

Item No. 7.	Classification: Open	Date: 10 May 2018	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Food and Wine, 4 Camberwell Church Street, London SE5 8QU – Transfer Application	
Ward(s) or groups affected:		Brunswick Park	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Somasundram Ariyarajah to transfer a premises licence under the Licensing Act 2003 in respect of the premises known as Food and Wine, 4 Camberwell Church Street, London SE5 8QU.
2. This is an application to transfer the premises licence, submitted under Section 42 of the Licensing Act 2003. The application is subject to an objection notice from the Metropolitan Police Service and is therefore referred to the sub-committee for determination.
3. Paragraphs 12 to 14 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.
4. Paragraphs 29 to 33 of this report deals with the police objection notice received to the transfer application. A copy of the relevant police objection notice is attached as Appendix D.
5. 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

6. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
7. Within Southwark, the licensing responsibility is wholly administered by this council.

8. 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.
9. 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.
10. The application to transfer a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
11. The police may submit an objection notice to an application to transfer a premises licence when relevant to the promotion of the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

Premises licence transfer

12. A premises licence transfer application was received on 19 March 2018 to remove Mohammed Imran Ghulam Rasool as the premises licence holder of Food & Wine (a.k.a Superdeals) and to specify Somasundram Ariyarah as the new premises licence holder. On 19 March 2018 consents were also received.
13. The effect of an application to transfer a premises licence is that it will have immediate interim effect unless an objection is received from the Police.
14. A copy of this application and consent is attached as Appendix A.

Premises history

15. A premises licence was issued in respect of the premises on 9 April 2008. The licence was granted to the current licence holders, Mohammed Imran and Ghulam Rasool.
16. On 29 December 2012 a visit by the Night Time Economy Team inspected the premises and found no training records, no personal licence holder on site and

missing notices regarding police, awareness of pickpockets and a contact name for customers. A warning letter was sent out.

17. On 6 April 2014 licensing enforcement officer attended the premises, which was not compliant. No personal licence holder or designated premises supervisor (DPS) was at the premises.
18. On 22 August 2015 a full inspection of the premises was undertaken, despite three staff being present at the time, they were unable to show CCTV footage, so it could not be sure that it was working. In addition, there were no notices in accordance with conditions 341-345 and no full licence available.
19. On 2 November 2015, licensing enforcement officers carried out an inspection to determine whether the licensable activities at the above premises were carried out in accordance with the premises licence issued in respect of the premises.
20. During the inspection the officers witnessed the following:
 - It was not possible to ascertain if the CCTV system at the premises has a 31 day recording capacity as required by condition 289 of the premises licence.
 - Footage from the CCTV system could not be made available to the inspecting officers on as required by condition 289.
 - There was no signage displayed, as required by condition 341, informing customers that the police will be informed in the event of any individual being found in possession of controlled substances or offensive weapons.
 - There was no signage displayed, as required by condition 342, informing customers about the need to be aware of pickpockets or bag snatchers, and to guard their property, or unattended bags.
 - There was no signage displayed, as required by condition 343, displaying the name of a contact for customers if they wish to report concerns.
21. Each of the matters listed above potentially constitutes a breach of the licence issued by the council under the Licensing Act 2003.
22. It was apparent that the person left in charge of the premises was not aware of the premises licence issued in respect of the premises or its terms and conditions. All staff employed at the premises must be aware of the terms and conditions of the premises licence and have received training in respect of it.
23. The staff member present at the time of the visit displayed a lack of knowledge as to the acceptable forms of identification that can be accepted as proof of age in regards to the sale of alcohol. All members of staff at the premises must read the training pack and complete the training record included with it.

24. It was recommended that all staff members who do not have a personal licence are authorised in writing by the designated supervisor (DPS) of the premises to make sales of alcohol. Should you require it, please find enclosed a letter of authorisation template. If you use the authorisation template please keep it at the premises.
25. A warning letter was provided to the premises licence holders.
26. On 28 January 2017, a test purchase was carried out at the request of trading Standards further to information received that the Designated Premises Supervisor had departed the business. Alcohol was sold.
27. On 31 January 2017, the premises applied for a vary DPS application, which was deemed as invalid. A letter was sent that day to advise, which is included in the supporting representation made by the licensing authority. A valid application was not received until 14th February 2017.
28. On 20 April 2017 an application was submitted by this council's trading standards service under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Mohammed Imran and Ghulam Rasool in respect of the premises known as Superdeals (Food and Wine), 4 Camberwell Church Street, London SE5 8QU. The premises was visited by trading standards and the review documents were delivered. A non-personal licence holder was found to be working alone in the shop; he continued to sell alcohol despite being advised that it was an offence under the terms of the premises licence. The employee was also unable to operate the CCTV.
29. The review application was submitted in respect of the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives and in summary states that the following has been witnessed and/or taken place at the premises:

Prevention of crime and disorder

- Sale of alcohol when there was no designated premises supervisor (breach of condition 100) - various dates.
- Sale of alcohol to a child (an offence under Section 146 Licensing Act 2003)
- Numerous breaches of premises licence conditions regarding CCTV, notices, age verification, personal licence holder not on premise (various dates), untrained staff.
- Offer and Sale of alcohol below duty price (breach of mandatory condition 491).
- Failure to make available copy of premises licence (an offence under Section 57 Licensing Act 2003).
- Failure to produce traceable invoices for super strength beers (an offence under the General Food Hygiene Regulations 2013).

