

Item No. 6.	Classification: Open	Date: 27 June 2017	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003: The Charlie Chaplin, 26 New Kent Road, London SE1 6TJ – Representations Against Interim Steps	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATIONS

1. That the licensing sub-committee considers representations from the premises licence holder under 53B(9A) against the interim steps imposed under section 53A at a summary review of the premises licences in respect of the premises known The Charlie Chaplin, 26 New Kent Road, London SE1 6TJ held on 22 June 2017.
2. **Notes:**
 - a) Under section 53B(9A) of the licensing act 2003 the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations. The licence holder of the premises may only make further representations under subsection (6) if there has been a material change in circumstances since the authority made its determination..
 - b) A copy of the full application and certificate is attached as Appendix A.

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 summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the Licensing Authority to respond by taking interim steps quickly, where appropriate, pending a full review.

KEY ISSUES FOR CONSIDERATION

The premises licence

8. The premises in respect of the premises licence consists of a public house on the ground floor called the Charlie Chaplin and a nightclub on the first floor called the CC Lounge, 26 New Kent Road, London SE1 6TJ.
9. The premises licence was carried over from the justices licence in the 2005 transition and varied to extend the hours.
10. The premises licence was transferred to the current premises licence holder Adrian Ennis in September 2010.
11. The premises licence was subject to a previous summary review, initiated by the Metropolitan Police on 16 March 2017. The application concerned a serious incident that took place on 16 March 2016 at approximately 22:50. It was alleged that a patron described as being extremely intoxicated became aggressive when last orders were called and left the premises, then smashed a window of the premises with a phone.

Another patron then left the premises and assaulted the victim causing significant facial injuries. At the hearing on 18 March 2016, interim steps were considered and two interim steps were imposed. The notice of decision it attached in Appendix B. Additional conditions were added to the operating schedule of the premises licence.

12. The details of the premises licence that applies to both areas are:
 - Opening Hours:

Monday to Saturday	11:00 to 01:30 (the following day)
Sunday	11:00 to 23:30
 - Regulated entertainment in the form of live music and recorded music (indoors):

Monday to Saturday	11:00 to 01:30 (the following day)
Thursday to Sunday	11:00 to 23:30
 - Late night refreshment (indoors):

Monday to Saturday	23:00 to 01:30 (the following day)
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 - Sale of alcohol for consumption on and off the premises

Monday to Saturday	11:00 to 01:00 (the following day)
Sunday	11:00 to 23:00
13. A copy of the premises licence is attached as Appendix C.

Designated premises supervisor

14. The designated premises supervisor (DPS) is Adrian Ennis who has been DPS since July 2010 and holds a personal licence issued by the London Borough of Newham.

The review application and certificate

15. On 21 June 2017 the Metropolitan Police applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as The Charlie Chaplin, 26 New Kent Road, London SE1 6TJ.
16. On 21 June 2017 a Superintendent for the Metropolitan Police force certified that in his opinion the premises are associated with serious crime or serious disorder or both.
17. The application is concerned with a serious incident that took place on Saturday 17 June 2017 at approximately 23:30. The Police attended the premises in which two males were stabbed. Both victims were reported to be heavily intoxicated. The suspect, a patron, was also believed to be intoxicated and was seen to go behind the bar and remove a knife from the counter and stab both victims before leaving. Both victims were taken to hospital, the suspect had not been identified at the point the application for review was made.
18. Staff at the venue were also reported to be intoxicated, along with the landlord. There were no persons at the venue who could operate the CCTV. At the time, the bar staff would also not provide statements concerning the events.
19. On 22 June 2017 the licensing sub-committee suspended the licence as an interim step until such time as the full hearing (to be heard on 18 July 2017) could be determined, to prevent further incidents from occurring.
20. A copy of the notice of decision dated 22 June 2017 is attached to this report as Appendix D.

