

Item No. 5.	Classification: Open	Date: 30 August 2017	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Six Yard Box, Unit 6, The Artworks, Elephant Road, London SE17 1AY	
Ward(s) of group(s) affected		East Walworth	
From		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Six Yard Box Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Six Yard Box, Unit 6, The Artworks, Elephant Road, London SE17 1AY.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to a representation from a responsible authority and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 10 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.
 - c) Paragraphs 11 to 13 of this report deal with the representation submitted in respect of the application. Copies of the representations submitted by the council's licensing authority and the Metropolitan Police Service are attached to this report in Appendix B. A map showing the location of the premises is attached to this report as Appendix E.
 - 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 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 persons 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 premises licence application

8. On 10 July 2017 Sebastian O'Driscoll applied to this council for the grant of a premises licence in respect of Six Yard Box Limited at Six Yard Box, Unit 6, The Artworks, Elephant Road, London SE17 1AY. The premises are described in the application in the application as follows:

‘...Premises is located in a shipping container as part of the Artworks complex. The Premises has an internal floor space of 320sq ft. The premises has an accommodation limit for 40 persons. The Premises has two CCTV cameras that monitor the entirety of the premises. The Premises has 4 tables and two bar counters that can provide seating for 30 customers.

The Artworks is a mixed leisure and office site in Elephant and Castle. The Six Yard Box is one of 6 licensed premises on the Artworks site. The Artworks is fenced and gated, public can only access the site via two pedestrian entrances, one on the Walworth Road and the other on Elephant Road. The Six Yard Box premises is located inside the Artworks gates on the south side of a public use courtyard.

The courtyard that is operated and managed by the site landlords Artworks. The courtyard area has an accommodation limit of 200. The Artworks provide seating, security, cleaning and maintenance for the courtyard.

They also have CCTV of the courtyard which is managed by the Artworks Security Team. They hold Public Liability Insurance for the courtyard area..’

9. The application and is summarised as follows:
- The supply by retail of alcohol (both on and off sales)
 - Sunday to Thursday 12:00 (midday) to 23:00
 - Friday 12:00 (midday) to 00:00 (midnight)
 - Saturday 10:00 to 00:00 (midnight)
 - The provision of regulated entertainment in the form of recorded music (indoors)
 - Sunday to Thursday 12:00 (midday) to 23:00
 - Friday 12:00 (midday) to 00:00 (midnight)
 - Saturday 10:00 to 00:00 (midnight)
 - Opening hours
 - Sunday to Thursday 12:00 (midday) to 23:30
 - Friday 12:00 (midday) to 00:30
 - Saturday 10:00 to 00:30
 - The proposed designated premises supervisor of the premises is Sebastian O'Driscoll who has a personal licence by London Borough of Southwark.
10. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached to this report in Appendix A.

Representations from responsible authorities

11. A representation had been submitted by the Metropolitan Police (Licensing Division). The representation was made under the licensing objectives of the prevention crime and disorder and the prevention of public nuisance due to concerns with the operational nature of the Artworks. The Applicant has agreed to additional conditions, namely
1. That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises.
 2. That all CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council. There will be at least one person on duty at all times that is familiar with the operation of the CCTV and able to download the footage upon request.
 3. That all staff are trained in their responsibilities under the licensing act 2003 and training records to be kept and signed and updated every 6 months. The records shall, upon request, be made immediately available to officers of the police and the council.

4. That clear and visible signage on entrance/exit requesting customers to respect neighbours and leave quietly.
5. That no drinks shall be taken from the venue after 23:00 with the exception being off sales, that shall be sold in sealed containers for consumption away from the area known as The Artworks.
 - A copy of the original representation, the Applicant's agreement and subsequent Police withdrawal are available in Appendix B.
12. A representation has been received from this council's licensing authority in relation to the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance. The author has asked for further information and additional conditions. A copy of the representation is available in Appendix B.

Representations from other persons

13. No other representations have been received.

Conciliation

14. The Applicant was sent copies of the representations that were submitted. The Applicant has responded to both Objectors. Copies of those responses are in Appendix C.

Premises history

15. There is currently a premises licence in place. A copy of the current licence is available for information in Appendix D. The current hours for licensable activities are:
 - The sale by retail of alcohol to be consumed on the premises
 - Monday to Sunday from 12:00 to 23:00
 - Opening Hours
 - Monday to Sunday from 12:00 to 23:00
16. There is no history of complaints associated with the premises received by the licensing authority. An inspection was carried out on 17 February 2017. A number of breaches of the current licence were found, namely:
 - A copy of the premises licence was not available for inspection (contrary to Section 57(3) of the Licensing Act 2003)
 - The CCTV was not working or being retained correctly (contrary to Conditions 288 and 289 of the premises licence)
 - Staff training records were not available for inspection (contrary to condition 340 of the premises licence).
17. A warning letter was provided for the offences found (this is referred to in the representation made by the licensing authority, with the warning letter attached as a

supporting document). A revisit inspection was carried out on 5 May 2017. All issues were found to be resolved and the inspection was found to be fully satisfactory.

