

Item No. 5.	Classification: Open	Date: 23 January 2018	Meeting Name: Licensing Sub-Committee
Report Title		Bridge Walk Food and Wine, 3 London Bridge Walk, London SE1 2SX	
Ward(s) of group(s) affected		Riverside	
From		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Bhaskaran Sivakumar for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Bridge Walk Food and Wine, 3 London Bridge Walk, London SE1 2SX.
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 a representation from a responsible authority and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 10 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 11 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted by the responsible authorities and subsequent withdrawal emails are attached to this report in Appendices B and C.
 - d) Paragraphs 21 to 25 of this report deals with the premises history. Copies of the previous licence, a warning letter issued and the Notice of decision of a sub committee hearing are attached as Appendices D and E.
 - e) Paragraph 26 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.
 - f) 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 9 November 2017 Bhaskaran Sivakumar applied to this council for the grant of a premises licence in respect of Bridge Walk Food and Wine, 3 London Bridge Walk, London SE1 2SX. The premises are described in the application as a "Grocery, news agent and supply of alcohol for consumption off the premises".
9. The application is summarised as follows:
- The supply by retail of alcohol (off sales only)
 - Monday to Friday from 11:00 to 23:00
 - Saturday and Sunday from 11:00 to 22:00
 - Opening hours
 - Monday to Wednesday from 07:00 to 23:00
 - Thursday and Friday from 07:00 to 00:00
 - Saturday and Sunday from 07:00 to 22:00.

- The proposed designated premises supervisor of the premises is Bhaskaran Sivakumar who has a personal licence by London Borough of Croydon.
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 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 in Appendix A.

Representations from responsible authorities

11. Representations were submitted by the Metropolitan Police Service, licensing (as a responsible authority), public health and trading standards.
12. The representation submitted by the Metropolitan Police Service (Licensing Unit) states that the premises is situated within the Borough and Bankside cumulative impact zone (CIZ) and as such the presumption changes from that to grant to that of refused unless enough measures are offered to negate the cumulative impact the venue will have. The application has offered no extra measures to that previously submitted and the police believe the same evidence is still relevant to that previously submitted.
13. A joint visit was conducted with the council's trading standards department on 19 April 2017. The premises was found to be selling alcohol under a temporary events notice. The applicant was not present, however one member of staff present was subsequently arrested as he was wanted by UK Border Force for being an absconder who was over-staying with no entitlement to work. Further to this the applicant has failed to address any of the concerns from the previous hearing and how it intends to negate the effect of the CIZ.
14. The representation from trading standards advises that the premises had been operating under an invalid licence due to the premises licence holder's company having been dissolved some five years previously. They reiterate the concerns in relation to finding an employee without the right to work. Furthermore there are concerns in relation of the potential sale of alcohol to children.
15. In addition, on 14 November 2017 trading standards and the police carried out a visit following the receipt of this new application. Behind the counter there was an invoice for the purchase of alcohol from 3 June 2017 from a cash and carry. There was also a refusals book where the last entry was before the applicant had acquired the business in October 2016. Alcohol remained on the shelves in the premises although most, but not all, was covered over with black plastic. There was a sign outside the shop stating alcohol was for sale between 6am and 11pm, though no evidence that alcohol was being supplied in breach of the Licensing Act.
16. The representation from Licensing (as a responsible authority) refers to the premises being in the CIZ and that the applicant has not addressed the presumption to refuse the application in the operating schedule.
17. The public health representation was made under the licensing objectives of the prevention crime and disorder, the prevention of public nuisance and public safety due to concerns in relation to the availability of alcohol. They recommend that no

beers, lagers, ciders or similar alcohols to be sold in cans with an Alcohol By Volume (ABV) in excess of 6.5% or in bottles larger than 750ml with an ABV in excess of 6.5%. The recommended condition has been agreed and therefore the public health representation has now been withdrawn.

18. Copies of these representations and subsequent withdrawal are attached Appendices B & C.

Representations from other persons

19. There are no representations submitted by other persons.

Conciliation

20. The applicant's agent was sent copies of the representations. The conciliation process has led to conditions being agreed by the applicant and public health, who subsequently withdrew their representation. All other representations remain outstanding.

