

Item No. 5.	Classification: Open	Date: 6 April 2018	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Brick Brewery, Railway Arch 209, Blenheim Grove, London SE15 4QL	
Ward(s) or groups affected:		The Lane	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Ian Stewart to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Brick Brewery, Railway Arch 209, Blenheim Grove, London SE15 4QL.
2. Notes:
 - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Brick Brewery, Railway Arch 209, Blenheim Grove, London, SE15 4QL 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 10 to 15 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 E.
 - Paragraphs 17 to 22 of this report summarise 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.
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 current premises licence in respect of the premises known as Brick Brewery, Railway Arch 209, Blenheim Grove, London, SE15 4QL was issued on 22 October 2013 and allows the following licensable activities:
- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday between 11:00 and 22:30
 - Opening hours:
 - Monday to Sunday between 11:00 and 23:00
9. A copy of the existing premises licence is attached as Appendix A.

The variation application

10. On 11 January 2018 Ian Stewart 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 Brick Brewery, Railway Arch 209, Blenheim Grove, London, SE15 4QL.
11. The application is summarised as follows:
- To amend the hours permitted for the sale of alcohol on the following days as stated:
 - Monday no change
 - Tuesday and Wednesday 17:00 to 23:00
 - Thursday 12:00 to 23:00
 - Friday & Saturday 12:00 to 00:00

- Sunday 12:00 to 23:00.
 - To allow for the provision of live music as follows:
 - Tuesday to Sunday 17:00 to 22:30.
 - To allow for the provision of recorded music as follows:
 - Tuesday and Wednesday 17:00 to 23:00
 - Thursday 12:00 to 23:00
 - Friday & Saturday 12:00 to 00:00
 - Sunday 12:00 to 23:00.
 - To amend the opening hours of the premises to:
 - Monday no change
 - Tuesday and Wednesday 17:00 to 23:00
 - Thursday 12:00 to 23:00
 - Friday and Saturday 12:00 to 00:00
 - Sunday 12:00 to 23:00.
12. The application form provides the applicant's operating schedule. Parts E, F, 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. On 25 January 2018 the applicant modified the application as follows:
- To amend the hours permitted for the sale of alcohol to:
 - Sunday to Thursday 11:00 to 23:00
 - Friday and Saturday 11:00 to 00:00 (midnight)
 - To amend the opening hours of the premises to:
 - Sunday to Thursday 11:00 to 23:30
 - Friday and Saturday 11:00 to 00:30 the following day
 - To allow for the provision of recorded music as follows:
 - Friday and Saturday 23:00 to 00:00.
 - To remove live music from the application.
14. Copies of the variation application and correspondence relating to the modification of the application are attached to this report as Appendix B.
15. The responsible authorities were informed of the above modification of the application.

Designated premises supervisor

16. The designated premises supervisor (DPS) under the existing premises licence is Ian Stewart.

Representations submitted by responsible authorities

17. Representations were submitted by this council's environmental protection team, this council's trading standards service, this council's licensing responsible authority and the Metropolitan Police Service.
18. The environmental protection team's representation was concerned with the likely effect of the proposed variation on the promotion of the prevention of public nuisance licensing objective. Subsequent to the modification of the application the environmental protection team withdrew their application.
19. The trading standards representation proposed that various conditions in regards to the implementation of a challenge 25 policy be included in the application and that clarification as to the possible removal or modification of condition 343 of the premises licence be provided. The applicant agreed to the conditions proposed by the trading standards service and also requested that condition 343 be removed from the licence and be replaced by two alternative conditions. Trading standards subsequently withdrew their representation.
20. The licensing responsible authority refers to the application as originally submitted and does not take into account the modification of the application. The representation was submitted in regards to the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation notes that the premises are situated in Peckham major town centre area and that the closing time recommended, in this council's statement of licensing policy, for public houses, wine bars or other drinking establishments in Peckham major town centre area is 23:00 Sunday to Thursday and 00:00 Friday and Saturday. The representation notes that the premises are subject to the Peckham cumulative impact policy. The representation requests that an accommodation limit and dispersal policy be provided and that two conditions relating to 'off sales' at the premises are included in the application.
21. The Metropolitan Police Service's representation proposed that a condition relating to the provision of SIA registered door supervisors at the premises be included in the application. The applicant agreed to the inclusion of the condition in the application and the Metropolitan Police Service withdrew their representation.

Representations submitted by 'other persons'

22. One representation was submitted by one other person, the other person being a local resident. The representation implies that the proposed extension of operating hours would be likely to lead to an increase in noise, drunkenness and anti-social behaviour in the locale and objects strongly to the premises opening later than 23:00 on any night.

