

Item No. 5.	Classification: Open	Date: 18 July 2017	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003:The Charlie Chaplin, 26 New Kent Road, London SE1 6TJ – Review	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 53C of the Licensing Act 2003 by the chief of police for the Metropolitan Police Service for a summary review of the premises licences in respect of the premises known as The Charlie Chaplin, 26 New Kent Road, London SE1 6TJ.
2. **Notes:**
 - a) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix A.
 - b) The grounds for the review are stated in paragraphs 16 to 21 of this report. A copy of the full application and certificate are provided as Appendix B
 - c) Copies of the Notices of Decisions from two previous hearings held on 22 and 27 June 2017 are in 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 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 2016. Copies of the notices of decision from 18 March 2016 and 12 April 2016 are available in Appendix C. 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.
12. 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 C. Additional conditions were added to the operating schedule of the premises licence.
13. The details of the current 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)
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 - Late night refreshment (indoors):

Monday to Saturday	23:00 to 01:30 (the following day)
Sunday	23:00 to 23:30
 - 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
14. A copy of the current premises licence is attached as Appendix A.

Designated premises supervisor

15. Since the review was initiated, the designated premises supervisor (DPS) has been changed as of 26 June 2017 from Adrian Ennis to Craig Morrison, who holds a personal licence issued by the London Borough of Barking and Dagenham.

The review application and certificate

16. On 21 June 2017 the Metropolitan Police Service 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.
17. On 21 June 2017 a Superintendent for the Metropolitan Police Service certified that in his opinion the premises are associated with serious crime or serious disorder or both. The CCTV at the premises was not operational.
18. The premises licence was subsequently suspended following a hearing held on 22 June 2017. A copy of the notice of decision is available in Appendix C.
19. As a result, the premises licence holder put a number of measures in place, namely:
 - a) The physical bar was altered so as to prevent members of the public gaining access behind the bar
 - b) The CCTV system was upgraded
 - c) All staff were received training in preventing and dealing with violence and aggression
 - d) The licence holder applied to vary the licence so as to change the designated premises supervisor to Craig Morrison.
20. On 26 June, the licensing authority inspected the premises to confirm that all interim measures had been put in place.
21. As a result of the measures taken, a second hearing was held on 27 June 2017. A copy of that Notice of Decision is also included in Appendix C.

Representations from responsible authorities

22. A representation has been provided by this council's licensing authority in relation to the prevention of crime and disorder, the prevention of public nuisance and public safety. The concern is primarily with the event that led to review in 2016. Had the measures that had been put in place been followed, this incident may not have taken place.
23. A 'holding representation' has been received from this council's health and safety Department. At the time this report was published, the body of that representation had not provided and is expected to be circulated at a later date.
24. The representations from Responsible Authorities are available in Appendix D.
25. The Metropolitan Police have also submitted additional supporting documents which are available in Appendix E.

Representations from other persons

26. No further representations have been made.

Operating history

27. Four full premises inspections were made under the Licensing Act 2003, the first conducted on 5 August 2011 at 23:07, 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.
35. Visits by council licensing officers working on the night-time economy have been made and details of these visits are provided in Appendix D. On Monday 26 June 2017, the licensing authority inspected the premises to confirm that all interim measures had been put in place as a result of the licensing sub-committee hearing held on 22 June 2017, when the interim steps were varied and the licence modified with the following conditions added:
 - That the CCTV is checked on a daily basis to ensure that operational and a log maintained of the daily checks and made available to the police and authorised council officers immediately upon request.
 - That there will always be someone on the premises at all times the premises open to the public that can operate the CCTV.
 - That the hatch/gate shall remain closed at all times save for access or ingress.
 - That on Fridays and Saturdays from 21:30 until closing there will be one SIA officer.

- That no fruit knife (or any other knife/weapon) will be allowed within the premises and/or kept behind the bar area.

37. At the licensing sub-committee meeting on 26 June 2017, the representative for premises informed the committee that whilst they were agreeable to the additional conditions, they would not agree to the SIA authorised officer being a permanent condition of the licence.

