

Item No. 6.	Classification: Open	Date: 6 September 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Unit 2, 777 Old Kent Road, London SE15 1NZ	
Ward(s) or groups affected:		Livesey	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by George Nwachukwu to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Unit 2, 777 Old Kent Road, London SE15 1NZ.
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 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 B.
 - Paragraphs 13 to 18 of this report deal with the representations submitted in respect of the application. (Copies of the representations are attached as Appendices C & 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.

Within Southwark, this council wholly administers the licensing responsibility.

4. 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.
5. 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.
6. 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

7. The current premises licence in respect of the premises known as Unit 2, 777 Old Kent Road, London SE15 1NZ allows the following licensable activities:
- The sale of alcohol to be consumed on and off the premises

Sunday to Friday	between 11:00 & 23:00
Saturday	between 11:00 & 00:00 (midnight)
 - The provision of late night refreshment

Saturday	between 23:00 & 00:00 (midnight)
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 - Opening hours

Sunday to Friday	between 11:00 & 23:30
Saturday	between 11:00 & 00:30 the following day

The premises are described as a restaurant. A copy of the existing premises licence is attached as Appendix A.

The variation application

8. On 20 June 2017 George Nwachukwu 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 Unit 2, 777 Old Kent Road, London SE15 1NZ.
9. The application is summarised as follows:
- To amend the hours permitted for the sale of alcohol

Sunday to Thursday between 11:00 & 00:30 the following day

Friday, Saturday
and Bank Holidays between 11:00 & 03:00 the following day

- To amend the days and hours permitted for the provision of late night refreshment

Sunday to Thursday between 11:00 & 00:00

Friday and Saturday
and Bank Holidays between 11:00 & 02:30 the following day

- To amend the premises' opening hours

Sunday to Thursday between 11:00 & 01:00 the following day

Friday and Saturday
and Bank Holidays between 11:00 & 03:30 the following day

10. The premises licence application form provides the applicant's operating schedule. The operating schedule sets out any 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.
11. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

12. The designated premises supervisor (DPS) under the existing premises licence is George Nwachukwu.

Representations from responsible authorities

13. The council's planning service has submitted a representation in respect of the prevention of public nuisance licensing objective. The representation notes that events taking place at the premises have resulted in complaints of noise and nuisance from local residents. The representation notes that a temporary stop notice was served by the planning service to ensure that the premises adheres to a closing time of 23:00 hours as per planning permission in respect of the premises. The representation states that two planning applications to extend the hours of operation in respect of the premises have been refused on the grounds of the potential harm to residential amenity by the proposed extended hours of operation and further notes that there has been no change of circumstance to lead to a different conclusion in respect of the potential impact of extending the operating hours of the premises. The representation alleges that the premises are arranged as a late night drinking venue and not as a restaurant. The representation recommends that the application be rejected.
14. The council's director of public health has submitted a representation in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation states that research shows that increased hours of alcohol sales are associated with increased alcohol consumption, increased alcohol-related injuries and increased alcohol related

harm. In addition to this the representation notes that this council's Statement of Licensing Policy recommends that restaurants in the premises' location should close at 23:00 hours. The representation recommends that the application be rejected.

15. The council's licensing responsible authority has submitted a representation in respect of the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation notes that this council's Statement of Licensing Policy recommends that restaurants in the premises' location should close at 23:00 hours. The representation also notes that current planning permission in regards to the premises stipulates that the premises close at 23:00 hours. The licensing responsible authority recommends that the application is refused. The representation recommends that the application be rejected.
16. The Metropolitan Police Service has submitted a representation which notes that current planning permission in regards to the premises stipulates that the premises close at 23:00 hours. The representation notes that events taking place at the premises have resulted in complaints regarding public nuisance and noise nuisance caused by customers. The representation notes that the hours of operation applied for exceed those recommended in this council's Statement of Licensing Policy for a restaurant in the premises' location. The Metropolitan Police Service object to the application as the proposed extension of hours, if granted, are likely to lead to an increase in public nuisance and crime and disorder in the area.
17. The council's environmental protection team has submitted a representation in regards to the prevention of public nuisance licensing objective. The representation notes that events taking place at the premises have resulted in complaints of noise and nuisance from local residents. The representation also notes that current planning permission in regards to the premises stipulates that the premises close at 23:00 hours and that planning applications to extend the premises' hours of operation have been refused. The environmental protection team recommends that the application be refused.
18. Copies of the representations submitted by responsible authorities are attached as Appendix C.

