

Item No. 6.	Classification: Open	Date: 11 September 2017	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Tonkotsu, 133 Rye Lane, Peckham, London SE15 4ST	
Ward(s) of group(s) affected		The Lane	
From		Strategic Director of Environment & Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application made by Tonkotsu Limited for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Tonkotsu, 133 Rye Lane, Peckham, London SE15 4ST.
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 representations and is therefore referred to the sub-committee for determination.
 - b) 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 A.
 - c) Paragraphs 12 to 16 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report in Appendix B. A map showing the location of the premises is attached to this report as Appendix C.
 - 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 4 July 2017 Tonkutsu Limited trading applied to this council for the grant of a premises licence in respect of 133 Rye Lane, Peckham, London SE15 4ST.
9. The application is summarised as follows:
- **Late night refreshment**
 - Sunday to Thursday from 23:00 to 00:00 (midnight)
 - Friday and Saturday from 23:00 to 01:00 the following day
 - **Sale of alcohol to be consumed both on and off the premises**
 - Sunday to Thursday from 11:00 to 23:30 the following day
 - Friday & Saturday from 11:00 to 00:30 the following day
 - **Proposed opening hours of the premises**
 - Sunday to Thursday from 11:00 to 00:00 (midnight)
 - Friday & Saturday from 11:00 to 01:00 the following day
 - The premises are described as a Japanese ramen restaurant with an ancillary bar for the use of customers waiting to dine only.
10. The premises licence application form provides the applicant's operating schedule. Parts 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 then 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 and is attached to this report as appendix A.

Designated premises supervisor

11. The proposed designated premises supervisor (DPS) is Anne Seigner.

Representations from responsible authorities

12. The Metropolitan Police Service submitted a representation which agreed in principle with the control measures stated by the applicant in the operating schedule of the application, however the Metropolitan Police Service proposed specific wordings in respect of conditions to be included in any licence issued subject to the application. The applicant agreed to the conditions proposed by the Metropolitan Police Service and the Metropolitan Police Service subsequently withdrew their representation.
13. The licensing responsible authority submitted a representation which sought clarification of various parts of the application, requested accommodation limits for the basement and first floor of the premises and suggested a condition to be included in any licence issued subject to the application. The applicant clarified the application to the licensing responsible authority's satisfaction, provided an accommodation limit in respect of the premises and agreed to a proposed licence condition that was to the satisfaction of the licensing responsible authority. The licensing responsible authority subsequently withdrew their representation.

Representations from other persons

14. Three representations have been submitted by other persons, those other persons being local business people.
15. All three representations welcome the business to the area but are concerned with the possible negative effect that the proposed operation of the premises will have on health and safety of the customers of existing businesses in the locale. Two of the representations suggest a latest closing time for the premises of 23:00.
16. Copies of all of the representations submitted, and related correspondence, are attached to this report as Appendix B.

Conciliation

17. The applicant liaised with the responsible authorities who had submitted representations and those responsible authorities subsequently withdrew their representations. The applicant was invited to respond to the local business owners representations. The applicant has met with all three local business owners twice, however at this time the local business owner's representations remain outstanding and must be considered by the licensing sub-committee. At the hearing to determine this application the sub-committee will be updated as to any conciliation of the outstanding representations.

Premises history

18. No licensing authorisation has been issued in respect of the premises under the Licensing Act 2003 or any previous legislation.
19. No Temporary Event Notices have been submitted in regards to the premises.

20. On 4 July 2017 Tonkotsu Limited trading applied to this council for the grant of a premises licence in respect of 133 Rye Lane, Peckham, London SE15 4ST.

Map

21. A map showing the location of the premises is attached to this report as Appendix C. The following licensed premises are also shown on the map and provide licensable activities as stated:

Roof B (Bussey Building), 133 Copeland Road, London SE15 3SN licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Friday from 17:00 to 22:30
 - Saturday from 12:00 to 22:30
- The provision of films:
 - Monday to Sunday from 12:00 to 00:00
- The provision of live music:
 - Monday to Sunday from 12:00 to 22:00
- The provision of plays:
 - Monday to Sunday from 12:00 to 23:00.

Forza Win Ltd, Unit 4.1, Copeland Industrial Park, 133 Copeland Road, London SE15 3SN licensed for:

- The sale of alcohol to be consumed on the premises:
 - Wednesday to Saturday from 12:00 to 23:30
 - Sunday from 12:00 to 22:30.

