

Item No. 7.	Classification: Open	Date: 27 March 2018	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003: Sir Robert Peel, 7 Langdale Close, London, SE17 3UF	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATIONS

1. That the licensing sub-committee considers an application made under Section 53C of the Licensing Act 2003 by the chief of police for the metropolitan police for a summary review of the premises licences in respect of the premises known as Sir Robert Peel, 7 Langdale Close, London SE17 3UF.
2. **Notes:**
 - a) A copy of the current premises licences issued in respect of the premises are attached to this report as Appendix A.
 - b) The grounds for the review are stated in paragraphs 15 to 25 of this report. A copy of the full application and certificate are provided as Appendix B.
 - c) A copy of the notice of decision from the previous hearing held on 2 March 2018 is in Appendix C.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act

- Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

KEY ISSUES FOR CONSIDERATION

The premises licence

8. The premises in respect of the premises licence consists of a public house on the ground floor called the Sir Robert Peel, 7 Langdale Close, London SE17 3UF.
9. The premises licence was carried over from the justices' licence in the 2005.
10. The premises licence was originally applied with premises licence holder Garry MacCarthy. The designated premises supervisor role was varied to Mr. MacCarthy on 22 August 2017.
11. The premises licence has not been subject to a previous review and there is no history of temporary events notices.
12. The details of the current premises licence that applies to both areas are:
- Opening hours:
 - Monday to Sunday: no restrictions.
 - Regulated entertainment in the form of live music and recorded music (indoors), anything similar (indoors) and performances of dance (indoors):

Monday to Thursday from 09:00 to 23:00:

 - Friday and Saturday from 09:00 to 00:30 (the following day)
 - Sunday from 09:00 to 22:30.
 - Late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 23:30.
 - Sale of alcohol for consumption both on and off the premises:
 - Monday to Saturday from 10:00 to 23:00
 - Sunday from 12:00 to 22:30.
13. A copy of the current premises licence is attached as Appendix A.

Designated premises supervisor

14. The designated premises supervisor (DPS) is Garry MacCarthy who has been DPS since August 2017 and holds a personal licence issued by the London Borough of Southwark.

The review application and certificate

15. On 28 February 2018 the Metropolitan Police Service applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Sir Robert Peel, 7 Langdale Close, London, SE17 3UF.
16. On 28 February 2018 a Superintendent for the Metropolitan Police Service force certified that in his opinion the premises are associated with serious crime or serious disorder or both.
17. The application is concerned with a serious incident that took place on Sunday 25 February 2018. The Police attended the premises in which a male had suffered a serious stab wound. The suspect, a regular patron, has also been arrested.
18. CCTV has been seized and sent for analysis.
19. It is believed that the events took place during a time when the premises should have been closed.
20. The police requested that following interim steps are taken to prevent further incidents from occurring:
 - The licence is suspended until such time as the full hearing is determined
21. The licensing sub-committee were not restricted to just considering this step.
22. A copy of the application and certificate are attached to this report as Appendix B.
23. The premises licence was subsequently reviewed at a hearing held on 2 March 2018. A copy of the Notice of Decision is available in Appendix C.
24. As a result, the licensing sub-committee put a number of measures in place, namely:
 - That the premises licence be suspended.
 - That the designated premises supervisor be removed.
25. On 9 March 2017 at 19:15, the licensing authority attended the premises as part of their night time economy visits. The premises was not open to the public. Mr Clancy and Mr O'Carroll were present and were carrying out refurbishment measures on the premises.

Representations from responsible authorities

26. A representation as been provided by this council's licensing authority supporting the review brought by the police. The representation is based on the four licensing objectives, namely the prevention of crime and disorder, the prevention of public nuisance, health & safety and the protection of children from harm. Despite receiving a prior written warning (which is exhibited), the violent incident which led to the review occurred during times where no premises licence was in place.
27. The representation from the Licensing Authority is available in Appendix D.

Representations from other persons

28. Representations have not been made by other persons.

Operating history

29. On 24 October 2008, the premises was inspected. It was found to be in breach of six conditions of the premises licence and a copy of the licence was unavailable, neither was there a fire risk assessment in place. A warning letter was sent.
30. On 27 February 2010, the premises was inspected and found to be compliant in regards to the premises licence, however, a fire risk assessment could not be produced.
31. On 1 February 2014, the premises was visited at 01:34, whilst it was closed to the public, with the door locked, people were found to be consuming alcohol inside.
32. On 20 August 2017, the premises was visited at 01:15 and found to be full of customers.
33. On 17 December 2017, the premises was visited at 00:45, there was music playing and people consuming alcohol. A Mr Clancy was present and claimed to be the licence holder.
34. A complaint was received that the premises was operating beyond its hours. A warning letter was sent to the premises and Officers visited at 00:44 on 27 August 2017 at which point the premises was found to be full of customers.
35. The following visits have been carried out at the premises during night time economy visits in relation to the entrance area.

