

Item No. 5.	Classification: Open	Date: 24 October 2017	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Luca's Kitchen and Bakery, 35 North Cross Road, London SE22 9ET	
Ward(s) of group(s) affected		East Dulwich	
From		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application submitted by Constanza (UK) Ltd for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Luca's Kitchen and Bakery, 35 North Cross Road, London E22 9ET.
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 18 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report in Appendices B and C. A map showing the location of the premises is attached to this report 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 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 28 August 2017 Constanza (UK) Ltd applied to this council for the grant of a premises licence in respect of Luca's Kitchen and Bakery, 35 North Cross Road, London SE22 9ET.
9. The application is summarised as follows:
- **The sale of alcohol to be consumed both on and off the premises**
 - Monday to Sunday 09:00 – 22:30 (with on sales to commence from 11:00)
 - **Proposed opening hours of the premises**
 - Monday to Sunday 07:00 to 23:00
 - The premises are described as a coffee shop, restaurant and bakery with a delicatessen shop section.
10. The premises licence application form provides the applicant's operating schedule. Parts 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 is attached to this report as Appendix A.

Designated premises supervisor

11. The proposed designated premises supervisor (DPS) is Luca Constanza.

Representations from responsible authorities

12. The director of public health submitted a representation recommending amendments to the application. The applicant agreed to the recommended amendments and the representation was withdrawn.
13. The Metropolitan Police Service submitted a representation suggesting that the application be amended to include certain control measures that would become conditions of any licence issued subsequent to the application. The applicant agreed to the inclusion of the control measures (with an agreed to alteration to one of the control measures) and the representation was withdrawn.
14. Copies of the representations and related correspondence are attached as Appendix B.

Representations from other persons

15. Three representations have been submitted by local residents. The representations are concerned that the proposed operation of the premises will give rise to noise nuisance, note that the premises are located in a residential area and contend that earlier finish times in regards to the sale of alcohol would be more appropriate.
16. Copies of the applicant's replies to the representations are attached as Appendix C.

Conciliation

17. The applicant has provided replies to the local residents, composed of a letter and a copy of steps in the application that the applicant has included to promote the four licensing objectives. At this time all of the representations remain outstanding and must be considered by the licensing sub-committee. At the hearing to consider this application, the licensing sub-committee will be updated as to any further information pertaining to the conciliation of the representations submitted by the local residents.
18. Copies of the applicant's replies to the representations are attached as Appendix D.

Premises history

19. No licensing authorisation has been issued in respect of the premises under the Licensing Act 2003 or any previous legislation.
20. No temporary event notices have been submitted in regards to the premises.
21. On 28 August 2017 Constanza (UK) Ltd applied to this council for the grant of a premises licence in respect of Luca's Kitchen and Bakery, 35 North Cross Road, London SE22 9ET.

Map

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

Tandoori Nights, 73 Lordship Lane, London SE22 8EP licensed for:

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

Lord Palmerston, 91 Lordship Lane, London SE22 8EP licensed for:

- The sale of alcohol to be consumed on & off the premises, live music, recorded music, anything similar to live or recorded music, films, indoor sporting events
 - Sunday to Thursday from 10:00 to 23:30
 - Friday and Saturday from 10:00 to 00:30 the following day
- The provision of late night refreshment
 - Sunday to Thursday from 23:00 to 3:30
 - Friday and Saturday 23:00 to 00:30 the following day

Londis, 93 Lordship Lane, London SE22 8HU licensed for:

- The sale of alcohol to be consumed off the premises
 - Monday to Sunday from 00:00 to 00:00 (24 hours)

House Of Tippler, 123 Lordship Lane, London SE22 8HZ licensed for:

- The sale of alcohol to be consumed on and off the premises and films
 - Monday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 01:00 the following day
 - Sunday from 11:00 to 23:30
- Live music, recorded music, anything similar to live or recorded music
 - Monday to Thursday from 11:00 to 00:30 the following day
 - Friday and Saturday from 11:00 to 01:30 the following day
 - Sunday from 11:00 to 00:00
- Performances of dance
 - Monday to Wednesday from 11:00 to 23:00
 - Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 01:00 the following day
 - Sunday from 11:00 to 22:30

- The provision of late night refreshment
 - Monday to Wednesday from 23:00 to 23:30
 - Thursday from 23:00 to 00:30 the following day
 - Friday and Saturday from 23:00 - 01:30 the following day

Gourmet Burger Kitchen, 121 Lordship Lane, London SE22 8HU licensed for:

- The sale of alcohol to be consumed on and off the premises
 - Monday to Thursday from 10:00 to 23:30
 - Friday and Saturday from 10:00 - 00:00
 - Sunday from 11:00 - 23:00
- The provision of late night refreshment
 - Monday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00

Curry Cabin, 96 Lordship Lane, London SE22 8HF licensed for:

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

Kaival News, 100 Lordship Lane, London SE22 8HF licensed for:

- The sale of alcohol to be consumed off the premises
 - Monday to Saturday from 07:00 to 23:30
 - Sunday from 07:00 - 22:30

Yama Momo, 72 Lordship Lane, London SE22 8HF licensed for:

- The sale of alcohol to be consumed on & off the premises
 - Monday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 01:00 the following day
 - Friday and Saturday from 10:00 to 02:00 the following day
 - Sunday from 12:00 to 00:00
- Recorded music
 - Monday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 01:00 the following day
 - Friday and Saturday from 10:00 to 02:00 the following day
 - Sunday from 10:00 - 00:00

- The provision of late night refreshment
 - Monday to Wednesday from 23:00 to 00:30 the following day
 - Thursday from 23:00 to 01:00 the following day
 - Friday and Saturday from 23:00 to 02:00 the following day
 - Sunday from 23:00 - 00:30 the following day

Marks & Spencer Simply Foods, 84-90 Lordship Lane, London SE22 8EW licensed for:

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

Blue Mountain Café, 18 North Cross Road, London SE22 9EU licensed for:

- The sale of alcohol to be consumed on the premises
 - Monday to Saturday from 10:00 to 23:00
 - Sunday from 10:00 to 18:00

Vintage Pretty, 49 North Cross Road, London SE22 9ET licensed for:

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

The Actress, 90 Crystal Palace Road, London SE22 9EY licensed for:

- The sale of alcohol to be consumed on and off the premises, live music, recorded music anything similar to live or recorded music
 - Monday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 23:30
 - Sunday from 10:00 to 22:30
- The provision of late night refreshment
 - Monday to Sunday from 23:00 to 23:30.

Deregulation of entertainment

23. On 6 April 2015 entertainment became deregulated and as a result:

- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
- Live amplified music is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.

24. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Southwark council statement of licensing policy

25. 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.

26. 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.

27. The premises are located in Lordship Lane district town centre area. Closing times suggested in the statement of licensing policy for the following types of licensed premises located in Lordship Lane district town centre area are:

- Restaurants and cafes
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00

- Public houses, wine bars or other drinking establishments
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00.

Resource implications

28. A fee of £190.00 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

29. 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

30. 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

31. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
32. The principles which sub-committee members must apply are set out below.

Principles for making the determination

33. 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.
34. 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.
35. 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

36. 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.
37. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
38. 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.
39. 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.
40. 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

41. 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

42. 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.
43. 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

44. 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.
45. 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.
46. 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.
47. 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.

48. 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.

49. 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.
50. 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

51. 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

52. 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 Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the application
Appendix B	Copies of representations submitted by responsible authorities and related correspondence
Appendix C	Copies of the representations submitted by other persons
Appendix D	Copies of the replies from the applicant to the other persons' representations
Appendix E	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	10 October 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		12 October 2017	