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| Item No. 5. | Classification: Open | Date: 2 October 2017 | Meeting Name: Licensing Sub-Committee |
| Report title: | | Licensing Act 2003: Unit 2, 777 Old Kent Road, London SE15 1NZ - Review | |
| 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 an other person under Section 51 of the Licensing Act 2003 for a review of the premises licence held by George Nwachukwu in respect of the premises known as Unit 2, 777 Old Kent Road, London SE15 1NZ
2. Notes:
 - a) The grounds for the review are stated in paragraph 13 of this report. A copy of the review application is attached as Appendix B.
 - b) The application is supported in representations submitted by one responsible authority and an 'other person'. Copies of the representations and related correspondence are attached in Appendix C. Details of the representations are provided in paragraphs 15 to 18 of this report.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix A. A map showing the location of the premises is attached as appendix G.
 - 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
 - Sunday to Thursday between 11:00 and 23:30
 - Friday, Saturday and bank holidays between 11:00 and 00:30 the following day
 - The provision of late night refreshment
 - Sunday to Thursday between 11:00 and 23:30
 - Friday, Saturday and bank holidays between 11:00 and 00:30 the following day

- Opening hours
 - Sunday to Thursday between 11:00 and 00:00 the following day
 - Friday and Saturday and bank holidays between 11:00 and 01:00 the following day
- 10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix A.

Designated premises supervisor (DPS)

- 11. The current designated premises supervisor (DPS) named on the licence is George Nwachukwu.

The review application

- 12. On 12 July 2017 an application was submitted by an 'other person', under Section 51 of the Licensing Act 2003, for the review of the premises licence held by George Nwachukwu in respect of the premises known as Unit 2, 777 Old Kent Road, London SE15 1NZ.
- 13. The review application was submitted in respect of the prevention of crime and disorder and prevention of public nuisance licensing objectives on the grounds that:
 - The premises are operating in breach of the planning permission granted in respect of the premises.
 - Numerous complaints about the premises have been submitted by local residents to the council, Southwark anti-social behaviour unit, the police and a local MP in regards to the operation of the premises.
 - Local residents have been subject to alleged verbal abuse from the licensee when those local residents have submitted complaints in regards to noise nuisance or complaints about the premises' customers loitering in the surrounding streets
 - The applicant has allegedly been woken up by shouting, arguing, music being played in cars and car horns being sounded.
 - Customers from the premises urinate outside of the applicant's bedroom window and in the applicant's front garden
 - The premises are being operated as a club / bar
- 14. A copy of the review application is attached as Appendix B.

Representations from responsible authorities

- 15. This council's director of public health has submitted a representation in regards to the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation expresses concern over the alleged persistent failure (of the premises' management) to

promote the licensing objectives. The representation notes that local residents are allegedly being disturbed in the early hours of the morning and that the resultant loss of sleep could have detrimental effects to those residents' health. The director of public health fully supports that the premises licence issued in respect of the premises be reviewed.

Representations from other persons

16. A local resident has submitted a representation in support of the review application. The representation states that the premises management have been negligent in their duty to ensure that customers leave the premises in a quiet and orderly manner, that the operation of the premises leads to the loss of amenity for local residents, that loud arguments take place in the locale between customers of the premises, that the operation of the premises has an adverse effect on local residents' ability to park in the locale (and that double parking could lead to an accident), that vandalism and anti-social behaviour arise from the location and that the disposal of trade waste from the premises is of concern.
17. The representation states that it has been submitted on behalf of a local community association. This council's guidance to the submission of representations advises that when such representations are submitted proof (such as meeting minutes) must be provided that the representation has been submitted on the agreement of the members of the association (or similar body). In this case no such proof has been provided and so the representation must be considered as being submitted on behalf of the individual who submitted it, and not on the behalf of the community association referred to.
18. Copies of the representations and related correspondence are attached to this report as Appendix C.

