

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 4 July 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Fora, Brandon House, 180 Borough High Street, London SE1 1LH	
<b>Ward(s) of group(s) affected</b>		Borough and Bankside	
<b>From</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Fora Space Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Fora, Brandon House, 180 Borough High Street, London SE1 1LH.
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 other persons 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 20 of this report deal with the representations submitted and any further correspondence in respect of the application. Copies of the representations are attached as Appendices B, C , D, E and F.
  - d) Paragraph 23 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix G.
  - e) 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 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 persons 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 16 May 2018, Fora Space Limited applied to this council for the grant of a premises licence in respect of Fora, Brandon House, 180 Borough High Street, London SE1 1LH. The premises is described as a new build premises offering workspaces to their members knowns as residents on a flexible monthly basis throughout the building. There is also a café bar. The ground floor area is open to residents and members of the public whereas the meeting room in the lower ground floor, space on the fifth floor and terrace on the fifth floor is only open to residents and guests with the outside terraced area only open until 21:00.
9. The application is summarised as follows:

#### **Films (indoors)**

- Ground Floor/Lower Ground Floor/fifth Floor Area C:
  - Monday to Saturday from 11:00 to 23:30
  - Sunday from 11:00 to 22:30.
- Fifth floor terrace area D
  - Monday to Sunday from 11:00 to 21:00.

### **Live music (indoors)**

- Ground Floor/Lower Ground Floor/fifth Floor Area C:
  - Monday to Saturday from 11:00 to 23:30
  - Sunday from 11:00 to 22:30.
- Fifth floor terrace area D:
  - Monday to Sunday - 11:00-21:00.

### **Recorded music (indoors and outdoors)**

- Ground Floor/Lower Ground Floor/fifth Floor Area C:
  - Monday to Saturday from 11:00 to 23:30
  - Sunday from 11:00 to 22:30.
- Fifth floor terrace area D:
  - Monday to Sunday from 11:00 to 21:00.

### **Supply of alcohol (on and off the premises)**

- Ground floor, lower ground floor and fifth floor area C:
  - Monday to Saturday from 11:00 to 23:30
  - Sunday from 11:00 to 22:30.
- Fifth floor terrace area D
  - Monday to Sunday from 11:00 to 21:00.

### **Operating hours**

- Ground floor, lower ground floor and fifth floor area C:
  - Monday to Saturday from 11:00 to 23:30
  - Sunday from 11:00 to 22:30.
- Fifth floor terrace area D:
  - Monday to Sunday from 11:00 to 21:00.

10. The premises licence application form provides the applicant's operating schedule. Parts B, E, F, 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 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 is attached to this report in Appendix A.

### **Designated premises supervisor**

11. The proposed designated premises supervisor Bartosz Piotr Kopacz who has a personal licence issued by the Richmond Upon Thames Council.

### **Representations from responsible authorities**

12. There are representations from the environmental protection team (EPT), licensing (as a responsible authority) and trading standards.
13. The EPT are concerned there are no measures outlined to control noise from recorded music to ensure public nuisance will not be caused to both residents within the new build and other residents in neighbouring properties. Recorded music is also proposed for external areas, which is not considered acceptable. They refer to the planning permit granted and have requested clarification on other aspects of the application.
14. The licensing representation states that the premise is also situated within the Borough and Bankside cumulative impact policy area. They advise that the applicant has not addressed the presumption to refuse this application within the operating schedule and recommend the refusal of this application unless the applicant can demonstrate that the premises will not be contributing to crime and disorder and public nuisance within the policy area. They also seek clarification on other issues and have recommended a number of conditions to the applicant.
15. Trading standards have proposed a number of conditions to be agreed by the applicant.
16. The representations are attached as Appendix B.