Public Safety

- Breaches of premises licence conditions (conditions 100, 341, 342 343, 344 and 2470 - lack of notices regarding personal safety, CCTV (condition 289).

Protection of children from harm

- Sale of alcohol to a child (an offence under Section 146 Licensing Act 2003).
 - Failure to adopt an age verification scheme (breach of condition 334).
 - Failure to operate a refused sales register (breach of condition 340).
 - Failure to display notices detailing restrictions on sales to children (breach of condition 344) and at each point of sale stating "No proof of age - no sale" (breach of condition 347).
30. On 26 April 2017, the premises was visited by trading standards, the Metropolitan Police Service and the licensing authority. There was a man running the store alone, selling alcohol. He claimed to have a personal licence with Tower Hamlets, however, he had only just made an application, which has not yet been granted. Additionally, he was a failed asylum seeker and therefore should not have been working; he is appealing this ruling. His failed asylum application would therefore affect his ability to hold a personal licence.
31. The licence was revoked at licensing sub-committee on the 15 June 2017. A copy of the licensing sub committee decision is attached as Appendix B. A copy of the revoked premises licence is available for Members' information at Appendix C.
32. A premises licence transfer application was received on 19 March 2018 to remove Mohammed Imran Ghulam Rasool as the premises licence holder of Food and Wine and to specify Somasundram Ariyarahah as the new premises licence holder. On 19 March 2018 consents were also received.
33. The Licensing Authority received an appeal dated 4 July 2017. A copy of the appeal document is available in Appendix D.
34. The licensing appeal hearing was due to be heard on 18 April 2018 at Camberwell Green Magistrates' Court. However, the day before the appeal, the Magistrates' Court listed the case on its own motion. On being informed of this transfer application, the District Judge was of the opinion that the transfer application should be determined by the licensing sub-committee. The appeal was therefore adjourned to 29 June 2018.

The police objection

35. The police upon receipt of the application to transfer the premises licence holder submitted an objection notice on 29 March 2018. A copy of the representation is available in Appendix E.
36. The representation considers that on the 27 March 2018, officers from Southwark's trading standards office conducted a test purchase at the premises. The person in charge of the shop at the time made an underage sale of cigarette's without challenging the young person.
37. Enquiries were made with the person in charge at the time as to the identity of the current premises licence holder. This person knew the manager to be Mr Ghulam

Rasool. There was no mention of the new premises licence holder as detailed above.

38. The Metropolitan Police are of the view that this transfer is another tactic used to circumvent the provisions and objectives of the Licensing Act and one Southwark's licensing policy seeks to address. No documentation has been supplied to indicate the business is now under new management control and the police continue to be seriously concerned over the operation of the premises, following the recent test purchase failure.
39. It is for this reason that the police are of the opinion that there are exceptional circumstances on this occasion to object to the transfer of this premises licence.

Consideration by the sub-committee

40. It has not been possible to reach a negotiated outcome of this matter and the sub-committee is asked to consider whether the police objection notice is upheld under the necessity to promote the licensing objective of crime and disorder and refuse the application to transfer.

The local area

41. A map of the local area is attached as Appendix F. There are a number of licenced premises in the local area namely:

London Food and Wine, 12 Camberwell Church Street, SE5 8QU licensed for:

- The sale of alcohol to be consumed both off the premises:
 - Monday to Sunday from 08:00 to 03:00 (the following day).

The Tiger , 18 Camberwell Green, London SE5 7AA licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Sunday to Thursday from 09:00 to 01:30 (the following day)
 - Friday and Saturday from 09:00 to 03:30 (the following day).
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 01:30 (the following day)
 - Friday and Saturday from 23:00 to 02:30 (the following day).
- The provision of regulated entertainment in the form of recorded music, live music, and performance of dance (indoors):
 - Monday to Thursday from 09:00 to 02:00 (the following day)
 - Friday and Saturday from 09:00 to 04:00 (the following day)
 - Sunday from 09:00 to 01:00 (the following day).