Operating history

34. A premises licence was issued to George Nwachukwu in respect of the premises on 25 September 2016. On the licence Mr Nwachukwu was specified as the premises' DPS.
35. On 15 December 2016 a complaint was made to Southwark anti-social behaviour unit (SASBU) by the review applicant alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to the licensing unit by SASBU.
36. 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.
37. 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.
38. 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).
39. 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 D.
 40. On 20 June 2017 an application to vary the premises licence issued in respect of the premises was submitted. The application sought to extend the hours permitted for licensable activities at the premises and extend the premises' opening hours. The application was subject to representations submitted by responsible authorities and four 'other persons' and so the application was referred to the licensing sub-committee for determination.
 41. 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.
 42. On 1 August 2017 a complaint was made to SASBU by the review applicant alleging that the premises were being operated outside of the hours permitted for licensable activities by the premises licence issued in respect of the premises (specifically "past midnight"), and that customers shout and drink in the surrounding streets when leaving the premises. The complaint was forwarded to the Licensing unit by SASBU.
 43. A licensing sub-committee hearing in respect of the variation application submitted on 20 June 2017 (see paragraph 38 above) was held on 6 September 2017. At the hearing the application was granted with hours that were reduced from the hours applied for. A copy of the notice of decision in regards to the hearing is attached as Appendix E.
 44. On 7 September 2017 a complaint was made to the Licensing Unit by a fourth local resident stating that the provision of licensable activities at the premises, outside of the hours permitted for licensable activities by the premises licence issued in respect of the premises, was being advertised in respect of the premises.
 45. The hours referred to in the complaint are a closing time of 23:00 on Monday to Thursday and "till late" on Friday and Saturday. The decision made by the licensing sub-committee on 6 September 2017 would allow for a closing time of 00:00 (midnight) on Monday to Thursday.
 46. A list of the temporary event notices (TENs) submitted in respect of the premises is attached as appendix F.

Map

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

805 Restaurant, 805-809 Old Kent Road, London SE15 1NX licensed for:

- The provision of late night refreshment
 - Monday to Sunday between 23:00 and 00:30 the following day
- The sale of alcohol provision of regulated entertainment
 - Monday to Sunday between 14:00 and 00:30 the following day

Champagne Bar & Lounge, 817 Old Kent Road, London SE15 1NX licensed for:

- The provision of late night refreshment
 - Monday to Sunday between 23:00 and 00:30 the following day
- The sale of alcohol
 - Sunday to Thursday between 10:00 and 00:00
 - Friday and Saturday between 10:00 and 03:00

- **Iceland Foods LTD, 789-799 Old Kent Road, London SE15 1NZ** licensed for:

- The sale of alcohol
 - Monday to Saturday between 08:00 and 23:00
 - Sunday between 10:00 and 22:30

- **Murco Costcutter Hopfields Service Station, 747-759 Old Kent Road, London SE15 1NZ** licensed for:

- The sale of alcohol
 - Monday to Sunday between 00:00 to 00:00 (24 hours sales)
- The provision of late night refreshment
 - Friday and Saturday between 23:00 and 05:00 the following day

Southwark council statement of licensing policy

20. 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.
21. 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.
22. Within Southwark's statement of licensing policy 2016 - 2020, the premises are identified as being within a residential area. The closing times recommended in the statement of licensing policy for restaurants located in residential areas area are:
- Restaurants and cafes 23:00 daily

Resource implications

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

Consultation

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

Community impact statement

25. 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

26. 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.
27. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

28. Under Section 52 of the Licensing Act, the licensing authority must hold a hearing to determine the review and any relevant representations.
29. 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.
30. 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.
31. 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.
32. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

33. 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.
34. 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.
35. 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

36. 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

37. 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.
38. 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

39. 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.
40. 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.
41. 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.
42. 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.
43. 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.
44. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.

45. 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.
46. 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

47. 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

48. 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 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 current premises licence |
| Appendix B | Copy of the review application |
| Appendix C | Copies of the representations and related correspondence submitted |
| Appendix D | Details of licensing visits to the premises |
| Appendix E | Copy of Notice of Decision of 6 September 2017 |
| Appendix F | Details of temporary event notices submitted in respect of the premises |
| Appendix G | Map of the local area |

AUDIT TRAIL

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|---|--|--------------------------|
| Lead Officer | Deborah Collins, Strategic Director of Environment and Social Regeneration | |
| Report Author | Wesley McArthur, Principal Licensing Officer | |
| Version | Final | |
| Dated | 18 September 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 | 20 September 2017 | |