

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 15 September 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Peckham Food and Wine, 176 Peckham High Street, London, SE15 5EG - Transfer Application	
<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 made by Safeer Abbas Shah to transfer a premises licence under the Licensing Act 2003 in respect of the premises known Peckham Food and Wine, 176 Peckham High Street, London, SE15 5EG.

## **Notes**

2. This is an application to transfer the premises licence, submitted under Section 42 of the Licensing Act 2003. The application is subject to an objection notice from the Metropolitan Police Service and is therefore referred to the sub-committee for determination.
3. Paragraphs 12 to 15 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.
4. Paragraphs 31 to 39 of this report deals with the police objection notice received to the transfer application. A copy of the relevant police objection notice is attached as Appendix B.
5. 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**

6. The 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.

7. Within Southwark, the licensing responsibility is wholly administered by this council.
8. 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.
9. 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.
10. The application to transfer a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
11. The police may submit an objection notice to an application to transfer a premises licence when relevant to the promotion of the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **Premises licence transfer**

12. A premises licence transfer application was received on 9 August 2017 to remove Kiran Israr as the premises licence holder of Peckham Food and Wine and to specify Safeer Abbas Shah as the new premises licence holder.
13. On 9 August 2017 consent was received from Kiran Israr to transfer the premises licence for Peckham Food and Wine to Safeer Abbas Shah.
14. The effect of an application to transfer a premises licence is that it will have immediate interim effect unless an objection is received from the police.
15. A copy of this application is attached as Appendix A

## **Premises history**

16. On 6 August 2006 a premises licence was issued in respect of the premises to Muhammed Islam and Saima Shahzadi.
17. On 15 June 2009 the licence was transferred to the current licensee, Kiran Israr. Kiran Israr was also specified as the premises on this date.
18. On 12 July 2011 a licensing officer undertook an inspection of the premises and noted that no personal licence holder was present at the premises in breach of condition 341 of the premises licence issued in respect of the premises. A revisit of the premises was undertaken on 26 July 2011 and the premises were found to be being operated compliantly.
19. On 2 February 2012 a licensing officer undertook an inspection of the premises and noted that the premises licence was not available at the premises (in breach of s.57 of the Licensing Act 2003), that no personal licence holder was present (in breach of licence condition 341) and that no staff training records in regards to the age identification scheme required at the premises were available (in breach of condition 326). A revisit of the premises was undertaken on 28 February 2012 and the premises were found to be being operated compliantly.
20. On 5 December 2015 a licensing officer undertook an inspection of the premises and noted that no personal licence holder was present (in breach of licence condition 341), that sales of alcohol at the premises were not authorised by a designated premises supervisor (DPS) (in breach of condition 100), that there was no recognised alcohol sales training scheme in place at the premises (in breach of condition 340), that no staff training records in regards to the age identification scheme required at the premises were available (in breach of condition 326), that fire extinguishers at the premises hadn't been maintenance inspected for over 12 months (in breach of condition 255a), and that less than 28 days worth of CCTV footage was available (in breach of condition 289). A revisit of the premises was undertaken on 17 April 2016 and the premises were found to be being operated compliantly.
21. On 26 April 2017 a licensing officer undertook an inspection of the premises with trading standards and police officers. An illegal worker was arrested at the premises and it was noted that CCTV at the premises was not functioning, in breach of licence condition 288. A revisit of the premises was undertaken on 27 April 2017 and the CCTV at the premises was found to be fully operational. Further details of this visit are provided in the review application.
22. On 19 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 Kiran Israr in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London, SE15 5EG.
23. The review application was submitted in respect of the prevention of crime and disorder and the protection of children from harm licensing objectives and in summary states that the following has been witnessed and / or taken place at the premises:

- That illegal workers have been observed working at the premises on 6 separate occasions (in breach of the immigration legislation) on 23 November 2016, 8 February 2017, 2 March 2017, 5 April 2017 and 20 May 2017.
  - Failure to pay the National Minimum Wage.
  - Failure to have CCTV working (in accordance with conditions 288 & 289 of the premises licence issued in respect of the premises).
  - Failure to display sale price of “super strength” beers, lagers and ciders.
  - Failure to have a personal licence holder on the premises at all times (in breach of licence condition 336).
  - Supplying alcohol without the authorisation of a personal licence holder (in breach of licence condition 101).
  - Duty evaded alcohol being sold.
  - Offering to sell unsafe and counterfeit “Apple” phone chargers.
  - Failure to train staff on age verification and to keep and make available records of that training (in breach of licence condition 326).
24. Trading standards recommended that the premises licence issued in respect of the premises is revoked.
25. A licensing sub-committee hearing, to determine the review application, was scheduled to take place on 22 August 2017. With the agreement of all relevant parties, the hearing was deferred to 6 September 2017 and then moved to the 15 September 2017. The reason for the deferment is because an application to transfer the premises licence issued in respect of the premises has been submitted. The application to transfer the premises licence is subject to representations and the application must be determined by the licensing sub-committee at a hearing. It was decided that the review application and transfer application should be heard in conjunction with each other as they have a direct bearing on each other. The time limit to hold the hearing in respect of the review application has been extended under section 11 of The Licensing Act 2003 (Hearings) Regulations 2005 as it is in the public interest to do so.
26. Full details of the grounds for the review are provided within the review application attached as Appendix D.
27. On 27 June 2017 a change of DPS application was submitted, to have immediate effect to specify Aamir Ali as the DPS of the premises. The application was granted and the current licence was issued on the 27 June 2017. The licensee remains Kiran Israr.

