

Item No. 6.	Classification: Open	Date: 13 December 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Berfin Supermarket, 74 Denmark Hill, London SE5 8RZ	
Ward(s) or groups affected:		Camberwell Green	
From:		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 Ismail Incedal in respect of the premises known as Berfin Supermarket, 74 Denmark Hill, London SE5 8RZ.
2. Notes:
 - a) The grounds for the review are stated in paragraph 13 of this report. A copy of the premises licence 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 B. Details of the representations are provided in paragraphs 16 to 19.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C. A map of the area that the premises are located in is attached as Appendix E.
 - 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 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:
 - Sunday to Thursday from 08:00 to 00:00 (midnight)
 - Friday and Saturday from 08:00 to 01:00 (the following day).
 - There are also no restrictions in respect of the premises' standard opening times (it can therefore be open 24 hours per 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 C.

Designated premises supervisor (DPS)

11. The current designated premises supervisor (DPS) named on the licence, since 16 November 2016, is Cennet Incedal.

The review application

12. On 17 October 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 Ismail Incedal in respect of the premises known as Berfin Supermarket, 74 Denmark Hill, London SE5 8RZ.
13. The review application was submitted in respect of the prevention of crime and disorder and the prevention of public nuisance licensing objectives; and in summary states that the following have been witnessed and / or taken place at the premises:
 - **Prevention of crime and disorder**
 - Offer and sale of beers, lagers and ciders above 6.5% ABV - breach of Condition 841
 - Offer and sale of duty evaded super strength beer - Customs and Excise Management Act
 - Staff working at premise not trained and fully conversant in the correct operation of CCTV and unable to demonstrate its operation on immediate request to authorised officers from Southwark Council and/or the police - breach of Condition 793
 - Failure to produce traceable invoices for all super strength beers purchased – General Food Hygiene Regulations 2013.
 - **Prevention of Public Nuisance**
 - Sale of super strength beers and ciders when a known problem in the immediate vicinity and reason for restriction already on licence.
14. Taking into account that this is the second review of the premises licence, the sub-committee is invited to consider all options available to them, including revocation of the premises licence. The licence already has a comprehensive list of conditions on the operating schedule, but no genuine attempts have been made to ensure these are complied with. Therefore trading standards do not suggest any further conditions in this application that may improve compliance.
15. Full details of the grounds for the review are provided within the application. A copy of the review application is attached as Appendix A.

Representations from responsible authorities

16. The Metropolitan Police Service and this council's licensing authority have submitted representations in support of the review application.
17. The Metropolitan Police Service's representation notes that the review application details a significant number of breaches of the premises licence and a number of offences with regard to duty evaded alcohol and the Consumer Protection Act. It is noted that this is the second such review. The police fully support the application by trading standards for the review of the premises licence having joint concerns for problem drinking in the area and therefore recommend that the licence is revoked.

18. The licensing responsible authority's representation is submitted in respect of the prevention of crime and disorder and the prevention of public nuisance objectives. The representation notes that there is a continued pattern of disregard for legislation, again coupled with the previous, seemingly ineffectual review, and the joint concerns with problem drinking in the area and recommend that the licence is revoked
19. Copies of the representations are attached as Appendix B.

Representations from other persons

20. No representations have been received by other persons.

Operating History

21. A premises licence was issued in respect of the premises to Bayram Dag on 6 April 2006. The DPS specified in respect of the licence was Bayram Dag.
22. On 11 November 2009 an application to specify Piro Balloglli as the premises' DPS was submitted and an amended licence was issued on 26 November 2009.
23. On 8 February 2013 a licensing inspection of the premises was undertaken. Various breaches of the premises licence issued in respect of the premises were noted and a warning letter was sent to the licensee.
24. On 28 February 2013 an application with immediate effect to specify Ismail Incedal premises' DPS was submitted and an amended licence was issued on 28 February 2013.
25. On 21 August 2015 a licensing inspection of the premises was undertaken. The premises were being operated compliantly.
26. On 5 September 2016 an application with immediate effect to transfer the licence to Ismail Incedal was submitted and an amended licence was issued on 5 September 2016.
27. On 21 September 2016, 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. The review application was considered by the licensing sub-committee on 16 November 2016 when the then DPS Ismail Incedal was removed as the designated premises supervisor, there was a reduction in hours of the licensable hours and the licence was modified by adding eight conditions. A copy of the notice of decision is attached as Appendix D.
28. No TEN's have been submitted in regards to the premises. There is no history of complaints from members of the public.

The local area

29. A map of the local area is attached as Appendix E. There are a number of licenced premises in the immediate vicinity, namely:

Pesh Flowers, 31 Denmark Hill, London SE5 8RS:

- Sale of alcohol to be consumed off the premises:

- Monday to Saturday until 23:00
- Sunday until 22:30.

Joiners Arms, 35 Denmark Hill, London SE5 8RS:

- Sale of alcohol to be consumed on and off the premises, live music, recorded music:
 - Sunday to Thursday until 00:00 (midnight)
 - Friday and Saturday until 01:00 the following day.

Lamoon Restaurant, 39 Denmark Hill, London SE5 8RS:

- Sale of alcohol to be consumed on and off the premises, recorded music & late night refreshment:
 - Monday to Saturday until 00:00 (midnight)
 - Sunday until 23:30.

Chicken Express, 53 Denmark Hill, London SE5 8RS:

- Late night refreshment:

Monday to Sunday until 01:00 the following day.

Pizza Hut, 57 Denmark Hill, SE5 8RS:

- Late night refreshment:
 - Monday to Sunday until 00:30 the following day.

Ginseng Noodle Bar, 4 Coldharbour Lane, SE5 9PR:

- Late night refreshment:
 - Monday to Saturday until 00:30
 - Sunday until 00:00.
- Sale of Alcohol:
 - Monday to Saturday until 00:00
 - Sunday until 23:30.

Southwark council statement of licensing policy

30. 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
31. 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.
32. Within Southwark's Statement of Licensing Policy 2016 - 2020, the premises are identified as being within the Camberwell CIP area and the Camberwell District Town Centre. Under the Southwark Statement of Licensing Policy 2016 - 2020 the Local CIP applies to night clubs, public houses and bars, off-licences, supermarkets and grocers. The closing time recommended in the Statement of Licensing Policy for off licences, and grocers or supermarkets with off sales of alcohol in this area is 00:00 (midnight) daily.

Resource implications

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

Consultation

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

Community impact statement

35. 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

36. 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.
37. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

38. Under Section 52 of the Licensing Act, the licensing authority must hold a hearing to determine the review and any relevant representations.
39. 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.
40. 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.
41. 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.
42. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
 43. 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.
 44. 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.
 45. 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

46. 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

47. 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
 - To 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.
48. 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

49. 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.
50. 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.
51. 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.
52. 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.

53. 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.
54. 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.
55. 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.
56. 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

57. 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

58. 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	Copies of the representations submitted by responsible authorities
Appendix C	Copy of the premises licence
Appendix D	Notice of decision from 16 November 2016
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment & Social Regeneration		
Report Author	Andrew Heron, Principal Licensing Officer		
Version	Final		
Dated	29 November 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		30 November 2017	