

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 4 September 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Alpha Off Licence, 24 Peckham Rye, London, SE15 4JR	
<b>Ward(s) or groups affected:</b>		The Lane	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by this council's Trading Standards service under Section 51 of the Licensing Act 2003 in respect of the premises known as: Alpha Off Licence, 24 Peckham Rye, London, SE15 4JR.
2. Notes:
  - The grounds for the review are stated in paragraph 13 of this report. A copy of the review application is attached as Appendix B.
  - The review application is supported by representations submitted by responsible authorities. Copies of the representations are attached as Appendix C. Details of the representation are provided in paragraphs 15 to 19.
  - A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix A. A map of the area that the premises are located in is attached as Appendix E.
  - 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 new 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 applications 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. 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.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The premises licence allows the provision of licensable activities as follows:
- The sale of alcohol to be consumed off the premises:
 

Monday to Sunday	between 06:00 and 23:00
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  - Opening times:
 

Monday to Sunday	between 06:00 and 23:00
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10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix A.

### **Designated premises supervisor**

11. The current designated premises supervisor (DPS) under the existing premises licence is Sharla Thevarasa.

## The review application

12. On 14 June 2017, an application was submitted by this council's trading standards service under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Sharla Thevarasa in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London, SE15 5EG.
13. The review application was submitted in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm licensing objectives and in summary states that the following has been witnessed and / or allegedly taken place at the premises:
  - That illegal workers have been observed working at the premises on two separate occasions – (in breach of the immigration legislation)
  - The sale of beers, lagers and ciders with an alcohol by volume (ABV) above 7% which is a breach of condition 128 of the premises licence issued in respect of the licence
  - The offer and sale of duty evaded super strength beer
  - The failure to have CCTV working at the premises which is a breach of conditions 288 and 289 of the premises licence issued in respect of the licence
  - The failure to display sale price of alcohol
  - Supplying alcohol without the authorisation of Personal Licence holder which is a breach of condition 101 of the premises licence issued in respect of the licence
  - The sale of alcohol to an intoxicated person which is a breach of section 141 of The Act
    - The sale of alcohol to a child which is a breach of section 146 of The Act
    - The offer to supply alcohol that cannot be legally sold under Consumer Protection Unfair Trading Regulations 2008
    - The failure to make available copy of premises licence which is a breach of section 57 of The Act
    - The failure to display the premises licence summary at the premises which is a breach of section 57 of The Act
    - The supply of alcohol when there is no designated premises supervisor in respect of the premises which is a breach of mandatory condition 100 of the premises licence issued in respect of the premises
    - The failure to implement and maintain a challenge 25 policy which is a breach of condition 4AA of the premises licence issued in respect of the licence

- The failure to train staff, and keep records pertaining to such training, in relation to the Challenge 25 policy required at the premises which is a breach of condition 4AB of the premises licence issued in respect of the licence.
  - The trading standards service recommends that the premises licence issued in respect of the premises is revoked.
14. Full details of the grounds for the review are provided within review the application. The review application is attached as Appendix B.

### **Representations from responsible authorities**

15. Children social care for Southwark has submitted a representation in respect of the protection of children from harm. The representation refers to the various incidences of licence breaches and / or offences in respect of age verification, and in relation to the protection of children from harm, that have taken place at the premises. Children Social Care for Southwark supports the recommendation by the trading standards service that the premises licence issued in respect of the premises is revoked.
16. The licensing responsible authority have submitted a representation stating that they have no confidence that the premises licence holder would be willing to enforce the current licence conditions and that any new conditions that members may impose will be similarly ignored in the pursuit of profit. The licensing responsible authority therefore supports the recommendation made by the trading standards service that the premises licence issued in respect of the premises is revoked.
17. The metropolitan police service have submitted a representation acknowledging that the review details a significant number of breaches of the premises licence issued in respect of the premises, a number of offences with regard to the consumer protection act, and possible immigration offences. The metropolitan police service fully supports the review application and the recommendation that the premises licence issued in respect of the premises is revoked.
18. The director of public health has submitted a representation in regards to all four licensing objectives. The representation acknowledges the various licence breaches and offences in the review application and fully supports that the premises licence issued in respect of the premises is reviewed by the licensing sub-committee.
19. Copies of the representations are attached as Appendix C.

