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| Item No. 8. | Classification: Open | Date: 6 April 2018 | Meeting Name: Licensing Sub-Committee |
| Report Title | | Licensing Act 2003: Theo's, (Ground Floor Draper House) 17-19 Elephant and Castle, London, SE1 6TH | |
| Ward(s) of group(s) affected | | Newington | |
| From | | Strategic Director of Environment and Social Regeneration | |

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Greenpoint Avenue Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Theo's, (Ground Floor Draper House) 17-19 Elephant and Castle, London SE1 6TH.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 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 A.
 - c) Paragraphs 12 to 15 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted responsible authorities are attached to this report in Appendix B. Representations from other persons are attached at Appendix C. A map showing the location of the premises is attached to this report as Appendix D.
 - 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 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 premises licence application

8. On 31 January 2018, Greenpoint Avenue Limited applied to this council for the grant of a premises licence in respect of Theo's, (Ground Floor Draper House) 17-19 Elephant and Castle, London SE1 6TH. The premises are described in the application simply as being a 'pizza restaurant'.
9. The application is summarised as follows:
- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 12:00 to 00:00 (midnight).
 - The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 00:30 (the following day).
 - The provision of regulated entertainment in the form of recorded music (Indoors):
 - Monday to Sunday from 10:00 to 00:30 (the following day).
 - Opening hours:
 - Monday to Sunday from 07:00 to 00:30 (the following day).
10. The proposed designated premises supervisor of the premises is Theo Lewis (the licence Applicant) who has a personal licence by London Borough of Lambeth.
11. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be

attached to any licence granted subsequent to the application. A copy of the application and premises plan is attached to this report in Appendix A.

Representations from responsible authorities

12. A representation was submitted by the council's environmental protection team (EPT). Please see Appendix B. The representation was withdrawn further to the following agreements:
 - 1) That the provision of regulated entertainment in the form of recorded music has been removed, in light of the music intended to be only background.
 - 2) The removal of a condition offered in Section 'M (a)' of the application operating schedule which had stated "The premises shall not hold licensed entertainment unless approved under a temporary events notice."
 - 3) In light of the external seating area being closed by 22:00, Condition 17 offered in Section 'M (a)' of the application Operating Schedule is to be amended to reflect this:
 - "The external area will be out of use between 22:00 and 08:00, with all furniture having been brought into the premises or, if left outside, rendered unusable"
13. The representation from the council's licensing department in their role as responsible authority requested additional conditions and draws the attention of the applicant to the Southwark licensing policy. The representation is also available in Appendix B. Additional conditions have been requested, which the applicant agreed to – the response from the applicant follows the representation. At the time this report was published, no response had been received by the applicant.

Representations from other persons

14. Representations have been received from two other persons, both local residents in the immediate vicinity. These representations state that there is potential for the increase in crime and disorder and public nuisance. There are also concerns regarding the hours that have been applied for. These representations are available in Appendix C.

Conciliation

15. The applicant has been sent copies of all the submitted representations. The representation from EPT has been conciliated; the representation from Licensing remains outstanding. The Applicant asked that both local residents receive the correspondence which follows on from the representations in Appendix C. No response has been received from either Objector. The Applicant's contact details have been passed to both Objectors; one has made contact, the second remains silent.

Premises history

16. The venue has not had a premises licence in place previously. There is no history of temporary events notices or complaints to the licensing department.

Map

17. A map showing the location of the premises is attached to this report as Appendix D. The following are a list of similarly licensed premises are in the immediate vicinity of the premises application:

After Taste Chinese Restaurant, 97 Newington Butts, London SE1 6SF

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 11:00 to 00:00 (midnight)
 - Sunday from 12:00 (midday) to 23:30.
- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 00:00 (midnight)
 - Sunday from 12:00 (midday) to 23:30.

Ivory Arch, 80-82 Walworth Road, London SE1 6SW

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 11:00 to 00:00 (midnight).
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Sunday from 23:00 to 00:00 (midnight).
- The provision of regulated entertainment in the form of live music, recorded music, films and plays:
 - Monday to Sunday from 11:00 to 00:00 (midnight).

Mamuska, 16 Elephant and Castle, London SE1 6TH

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 10:00 to 02:00 (the following day)
 - Sunday from 12:00 (midday) to 23:00.
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Saturday from 23:00 to 02:30 (the following day)
 - Sunday from 23:00 to 23:30.
- The provision of regulated entertainment in the form of live music, recorded music, and performances of dance:
 - Monday to Saturday from 09:00 to 02:00 (the following day)
 - Sunday from 09:00 to 23:00.

La Chatica, Unit 13 Tiendas Del Sur, 91-95 Newington Butts, London SE1 6SE

- Sale by retail of alcohol to be consumed off premises:
 - Monday to Saturday from 10:00 - 21:00
 - Sunday from 12:00 to 18:00.

Corporation Ponce, Arch 144, Eagle Yard, Hampton Street London, SE1 6SP

- The Sale by retail of alcohol (on sales):
 - Sunday to Thursday from 14:00 to 22:30
 - Friday and Saturday from 14:00 to 23:30.

- The provision of late night refreshment (indoors):
 - Friday and Saturday from 14:00 to 23:30.
- The provision of regulated entertainment in the form of live and recorded music (indoors):
 - Friday and Saturday from 14:00 to 23:30
 - Sunday from 14:00 to 22:30.

La Barra, Arch 147, Eagle Yard Unit 2, Hampton Street, London SE1 6SP

- The sale by retail of alcohol (on sales):
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00.
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00.

Rincon Tropical - 2nd Floor, Arch 147, Eagle Yard, Hampton Street, London, SE1 6SP

- The sale by retail of alcohol (on sales):
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00.
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00.

Southwark council statement of licensing policy

18. 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
19. 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.
20. Within Southwark's statement of licensing policy, the premises are identified as being outside of a cumulative impact policy (CIP) area but within the Elephant and Castle major town centre area. Under the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for the following categories of premises:
- Restaurants and cafes:
 - Sunday to Monday to 00:00 (midnight)
 - Friday and Saturday to 01:00 (the following day).
 - Public houses, wine bars or other drinking establishments:
 - Sunday to Monday to 23:00
 - Friday and Saturday to 00:00 (midnight).

Resource implications

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

Consultation

22. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

23. 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

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

Principles for making the determination

26. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
27. Relevant representations are those which:
 - Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an interested party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
28. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
 - To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence
 - To exclude from the scope of the licence any of the licensable activities to which the application relates
 - To refuse to specify a person in the licence as the premises supervisor
 - To reject the application.

Conditions

29. 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.
30. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.

31. 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.
32. 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.
33. 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

34. 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

35. 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.
36. This matter relates to the determination of an application for a premises licence under section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

37. 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.
38. 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.
39. 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.
40. 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.
41. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.

The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.

42. 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.
43. 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

44. 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

45. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|---|---|----------------------------------|
| Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing Policy Case file | Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH | Kirty Read Tel: 020 7525 5748 |

APPENDICES

| Name | Title |
|------------|---|
| Appendix A | Application for a premises licence |
| Appendix B | Representations from responsible authorities and applicant's responses |
| Appendix C | Representations submitted by other persons and the Applicant's response |
| Appendix D | Map of the local area |

AUDIT TRAIL

| | | | |
|---|--|--------------------------|--|
| Lead Officer | Deborah Collins, Strategic Director of Environment and Social Regeneration | | |
| Report Author | Andrew Heron, 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 | |