Date of Visit	Time of Visit	Outcome Comments
17/12/2016	00:45	Allegations that it is staying open until 03:00hrs on the weekends. Arrived outside at 00.25hrs and did observations from outside. Music from pub was still playing, and audible from outside, at 00.45hrs. When Officers entered, there 6 customers at the bar. Behind the bar was Mr. Clancy. He claimed the customers were his friends and that he was giving them free drinks. He was advised that his till should be switched off and no money should change hands. The music was turned off at the request of the Officers. Although the premises licence doesn't show Mr. Clancy as the premises licence holder, he claims to have been the licensee for 2years and that his closing time is 01.00hrs. Mr. Clancy was unable to produce a copy of the licence. Further enquiries to follow as to who is the premises licence holder and designated premises supervisor.
20/08/2017	00:15	Loud music audible; Officers could hear a DJ playing inside speaking on microphone. A man came out from the pub to speak to Officer and said "Is it the noise" Officers said "YES" he then walked in and turned it down.
20/08/2017	01:15 (one hour after visit)	Pub open lots of customers inside seen through glass window, no sign of closing people drinking inside. Officers called NTE Police Sgt. Keith Dempster and asked them to visit there is concern that the management appears to be aggressive.
27/08/2017	00:44	Premise open, full of customers inside drinking no signs of closing. Officers called NTE Police to attend with then, but no answer.
09/03/2018	19:15	Premises closed to public, refurbishment works taking place. My Clancy and Mr O'Carroll present.

The local area

36. A map of the local area is attached at Appendix E. There is only one other licensed premises in the immediate vicinity, namely:

Orbit Brewing – Arches 224 to 227, Fielding Street, SE17 3HD

- The sale by retail of alcohol (both on and off sales):
 - Wednesday to Friday from 17:00 to 22:30
 - Saturday and Sunday from 12:00 to 22:30

Southwark Council statement of licensing policy

37. Council assembly approved Southwark's statement of licensing policy 2016 to 20 on 25 November 2015. The policy came into effect on 1 January 2016. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
- Section 5 - Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
- Section 6 - Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
- Section 7 - Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
- Section 8 - The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
- Section 9 - Public safety. This provides general guidance on the promotion of the second licensing objective.
- Section 10 - The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
- Section 11 - The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.

38. 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. Within Southwark's Statement of Licensing Policy, the premises are identified as being outside of a cumulative impact zone but situated in a residential area. Relevant closing

times recommended in the Statement of Licensing Policy for licensed premises in residential areas are as follows:

- Closing time for public houses, wine bars or other drinking establishments is 23:00.

Resource implications

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

Consultation

40. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

Community impact statement

41. 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

42. The sub-committee is asked to determine, under Section 53C of the Licensing Act 2003, an application, made under Section 53A of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

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

Principles for making the determination

44. Under Section.53 (A)(2) the licensing authority must determine a review application within 28 days of receipt of the application and reach a determination on that review.

45. The four licensing objectives are:

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

46. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Modify the conditions of the licence by altering, omitting or adding any condition
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence.

47. For the purpose of determining a relevant representation under section 52 of the Act a "relevant representation" means representations which:

- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
48. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
49. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
50. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
51. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

52. Where the authority takes interim steps an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

53. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations.
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing.
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant:
 - To the particular application before the committee
 - To the licensing objectives.

- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
 - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
54. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

Council's multiple roles and the role of the licensing sub-committee

55. 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.
56. 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.
57. 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.
58. 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.
59. 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.
60. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
61. 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.

62. There is no right of appeal to a magistrates' court against the licensing authority's decision regarding the setting of interim steps at this Stage.

Guidance

63. 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

64. 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	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

APPENDICES

Name	Title
Appendix A	The current premises licence
Appendix B	Copy of review application
Appendix C	Copy of the Notice of Decision from 2 March 2018
Appendix D	Representation from the Licensing Authority
Appendix E	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment Social Regeneration		
Report Author	Andrew Heron, Principal Licensing Officer		
Version	Final		
Dated	15 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		15 March 2018	