

Item No. 5.	Classification: Open	Date: 23 March 2018	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX	
Ward(s) or groups affected:		Faraday Ward	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Curvingroad Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX, under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to outstanding representations submitted by responsible authorities and is therefore referred to the sub-committee for determination.
 - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
 - Paragraphs 9 to 11 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 D.
 - Paragraphs 14 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representations for responsible authorities are attached in Appendix C.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 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.

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 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

8. The original premises licence for the premises known as Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX 6SP, was issued following a hearing of the Southwark licensing sub-committee on 20 March 2017 at which point the licence was granted. The current premises licence was issued on 23 January 2018 following a DPS variation (all other activities remain unchanged) and allows the following licensable activities:
 - The sale of alcohol to be consumed on the premises:
 - Monday to Thursday from 12:00 to 22:30
 - Friday and Saturday from 12:00 to 23:30
 - Sunday from 12:00 to 22:00.

 - The provision of regulated entertainment in the form of films, live and recorded music (both indoors and outdoors):
 - Monday to Thursday from 09:30 to 23:00
 - Friday and Saturday from 09:30 to 00:00 (midnight)
 - Sunday from 09:30 to 22:30.

 - The provision of regulated entertainment in the form of plays and performances of dance (indoors):
 - Monday to Thursday from 09:30 to 23:00
 - Friday and Saturday from 09:30 to 00:00 (midnight)
 - Sunday from 09:30 to 22:30.

- Opening hours:
 - Monday to Thursday from 09:30 to 23:00
 - Friday and Saturday from 09:30 to 00:00 (midnight)
 - Sunday from 09:30 to 22:30.
- A copy of the existing premises licence is attached as Appendix A.

The variation application

9. On 29 January 2018 Curvingroad 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 Theatre Delicatessen, The Old Library, 39 Wells Way, London SE5 0PX 6SP
10. The application for variation is described as follows:
 - The proposed variation would extend the opening hours of the premises on weekends, as well as initiate non-standard timings for weeknights that fall on bank and public holidays.
 - The variation would also increase the accommodation limit set out in the conditions of the license from 75 to 120 people, not including staff.’
11. It should be noted that all hours are being sought to be extended, not just the weekend hours as suggested by the application introduction. The following hours are being requested:
 - The sale of alcohol to be consumed on the premises:
 - Sunday to Wednesday from 12:00 to 23:30
 - Thursday to Saturday from 12:00 to 02:30 (the following day).
 - The provision of regulated entertainment in the form of films, live and recorded music and performances of dance (both indoors and outdoors):
 - Sunday to Wednesday from 09:30 to 00:00 (midnight)
 - Thursday to Saturday from 09:30 to 03:00 (the following day).
 - The provision of regulated entertainment in the form of plays (indoors):
 - Sunday to Wednesday from 09:30 to 00:00 (midnight)
 - Thursday to Saturday from 09:30 to 03:00 (the following day).
 - Opening hours:
 - Sunday to Wednesday from 09:30 to 00:00 (midnight)
 - Thursday to Saturday from 09:30 to 03:00 (the following day).
 - Additional non-standard timings:
 - On the occasion of public holidays that do not fall on weekends, we would like to extend hours to 03:00. For example, on New Year's Day (when it falls on a weekday) and on bank holidays, when we would

normally have stopped licensable activities the previous evening, we would like to extend activities to 03:00 on the day of the holiday.

12. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

13. The designated premises supervisor (DPS) under the existing premises licence is Peter Weidmann, holding a personal licence with the London Borough of Brent.

Representations from responsible authorities

14. The Metropolitan Police Service have made a representation with concerns of the location of the premises and that the hours applied for are significantly outside of the Southwark licensing policy. The police believe that the hours applied for are excessive and could potentially increase antisocial behaviour in the area.
15. The Southwark environmental protection team (EPT) have made a representation under the licensing objective of the prevention of public nuisance. The concerns are raised in relation to the proximity to residential addresses and the egress of noise and the likelihood of potential complaints. They also make reference to the effect of the increase of accommodation limits. Finally, the hours are considered to be excessive.
16. Southwark public health (PH) have also made a representation. The concerns are raised in relation to the extension of hours outside of the Southwark licensing policy and the potential for alcohol-related harm from a late-night premises.
17. The licensing authority (LA) have made representation under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The application is inconsistent with the hours in relation to the Southwark licensing policy and if granted, would be inappropriate for this area.
18. The planning authority have not made a formal representation against the application, however, comments have been made and therefore the correspondence is attached for Member's information only. They state simply that planning permissions would be required for later hours and that the hours are not suitable for a premises in this location.
19. Copies of all the representations made by responsible authorities are available in Appendix C.

Representations from other persons

20. No representations have been received from other persons.

Conciliation

21. Copies of representations were provided to the Applicant's agent on 27 February 2018. At the point of publication of this report, the Applicant had not responded to the concerns of the responsible authorities.