Golden Grill, 20 Camberwell Green London SE5 7AA licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday from 11:00 to 02:00 (the following day)
 - Sunday from 13:00 to 22:30.
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 02:00 (the following day)
 - Friday and Saturday from 23:00 to 04:00 (the following day).

Hermits Cave, 28 Camberwell Church Street, London SE5 8QU licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Thursday from 10:00 to 00:00 (midnight)
 - Friday and Saturday from 10:00 to 02:00 (the following day)
 - Sunday from 10:00 to 01:00 (the following day).
- The provision of late night refreshment (indoors):
 - Monday to Thursday from 23:00 to 00:00 (midnight)
 - Friday and Saturday from 23:00 to 02:00 (the following day)
 - Sunday from 23:00 to 01:00 (the following day).
- The provision of regulated entertainment in the form of recorded music, live music, films, and performance of dance (indoors):
 - Monday to Thursday from 10:00 to 00:00 (midnight)
 - Friday and Saturday from 10:00 to 02:00 (the following day)
 - Sunday from 10:00 to 01:00 (the following day).

Chicks Peri Peri Chicken, 5 Camberwell Church Street, London SE5 8TR licensed for:

- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 01:30 (the following day)
 - Friday and Saturday from 23:00 to 02:30 (the following day)

Bolu Kebab Restaurant, 7 Camberwell Church Street, London SE5 8TR licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday from 09:00 to 03:00 (the following day)
 - Friday and Saturday from 09:00 to 04:00 (the following day)
 - Sunday from 12:00 to 03:00 (the following day).

- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 05:00 (the following day)

**Portuguese Café Deli, 11 Camberwell Church Street, London SE5 8TR
licensed for:**

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday from 08:00 to 00:00 (midnight).
- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 00:00 (midnight)
 - Sunday from 23:00 to 23:30

Wuli Wuli, 15 Camberwell Church Street, London SE5 8TR:

- The sale of alcohol to be consumed on and off the premises:
 - Sunday to Thursday from 12:00 to 23:00
 - Friday and Saturday from 12:00 to 01:00 (the following day)
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 01:00 (the following day)

Cannon and Cannon Fine Foods, 17-21 Camberwell Church Street, London SE5 8TR licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday 11:00 to 23:00

Stormbird, 25 Camberwell Church Street, London SE5 8TR licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Wednesday from 10:00 to 00:00 (midnight)
 - Thursday from 10:00 to 02:00
 - Friday and Saturday from 10:00 to 03:00 (the following day)
 - Sunday from 10:00 to 00:00 (midnight).
- The provision of late night refreshment (indoors):
 - Monday to Wednesday from 23:00 to 00:00 (midnight)
 - Thursday from 23:00 to 02:00
 - Friday and Saturday from 23:00 to 03:00 (the following day)
 - Sunday from 23:00 to 00:00 (midnight).

- The provision of regulated entertainment in the form of recorded music, live music, films, and performance of dance (indoors):
 - Monday to Wednesday from 10:00 to 00:00 (midnight)
 - Thursday from 10:00 to 02:00
 - Friday and Saturday from 10:00 to 03:00 (the following day)
 - Sunday from 10:00 to 00:00 (midnight).

Community impact statement

42. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the pursuit of the crime and disorder objective.
43. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

Southwark council statement of licensing policy

44. Council assembly approved Southwark's Statement of Licensing Policy 2011-14 on 12 October 2011. Sections of the statement that are considered to be of particular relevance to this application 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.
45. 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.

Resource implications

46. A fee of £23.00 has been paid by the applicant in respect of this application being the statutory fee payable for the transfer of a premises licence.

Consultations

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

48. The sub-committee is asked to determine the application for the transfer of a premises licence under Section 42 of the Licensing Act 2003.
49. The principles which sub-committee members must apply are set out below.

Principles for making the determination

50. The general principle is that applications for the transfer of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.
51. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.
52. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

Reasons

53. If the sub-committee determines that it is necessary to refuse the application to transfer the premises licence, it must give reasons for its decision.

Hearing procedures

54. Subject to the licensing hearing regulations, the licensing sub-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.
55. This matter relates to the determination of an application for a premises licence under section 42 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

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 the objection notice submitted by the police. 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 objection 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. All interested parties 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 DCMS 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 DCMS 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

No.	Title
Appendix A	Copy of the transfer application and consent form
Appendix B	Sub-committee notice of decision from 15 June 2017
Appendix C	Premises licence
Appendix D	Appeal document
Appendix E	Police representation
Appendix F	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment & Social Regeneration		
Report Author	Andrew Heron, Principal Licensing Officer		
Version	Final		
Dated	26 April 2018		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments sought	Comments included
Director of Legal Services		Yes	Yes
Strategic Director of Finance and Corporate Services		Yes	Yes
Cabinet Member		No	No
Date final report sent to Constitutional Team			27 April 2018