28. On the 9 August 2017 a change of DPS application was submitted by Safeer Abbas Shah to remove Aamir Ali as the DPS of the premises and to specify Safeer Abbas Shah as the new DPS of the premises. This application is attached as Appendix E
29. The effect of refusing the transfer application will mean that the change of DPS application will not be valid and will not be able to be granted.
30. No temporary event notices (TENs) have been submitted in regards to the premises.

### **The police objection**

31. The police, upon receipt of the application to transfer the premises licence holder from Kiran Israr to Safeer Abbas Shah, submitted an objection notice on 16 August 2017, on the grounds of crime and disorder.
32. The police state the above premises is subject of an application for a review of the premises licence under the licensing act 2003 submitted by Southwark trading standards on the 19 June 2017.
33. The police state that a check on Companies House shows a large number of documents were received by Companies House "for filing in Electronic Format on 27 July 2017" These seek to show that all three directors resigned after the review was submitted apparently resigning on 1 May 2017. However they show that on the same day (1st May) that Shazia Imran was re-appointed as a director that very day and resigned again on 27 July. It also shows on 27 July 2017 Israr served a "Notice of ceasing to be a person with significant control with effect from 1st May, thus indicating that from 1st May until 27 July there was no one in significant control. On 27 July Mr Safeer Abbas Shah is indicated as being appointed as a director, the sole director. The next day, on 28 July, a new company, Ya Sir Minimarket Limited, was incorporated where Mr Safeer Abbas Shah has become one of two directors. The other new director, Yasir Saddique, it is understood was one of the people managing the premises on a day to day basis when the problems arose that led to the review.
34. The police state a check on the history of Peckham Foods and Wines Limited shows Safeer Abbas Shah to have been the Company Secretary from 30 May 2007 until he resigned on 30 April 2009
35. On 10 August the Metropolitan Police received an application to transfer the Premises Licence from Kiran Israr to Safeer Abbas Shah. This was a day before the review application hearing was due to be heard on 11 August, though this was re-scheduled for 22 August.
36. The Metropolitan Police are of the view that this transfer is a tactic used to circumvent the provisions and objectives of the Licensing Act and one Southwark's licensing policy seeks to address.
37. The police in their objection make reference to paragraphs 89 and 90 of Southwark's statement of licensing policy which states:

- “89. This authority is concerned over the frequently observed practice of an application for a transfer of a premises licence being made immediately following an application for a review of that same licence being lodged.
90. Where, such applications are made, this authority will require documented proof of transfer of the business / lawful occupancy of the premises, to the new proposed licence holder to support the contention that the business is now under new management control.”
38. The police state that no documentation has been supplied to indicate the business is now under new management control and the police continue to be seriously concerned about the operation of the premises and crime will continue along with poor management and the employment of illegal workers at this premise. The police maintain that the review process should continue under the previous licence holder and the premises licence is revoked
39. The police state that It is for this reason in their opinion there are exceptional circumstances on this occasion to object to the transfer of this premises licence.

#### **Consideration by the sub-committee**

40. It has not been possible to reach a negotiated outcome of this matter and the sub-committee is asked to consider whether the police objection notice is upheld under the necessity to promote the licensing objective of crime and disorder and refuse the application to transfer.

#### **The local area**

41. A map of the local area is attached as appendix D. The following premises are shown on the map and are licensed as stated below.

**Prince of Peckham, 1 Clayton Arms Clayton Road London SE15 5JA** licensed for:

- Films, indoor sporting events, recorded music and the sale of alcohol to be consumed on or off the premises:
  - Sunday to Thursday from 10:00 to 00:00 (midnight)
  - Friday and Saturday from 10:00 to 02:00 the following day.

**The Copper Tap at the Red Cow, 190-192 Peckham High Street, London SE15 5EG** licensed for:

- Recorded music, performances of dance and the sale of alcohol to be consumed on or off the premises:
  - Monday to Thursday from 12:00 to 23:00
  - Friday and Saturday from 12:00 to 01:00 the following day
  - Sunday from 12:00 to 22:30

- Late night refreshment and live music:
  - Friday and Saturday from 12:00 to 01:00 the following day.

### **Community impact statement**

42. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the pursuit of the crime and disorder objective.
43. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

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

44. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. 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.
45. 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.

### **Resource implications**

46. A fee of £23.00 has been paid by the applicant in respect of this application being the statutory fee payable for the transfer of a premises licence.

### **Consultation**

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

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and democracy**

48. The sub-committee is asked to determine the application for the transfer of a premises licence under Section 42 of the Licensing Act 2003.
49. The principles which sub-committee members must apply are set out below.

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

50. The general principle is that applications for the transfer of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.
51. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.
52. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

### **Reasons**

53. If the sub-committee determines that it is necessary to refuse the application to transfer the premises licence, it must give reasons for its decision.

### **Hearing procedures**

54. Subject to the licensing hearing regulations, the licensing sub-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.

55. This matter relates to the determination of an application for a premises licence under section 42 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**

56. 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.
57. 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.

58. 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.
59. 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.
60. The sub-committee can only consider matters within the application that have been raised through the objection notice submitted by the police. This will be decided on a case to case basis.
61. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making objection 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.
62. All interested parties 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**

63. 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**

64. 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 Phone number: 020 7525 5748

## APPENDICES

No.	Title
Appendix A	Copy of the transfer application
Appendix B	Police objection
Appendix C	Copy of the premises licence
Appendix D	Trading standards review application
Appendix E	Copy of the change of designated premises supervisor application
Appendix F	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Richard Kalu, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	30 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 Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	1 September 2017	