

Item No. 5.	Classification: Open	Date: 18 December 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Mc & Sons, 160 Union Street, London SE1 0LH	
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 by Ryan McElhinney and John McElhinney to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Mc & Sons, 160 Union street, London SE1 0LH.
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Mc & Sons, 160 Union Street London SE1 0LH under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and other persons and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 12 of this report provide a summary of the current premises and the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A. A copy of the existing premises licence is attached as Appendix B.
 - c) Paragraphs 13 to 21 of this report deal with the representations received to the premises licence application and conciliation progress made. Copies of the relevant representations from responsible authorities and other persons are attached as Appendices C and D.
 - d) Paragraph 26 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 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 current premises licence

8. The premises licence allows for the following activities:
 - Sale of alcohol for consumption off premises:
 - Monday to Saturday from 08:00 to 23:00
 - Sun 08:00 from 08:00 to 22:30.
9. A copy of the premises licence is provided as Appendix B.

The variation application

10. On 19 October 2017, Ryan & John McElhinney applied to this council to vary the premises licence issued in respect of the premises known as Mc & Sons, 160 Union Street, London SE1 0LH. The premises is described as a ground floor public house. A brief description of the variation is given as follows:
 - To extend the permitted hours for the sale of alcohol on the premises
 - Thursday to Saturday from 23:00 to 01:00.

- Operating hours:
 - Monday to Wednesday from 10:00 to 23:00
 - Thursday to Saturday from 10:00 to 01:00
 - Sunday from 12:00 to 23:30.
11. The variation to the premises application form provides the applicant operating schedule. Parts J, K, L, M, N and O and P set out the proposed operating hours and operating controls 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 the information provided in part P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix A.

Designated premises supervisor

12. The designated premises supervisor is Ryan McElhinney who has a personal licence issued by Lambeth Council.

Representations from responsible authorities

13. Representations have been submitted by the Metropolitan Police Service, the environmental protection team (EPT), licensing (as a responsible authority) and public health.
14. The police object to the granting of the variation as they see no exceptional circumstances to grant the application. The current licence has minimal conditions and the operating schedule appears to have offered nothing to negate the increase in hours and the problems that would be associated with it for a premises situated within the cumulative impact zone (CIZ). They have recommended a number of conditions to be included on the licence to promote the crime and disorder licensing objective, some of which may have been offered as part of the operating schedule but the wording is important to avoid ambiguity.
15. The EPT representation states that the hours sought exceed the recommended opening hours within the current licensing policy (2016-2020) for this part of the borough. As this is a newly opened premises, with one alleged noise complaint already received, they raise concerns about permitting a 01:00 opening time on Thursdays, Fridays and Saturdays and the potential for public nuisance to occur.
16. The licensing representation is based on the Southwark statement of licensing policy 2016 – 2020 and relates to the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance. They advise that the premises sits in the Borough and Bankside CIZ and the applicant has not addressed the presumption to refuse this application within the operating schedule. They have recommended a number of conditions, which if agreed will form part of the licence conditions.
17. The public health representation raises concerns regarding the hours of alcohol sales requested. They advise that research suggests that increased hours of alcohol sales are associated with increased alcohol consumption, increased alcohol-related injuries, and increased alcohol-related harm. Additionally the hours requested are considerably later than those recommended in Southwark's statement of licensing policy. The premises is located in the close vicinity of local residents and therefore there are concerns that these extended hours will cause public nuisance to these

local residents due to noise and dispersal from the premises. They also recommended that operating hours should be as per Southwark's statement of licensing policy.

18. The representations are attached as Appendix C.

Representation from other persons

19. There are eight representations from other persons (a local ward councillor and seven residents). They state that since officially opening a few weeks ago there have been crowds of people from the pub gathering around the premises until after 23:00 each night. Customers with drinks currently block the pavement, create noise and leave bottles and glasses (sometimes broken glass). They state they can also hear the music from the public house in the homes. There are also issues with the disposal of empty bottles and rubbish bags which create noise and mess.
20. Their representations are attached as Appendix D.

Conciliation

21. The representations were forwarded to the applicant. The licensing sub-committee will be updated of any developments on 18 December 2017.

Premises history

22. The premises has an existing licence number 860110. The premises licence consists of a public house on the ground floor and was carried over from the justices licence in the 2005 transition period. The premises licence was transferred to the current premises licence holder on the 17 August 2017.
23. An application was also made on that day to specify John Mc Elhinney as the new designated premises supervisor of the premises.

Complaint

24. There is one recorded complaint about loud music, made on 19 October 2017.

Temporary event notices (TENs)

25. A TEN has been issued for 11 December 2017 for regulated entertainment and alcohol and to extend the hours of operation till midnight.

The local area

26. 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 are also shown on the map and provide licensable activities:
 - Blue Tree Kitchen, 164-180 Union Street, London SE1 (Monday to Sunday until 23:00)
 - Spots and Stripes, Railway Arch 64 Ewer Street, London SE1 (Monday to Sunday until 01:30)

- Union Viet Cafe & Restaurant, 120-128 Union Street, London SE1 (Monday to Sunday until 23:00)
- Ewer Street Car Park, Great Suffolk Street, London SE1 (Monday to Sunday until 07:30)
- Cafe 171, The Jerwood Space Ltd, 171 Union Street, London SE1 (Monday to Saturday until 23:00 and Sunday until 2:30).

Deregulation of entertainment

27. 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.
28. 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 zone

29. Council assembly approved the introduction of a cumulative impact zone for Borough and Bankside on 5 November 2008 and extended the area in April 2011. This application falls within the policy area.
30. The decision to introduce the cumulative impact zone was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
31. 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.
32. The applicant has been advised to address the committee's concerns around cumulative impact at the meeting.

Southwark Statement of Licensing Policy

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

34. 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.
35. 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

36. A fee of £190 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 B.

Consultation

37. 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 a similar notice exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

38. 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

39. The sub-committee is asked to determine the variation application for a premises licence under section 34 of the Licensing Act 2003.
40. The principles which sub-committee members must apply are set out below.

Principles for making the determination

41. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
42. The general principle is that applications for variation 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.
43. 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 other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
44. 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:
- Add to, omit, and/or alter the conditions of the licence, or
 - Reject the whole or part of the application for variation.

Conditions

45. 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.
46. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.

47. 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.
48. 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.
49. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions came into force: age verification policy and smaller measures for alcoholic drinks.
50. 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

51. 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

52. 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.
53. This matter relates to the determination of an application to vary a premises licence under section 34 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

54. 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.
55. 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.
56. 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.
57. 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.
58. 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.
59. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
60. 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.

61. 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

62. 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

63. 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	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Variation application
Appendix B	Current licence
Appendix C	Representations from responsible authorities
Appendix D	Representations from other persons
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Dorcas Mills, Principal Licensing Officer	
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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
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