The representations against interim steps

21. The current hearing is for the purpose of considering if interim steps imposed 22 June 2017 on are needed following the receipt of the premises licence representations.
22. On 26 June 2017, representations were received from the solicitors for the premises licence requesting a reconsideration of the 22 June decision on the basis that a material change in circumstances had occurred since the decision:
 - The physical bar has been altered so as to prevent members of the public gaining access behind the bar
 - The CCTV system has been upgraded
 - All staff have received training in preventing and dealing with violence and aggression
 - An application to vary the licence has been submitted changing the designated premises supervisor to the current bar manager
 - The new DPS is able to operate the CCTV and is able to provide a live feed to his mobile phone.
23. A copy of the premises licence holder's representations together with supporting evidence is attached to this report as Appendix E.
24. The licensing sub-committee is not obliged to hear evidence from other parties at this stage of the procedure. However the premises licence holder and DPS have been invited to attend the hearing.
25. The review is currently being consulted on and is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full hearing of the licensing sub-committee.

26. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

Operating History

27. Four full premises inspections were made under the Licensing Act 2003, the first conducted on 5 August 2011 at 23:0, the premises was found to be in breach of six conditions of the premises licence, additionally there was no fire risk assessment in place. A warning letter was sent on 8 August 2011.
28. A revisit on 30 September 2011 found the premises compliant and a fire risk assessment in place.
29. The second conducted on 13 April 2012 at 23:26, found the premises to be in breach of one condition of the premises licence, additionally there was another 9 items of concern. A warning letter was sent on 8 May 2012.
30. A revisit on 17 December 2012 found the premises compliant and a fire risk assessment in place.
31. On 1 March 2014 at 21:06 an inspection found the premises to be fully compliant with the premises licence.
32. On 7 March 2015 at 21:00 an inspection found the premises to be fully compliant with the premises licence.
33. An inspection conducted on 20 March 2015 at 21:49, the premises was found to be in breach of one condition of the premises licence; additionally the premises licence and summary were unavailable. A warning letter was sent on 23 March 2015.
34. A revisit on 17 April 2015 found the premises compliant and a fire risk assessment in place.
35. A visit took place on 29 July 2016 at 18:30 following a complaint about parents with children consuming alcohol on the premises and patrons parking in front of the premises.
36. A revisit took place on 14 April 2017 at 19:07 to further discuss the parking issue and the use of the land by the premises to place tables and chairs there. The DPS advised that the premises had the permission of the Shopping Centre management to use the land.
37. A further revisit took place on 2 June 2017 at 18:08, no issues were found with external parking.
38. Visits by council licensing officers working on the night-time economy have been made.
39. As a result if an incident serious crime and/or serious disorder, a summary review was issued by the Metropolitan Police and on 22 June 2017 the premises licence was suspend.
40. The night time economy team log detailing visits to the premises are provided in Appendix F.

The local area

41. A map of the local area is attached at Appendix G.

Southwark Council statement of licensing policy

42. 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.
43. 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

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

Consultation

45. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

Community impact statement

46. 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

47. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003.
48. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

49. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where.
 - The application is properly made in accordance with Section 53A of the Act.
 - The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.
50. 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.
51. 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 premises licence.
52. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
53. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
54. 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 a appropriate and proportionate response.
55. 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

56. Where the authority takes interim steps an application for review it must notify the determination and reasons why for making it to:
 - The holder of the licence
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

57. 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
 - To 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.
58. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

Council's multiple roles and the role of the licensing sub-committee

59. 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.
60. 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.
61. 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.

62. 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.
63. 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.
64. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
65. 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.
66. There is no right of appeal to a magistrates' court against the licensing authority's decision regarding the setting of interim steps at this stage.

Guidance

67. 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.

REASONS FOR LATENESS

68. Due to the council's obligation to hold a hearing within 48 hours of receipt of a request from the premises licence holder to make representations against interim steps, there was not sufficient time to prepare and clear the report in time for the agenda dispatch.

REASONS FOR URGENCY

69. The council has a statutory duty to hold a hearing within 48 hours of receipt of a request from the premises licence holder to make representations against interim steps if there has been a material change in circumstances since the authority made its determination.

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	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

APPENDICES

Name	Title
Appendix A	Copy of review application and certificate
Appendix B	Copy of notice of decision from licensing sub-committee on 12 April 2016
Appendix C	Copy of the existing premises licences
Appendix D	Copy of notice of decision from licensing sub-committee on 22 June 2017
Appendix E	Correspondence from premises requesting a hearing to make representations against interim steps
Appendix F	Night time economy visits to premises
Appendix G	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure		
Report Author	Andrew Heron, Principal Licensing Officer		
Version			
Dated	26 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		No	No
Cabinet Member		No	No
Date final report sent to Constitutional Team			26 June 2017