Operating history

22. Multiple temporary event notices (TENs) have been issued to the premises since the original licence was granted.

Applicant	Dates	Activities	Counter Notice
Roland Smith	From 18/02/2017 to 19/02/2017 18:00 - 23:30 18/02/2017 18:00 - 22:30 19/02/2017	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment	No
	From 18/03/2017 to 19/03/2017 18:30 - 23:00 18/03/2017 18:30 - 22:30 19/03/2017	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	No
	From 04/04/2017 to 08/04/2017 19.00-23.00 each day	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment	No
	From 24/06/2017 to 25/06/2017 12:00-02:00	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment	No
	From 31/12/2017 to 01/01/2018 19:00 - 05:00	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment	No
	From 16/12/2017 to 17/12/2017 19:00 - 03:00	Sale by retail of alcohol to be consumed on the premises	No
	From 25/11/2017 to 26/11/2017 19:30 - 02:00	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment	No

Applicant	Dates	Activities	Counter Notice
	From 27/01/2018 to 28/01/2018 19:30 - 02:00	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment	No

23. No complaints have been received by the council's licensing department in relation to this premises.

24. Visits conducted to the premises:

Date	Time	Outcome
24 February 2018	20:24	No licensable activities taking place. No on-site manager available. No inspection carried out.
25 February 2018	21:12	Premises closed

Map

25. A map of the area is attached to this report as Appendix D. There are some licensed premises in the immediate vicinity:

Emukay Restaurant, 91 Camberwell Road, London SE5 0EZ, licenced for:

- The sale of alcohol (on and off sales):
 - Monday to Sunday from 10:00 to 02:00 (the following day).
- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 03:00 (the following day).
- The provision of regulated entertainment in the form of live music, recorded music and performances of dance (indoors):
 - Monday Sunday from 20:00 to 02:30.

Burgess Park and Adventure Playground, Albany Road and Camberwell Road, London SE5 0AH, licenced for:

- The provision of regulated entertainment in the form of live music, recorded music, films and plays (indoors):
 - Monday to Thursday from 10:00 to 21:00
 - Friday to Sunday from 10:00 to 22:00.

Canaan Restaurant, 163 Camberwell Road, London SE5 0HB, licenced for:

- The sale by retail of alcohol (on sales only)
 - Monday to Saturday from 11:00 to 00:00 (midnight)
 - Sunday from 12:00 to 23:30.

- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 00:30 (the following day)
 - Sunday from 23:00 to 00:00 (midnight).

Legacy Restaurant, 53 Camberwell Road, SE5 0EZ, licenced for:

- The sale by retail of alcohol (on sales):
 - Monday to Thursday from 10:00 to 00:30 (the following day)
 - Thursday to Sunday from 10:00 to 02:30 (the following day).
- The provision of late night refreshment (indoors):
 - Monday to Thursday from 23:00 to 00:30 (the following day)
 - Thursday to Sunday from 23:00 to 02:30 (the following day).
- The provision of regulated entertainment in the form of live music, recorded music and performances of dance (indoors):
 - Monday to Thursday from 18:00 to 00:30 (the following day)
 - Thursday to Sunday from 18:00 to 02:30 (the following day)

Abokobi Ghanaian Restaurant, 33 Camberwell Road, SE5 0EZ, licenced for:

- The sale by retail of alcohol (on sales only):
 - Monday to Sunday from 12:00 to 23:30.
- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 23:30.

Red Sea, 85 Camberwell Road, SE5 0EZ, licenced for:

- The sale by retail of alcohol (on sales only):
 - Sunday to Thursday from 12:00 to 23:00
 - Friday from 12:00 to 00:00 (midnight)
 - Saturday from 12:00 to 02:00 (the following day).
- The provision of late night refreshment (indoors)
 - Friday from 23:00 to 00:00 (midnight)
 - Saturday from 23:00 to 02:00 (the following day).

Southwark council statement of licensing policy

26. 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.
27. 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.
28. 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, pubs, cafes, wine bars, theatres and cinemas:
 - Monday to Sunday 23:00
 - Night clubs (with Sui Generis planning classification) are not considered appropriate for residential areas.

Resource implications

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

Consultation

30. 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 twice (there was an error on the initial advert; however, this was republished within the specified time period to the satisfaction of the Licensing Authority). A similar notice exhibited at the premises for a period of 28 consecutive days. This was inspected by a Licensing Officer during the consultation period and found to be compliant.

Community impact statement

31. 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

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

Principles for making the determination

34. 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.
35. 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.
36. 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.
37. 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

38. 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.

39. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

40. 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.

41. 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.

42. 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.

43. 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

44. 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

45. 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.
46. 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

47. 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.
48. 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.
49. 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.
50. 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.
51. 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.

52. 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.
53. 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.
54. 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

55. 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

56. The head of regulatory services has confirmed that the costs of this process over and above the application fee 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

No.	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copies of representations from responsible authorities:
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	9 March 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	12 March 2018	