

Item No. 6.	Classification: Open	Date: 11 August 2017	Meeting name: Licensing Sub-Committee
Report Title		Licensing Act 2003 – Transfer Application Adam News, 6 Coldharbour Lane, London SE5 9PR	
Ward(s) or groups affected:		Camberwell Green Ward	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Nawaz Muhammad to transfer a premises licence under the Licensing Act 2003 in respect of the premises known as Adam News, 6 Coldharbour Lane, London, SE5 9PR.

Notes:

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 25 to 34 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 new 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 30 June 2017 to transfer the premises licence holder of Adam News to specify Nawaz Muhammad as the new premises licence holder.
13. On 30 June 2017 consents were received from the existing premises licence holder to transfer the premises licence for Adam News to Nawaz Muhammad.
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.

Premises history

16. A premises licence was issued in respect of the premises on 2 June 2006.

17. On the 2 July 2016 a transfer application was received to transfer the premises licence in addition there was a change of designated premises supervisor. These applications were granted 22 June 2016.
18. On 8 December 2016 Trading Standards and the Metropolitan Police 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.
19. The review application was submitted in respect of the prevention of crime and disorder and public safety licensing objectives. A copy of the review application is attached as Appendix D.
20. The licence was revoked at licensing sub-committee on the 15 June 2017. A copy of the licensing sub committee decision is attached as Appendix E.

The police objection

21. The police upon receipt of the application to transfer the premises licence holder to Nawaz Muhammad was submitted an objection notice on 13 July 2017.
22. The police state the above premises was subject of an application for a review of the premises licence under the licensing act 2003. On Thursday the 15 June 2017 the licensing sub-committee heard 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. The licensing sub committee took the decision to revoke the premises licence. The premises licence holder has appealed this decision.
23. On the 30 June 2017 the police state that an application was received from Mr Nawaz Muhammad to transfer the above premises licence. Under the licensing act 2003 an application to transfer the premises licence can become effective immediately. In addition an application to vary the premises licence to specify Mr Muhammad as the designated premises supervisor was also received.
24. The police state on this occasion they were made aware that a visit was made to the premises on the 11 July 2017, 11-days after the transfer took effect. The purpose of this visit was to conduct a licensing induction with the new premises licence holder Mr Muhammad.
25. The police state prior to this visit Mr Muhammed and been asked to ensure he had a copy of the lease agreement, and any other transfer documents which would indicate that he had legitimate control of the premises. This documentation was not forthcoming during the visit, Mr Muhammad stated that his solicitors were dealing with this matter and no lease had been signed yet.
26. Also present during this visit and induction meeting was the owner of the premises who had been witnessed working behind the counter of the shop. On questioning, the owner of the premises stated that he worked at the premises for free. He was

then asked why he would work for free in a shop that he owns but rents out to Mr Muhammed.

27. The police state that they are of the opinion that Mr Muhammed does not at this time have legitimate control of the premises, there is no signed lease agreement in place and as yet no further documentation to indicate that this would be the case.
28. Additionally the police state at the conclusion of the meeting, a licensing officer from Southwark Council noticed that a number of cans of Zubr lager displayed for sale. The information displayed on the cans was not English. This is a clear breach of the food labelling regulations as explained in more detail in the attached warning letter sent to Mr Muhammad. This in my opinion demonstrates disregard for licensing objectives and indicates that Mr Muhammed is not an appropriate person to take on this premises licence.
29. The police state that it is their opinion there are sufficient exceptional circumstances for us to object to the transfer of this premises licence, the same evidence is appropriate to object to the application to vary the premises licence to specify Mr Muhammed as the designated premises supervisor.
30. The Police have called a licensing officer as a witness to support their objections to the Transfer licensing application. A witness statement has been provided by the licensing officer which is detailed at Appendix F.

Consideration by the sub-committee

31. 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.

The local area

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

- **Art Deli Ltd. – 16a Cold harbour Lane, SE5 9PR:**

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, SE5 8RS:**

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 00:30 (the following day)

Sunday 23:00 to 00:00 (midnight)

• **Pizza Hut – 57 Denmark Hill, SE5 8RS:**

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

• **Chicken Express – 53 Denmark Hill, SE5 8RS:**

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

• **Joiners Arms – 35 Denmark Hill, SE5 8RS:**

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, SE5 8RS:**

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, SE5 9PR**

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

Community impact statement

33. 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.
34. 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

35. 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 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
 - Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
 - Section 6 which details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998
 - Section 7 which provides general guidance on dealing with crime and disorder and deals with licensing hours
 - Section 8 which provides general guidance on ensuring public safety including safe capacities
 - Section 9 which provides general guidance on the prevention of nuisance
 - Section 10 which provides general guidance on the protection of children from harm.
36. 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

37. 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

38. 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

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

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

Principles for making the determination

41. 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.
42. 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.
43. 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

44. 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

45. 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.
46. 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

47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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.

53. 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

54. 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.

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 transfer application
Appendix B	Police objection
Appendix C	Copy of the premises licence
Appendix D	Trading Standards Review application – 15 June 2017 (Licensing Sub – Committee)
Appendix E	Review Application – Licensing Sub – Committee Notice of Decision 15 June 2017
Appendix F	Licensing Officer Witness Statement
Appendix G	Copy of Change of Designated Premises Supervisor application
Appendix H	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Richard Kalu, Licensing Enforcement Officer	
Version	Final	
Dated	28 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	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team		28 July 2017