Premises history

21. The premises had a licence in place which was originally issued in May 2011. The previous premises licence holder was Bridge Walk Food and Wine Limited (05792224). A Companies House search shows that the company was dissolved on 24 July 2012. A copy of the previous premises licence and Companies House search is attached as Appendix D.
22. On 29 March 2017, the premises was visited by the licensing authority, further to information received from the trading standards authority that the premises licence was now invalid. The owner was advised to remove alcohol from sale. On 30 March 2017 and the premises was written to in order to provide a formal warning. A copy of that correspondence is available as part of Appendix E.
23. An application was made on 12 April 2017 for a grant of a premises licence. Representations were submitted to the application and as such it was determined by the licensing sub committee on 8 August 2017. The decision made was refuse the application. The notice of decision is attached as part of Appendix E.
24. The premises was trading with a series of temporary events notices which are detailed below.

Date of Application	Date of Event	Applicant	Licensable Activities	Issue of Counter Notice?
30/03/2017	From 10/04/2017 to 14/04/2017 09:00 - 23:00	Sivakumar Bhaskaran	Sale by retail of alcohol to be consumed off the premises	No
10/04/2017	From 20/04/2017 to 21/04/2017 09:00 - 23:00	Sivakumar Bhaskaran	Sale by retail of alcohol to be consumed off the premises	No

Date of Application	Date of Event	Applicant	Licensable Activities	Issue of Counter Notice?
13/04/2017	From 03/05/2017 to 05/05/2017 09:00 - 23:00	Sivakumar Bhaskaran	Sale by retail of alcohol to be consumed off the premises	No

25. There is no history of complaints associated with the premises received by the Licensing Authority.

Map

26. A map of the area is attached to this report as Appendix F. 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 as stated:

- The News Building, 1 London Bridge Street, London SE1 (Monday to Sunday until 00:00)
- Grind, Ground Floor, 2 London Bridge, London SE1 (Monday to Thursday until 00:00, Friday and Saturday until 01:00 and Sunday until 22:30)
- Pizza Express Limited, 4 Borough High Street, London SE1 (Monday to Saturday until 00:00 and Sunday until 22:30)
- Boro Bistro, 6-10 Borough High Street, London SE1 (Monday to Tuesday until 23:30, Wednesday to Saturday until 03:30 and Sunday until 22:30)
- Oddbins, 7 Borough High Street, London SE1 (Monday to Saturday until 23:0, Sunday until 22:30)
- Barrow Boy and Banker, 8 Borough High Street, London SE1 (Sunday to Friday until 01:00 and Saturday until 02:00)
- Glaziers Hall Ltd, 9 Glaziers Hall, Montague Close, London SE1 (Monday to Saturday until 02:00 and Sunday until 00:00)
- The Mug House, 1-3 Tooley Street, London SE1 (Monday to Sunday until 02:00)
- Number 1 Bar Limited, 1 Duke Street Hill, London SE1 (Sunday to Wednesday until 03:00 and Thursday to Saturday until 06:00)
- Azzura, Unit 31 Cottons Centre, London SE1 (Monday to Saturday until 00:30 and Sunday until 00:00)

Borough and Bankside cumulative impact zone

27. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises

(saturation/cumulative impact policy) on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.

28. The decision to introduce saturation policy 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.
29. 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.
30. The applicant has been advised to address the committee's concerns around cumulative impact at the meeting.

Southwark Council statement of licensing policy

31. Within Southwark's statement of licensing policy, the premises are identified as being inside the Borough and Bankside cumulative impact zone and inside a residential area. Relevant closing times recommended in the statement of licensing policy for off licences are as follows:

- Mon to Sun until 00:00 (midnight) daily

32. Council assembly approved Southwark's statement of licensing policy 2016 - 2020 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.
33. 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

34. 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 bands B.

Consultation

35. 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

36. 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

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

Principles for making the determination

39. 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.
40. 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.
41. 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

42. 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.
43. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
44. 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.
45. 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.
46. 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

47. 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

48. 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.
49. 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

50. 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.
51. 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.

52. 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.
53. 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.
54. 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.

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 Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Representations by responsible authorities
Appendix C	Withdrawal email from public health
Appendix D	Copy of previous (now invalid) premises licence and Companies House search
Appendix E	Warning letter date 30 March 2017 & Notice of Decision for the hearing of 8 August 2017
Appendix F	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure		
Report Author	Dorcas Mills, Principal Licensing Officer		
Version	Final		
Dated	11 January 2018		
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		11 January 2018	