

Item No. 7.	Classification: Open	Date: 15 August 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: The Farriers Arms, 214 Lower Road, London SE8 5DJ	
Ward(s) or groups affected:		Rotherhithe	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Kenneth Ryan to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: The Farriers Arms, 214 Lower Road, SE8 5DJ.
2. Notes:
 - The application seeks to vary a premises licence held under current legislation. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the sub-committee for determination. A copy of the current premises licence is attached as Appendix A.
 - Paragraphs 9 to 11 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 B.
 - Paragraphs 14 to 17 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached as Appendices C and D
 - A map showing the location of the premises is attached as appendix G.

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, this council wholly administers the licensing responsibility.
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 premises licence application 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 under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current premises licence

8. The current premises licence in respect of the premises known as The Farriers Arms, 214 Lower Road, SE8 5DJ allows the following licensable activities:
- Recorded Music:
 - Monday to Thursday between 11:00 and 23:00
 - Friday between 11:00 and 00:00 (midnight)
 - Saturday between 11:00 and 01:00 the following day
 - Sunday between 12:00 and 23:00
 - The sale of alcohol to be consumed on and off the premises:
 - Monday to Thursday between 11:00 and 23:30
 - Friday and Saturday between 11:00 and 01:30 the following day
 - Sunday between 12:00 and 23:30
 - The provision of late night refreshment
 - Monday to Saturday between 23:00 and 23:30
 - Opening hours:
 - Monday to Thursday between 11:00 and 00:00
 - Friday and Saturday between 11:00 and 02:00 the following day
 - Sunday between 12:00 & 00:00

The variation application

9. On 19 May 2017 Kenneth Ryan applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as The Farriers Arms, 214 Lower Road, SE8 5DJ.
10. The application is summarised as follows:
 - To allow for the following non standard timings in regards to licensable activities:
 - The day of the London Marathon between 09:00 and 02:00 the following day
 - To allow for the following non standard opening hours:
 - The day of the London Marathon between 09:00 and 02:30 the following day
 - To add entertainment similar to live or recorded music to the licence as follows:
 - Monday to Thursday between 11:00 and 23:00
 - Friday between 11:00 and 00:00
 - Saturday between 11:00 and 01:00 the following day
 - Sunday between 12:00 and 23:00
 - To extend the permitted hours for licensable activities on St. Patrick's Day, St George's Day, Burns Night as follows when they fall on the following days:
 - Monday to Thursday between 11:00 and 00:00
 - Friday between 11:00 and 01:00 the following day
 - Saturday between 11:00 and 02:00 the following day
 - Sunday between 12:00 and 00:00
 - To extend the permitted opening hours on St. Patrick's Day, St George's Day, Burns Night as follows when they fall on the following days:
 - Monday to Thursday between 11:00 and 00:30
 - Friday & Saturday between 11:00 and 02:30 the following day
 - Sunday between 12:00 and 00:30
 - To amend condition 842 of the premises licence to allow the beer garden at the premises to be used until 22:00 hours daily.
11. The premises licence application form provides the applicant's operating schedule. The operating schedule sets out the proposed operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should an amended premises licence be issued in respect of the application the information provided in the operating schedule will form the basis of conditions that will be included in the licence.
12. A copy of the application is attached to this report as appendix B.

Designated premises supervisor

13. The designated premises supervisor (DPS) under the existing premises licence is Philomena Stewart.

Representations from responsible authorities

14. The council's environmental protection team has submitted a representation in respect of the prevention of public nuisance licensing objective. The representation notes that certain licence conditions were imposed on the licence by the licensing sub-committee. The representation states that the application gives insufficient detail with regards to noise control, particularly in respect of the beer garden, should extended hours be granted. The environmental protection team consider that any relaxation of the current hours will increase the potential for public nuisance.
15. A copy of the representation submitted by the environmental protection team is attached as Appendix C.

Representations from other person

16. One local resident has submitted a representation in regards to the application. The representation objects to the application in respect of the prevention of public nuisance and the prevention of crime and disorder licensing objectives. The representation is particularly concerned with the proposed extension of the permitted hours of use in regards to the beer garden, and contends that the use of the beer garden presently causes noise nuisance which will be exacerbated and last for a longer duration should the beer garden be permitted to be open for longer than it is presently. The representation also contends that drug use and anti-social behaviour allegedly take place in the beer garden presently and that these activities may increase should the beer garden be permitted to be open for longer than it is presently.
17. Copies of the representation, related correspondence and photographs submitted by the local resident are attached as Appendix D.