### **Representations from other persons**

17. There are 63 representations from other persons (consisting of one local councillor and 62 other persons - 60 against and two in support). There is also a petition signed by 40 persons most of whom have already written individual representations.
18. Their concerns mostly relate to the terrace which is located directly beside flats in Brandon House. There is no separation between the terrace and the balconies of the flats on the sixth floor. The other persons have advised that there is street noise from Borough High Street. Music on the terrace would be amplified and then voices on the terrace would inevitably be raised to hold conversations over the music. Amplified music will bounce off the church directly across from the terrace and be bothersome for all residents in flats in Brandon House facing the High Street. Additionally, noise would emanate in the opposite direction into the mews where it would disturb residents facing the mews.
19. It also appears to be an application that covers both a public restaurant and separate office spaces, there is a public health concern in having office premises licensed, with no separation between the work environment and the consumption of alcohol for social purposes.
20. The representations and petition are attached as Appendices C and D.

## **Conciliation**

21. The representations were forwarded to the applicant's representative. The applicant has responded with an amended operating schedule which have since been circulated to all parties concerned and an invitation to a conciliation meeting on 28 June 2018 at 17.30. A response to the statement has since been submitted by an other person. The conciliation statement and the subsequent response are attached as Appendices E and F. The licensing sub- committee will be updated on 4 July 2018 of any developments.

## **Deregulation of entertainment**

22. On 6 April 2015 entertainment became deregulated and as a result:

- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
- Live and recorded amplified music is deregulated between 08:00 and 23:00 at on-licensed premises provided the audience does not exceed 500 people, however, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

## **Map of the local area**

23. A map of the area is attached to this report as Appendix G. For purposes of scale only, the circle on the map has a 100 metre radius. The following licensed premises terminal hours are also shown on the map:

### **Off licences:**

- Borough Off Licence, 151 Borough High Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 00:30)
- Sainsburys, 116-126 Borough High Street, London SE1 (24 hours).

### **Restaurants, public houses/bars:**

- River Restaurant and Sandwich Bar Loong, 200 Borough High Street, London SE1 (Monday to Saturday until 00.00 and Sunday until 00:00)
- Nelsons Cafe, 168 Borough High Street, London SE1 (Monday to Saturday until 00.30 and Sunday until 00:00)
- Amo Pasta Limited, 218 -220 Borough High Street, London SE1 (Monday to Sunday until 23:00)
- Belushi's, 161-165 Borough High Street, London SE1 (Sunday to Thursday until 03.00 and Friday and Saturday until 04:00)
- Blue Eyed Maid, 173 Borough High Street, London SE1 (Monday to Thursday until 02.30 and Sunday until 01:00)

- Joe Kitchen, 5-7 Marshalsea Road, London SE1 (Monday to Sunday until 23:00)
  - Trinity, 202-206 Borough High Street, SE1 (Monday to Wednesday until 00:30, Thursday and Friday until 02:30 and Sunday until 00:00)
24. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Public houses, wine bars or other drinking establishments:
    - Sunday to Thursday is 23:00
    - Friday and Saturday 00:00.

### **Borough and Bankside cumulative Impact policy area**

25. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises (saturation/cumulative impact policy) on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.
26. 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.
27. The effect of this special policy 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.
28. The applicant has been advised to address the committee's concerns around cumulative impact at the meeting.

### **Southwark council statement of licensing policy**

29. 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.

### **Resource implications**

30. A fee of £315.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

### **Consultation**

31. 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**

32. 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**

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

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

35. 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.
36. 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.
37. 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**

38. 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.
39. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
40. 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.
41. 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.
42. 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**

43. 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**

44. 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.
45. 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**

46. 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.

47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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**

54. 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

55. 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 submitted by responsible authorities
Appendix C	Representation submitted by other persons
Appendix D	Petition
Appendix E	Conciliation statement
Appendix F	Other persons response to conciliation
Appendix G	Map of area

## AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Dorcas Mills, Principal Licensing Officer		
Version	Final		
Dated	22 June 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		22 June 2018	