

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 13 July 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: The Barrel Project, 80 Druid Street, London SE1 2HQ	
<b>Ward(s) or groups affected:</b>		London Bridge and West Bermondsey	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Simon Charles Cotton to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as The Barrel Project, 80 Druid Street, London SE1 2HQ.
2. Notes:
  - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as The Barrel Project, 80 Druid Street, London SE1 2HQ under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and an other person and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 10 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. Copies of the existing premises licence and the Notice of Decision of 9 October 2017 are attached as Appendices B and C.
  - c) Paragraphs 13 to 20 of this report deals with the representations received to the premises licence application and any conciliation progress made. Copies of the relevant representations from responsible authorities and an other person are attached as Appendices D and E.
  - d) Paragraph 26 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.
  - 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 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 current premises licence**

8. The premises licence allows for the following activities:
- Sale of alcohol for consumption on premises
    - Monday to Sunday from 11:00 to 22:30
  - Sale of alcohol for consumption off premises
    - Monday to Sunday from 11:00 to 23:00
  - Operating Hours
    - Monday to Sunday from 11:00 to 23:00
9. A copy of the premises licence is provided as Appendix B.

## The variation application

10. On 18 May 2018, Simon Charles Cotton applied to this council to vary the premises licence issued in respect of the premises known as The Barrel Project, 80 Druid Street, London SE1 2HQ. The premises is a railway arch which is used as barrel ageing facility for beer and providing a bar/shop selling specialist beer and other alcoholic drinks theatre. A brief description of the variation is given as follows:
  - To have an outside area where people can consume alcohol on Druid Street.
  - To have the ability to have children on the premises to stop young families being turned away.
  - To remove the conditions currently listed at Annex 2 of the premises licence namely: 341, 342, 343, 344, 345, 346, 353 and 354:
    - 341 No customers should be allowed to take drinks onto Druid Street or Rope Street other than to take away and they must be in a sealed container.
    - 342 Smokers on Druid Street shall be limited to 5 people at any time.
    - 343 No customers shall be allowed to take drinks externally at any time other than off-sales which must be sold in a sealed container for consumption away from the premises.
    - 344 That after 21:00 customers shall not use any outside area other than those who temporarily leave the premises to smoke, and no more than five people shall be permitted to do so at any one time.
    - 345 All external doors and windows shall be kept closed after 21.00 on any day, except for access and egress.
    - 346 That alcohol for consumption off the premises is not sold for immediate consumption in the area around the premises and is supplied in sealed containers that require a tool such as a bottle opener or corkscrew to be opened.
    - 353 There shall be no children on the premise whilst licensable activities take place.
    - 354 Alcohol supplied for consumption off the premises will be collected in person by the purchaser from the premise and the Challenge 25 policy shall be operated.
  - The rest of the conditions shall remain.
11. The variation to the premises application form provides the applicant operating schedule. Parts J, K, L, M, N and O and P set out the proposed operating hours and operating controls 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 P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix A.

### **Designated premises supervisor**

12. The designated premises supervisor is Simon Charles Cotton who has a personal licence issued by Hammersmith & Fulham Council.

### **Representations from responsible authorities**

13. There are representations submitted by the Metropolitan Police Service, environmental protection team (EPT), licensing (as a responsible authority) and health and safety.
14. The police state that the premises are located in a railway arch in a mainly residential street and there are large residential blocks opposite. The premises does not benefit from an outside area on Druid Street and opens directly onto the pavement/loading bay with no border to the road. The area the premises is located is becoming saturated with licensed premises and the use of outside areas is having a cumulative impact on the area causing public nuisance to local residents including public urination and obstructions to passing traffic putting people in danger. The variation does not seem to back this description with the requirement for children to be on the premises. The area has a considerable amount of brewery type venues with groups of people moving between the different licensed premises having consumed alcohol leading to a high possibility of intoxication within the area.
15. The EPT representation is based on public nuisance and have object under the prevention of public nuisance licensing objective. They state that since the licensing of Hawkes at 92-96 Druid Street, complaints have been received regarding noise from patrons using the external area at that premises. Despite applying all reasonable controls, licensing a further external area at this premises is likely to result in a cumulative impact whereby an additional 30 people may be drinking outside. This would leave the residential block opposite these two premises with up to 60 external drinkers to 22:00, when fairly recently no external drinking was permitted. There is no external area within the demise and the premises has no right to use the area to the front on Druid Street as this is a loading bay which forms part of the carriageway.
16. The licensing representation is submitted under the prevention of crime and disorder and public nuisance licensing objectives. They state that the conditions the applicant wants to remove are designed to address the licensing objectives raised. They also mention that the premises is in a residential area and if the use of the outside areas as sought is granted would contribute to ongoing issues. Reference is also made to the original application and the licensing sub committee conditions on the notice of decision of 9 October 2017. They recommend refusal of this application unless the applicant can demonstrate that the premises will not be contributing to crime and disorder and public nuisance.
17. The Health and Safety representation is based on the public safety licensing objective. Health and safety also have concerns about the use of the highway. They seek further clarification and have made recommendations to the applicant.
18. The representations are attached as Appendix D.

### **Representation from other persons**

19. There is one representation from an other person. They state since the licence was

granted last year, several temporary event notices have been submitted, to service private parties that run until 01:00 in the morning and the disturbance to residents peaks on these occasions. Since the acceleration of licensed premises on Druid Streets, residents' weekends (and sometimes weekday evenings) have been negatively impacted by noise from patrons. Summer weekends are particularly difficult, with constant shouting, cheering / often swearing for several hours during an evening. They advise that there are a total of 16 children of school age in just one of the blocks opposite the Barrel Project (there are two blocks directly opposite). Often the disturbances from these premises occurs on school nights. They further state that all six of the bars on Druid Street (with the exception of the Marquis of Wellington Pub on the opposite side) sit directly on public highways, not pavements.

