

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 23 April 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Lokma Restaurant, 11 Bermonsdey Square, London SE1 3UN	
<b>Ward(s) or groups affected:</b>		Chaucer	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by a local resident under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Lokma Limited in respect of the premises known as Lokma Restaurant, 11 Bermonsdey Square, London SE1 3UN.
2. Notes:
  - a) The grounds for the review are stated in paragraph 13 of this report. A copy of the premises licence review application is attached as Appendix A. The Applicant has also requested that supporting documentation be provided and appear after the application.
  - b) The review application is supported by a representation submitted by Southwark's Environmental Protection Team in their role as Responsible Authority and is attached as Appendix B. The application is further supported by five additional local residents from the same building. Their representations are available in Appendix C. Details of all representations are provided in paragraphs 15 – 17.
  - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix D. A map of the area that the premises are located in is attached as Appendix E.
  - 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 applications 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. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The premises licence allows the provision of licensable activities as follows:
  - The sale of alcohol to be consumed on the premises:
    - Sunday to Thursday from 07:00 to 00:00 (midnight)
    - Friday and Saturday from 07:00 to 01:00 (the following day)
  - The sale of alcohol to be consumed off the premises:
    - Monday to Saturday from 09:00 to 23:00
    - Sunday from 12:00 to 22:30
  - The provision of late night refreshment (indoors and outdoors)
    - Sunday to Thursday from 23:00 to 00:00 (midnight)
    - Friday and Saturday from 23:00 to 01:00 (the following day)

- The provision of regulated entertainment in the form of live and recorded music, performances of dance and facilities for making music (all indoors)
    - Sunday to Thursday from 12:00 to 00:00 (midnight)
    - Friday and Saturday from 12:00 to 01:00 (the following day)
  - Opening hours
    - Sunday to Thursday from 07:00 to 00:30 (the following day)
    - Friday and Saturday from 07:00 to 01:30 (the following day).
10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix D.

#### **Designated premises supervisor (DPS)**

11. The current Designated Premises Supervisor (DPS) named on the licence is Shahrokh Parvin since the licence was first issued in February 2009.

#### **The review application**

12. On 22 February 2018, an application was submitted by a local resident under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Lokma Limited in respect of the premises known as Lokma Restaurant, 11 Bermonsdey Square, London SE1 3UN.
13. The review application was submitted in respect of the prevention of crime and disorder and the prevention of public nuisance licensing objectives; and in summary states that the following has been witnessed and / or taken place at the premises:
- The proprietor has failed in his duty of care to act responsibly in terms of noise nuisance.
  - The proprietor has ignored the reasonable requests of the residents to address noise pollution.
  - The proprietor has been served with notices from the council to address noise issues which he has ignored.
  - The proprietor has breached the terms of his license in relation to condition 344 on the licensing register.
  - The level of noise and general nuisance to the public has increased substantially in the last three months. The business the restaurant is conducting (particularly on Friday & Saturday evenings) - that is effectively turning the restaurant into a nightclub/disco – is inappropriate for a residential area, especially with flats directly above the premises.
14. Full details of the grounds for the review are provided within review the application. This includes a timeline of noise nuisance. A copy of the review application and supporting documents are attached as Appendix A.

### **Representations from responsible authorities**

15. Southwark's environmental protection team have submitted a representation in support of the review application. The representation points to complaints received by the Southwark noise service, a warning letter that has subsequently been issued and Statutory Noise Abatement Notice as a result of breaches caused by the restaurant.
16. A copy of the representation is attached as Appendix B.

### **Representations from other persons**

17. Five representations have been supplied by additional local residents from within the same block above the premises. All residents state that they are affected by excess noise from the premises, especially at weekends. There is on going concern since the premises transfer took place. Concerns are additionally raised regarding the use of the external area.
18. Copies of all representation are attached in Appendix C.

### **Operating History**

19. A premises licence was issued in respect of the premises to Del Aziz Limited on 19 February 2009. The Designated Premises Supervisor was shahrokh Parvin, whom remains in place to this time.
20. On 18 December 2017 an application to transfer the premises licence to Lokma Limited was received and granted with immediate effect. Companies House advises that Lokma Limited (10602336) was incorporated on 6 February 2017. The company has two Directors, namely Zehra Parvin and Shahrokh Parvin (the current DPS).
21. The premises has only had one temporary event notice issued to Stefano Zerbetto for the sale of alcohol, late night refreshment and regulated enetertainment from 1<sup>st</sup> May 2016 to 2 May 2016 between the hours of 21:00 and 04:00 (the following day). It is noted that this was used before the transfer.
22. The following complaints have been received by the authority regarding the premises in the past 12months:

<b>Date</b>	<b>Complainant</b>	<b>Details</b>
15/10/2017	Local Resident	Complaint to Noise Team. Loud music from restaurant
19/11/2017	Local Resident	Complaint to Noise Team. Loud music from restaurant
21/11/2017	Local Resident*	Complaint to Noise Team. Loud music from restaurant – becoming regular on Saturday nights

