

Item No. 5.	Classification: Open	Date: 16 February 2018	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Luxford Bar Limited, 610 Old Kent Road, London, SE15 1JB	
Ward(s) or groups affected:		Livesey	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Luxford Bar Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Luxford Bar Limited, 610 Old Kent Road, London SE15 1JB.
2. Notes:
 - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Luxford Bar Limited, 610 Old Kent Road, London, SE15 1JB, under section 34 of the Act. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the sub-committee for determination.
 - Paragraphs 8 to 14 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 B. A map showing the location of the premises is attached as Appendix F.
 - Paragraphs 16 to 22 of this report deal with the representations submitted in respect of the application. Copies of the representations and related correspondence are attached in appendix C.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

4. Within Southwark, this council wholly administers the licensing responsibility. 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.
5. 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.
6. 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 interested parties 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

7. The current premises licence (a copy of the existing premises licence is attached as Appendix A) in respect of the premises known as Luxford Bar Limited, 610 Old Kent Road, London SE15 1JB was issued on 30 December 2015 and allows the following licensable activities:
 - Films, live music, recorded music, entertainment similar to live & recorded music and the sale of alcohol to be consumed on the premises, recorded music:
 - Sunday to Thursday between 11:30 and 22:30
 - Friday and Saturday between 11:30 and 00:00 (midnight)
 - Opening hours:
 - Sunday to Thursday between 11:30 and 23:00
 - Friday and Saturday between 11:30 and 00:30 the following day.

The variation application

8. On 9 November 2017 Luxford Bar Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Luxford Bar Limited, 610 Old Kent Road, London SE15 1JB.
9. The application is summarised as follows:

- To amend the hours permitted for the sale of alcohol to:
 - Sunday to Thursday between 12:00 and 23:30
 - Friday and Saturday between 12:00 and 01:00 the following day.
 - To amend the opening hours of the premises to:
 - Sunday to Thursday between 12:00 and 00:00 (midnight)
 - Friday and Saturday between 12:00 and 01:30 the following day
 - To allow children into the building until 23:00 provided that the children are seated away from the bar in the upstairs area of the restaurant and supervised by an adult at all times.
 - To remove condition 345
 - To change the name of the premises to 'Luxford', and to operate as a premises.
10. Following consultation between the business partners involved in the operation of the business, the applicant requested to amend the application on 7 December 2017 and provided an amended application form on 22 December 2017. The final summary of the amended variation application (and the variation to be considered) is as follows:
- To amend the hours permitted for films, live music, recorded music, entertainment similar to live and recorded music and the sale of alcohol to be consumed on the premises, recorded music:
 - Sunday to Thursday between 12:00 and 23:30
 - Friday and Saturday between 12:00 and 01:00 the following day
 - To amend the opening hours of the premises to:
 - Sunday to Thursday between 12:00 and 00:00 (midnight)
 - Friday and Saturday between 12:00 and 01:30 the following day
 - To allow for the following non standard timings:
 - New Year's Eve licensable activities cease at 03:30 and the premises close at 04:00
 - Sundays immediately preceding a bank holiday licensable activities cease at 01:00 and the premises close at 01:30.
 - To amend condition 345 to read: *"That no persons under the age of 18 will be permitted on the premises after 22:00 hours. Between 20:00 and 22:00 any persons under 18 at the premises must be accompanied by a responsible adult and will only be permitted in the designated family area of the premises away from the bar."*
 - To remove condition 346 and amend condition 341, to read: *"That two SIA registered door supervisors will be on duty when the premises are in operation. They will be employed at all times after 23:00 on Fridays & Saturdays, when live or recorded music is being provided, until the end of business and all*

patrons have vacated the premises they will be engaged to monitor admission and re-admissions to the premises, security, protection, screening and dealing with conflict and the dispersal of all customers. The security guards will also be trained and deployed to prevent entry, when applicable, to the premises of any person who appears to be under the age of 18 and who cannot provide valid photographic identification proving that they are at least 18 years old."