20. The representation is attached as Appendix E.

### **Conciliation**

21. The representations were forwarded to the applicant. The licensing sub committee will be updated of any developments on 13 July 2018.

### **Premises history**

22. The premises has an existing licence number 859851 issued on 15 November 2017.

### **Temporary event notices**

23. Below is the recent history of TENs applied for in respect of the premises.

<b>No.</b>	<b>Date of event</b>	<b>Time of event and activities</b>
1	6 to 7 Jan 2018	19:00 to 01:00 - Alcohol
2	20 to 21 Jan 2018	19:00 to 01:00- Alcohol
3	26 to 27 Jan 2018	19:00 to 01:00 - Alcohol
4	3 to 4 Feb 2018	19:00 to 01:00 - Alcohol
5	10 to 11 Feb 2018	19:00 to 01:00 - Alcohol
6	17 to 18 Feb 2018	19:00 to 01:00 - Alcohol
7	23 to 24 Feb 2018	19:00 to 02:00 -Alcohol
8	28 to 29 April 2018	23:00 to 01:00 - Alcohol

### **Complaints/visits conducted**

24. There are two recorded complaints during the times when Tens have been submitted. (21 Jan, 28 April) The complainant states that every time this happens, patrons make excessive noise outside and believes that licence conditions are being breached.
25. Following complaints received several visits were made to the premises by licensing officers on our night time economy team to warn and also advise management about complaints received.

### **The local area**

26. A map of the area is attached to this report as Appendix F. The premises is identified by a triangle at the centre of the map. For purposes of scale only the circle on the map has a 100 metre radius.

### **Public houses/restaurant/brewery**

- Marquis of Wellington PH, 21 Druid Street, London SE1 (Monday to Wednesday until 23.00 Thursday until 00.00, Friday and Saturday until 01.00 and Sun until 00.00) - Currently closed.
- Elmadero, Railway Arch 840, 30 Druid Street, London SE1 (Monday to Sunday until 23.00)
- Southwark Brewing Company Limited, 46 Druid Street, London SE1 (Monday to Sunday until 23.00)
- Doodle Bar, 60 Druid Street, SE1 (Sunday to Thursday until 00:00, Friday and Saturday until 01:00)
- St John Bakery Company Ltd, 72 Druid Street, London SE1 (Monday to Sunday until 23.00)
- Bea's of Bloomsbury Railway Arch, 76 Druid Street, London SE1 (Monday to Sunday until 22.00)
- Speckmobile Railway Arch, 76 Druid Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 22:30)
- Hawkes, 92 Druid Street, London SE1 (Monday to Sunday until 23:00)
- Comptoir Gourmand, 98 Druid Street, London SE1 (Monday to Sunday until 23:00)
- Anspach & Hobday, 116 - 118 Druid Street, London SE1 (Monday to Sunday until 23:00)
- Bottles, 128 Druid Street, London SE1 (Monday to Sunday until 23.00)
- Lemporio, 134 Druid Street, London SE1 (Sunday to Wednesday until 22.00 and Thursday to Saturday until 23:00)

- Thames Takeaway, 140 Tanner Street, London SE1 (Sunday to Thursday until 00:00 and Sunday until 00:30)
- Ronnies Supermarket, 116-118 Tanners Street, London SE1 (Monday to Saturday until 23:00 and Sunday until 22:30)
- Lassco, Ropewalk and Arches 46 and 48 to 53, London SE1 (Wednesday to Saturday until 22:00 and Sunday until 17:00)
- Lassco, 37 Maltby Street, London SE1 (Monday to Sunday until 23:00)
- Maltby Restaurant, 40 Maltby Street, London SE1 (Monday and Tuesday until 23:30, Wednesday and Sat till 01:00; Sun till 17:30).

### **Deregulation of entertainment**

27. 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').

### **Southwark Statement of Licensing Policy**

28. 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
29. 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.
30. 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:
- Restaurant, cafés, public houses, wine bars or other drinking establishments:
    - 23:00 daily.

### **Resource implications**

31. A fee of £190 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 B.

### **Consultation**

32. 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 a similar notice exhibited outside of the premises for a period of 28 consecutive days.

### **Community impact statement**

33. 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**

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



## **Principles for making the determination**

36. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
37. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
38. Relevant representations are those which:
  - Are about the likely effect of the granting of the application on the promotion of the licensing objectives
  - Are made by an other party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
39. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
  - Add to, omit, and/or alter the conditions of the licence, or
  - Reject the whole or part of the application for variation.

## **Conditions**

40. 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.
41. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
42. 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.
43. 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.
44. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water.

In October 2010 an additional two conditions came into force: age verification policy and smaller measures for alcoholic drinks.

45. 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**

46. 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**

47. 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.

48. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

49. 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.

50. 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.
51. 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.
52. 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.
53. 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.
54. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
55. 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.
56. 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**

57. 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

58. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

### BACKGROUND DOCUMENTS

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

### APPENDICES

Name	Title
Appendix A	Variation application
Appendix B	Current licence
Appendix C	Notice of Decision from 9 October 2017
Appendix D	Representations from responsible authorities
Appendix E	Representation from other person
Appendix F	Map of the local area

### AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	29 June 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 Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
Date final report sent to Constitutional Team		2 July 2018