

Item No. 6.	Classification: Open	Date: 4 December 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Southwark Rooms, 60 Southwark Street, London SE1 1UN	
Ward(s) or groups affected:		Cathedrals	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by the Metropolitan Police Service for a review of the premises licence in respect of the premises known as Southwark Rooms, 60 Southwark Street, London SE1 1UN
2. Notes:
 - a) The grounds for the review are stated in paragraphs 13 to 16 of this report. A copy of the review application and additional supporting information are provided as Appendices A/A1.
 - b) Paragraphs 9 to 11 detail the existing premises licence and is attached as Appendix B.
 - c) Paragraphs 17 to 23 of this report deals with the representations received to the review application and supporting documentation. Copies of the relevant representations from responsible authorities and other persons are attached as Appendices C and D.
 - d) Paragraph 28 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix E.
 - e) 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 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 53C(8) 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 concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises in respect of the premises licence consists of a basement and ground floor. The premises licence was carried over from the justices licence in the 2005 transition period.
10. The premises licence was transferred to the current premises licence holder Magdalena Zalinska on 5 May 2015 and is summarised as follows:
 - Live music – indoors:
 - Monday to Wednesday from 19:00 to 00:00 (midnight)
 - Thursday from 19:00 to 01:00 (the following day)
 - Friday and Saturday from 19:00 to 03:00 (the following day)
 - Sunday from 18:00 to 00:00.

- Recorded Music – Indoors:
 - Monday to Wednesday from 08:00 to 00:00
 - Thursday from 08:00 to 01:00
 - Friday and Saturday from 08:00 to 03:00
 - Sunday from 08:00 to 00:00.

- Facilities for Dancing – Indoors:
 - Monday to Wednesday from 18:00 to 00:00
 - Thursday from 18:00 to 01:30
 - Friday and Saturday from 18:00 to 03:30
 - Sunday from 18:00 to 00:00.

- Provisions Similar to making music and dancing – Indoors:
 - Sunday to Wednesday from 08:00 to 00:00
 - Thursday from 08:00 to 01:00
 - Friday and Saturday from 08:00 to 03:00.

- Late Night Refreshment – Indoors:
 - Sunday to Wednesday from 23:00 to 00:00
 - Thursday from 23:00 to 01:00
 - Friday and Saturday from 23:00 to 03:00.

- Sale by retail of alcohol to be consumed on premises:
 - Sunday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 01:00
 - Friday and Saturday from 10:00 to 03:00.

- Sale by retail of alcohol to be consumed off premises:
 - Sunday to Wednesday from 08:00 to 00:30
 - Thursday from 08:00 to 01:30
 - Friday and Saturday from 08:00 to 03:30.

- Operating hours:
 - Sunday to Wednesday from 08:00 to 00:30
 - Thursday from 08:00 to 01:30
 - Friday and Saturday from 08:00 to 03:30.

11. A copy of the current premises licence is attached as Appendix B.

Designated premises supervisor

12. The current designated premises supervisor (DPS) is Patrick Witter who has been the DPS of the premises since and holds a personal licence issued by the London Borough of Newham.

The review application

13. On 3 October 2017 the Metropolitan Police applied to the licensing authority for a review of the premises licence issued in respect of the premises known as Southwark Rooms, 60 Southwark Street, London SE1 1UN.
14. The Metropolitan Police seek to review the premises licence on the basis of non-compliance and failure of the premises to promote the below licensing objectives:
 - Prevention of Crime and disorder:
 - The operation of the premises falls below the standard expected from a responsible premises licence holder and they believe the profits are taking precedence over the promotion of the licensing objectives.
 - On 4 April 2015 a serious assault occurred in the basement area of the premises and the victim received two stab wound to the chest and arm and following this conditions were added to the licence by a minor variation process.
 - On 11 March 2017 there was an incident of serious disorder outside the venue, several calls were made to the police relating to 100 persons in the street fighting.
 - Public Safety:
 - The premises have failed to submit 696 promoted event risk assessment forms as per conditions 532 and 353.
 - The ID scanner has not been operating and during July and September the premises had been issued with at least five section 19 closure notices, on each occasion the ID Scanner was not working or not being operated correctly.
15. The Metropolitan Police Service are concerned that the premises is now operating with absolutely no regard given to the promotion of the licensing objectives despite the continued warnings and engagement with the management there has been no improvement in the operation of the venue and would like the committee to consider a revocation of the premises licence.
16. A copy of the application and supporting information are attached to this report as Appendix A/A1.