The Last Refuge Arts, 133 Unit, 9a Copeland Road, London SE15 3SN licensed for:

- The provision of films:
 - Monday to Friday from 08:00 to 00:00
 - Saturday and Sunday from 12:00 to 00:00
- The sale of alcohol and the provision of live music and recorded music:
 - Monday to Friday from 17:30 to 00:00
 - Saturday and Sunday from 14:30 to 00:00
- The provision of plays:
 - Monday to Friday from 19:30 to 22:30
 - Saturday and Sunday from 14:30 to 22:30.

Frank's Café, Levels 9 & 10, Peckham Multi Story Car Park, 95A Rye Lane, London SE15 4ST licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday from 11:00 to 23:00.

Frank's Café, Levels 7 & 8, Peckham Multi Story Car Park, 95A Rye Lane, London SE15 4ST licensed for:

- The sale of alcohol to be consumed on the premises:
 - Tuesday to Friday from 17:00 to 23:00
 - Saturday from 12:00 to 23:00
 - Sunday from 12:00 to 22:00.

Bold Tendencies, Levels 7 & 8, Peckham Multi Story Car Park, 95A Rye Lane, London SE15 4ST licensed for:

- The provision of live and recorded music:
 - Friday from 17:00 to 23:00
 - Saturday from 12:00 to 23:00
 - Sunday from 12:00 to 22:00.

Rye Express, 137-139 Unit 1 Rye Lane, London SE15 4ST licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday from 08:00 to 00:00.

Iceland Frozen Foods, 74 Rye Lane, London SE15 5DQ licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Saturday from 08:00 to 23:00
 - Friday to Saturday from 10:00 to 22:30.

Il Giardino Restaurant, 7 Blenheim Grove, London SE15 4QS licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:30.
- The provision of late night refreshment:
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:30.

Peckham Refreshment Rooms, 12-16 Unit 4 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Friday from 07:00 to 22:30
 - Saturday from 09:00 to 23:30
 - Sunday from 09:00 to 16:30.

Honest Burgers, 12-16 Unit 1 To 2 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00
 - Sunday from 10:00 to 23:00
- The provision of late night refreshment:
 - Friday to Saturday from 23:00 to 00:00.

Brick Brewery, Railway Arch 209, Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Friday from 11:00 to 22:30.

Bar Story, Arch 213 Blenheim Grove, SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday from 10:00 to 00:00
 - Sunday from 10:00 to 23:30
- The provision of late night refreshment:
 - Monday to Saturday from 10:00 to 00:30
 - Sunday from 10:00 to 00:30.

Little Bird Gin Nights & Weekends, 22a Unit 1, Dovedale Business Centre Blenheim Grove London SE15 4QN licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday from 10:00 to 19:00
- The sale of alcohol to be consumed off the premises:
 - Thursday to Sunday from 10:00 to 22:00.

Serious Pig, Railway Arch 221 Blenheim Grove, SE15 4QL licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday from 10:00 to 19:00

McDonald's Restaurants Limited, 72-74 Rye Lane, SE15 5DQ licensed for:

- The provision of late night refreshment:
 - Sunday to Thursday from 23:00 to 01:00
 - Friday and Saturday from 23:00 to 02:00

Southwark council statement of licensing policy

22. 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

23. 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.

24. The premises are located in Peckham major town centre area. Closing times suggested in the statement of licensing policy for restaurants located in Peckham major town centre area are:

- Friday and Saturday: 01:00
- Sunday to Thursday: 00:00.

25. **N.B.** The premises fall within the Peckham cumulative impact policy (CIP) area. In regards to the Peckham CIP paragraph 136 of the statement of licensing policy states that:

“The classes of premises to which the policy applies is defined as follows – night clubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores; and similar premises.”

26. As the premises do not fall within one of the above stated categories the Peckham CIP does not apply and there is no presumption to refuse the application. The presumption to grant the application applies.

Resource implications

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

Consultation

28. 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

29. 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

30. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

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

Principles for making the determination

32. 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.

33. 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.
34. 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

35. 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.
36. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
37. 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.
38. 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.
39. 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

40. 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

41. 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.
42. 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

43. 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.
44. 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.

45. 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.
46. 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.
47. 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.

48. 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.
49. 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

50. 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

51. The head of community safety and enforcement has confirmed that the costs of this process 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	Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the application
Appendix B	Copies of representations submitted and related correspondence
Appendix C	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	25 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	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	30 August 2017	