:00 to 01:00 (the following day)

- The provision of regulated entertainment in the form of recorded music (indoors):
 - Sunday to Thursday 10:00 to 00:00 (midnight)
 - Friday and Saturday 10:00 to 01:00 (the following day)

- The provision of regulated entertainment in the form of recorded live (indoors):
 - Friday and Saturday 20:00 to 01:00 (the following day)

Pesh Flowers, 31 Denmark Hill, London SE5 8RS licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Saturday 08:00 to 023:00
 - Sunday 10:00 to 22:30

Ginseng Noodle Bar, 4 Coldharbour Lane, London SE5 9PR licensed for

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday 11:00 to 00:30 (the following day)
 - Sunday 12:00 to 23:30

- The provision of late night refreshment (indoors):
 - Monday to Saturday 23:00 to 00:00 (midnight)
 - Sunday 23:00 to 23:30.

32. At the time of writing the premises licence holder has not submitted a response to the review application and representation, any submissions received prior to the hearing will be circulated.

Southwark council statement of licensing policy

33. Council assembly approved Southwark's statement of licensing policy 2016 to 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.
34. 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.
35. Within Southwark's statement of licensing Policy 2016 - 2020, the premises are identified as being within the Camberwell cumulative impact policy (CIP) area. Under the Southwark statement of licensing policy 2016 to 2020 the local CIP applies to night clubs, public houses and bars, off-licences, supermarkets and grocers. The closing time recommended in the statement of licensing policy for off licences, and grocers or supermarkets with off sales of alcohol in this area is 00:00 (midnight) daily.

Resource implications

36. There is no fee associated with this type of application.

Consultation

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

Community impact statement

38. 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

39. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
40. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

41. Under section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
42. The four licensing objectives are:
 - The prevention of crime and disorder
 - The protection of public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
 - Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
44. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
 - Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
45. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
46. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
47. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

48. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

49. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

50. 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 considers 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.
51. This matter relates to the review of the premises licence under section 51 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

52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
58. 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.
59. 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

60. 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

61. 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 & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Copies of the representations submitted by a responsible authorities
Appendix C	Copy of the premises licence
Appendix D	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	2 June 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		6 June 2017