### **Representations from other persons**

20. No representations have been received by other persons.

### **Operating History**

21. On 6 August 2006 a premises licence was issued in respect of the premises to Shenelle Elahie. Shenelle Elahie was specified as the DPS on the licence.
22. On 15 June 2009 the licence was transferred to the Puvirasalingham Karalasingham. Shanelle Elahie remained the DPS specified in respect of the premises.
23. On 22 July 2014 a minor variation application was submitted to remove two licence

conditions relating to prior defunct legislation and also to amend condition 128 to state:

*“No beers / ciders in single cans, bottles or multi-packs with an ABV of above 7% will be displayed / sold or offered for sale from the premises unless written permission (email will suffice) is obtained from the Police Licensing Officer. Such permission must be kept at the premises and made available immediately on request to relevant authorities.”*

Previously condition 128 stated:

*“No beers / ciders in single cans, bottles or multi-packs with an ABV of above 5.5% will be displayed / sold or offered for sale from the premises.”*

24. On 27 March 2016 an application, to have immediate effect, was submitted to transfer the licence to Sharla Thevarasa. An application, to have immediate effect, was also submitted to specify Sharla Thevarasa as the DPS of the premises on 27 March 2016. The applications were granted with immediate effect and the current licence was issued on 27 March 2016.

**N.B.** The review application indicates that on 15 March 2017 the premises' licensee was Puvirasalingham Karalasingham and that the premises' was DPS was Shenelle Elahie, implies that from 15 March 2017 there has been no licensee or DPS in connection to the premises and that breaches of the premises licence issued in respect of the premises, and / or The Act, may have been caused by this situation. Please note that since 27 March 2016 the licensee and DPS of the premises has been Sharla Thevarasa whom the trading standards service indicate they may have spoken to on the phone on 15 March 2017 and spoke to in person at the premises on 5 April 2017.

25. On 26 April 2017 a licensing officer undertook an inspection of the premises. The premises were found to be operating compliantly.
26. On 1 June 2017 the metropolitan police service visited the premises with Trading Standards officers. As a result of the visit the metropolitan police service served a notification of alleged offences under The Act in respect of the sale of alcohol to an individual under 18 years old (in breach of section 141 of The Act). A copy of the notice is attached as Appendix D.
27. No TEN's have been submitted in regards to the premises.

#### **The local area**

28. A map of the local area is attached as appendix E.

#### **Southwark council statement of licensing policy**

29. Council assembly approved Southwark's statement of licensing policy 2016 - 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: Which 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: Which 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: Which 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: Which 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: Which provides general guidance on the promotion of the first licensing objective
  - Section 9 – Public safety: Which provides general guidance on the promotion of the second licensing objective
  - Section 10 – The prevention of nuisance: Which provides general guidance on the promotion of the third licensing objective
  - Section 11 – The Protection of Children from Harm: Which 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. Within Southwark’s statement of licensing policy 2016 - 2020, the premises are identified as being within Peckham Major Town Centre Area. The closing time recommended in the statement of licensing policy for off licences, grocers or supermarkets with off sales of alcohol in Peckham Major Town Centre Area is 00:00 hours daily.

### **Resource implications**

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

### **Consultations**

33. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

## **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, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 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.
36. The principles, which sub-committee members must apply, are set out below.

### **Principles for making the determination**

37. Under s.52 the licensing authority must hold a hearing to determine the review and any relevant representations.
38. 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.
39. 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.
40. 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.
41. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

42. 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.
43. 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.
44. 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**

45. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
  - The holder of the licence
  - The applicant
  - Any person who made relevant representations
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

46. 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.
47. This matter relates to the review of the premises licence under section 51 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**

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.

54. 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.
55. 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**

56. Members are required to have regard to the DCMS 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**

57. The head of regulatory services has confirmed that the costs of this process are borne by the service.

### **BACKGROUND DOCUMENTS**

<b>Background papers</b>	<b>Held At</b>	<b>Contact</b>
Licensing Act 2003 DCMS 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**

<b>No.</b>	<b>Title</b>
Appendix A	Copy of the premises licence
Appendix B	Copy of the review application
Appendix C	Copies of the representations submitted by responsible authorities
Appendix D	Copy of notification of alleged offences served by the Metropolitan Police Service
Appendix E	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	15 August 2017	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		16 August 2017