Map

18. A map showing the location of the premises is attached to this report as Appendix E. There is a high concentration of licensed premises in the immediate vicinity. Namely:

Longwave Bar and Café, 1 The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (both on and off sales)
 - Monday to Sunday from 11:00 to 00:30 (the following day)
- The provision of late night refreshment (both indoors and outdoors)
 - Monday to Sunday from 23:00 to 01:00 (the following day)

The Trunk, Unit 2, The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (both on and off sales)
 - Sunday to Thursday from 11:00 to 23:30
 - Friday and Saturday from 11:00 to 00:30 (the following day)
- The provision of late night refreshment (both indoors and outdoors)
 - Monday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30 (the following day)
- The provision of regulated entertainment in the form of films (indoors)
 - Sunday to Thursday from 08:30 to 23:30
 - Friday and Saturday from 08:30 to 00:00 (midnight)
- The provision of regulated entertainment in the form of live music, recorded music, plays and the performance of dance (all indoors)
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00 (midnight)

Elephantastic Pizza, Unit 5, The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (on and off sales)
 - Monday to Sunday from 12:00 (midday) to 23:00

Black Acorn Tapas, Unit 16 The Artworks, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (on sales)
 - Monday to Sunday from 10:00 to 23:00

Marcel and Sons, 18, The Artworks, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (on sales)
 - Tuesday to Saturday from 12:00 (midday) to 22:00
 - Sunday from 12:00 (midday) to 17:00

Lost Rivers, Elephant Road, London SE17 1AY

- The sale by retail of alcohol (both on and off sales)
 - Sunday to Thursday from 11:00 to 23:30
 - Friday and Saturday from 11:00 to 00:30 (the following day)
- The provision of late night refreshment (both indoors and outdoors)
 - Monday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30 (the following day)
- The provision of regulated entertainment in the form of live music, recorded music, films, play and the performance of dance (all indoors)
 - Sunday to Thursday from 10:00 to 23:30
 - Friday and Saturday from 10:00 to 00:30 (the following day)

Distaindina, Unit 6, Farrell Court, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (both on and off sales)
 - Sunday to Thursday from 08:00 to 03:00 (the following day)
 - Friday and Saturday from 08:00 to 04:00 (the following day)

Bola 8, Railway Arches 113c and 122, Elephant Road, London SE17 1LB

- The sale by retail of alcohol (on sales)
 - Monday to Wednesday from 11:00 to 02:00 (the following day)
 - Thursday to Saturday from 11:00 to 04:30 (the following day)
 - Sunday from 11:00 to 02:30 (the following day)
- The provision of late night refreshment (indoors)
 - Sunday to Thursday from 23:00 to 02:30 (the following day)
 - Friday and Saturday from 23:00 to 05:00 (the following day)
- The provision of regulated entertainment in the form of live music (indoors)
 - Monday to Sunday from 11:00 to 00:00 (midnight)
- The provision of regulated entertainment in the form of recorded music and anything similar (indoors)
 - Sunday to Thursday from 11:00 to 02:30 (the following day)
 - Friday and Saturday from 11:00 to 05:00 (the following day).

Southwark council statement of licensing policy

19. Council assembly approved Southwark's statement of licensing policy 2011-14 on 12 October 2011. Council Assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016.
20. 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.
21. 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.
22. Within Southwark's statement of licensing policy, the premises are identified as being outside of a cumulative impact zone but inside the Elephant and Castle major town centre. Relevant closing times recommended in the Statement of Licensing Policy is as follows:
 - Restaurants and cafes
 - Sunday to Thursday until 00:00

- Friday and Saturday until 01:00
- Public houses
 - Sunday to Thursday until 23:00
 - Friday and Saturday until 00:00.

Resource implications

23. A fee of £100.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value bands D/E.

Consultation

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

Community impact statement

25. 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

26. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
27. The principles which sub-committee members must apply are set out below.

Principles for making the determination

28. The general principle is that applications for premises licence applications 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.
29. 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 interested party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
30. 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:
- To grant the licence subject to:

- The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence
- To exclude from the scope of the licence any of the licensable activities to which the application relates
 - To refuse to specify a person in the licence as the premises supervisor
 - To reject the application.

Conditions

31. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, 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.
32. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
33. 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.
34. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license 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.
35. 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

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

Hearing procedures

37. 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.
38. This matter relates to the determination of an application for a premises licence under section 17 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

39. 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.
40. 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.
41. 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.

42. 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.

43. 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.

The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.

44. 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.

45. 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

46. 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

47. 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 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	Kirby Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Representations submitted by responsible authorities
Appendix C	Representations submitted by Responsible Authorities – the Metropolitan Police and the Council's Licensing Department (and withdrawal by Police)
Appendix D	Copy of current premises licence
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure		
Report Author	Andrew Heron, Principal Licensing Officer		
Version	Final		
Dated	16 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		17 August 2017	