The local area

38. A map of the local area is attached at **Appendix F**. There are other licensed premises in the area, namely:

The Coronet, 28 Old Kent Road, London SE1 6TL

- Opening Hours:

Monday to Wednesday 09:00 to 03:30

Thursday to Sunday 09:00 to 07:30

- Licensable activities: The provision of regulated entertainment in the form of plays, films, indoor sports, boxing or wrestling, live music, recorded music, performances of dance, anything similar to live/recorded music and sale of alcohol (on sales only):

Monday to Wednesday 09:00 to 03:00

Thursday to Sunday 09:00 to 07:00

- The provision of late night refreshment:

Monday to Wednesday 23:00 to 03:00

Thursday to Sunday 23:00 to 07:00

Railway Arches 3-6 Elephant Road, London SE17 1LB

- Opening Hours:

Monday to Wednesday 09:00 to 03:00

Thursday to Sunday 09:00 to 07:00

- Licensable activities for Arches 3, 4, 5 & 6

The provision of regulated entertainment in the form of plays, films, indoor sports, boxing or wrestling, sale of alcohol:

Monday to Wednesday 09:00 to 03:00

Thursday to Sunday 09:00 to 07:00

- The provision of late night refreshment:

Monday to Wednesday 23:00 to 03:00

Thursday to Sunday 23:00 to 07:00

- Licensable activities for Arches 3 only:

The provision of regulated entertainment in the form of live music, recorded music, performances of dance and anything similar to live/recorded music:

Monday to Wednesday 09:00 to 03:00

Thursday to Sunday 09:00 to 07:00

Davish News, 30 New Kent Road, London SE1 6TJ

- The sale by retail of alcohol (off sales)
Monday to Sunday from 07:00 to 23:00

Naranjo Restaurant, 113 Elephant Road, London SE17 1LB

- The sale by retail of alcohol (on sales)
Monday to Sunday from 07:00 to 22:30

Tesco Metro, 326-328 Shopping Centre Elephant and Castle, London SE1 6TB

- The Sale by retail of alcohol (off sales)
Monday to Saturday from 07:00 to 22:30
Sunday from 09:00 to 17:30

Agata London, Unit 5 Metro Central Heights, 119 Newington Causeway, London SE1 6DQ

- The sale by retail of alcohol (off sales)
Monday to Sunday 24 hours per day

Nando's, Unit 4 Metro Central Heights, 119 Newington Causeway, London SE1 6BA

- The sale by retail of alcohol (on sales)
Monday to Saturday from 11:00 to 00:00 (midnight)
Sunday from 11:00 to 23:30
- The provision of late night refreshment (indoors)
Monday to Saturday from 23:00 to 00:30 (the following day)
Sunday from 23:00 to 00:00 (midnight)

Elephant and Castle Public House, 121 Newington Causeway, London SE1 6BN

- The sale by retail of alcohol (on sales)
Sunday to Wednesday from 11:00 to 00:00 (midnight)
Thursday from 11:00 to 01:00
Friday and Saturday from 11:00 to 02:00 (the following day)
- The provision of late night refreshment (indoors)
Sunday to Wednesday from 23:00 to 00:30 (the following day)
Thursday from 23:00 to 01:30
Friday and Saturday from 23:00 to 02:30 (the following day)
- The provision of regulated entertainment in the form of recorded music (indoors)
Sunday to Wednesday from 11:00 to 00:00 (midnight)
Thursday from 11:00 to 01:00
Friday and Saturday from 11:00 to 02:00 (the following day)

May Stores, Unit A, 28 Arch Street, London SE1 6AS

- The sale by retail of alcohol (off sales)

Monday to Sunday from 07:00 to 02:00 (the following day).

Southwark Council statement of licensing policy

39. 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.

40. 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. Within Southwark's statement of licensing policy, the premises are identified as being outside of a cumulative impact zone situated within a major town centre area. Relevant closing times recommended in the statement of licensing policy for licensed premises in residential areas are as follows:

- Closing time for public houses, wine bars or other drinking establishments: Sunday to Thursday is 23:00 and for Friday and Saturday 00:00.

Resource implications

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

Consultation

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

Community impact statement

43. 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

44. The sub-committee is asked to determine, under Section 53C of the Licensing Act 2003, an application, made under Section 53A 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.
45. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

46. Under Section 53(A)(2) The licensing authority must determine a review application within 28 days of receipt of the application and reach a determination on that review.
47. 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.
48. 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.
49. 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.

50. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
51. 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.
52. 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.
53. 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

54. Where the authority takes interim steps on 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

55. 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.

56. 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

57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.
63. 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.
64. 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

65. 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

66. 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	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	The current premises licence
Appendix B	Copy of review application
Appendix C	Notices of decisions from two previous hearings held on 22 June 2017 and 27 June 2017
Appendix D	Representations from responsible authorities
Appendix E	Supporting documents from the Metropolitan Police Service
Appendix F	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	6 July 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	7 July 2017	