11. There is to be no change of the operation of the premises to that of a restaurant only.
12. The application form provides the applicant's operating schedule. Parts B, E, F, H, J, K, L and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should an amended 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 included in the licence.
13. Copies of the original variation application, amended application and related correspondence are attached to this report as Appendix B.
14. The responsible authorities were informed of the above amendments to the application.

Designated premises supervisor

15. The designated premises supervisor (DPS) under the existing premises licence is Melodie Mavougou.

Representations from responsible authorities

16. Representations have been submitted by this council's trading standards service, this council's director of public health, the Metropolitan Police Service, this council's licensing responsible authority and this council's environmental protection team.
17. The trading standard's representation notes that condition 345 was a condition that was agreed to between trading standards and the licensee when the current licence was applied for, and that trading standards have concerns that children would be left unsupervised and out of parental sight. Trading standards object to the removal of condition 345. Trading standards have not provided any comments in regards to the amendments made to the application.
18. The director of public health's representation notes that the premises are located within "*a hotspot for alcohol related theft and alcohol related call outs*" and also that the premises are located in a residential area. The representation contends that residents are likely to be disturbed by noise and anti-social behaviour subsequent to the operation of the premises during the proposed extended hours of operation. The representation also notes that the closing time recommended for licensed venues in residential areas, in this council's statement of licensing policy is 23:00. The representation recommends that the application be rejected. The director of public health has not provided any comments in regards to the amendments made to the application, however it should be noted that the terminal hours applied for have not changed, and that the application now also seeks to include non standard timings in the licence.

19. The Metropolitan Police Service's representation notes that the premises are located in a residential area and that the extended operational hours applied for fall outside those recommended, for licensed premises in residential areas, in this council's statement of licensing policy. The representation notes that the licensee seeks to change the operation of the business from that of a bar to that of a restaurant and suggests a condition consistent with this change that should be imposed on any licence issued subsequent to the application. The Metropolitan Police Service have not provided any comments in regards to the amendments made to the application, however it should be noted that the terminal hours applied for have not changed, that the application now also seeks to include non standard timings in the licence, and that the application no longer seeks to change the operation of the premises from that of a bar to a restaurant.
20. The licensing responsible authority's representation notes that the premises are situated in a residential area and that the closing time recommended for licensed venues in residential areas, in this council's Statement of Licensing Policy, is 23:00. The representation contends that the proposed extended hours of operation are likely to impact residents living nearby and notes that the applicant has not offered any further control measures to mitigate this. The representation states that the licensing unit has received complaints in regards to the operation of the premises and that licensing officers have witnessed the premises being operated in breach of the conditions of the premises licence issued in respect of the premises. The licensing responsible authority recommends that the application is refused. The licensing responsible authority's has not provided any comments in regards to the amendments made to the application, however it should be noted that the terminal hours applied for have not changed, that the application now also seeks to include non standard timings in the licence, and that the application no longer seeks to change the operation of the premises from that of a bar to a restaurant.
21. The environmental protection team's representation notes that the premises are situated in a residential area and that the closing time recommended for licensed venues in residential areas, in this council's statement of licensing policy, is 23:00. The representation contends that the proposed extension of operating hours will lead to additional disturbance and public nuisance. The representation also notes that a number of noise complaints, from a variety of residents, have been made in regards to the operation of the premises. The representation recommends that the application be refused. The environmental protection team has acknowledged the amendments made to the application.
22. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as Appendix C.

Conciliation

23. The applicant was sent copies of the representations and was advised to directly contact the responsible authorities. The applicant has provided a reply to the environmental protection team's representation. A copy of the reply is attached in Appendix C. At the time of the writing of this report all of the representations submitted remain outstanding and must therefore be considered by the licensing sub-committee.