Conciliation

18. The applicant was sent copies of the representations. The applicant was advised to contact the environmental protection team directly to facilitate conciliation of their representation. The applicant was advised that the applicant could reply to the local resident via the licensing unit to facilitate conciliation of the local resident's representation. The applicant has not yet responded to the representations and so at this time the representations remain outstanding and must be considered by the licensing sub-committee. At the hearing to determine the application the licensing sub-committee will be informed of any developments in respect of the conciliation of the representations.

Operating history

19. A premises licence was issued in respect of the premises on 5 October 2005
20. The licence was transferred to Ms Philomena Stewart on 18 January 2007. Ms Stewart was specified as the DPS of the premises on this date.

21. On 18 January 2007 an application was also submitted to vary the premises licence to include live music and anything similar to live or recorded music. The application was subject to representations from a local resident and the council's environmental Protection Team. The application was granted at a licensing sub-committee hearing. At the hearing the licensing sub-committee imposed conditions on the licence. A copy of the recorded minutes pertaining to the hearing is attached as Appendix E.
22. On 17 May 2007 a local resident informed the licensing unit that the local resident had made a complaint to the council's noise team in regards to noise nuisance caused by loud entertainment noise emanating from the premises.
23. A complaint was received by the licensing unit from a local resident on 3 July 2007 alleging that loud music and entertainment sound levels at the premises were causing noise nuisance. The complainant also requested that the licensing unit liaise with the council's environmental protection team to calibrate the sound limiter at the premises.
24. On 29 January 2008 the council's environmental protection team submitted an application for the review of the premises licence issued in respect of the premises. A licensing sub-committee hearing was held on 17 March 2008 to determine the application. The licensing sub-committee amended a condition on the premises licence, pertaining to the sound limiter at the premises. Live music and entertainment similar to live or recorded music were removed from the licence. A copy of the notice of decision pertaining to the hearing is attached as Appendix F.
25. The licence was transferred to Mr Kenneth Ryan on 22 May 2015. Ms Stewart remains the DPS of the premises.
26. No temporary event notices have been submitted in respect of the premises in the past 24 months.
27. The Licensing Unit has received no complaints in regards to the premises since 3 July 2007.

Map

28. A map of the area is attached to this report as appendix G. The premises are at the centre of the map. The following premises are also shown on the map and are licensed as stated:

Surrey Quays Food and Wine, 1 Bush Road, London SE8 5AP licensed for:

- The sale of alcohol to be consumed off the premises
 - Monday to Saturday between 08:00 and 23:00
 - Sunday between 10:00 & 22:30

Southwark News, 5 Plough Way, London SE16 2LS licensed for:

- The sale of alcohol to be consumed off the premises
 - Monday to Sunday between 11:00 and 23:00

Costcutter, 13-15 Plough Way, London SE16 2LS licensed for:

- The sale of alcohol to be consumed off the premises
 - Monday to Saturday between 08:00 and 23:00
 - Sunday between 09:00 and 22:30

Southwark council statement of licensing policy

29. Council assembly approved Southwark's statement of licensing policy 2016 -2020 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.

30. 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.

31. The premises fall within Canada Water major town centre area. In Canada Water major town centre area the statement of licensing policy recommends the following closing times in respect of the types of Public houses, wine bars or other drinking establishments:

- Friday and Saturday: 00:00
- Sunday to Thursday: 23:00

Resource implications

32. A fee of £315.00 being the statutory fee payable for premises within non-domestic rateable value band C has been paid by the applicant company in respect of this application.

Consultation

33. Consultation has been carried out in respect of this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited at the premises for a period of 28 consecutive days.

Community impact statement

34. 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

35. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
36. The principles which sub-committee members must apply are set out below.

Principles for making the determination

37. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
38. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
39. Relevant representations are those which
 - Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
40. If relevant representations are received then the Sub-Committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to
 - Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation

Conditions

41. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
42. The four licensing objectives are
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
44. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
45. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
46. Members are also referred to the Home Office revised guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

47. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

Hearing procedures

48. 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 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.
49. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

50. 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.
51. 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.
52. 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.
53. 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.

54. 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.
55. 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.
56. 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

57. Members are required to have regard to the Home Office 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

58. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office 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	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copy of the representation submitted by the environmental protection team
Appendix D	Copies of the representation, related correspondence and photographs submitted by a local resident
Appendix E	Copy of licensing sub-committee hearing minutes (7 March 2007)
Appendix F	Copy of licensing sub-committee notice of decision (11 April 2008)
Appendix G	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Wesley McArthur, Principal Licensing Officer		
Version	Final		
Dated	2 August 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		3 August 2017	