Representations from responsible authorities

17. Representations from the London Fire and Emergency Planning Authority, health and safety and licensing as a responsible authority were submitted in support of the review application.
18. The London Fire and Emergency Planning Authority representation consists of a schedule of works submitted to the premises on 12 October 2017, highlighting areas of concern and steps to remedy the contraventions.

19. The health and safety representation states that the premises is in a poor state of repair, there are numerous exposed live electrical wall sockets in the premises and hanging electrical wires in the ceiling of the premises. Three Prohibition Notices have been served on the premises and despite warnings the premises were open using broken and exposed wall sockets, all three Prohibition Notices have been contravened and a prosecution case is pending on this matter.
20. The licensing representation is concerned with the failure of the licensee Magdalena Zalinska and DPS Patrick Witter to abide by the conditions on the premises licence and failure to promote the licensing objectives. The representation is concerned with the prevention of crime and disorder, the prevention of public nuisance and public safety.
21. The licensing authority advise that the premises has been subject to enforcement action following breaches of the premises licence witnessed by council officers and officers of the Metropolitan Police Service. Support and advice regarding running the premises in line with the premises licence and responsible operation of the venue has been given on several occasions by council officers and also officers of the Metropolitan Police Service and despite this, the licensee has continued to commit breaches.
22. The licensing unit are prosecuting the above offences under the Licensing Act 2003 and the Health Act 2006 and fully support the Metropolitan Police in asking for the premises licence to be revoked. The Licensing sub committee will be updated on 4 December 2017.
23. Copies of the representations submitted are attached as Appendix C.

Representations from other persons

24. There are no representations from other persons.

Operating history

25. Following the operational issues raised, on 22 March 2017 Patrick Witter attended the Council Offices at 160 Southwark Street to meet with the Licensing Department and a Police Licensing Officer. Mr Witter signed a document stating that he understood his obligations under the Licensing Act 2003.
26. Since then there have been a number of visits and breaches of licence conditions observed as detailed in the representation by the Licensing Unit (as a responsible authority).
27. A log of visits by the licensing unit is attached as Appendix D.

The local area

28. A map of the area is attached to this report as Appendix E. The premises is identified by a triangle at the centre of the map. For purposes of scale only, the circle on the map has a 100 metre radius. The following licensed premises terminal hours are also shown on the map:

- **Public houses/restaurants/theatres**

- Bunker Theatre, 53a Southwark Street, London SE1 (Sunday to Thursday until 01:00 and Friday and Saturday till 02:00)
- Southwark Rose Hotel, 43-47 Southwark Bridge Road, London SE1 (24 hours) (licensed activities Monday to Thursday until 01:00, Friday and Saturday until 02:00 and Sunday until 00:30)
- Novotel, 51-53 Southwark Bridge Road, London SE1 (24 hours) (licensed activities Monday to Saturday until 00:30 and Sunday until 00:00)
- O'ver Pizzeria, Right Side/East Wing, 44-46 Southwark Street, London SE1 (Monday to Saturday until 23:30 and Sunday until 23:00)
- Menier Chocolate, 51 Southwark Street, London SE1 (Monday to Saturday until 01:00 and Sunday until 00:00)
- YWCA Central Club, 73-81 Southwark Bridge Road, London SE1 (Monday to Saturday until 01:00 and Sunday until 22:30)
- Est India, 73-75 Union Street, London SE1 (Monday to Sunday until 00:00).

Deregulation of entertainment

29. 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.

30. 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').

Borough and Bankside cumulative impact policy

31. Council assembly approved the introduction of a cumulative impact policy for Borough and Bankside on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.

32. The decision to introduce saturation policy was taken with regard to the licensing 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 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.

Southwark council statement of licensing policy

34. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for the categories of premises as follows:
- Closing time for public houses, wine bars or other drinking establishments:
 - Sunday to Thursday is 23:00
 - Friday and Saturday 00:00.
35. 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.
36. 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

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

Consultation

38. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was exhibited outside the premises for a period of 10 working days.

Community impact statement

39. 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

40. 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.
41. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

42. Under Section 52 of the Licensing Act, the licensing authority must hold a hearing to determine the review and any relevant representations.
43. 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.
44. 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.
45. 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.
46. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
47. 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.
48. 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.
49. 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

50. 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

51. 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.
52. 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

53. 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.
54. 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.
55. 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.
56. 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.

57. 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.
58. 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.
59. 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.
60. 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

61. 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

62. 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/A1	Review application and supporting documents
Appendix B	Premises licence
Appendix C	Representations from responsible authorities
Appendix D	Licensing visit log
Appendix E	Map of area

AUDIT TRAIL

Lead Officer	Strategic Director of Environment and Social Regeneration	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	22 November 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	23 November 2017	