Conciliation

23. The applicant was sent copies of the representations and was advised to directly contact the responsible authorities and, if they so wished, to contact the other person via the licensing unit to facilitate conciliation of the responsible authorities and other person. Subsequent to the modification of the application the environmental protection team withdrew their representation. Further to conditions proposed by trading standards being accepted by the applicant trading standards withdrew their representation. Further to conditions proposed by the Metropolitan Police Service being accepted by the applicant the Metropolitan Police Service withdrew their representation.
24. The applicant has provided a response to the licensing responsible authority; however at the time of the writing of this report the licensing responsible authority's representation remains outstanding and must be considered by the licensing sub-committee. The licensing sub-committee will be informed at the hearing should the licensing responsible authority's representation be conciliated.
25. The applicant has provided responses to the other person, however the other person has maintained their representation which must therefore be considered by licensing sub-committee
26. Copies of the representations submitted and related correspondence are attached as Appendix C

Operating history

27. The current premises licence in respect of the premises was issued on 22 October 2013.
28. A list of all temporary event notices submitted in respect of the premises is attached in Appendix D.

Map

29. A map of the area is attached to this report as Appendix E. The premises are identified at the centre of the map. The following premises are in the area shown by the map:

Iceland Frozen Foods, 74 Rye Lane, London SE15 5DQ licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday 08:00 to 23:00
 - Friday to Saturday 10:00 to 22:30.

Il Giardino Restaurant, 7 Blenheim Grove, London SE15 4QS licensed for:

- The sale of alcohol to be consumed on the premises
 - Monday to Saturday 11:00 to 00:00
 - Sunday 12:00 to 23:30.

- The provision of late night refreshment:
 - Monday to Saturday 23:00 to 00:00
 - Sunday 23:00 to 23:30.

Peckham Refreshment Rooms, 12-16 Unit 4 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Friday 07:00 to 22:30
 - Saturday 09:00 to 23:30
 - Sunday 09:00 to 16:30.

Honest Burgers, 12-16 Unit 1 To 2 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday 10:00 to 23:00
 - Friday and Saturday 10:00 to 00:00
 - Sunday 10:00 to 23:00.
- The provision of late night refreshment:
 - Friday to Saturday 23:00 to 00:00.

Brick Brewery, Railway Arch 209, Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Friday 11:00 to 22:30.

Bar Story, Arch 213 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday 10:00 to 00:00
 - Sunday 10:00 to 23:30.
- The provision of late night refreshment:
 - Monday to Saturday 23:00 to 00:30
 - Sunday 23:00 to 00:00.

Little Bird Gin Nights & Weekends, 22a Unit 1, Dovedale Business Centre Blenheim Grove, London SE15 4QN licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday 10:00 to 19:00.

- The sale of alcohol to be consumed off the premises:
 - Thursday to Sunday 10:00 to 22:00.

Serious Pig, Railway Arch 221 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday 10:00 to 19:00.

McDonald's Restaurants Limited, 72-74 Rye Lane, London SE15 5DQ licensed for:

- The provision of late night refreshment
 - Sunday to Thursday 23:00 to 01:00
 - Friday and Saturday 23:00 to 02:00.

Coal Rooms, 11a Station Way, London SE15 4RX licensed for:

- Films, live music, recorded music and the sale of alcohol to be consumed on the premises:
 - Sunday to Thursday 10:00 to 00:00
 - Friday and Saturday 10:00 to 23:30.
- The provision of late night refreshment:
 - Sunday to Thursday 10:00 to 01:00
 - Friday and Saturday 10:00 to 00:00.

Bims African Store, 102 Rye Lane, London SE15 4RZ licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday 09:30 to 00:00.

Rye Express, 137-139 Unit 1 Rye Lane SE15 4ST licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday 08:00 to 00:00.

Swaizie Food Store, 1A Choumert Road, London SE15 4SE licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Saturday: 08:00 to 22:00
 - Sunday: 10:00 to 22:30.

PeckhamPlex, 95A Rye Lane, London SE15 4ST licensed for:

- Films:
 - Sunday to Thursday 09:00 to 00:00
 - Friday and Saturday 09:00 - 02:00.
- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday 14:00 to 22:00
 - Friday to Sunday 12:00 to 23:00.

Southwark council saturation policy for Peckham

30. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in November 2015 when full council assembly approved the 2016-2020 statement of licensing policy.
31. 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.
32. The effect of this special policy is that 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.
33. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

Southwark council statement of licensing policy

34. 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
35. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.
36. The premises fall within Peckham major town centre area. The statement of licensing policy recommends the following closing times in respect of the types of premises stated:
- **Public houses, wine bars or other drinking establishments:**
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00.

Resource implications

37. 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

38. 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.

Community impact statement

39. 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

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

Principles for making the determination

42. 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.
43. 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.
44. 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.
45. 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

46. 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.
47. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
48. 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.
49. 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.

50. 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.
51. 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

52. 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

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 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.

54. 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

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 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.
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. 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

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 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 Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copies of the variation application and related correspondence
Appendix C	Copies of the representations submitted and related correspondence
Appendix D	List of temporary event notices submitted in respect of the premises
Appendix E	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Wesley McArthur, Principal Licensing Officer		
Version	Final		
Dated	22 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		23 March 2018	