<b>Date</b>	<b>Complainant</b>	<b>Details</b>
01/12/2017	Local Resident	Complaint to Noise Team. Reporting loud live music
21/12/2017	Local Resident*	Complaint to Noise Team. Complaint of loud music playing until 01:24 with customers leaving at 01:45
24/12/2017	Local Resident	Complaint to Noise Team. Loud music from restaurant
28/12/2017	Local Resident	Complaint to Licensing Department of on-going issues with the premises.
11/01/2017	Local Resident	Complaint to Noise Team. Noise from premises
16/01/2017	Local Resident*	Complaint to Licensing Department. Formal complaint of on-going noise issued from premises
18/01/2018	Local Resident*	Complaint to Noise Team. Noise from premises
14/02/2018	Local Resident*	Complaint to Noise Team. Noise from premises
15/02/2018	Local Resident*	Complaint to Noise Team. Noise from premises
17/02/2018	Local Resident*	Complaint to Noise Team. Noise from premises
19/02/2018	Local Resident*	Complaint to Noise Team. Noise from premises – Turned up after 23:00, believes it is potentially malicious
13/03/2018	Local Resident	Complaint to Licensing Department. Regarding loud events over the last few months, preventing the complainant from sleeping. Believes that there are licence contraventions: Condition 344 - soundproofing should be installed Condition 309 - sound limiting device be installed and used Condition 312) - outside space should not be used after 22:00. In the summer months people are regularly sitting outside being served until between 23:00 and 00:00. The Complainant has made representation to this application (Party E)

\*The Complainant details with an asterisk (\*) are complaints made by the Applicant for review

23. The following visits have been carried out to the premises

Date	Outcome
03/10/2017	Joint daytime visit with Trading Standards. Full premises licence inspection, copy available on premises in digital form, but all ok. No summary on display - was printed off whilst I was there and put up. Advised that their 'noise limiter' was a dial on an internal wall.
05/01/2018	19:50 - Visit to as part of NTE visits, further to complaint about noisy Christmas party. Spoke to PLH. Advised as to the complaint. He said that they had had a Christmas Party that night, but does not believe that the noise can have gone on as long as the complainant says. He asked about what Southwark's policy are on opening hours as he believed that different Authorities had different policies, that as long as no licensable activities are taking place, the opening hours are not important. I advised that opening hours are not a suggestion - there should be no more customers on the premises after the terminal hour. If he wishes to stay open longer, should apply for a TEN or a variation. Also advised that the complaint involves loud music, they may wish to have an independent sound specialist look at their sound limiter.
24/02/2018	22:10 - Visit to as part of NTE visits, further to Local Resident Review. Met with Alex Zolfaghari and discussed the background of the premises and how the review application will proceed from here.

#### The local area

24. A map of the local area is attached as Appendix E. There are a number of licenced premises in the immediate vicinity, namely:

#### **Shortwave, 10 Bermondsey Square, London SE1 3UN:**

- Sale of alcohol to be consumed both on and off the premises:
  - Monday to Wednesday from 10:00 to 23:00
  - Thursday from 10:00 to 01:00
  - Friday and Saturday from 10:00 to 01:00
  - Sunday from 10:00 to 01:00.
- The provision of late night refreshment:
  - Sunday and Thursday from 23:00 to 00:00
  - Friday and Saturday from 23:00 to 05:00.

- The provision of regulated entertainment in the form of plays, live and recorded music, performances of dance, anything similar and facilities for making music and dancing and anything similar:
  - Monday to Wednesday from 10:00 to 23:00
  - Thursday from 10:00 to 00:00
  - Friday and Saturday from 10:00 to 01:00
  - Sunday from 10:00 to 00:00.
- The provision of regulated entertainment in the form of films:
  - Monday to Wednesday from 10:00 to 23:00
  - Thursday and Friday 10:00 to 00:00
  - Saturday and Sunday from 00:00 to 00:00.

**Bermondsey Square Hotel, Bermondsey Square, London SE1 3UN**

- Sale of alcohol to be consumed both on and off the premises:
  - Monday to Sunday from 10:00 to 02:00.
- The provision of late night refreshment:
  - Monday to Sunday from 23:00 to 05:00.
- The provision of regulated entertainment in the form of, live and recorded music, performances of dance, anything similar:
  - Monday to Sunday from 10:00 to 02:00.

**Sainsbury's Supermarket, 13-14 Bermondsey Square, London SE1 3UN**

- Sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 06:00 to 00:00.
- The provision of late night refreshment:
  - Monday to Sunday from 23:00 to 00:00.

**Southwark council statement of licensing policy**

25. Council assembly approved Southwark's statement of licensing policy 2016 - 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.
26. 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.
27. Within Southwark's statement of licensing policy 2016 - 2020, the premises are identified as being in a strategic cultural area, but outside of a cumulative impact policy area. Under the Southwark statement of licensing policy the following closing times are recommended as appropriate within this area:
- Closing time for Restaurants and Cafes:
    - Sunday to Thursday 00:00
    - Friday and Saturday 01:00.
  - Closing time for Public Houses Wine bars or other drinking establishments:
    - Sunday to Thursday 23:00
    - Friday and Saturday 00:00.

### **Resource implications**

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

### **Consultation**

29. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.



## **Community impact statement**

30. 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**

31. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 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.
32. The principles, which sub-committee members must apply, are set out below.

### **Principles for making the determination**

33. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
34. 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.
35. 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.
36. 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.

37. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
38. 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.
39. 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.
40. 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**

41. Where the authority takes interim steps on 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**

42. 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.
43. 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**

44. 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. 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.

50. 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.
51. 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**

52. 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**

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

### **BACKGROUND DOCUMENTS**

<b>Background papers</b>	<b>Held At</b>	<b>Contact</b>
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 Phone number: 020 7525 5748

### **APPENDICES**

<b>No.</b>	<b>Title</b>
Appendix A	Copy of the review application
Appendix B	Copy of the supporting representation submitted by the environmental protection team
Appendix C	Copies of supporting representations from five local residents
Appendix D	Copy of the current premises licence
Appendix E	Map of the local area

**AUDIT TRAIL**

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration		
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer		
<b>Version</b>	Final		
<b>Dated</b>	28 March 2018		
<b>Key Decision?</b>	No		
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>	
Director of Legal Services	Yes	Yes	
Strategic Director of Finance and Corporate Services	Yes	Yes	
<b>Cabinet Member</b>	No	No	
<b>Date final report sent to Constitutional Team</b>		10 April 2018	