Representations from other persons

19. Four 'other persons' have submitted representations objecting to the application. In summary the representations are concerned with the following:
 - The existing operation of the premises gives rise to noise nuisance
 - Customers using the premises engage in anti-social behaviour including public intoxication, littering, public urination, fights and sounding their car horns
 - That planning applications to extend the premises operating hours have been refused
 - That the premises operate as a night club
 - That patrons of the premises intimidate local residents
 - That a new residential housing complex is being built in the immediate vicinity of the premises
 - That all of the existing problems will be exacerbated, and crime and disorder in the locale increase, should the premises' hours of operation be extending.
20. Copies of the representations submitted by other persons are attached as Appendix D.

Conciliation

21. Due to time constraints the applicant was sent copies of the representation on the date of the writing of this report, therefore at the time of the writing of this report all of 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

22. A premises licence was issued in respect of the premises on 25 September 2016.
23. On 15 December 2016 a complaint was made to Southwark Anti-Social Behaviour Unit (SASBU) by a local resident alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to the Licensing Unit by SASBU.
24. On 23 December 2016 a complaint was made to a local ward councillor by a second local resident alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to the Licensing Unit by the local ward councillor.
25. On 3 January 2017 a complaint was made to a local MP by a third local resident again alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to local ward councillors by the local MP. The complaint was then forwarded to the Licensing Unit by a local ward councillor.
26. As a result of the above complaints an induction meeting at the premises was undertaken by a licensing officer on 5 January 2017. At the induction meeting the conditions of the premises licence issued in respect of the premises, the remit of the Licensing Unit and the potential consequences of breaching licensing legislation were explained to the licensee. During the induction meeting it was established that the following conditions of the premises licence issued in respect of the premises were not being complied with:
 - 841 (concerning a dispersal policy required at the premises)
 - 4A1 (concerning a refusal register required at the premises)
 - 305 (concerning signage required to be displayed at the premises)
 - 288 (concerning the maintenance of a CCTV system at the premises)

A warning letter was sent to the licensee in regards to the above breaches of the licence conditions. The premises have also been monitored periodically as a result of the complaints outlined above. Details of this monitoring are provided in Appendix E.

27. On 14 July 2017 an inspection of the premises was undertaken by a licensing officer. At the time of the inspection the premises were found to be being operated in compliance with the conditions of the premises licence issued in respect of the premises.
28. A list of the temporary event notices (TENs) submitted in in respect of the premises is attached as Appendix F.

Map

29. A map showing the location of the premises is attached to this report as Appendix G. The premises are identified at the centre of the map by a black diamond. The following licensed premises are also shown on the map:

- **805 Restaurant, 805-809 Old Kent Road, SE15 1NX** licensed for:
The provision of late night refreshment –

On Monday to Sunday between 23:00 and 00:30 the following day

The sale of alcohol provision of regulated entertainment –

On Monday to Sunday between 14:00 and 00:30 the following day
- **Champagne Bar & Lounge, 817 Old Kent Road, SE15 1NX** licensed for:

The provision of late night refreshment –

On Monday to Sunday between 23:00 and 00:30 the following day

The sale of alcohol –

On Sunday to Thursday between 10:00 and 00:00
On Friday and Saturday between 10:00 and 03:00
- **Iceland Foods LTD, 789-799 Old Kent Road, SE15 1NZ** licensed for:

The sale of alcohol –

On Monday to Saturday between 08:00 and 23:00
On Sunday between 10:00 and 22:30
- **Murco Costcutter Hopfields Service Station, 747-759 Old Kent Road, SE15 1NZ** licensed for:

The sale of alcohol –

On Monday to Sunday between 00:00 to 00:00 (24 hours sales)

The provision of late night refreshment –

On Friday and Saturday between 23:00 and 05:00

Southwark council statement of licensing policy

30. 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.
31. 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.
32. This council’s Statement of Licensing Policy defines the location that the premises are located in as a residential area. The Statement of Licensing Policy recommends the following closing times in respect of the restaurants and cafes in residential areas:
- 23:00 hours daily

Resource implications

33. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band B has been paid by the applicant company in respect of this application.

Consultations

34. 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

35. 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

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

Principles for making the determination

38. 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.
39. 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.
40. 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.
41. 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

42. 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.
43. The four licensing objectives are
 - a. The prevention of crime and disorder;
 - b. Public safety;
 - c. The prevention of nuisance; and
 - d. The protection of children from harm.

44. 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.
45. 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.
46. 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 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
47. Members are also referred to Revised Guidance on conditions issued under section 182 of the Licensing Act 2003 (April 2017) specifically chapter 9 when considering Annexes D, E, F and G of this report.

Reasons

48. 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

49. 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.

50. 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

51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. 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

58. Members are required to have regard to the revised guidance issued under section 182 of the Licensing Act 2003 (April 2017) 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

59. 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 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 responsible authorities
Appendix D	Copies of the representations submitted by other persons
Appendix E	Details of licensing visits to the premises
Appendix F	List of TENs submitted in respect of the premises
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	17 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	22 August 2017	