Operating history

24. The current premises licence in respect of the premises was issued in 30 December 2015.

25. On 11 March 2016 a licensing inspection of the premises was undertaken by a licensing officer. At the time of the inspection breaches of licence conditions 336, 4A1, 347 and 309 were noted. A re-inspection of the premises was undertaken on 18 October 2016 and the premises were found to be being operated compliantly.
26. On 23 April 2016 a local resident (to be referred to as resident 1) made a complaint of loud music emanating from the premises causing a nuisance when the premises are in operation. As a result of the complaint visits were made to the premises on 6 and 8 May 2016. Details of the visits are in Appendix D.
27. On 22 May 2016 resident 1 made a further complaint of loud music loud music emanating from the premises causing a nuisance when the premises are in operation.
28. On 28 January 2017 resident 1 made a further complaint of loud music emanating from the premises causing a nuisance when the premises are in operation and an allegation that the premises were being operated outside of the operational hours permitted by the premises licence issued in respect of the premises. As a result of the complaint a visit was made to the premises on 29 January 2017. Subsequent to the visit of 29 January 2017 warning letters were sent to the licensee, designated premises supervisor (DPS) and premises manager as a result of the visit. Copies of the warning letters are attached as part of the representation submitted by the licensing responsible authority. Details of the visit are in Appendix D.
29. On 27 March 2017 a different local resident made a complaint of loud music emanating from the premises causing a nuisance when the premises are in operation. As a result of the complaint a visit was made to the premises on 8, 9 and 16 April 2017. Details of the visits are in Appendix D.
30. Details of night-time licensing inspections to the premises are attached as Appendix D.
31. A list of all temporary event notices submitted in respect of the premises is attached in Appendix E.

Map

32. A map of the area is attached to this report as appendix F. The premises are identified at the centre of the map. The following premises are in the area shown by the map:

Mingles Restaurant, 1 Peckham Park Road, London SE15 6TR licensed for:

- Sale of alcohol to be consumed on the premises & recorded music:
 - Sunday to Thursday from 10:00 to 22:30
 - Friday and Saturday from 10:00 to 23:30.
- Late night refreshment:
 - Friday and Saturday from 23:00 to 23:30.

Classic News, 17 Peckham Park Road, London SE15 6TR licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday from 08:00 to 23:30.

M & N Off-Licence, 20 Peckham Park Road, London SE15 6TW licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday from 08:00 to 01:00 the following day.

B & M Stores, 593-613 Old Kent Road, SE15 1LA licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday from 08:00 to 22:00.

- **Mama Leah's, 660 Old Kent Road, London SE15 1JF** licensed for:

- Sale of alcohol to be consumed on the premises and recorded music:
 - Sunday to Thursday from 12:00 to 22:30
 - Friday and Saturday from 12:00 to 01:00 the following day.
- Late night refreshment:
 - Friday and Saturday from 23:00 to 01:00.
- Live music:
 - Friday and Saturday from 23:00 to 01:00.

- **Lickin' Fingers, 626b Old Kent Road, London SE15 1JB** licensed for:

- Sale of alcohol to be consumed on the premises:
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 23:30.
- Sale of alcohol to be consumed off the premises:
 - Sunday to Thursday from 10:00 to 23:30
 - Friday and Saturday from 10:00 to 00:30 the following day.
- Recorded music
 - Sunday to Thursday from 10:00 to 23:30
 - Friday and Saturday from 10:00 to 00:00 (midnight).
- Live music
 - Friday and Saturday from 23:00 to 00:00.

Southwark council statement of licensing policy

33. 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.
34. 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.
35. The premises fall within a residential area. The statement of licensing policy recommends the following closing times in respect of the types of premises stated:
- Restaurants and cafes:
 - 23:00 daily.
 - Public houses, wine bars or other drinking establishments:
 - 23:00 daily.

- Night clubs (with 'sui generis' planning classification):
 - Not considered appropriate for residential areas.

Resource implications

36. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band B has been paid by the applicant company in respect of this application.

Consultation

37. Consultation has been carried out in respect of 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 at the premises for a period of 28 consecutive days. When the application was amended a new notice was displayed at the premises and the consultation period extended for a further 28 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 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	Copy of the existing premises licence
Appendix B	Copies of the original variation application, the amended variation application and related correspondence
Appendix C	Copies of the representations submitted by the responsible authorities and related correspondence
Appendix D	Details of night time visits to the premises
Appendix E	List of temporary event notices submitted in respect of the premises
Appendix F	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	5 February 2018	
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		6 February 2018