

<b>Item No.</b> 7.	<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 - Review	
<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 (the Act) 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.
2. Notes:
  - a) The grounds for the review are stated in paragraphs 13 to 14 of this report. A copy of the review application is attached as Appendix A.
  - 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 paragraph 15 and 16.
  - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B. A map of the area that the premises are located in is attached as Appendix D.
  - 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 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 from 00:00 to 00:00 (24 hour sales of alcohol)
  - Opening times
    - Monday to Sunday from 00:00 to 00:00 (24 hour sales of alcohol).
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 B.

### **Designated premises supervisor (DPS)**

11. The current designated premises supervisor (DPS) named on the licence is Aamir Ali.

## **The review application**

12. 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.
13. 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 six 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).
14. The trading standards service recommends that the premises licence issued in respect of the premises is revoked.
15. Full details of the grounds for the review are provided within review the application. The review application is attached as Appendix A.

## **Representations from responsible authorities**

16. The licensing responsible authority has submitted a representation stating that they have no faith in the current management of the premises to promote the licensing objectives and that the licensing responsible authority therefore fully support the recommendation made by the trading standards service in the review application that the licence is revoked.
17. The Home Office have submitted a representation stating that during an enforcement visit at the premises illegal workers have been encountered at the

premises and the representation provides details of the illegal workers encountered at the premises.

18. Copies of the representations are attached as Appendix C.

### **Representations from other persons**

19. No representations have been received by other persons.

### **Operating History**

20. On 6 August 2006 a premises licence was issued in respect of the premises to Muhammed Islam and Saima Shahzadi.
21. 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.
22. 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.
23. 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.
24. 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 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 had not 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.
25. 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.
26. 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.

27. On 27 June 2017 an application, to have immediate effect, was submitted to specify Aamir Ali as the DPS of the premises. The application was granted and the current licence was issued on 27 June 2017. The licensee remains Kiran Israr.
28. No temporary event notices have been submitted in regards to the premises.
29. A Licensing Sub Committee hearing to determine the review application was scheduled to take place on 22 August 2017. On 22 August 2017, with the agreement of all relevant parties, the hearing was adjourned to 6 September 2017. The reason for the adjournment 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.

#### **The local area**

30. 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 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, 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.

#### **Southwark Council saturation policy for Peckham**

31. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in November 2015 when full council assembly approved the 2016 - 2020 statement of licensing policy.

32. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night, alcohol-related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
33. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
34. Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. The "cumulative impact" on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, "cumulative impact" relates to the effect of a concentration of many premises.
35. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

#### **Southwark Council statement of licensing policy**

36. 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. 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.
37. 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.
38. 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**

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

### **Consultations**

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

### **Community impact statement**

41. 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**

42. 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.
43. The principles, which sub-committee members must apply, are set out below.

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

44. Under section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
45. 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.
46. 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.
47. 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.
48. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
49. 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.
50. 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.
51. 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**

52. 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**

53. 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.
54. 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**

55. 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.
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 representations from other persons and responsible authorities.
61. 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.
62. 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**

63. Members are required to have regard to the Home Office 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 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 Phone number: 020 7525 5748

## APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Copy of the premises licence
Appendix C	Copies of the representations submitted by responsible authorities
Appendix D	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
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<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
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