

Item No. 8.	Classification: Open	Date: 24 September 2018	Meeting Name: Licensing Sub-Committee
Report Title		The Round, Strakers Road, London SE15 3UA	
Ward(s) of group(s) affected		Peckham Rye	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers whether to grant an application made by ECSI Limited to vary the premises licence issued under the Licensing Act 2003 in respect of the premises known as The Round, Strakers Road, London SE15 3UA.
2. Notes:
 - a) This application seeks to vary the provision of existing licensable activities permitted by the premises licence issued under the Licensing Act 2003 in respect of the premises known as The Round, Strakers Road, London, SE15 3UA. Existing permitted licensable activities are not under consideration. The variation application is subject to representations and is therefore referred to the sub-committee for determination. A copy of the current premises licence is attached to this report as Appendix A.
 - b) Paragraphs 9 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 B.
 - c) Paragraphs 14 to 19 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as appendices C & D. A map showing the location of the premises is attached to this report 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, have 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.

6. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm
7. 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
8. The premises licence variation application process involves the provision of relevant information stipulated by 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.

KEY ISSUES FOR CONSIDERATION

The current premises licence

9. The current premises licence in respect of the premises known as The Round, Strakers Road, London SE15 3UA allows the following licensable activities:
 - Plays, films, live music, recorded music, performances of dance and the sale of alcohol to be consumed on the premises:

Monday to Sunday 09:00 - 18:00
 - Opening hours:

Monday to Sunday 09:00 - 01:00 the following day

A copy of the existing premises licence is attached as Appendix A.

The variation application

10. On 11 July 2018 ECSI Limited applied to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as The Round, Strakers Road, London SE15 3UA.
11. The application and is summarised as follows:
 - To amend the licence to allow for 'off sales' of alcohol at the premises
 - To amend the hours permitted for the sale of alcohol to be consumed on and off the premises

Monday to Sunday 11:00 to 21:00

- **To amend the opening hours of the premises to**

Monday to Sunday 08:00 to 22:00

The application further states: *“The café has undergone refurbishment work, the internal layout and number of covers has changed at the café. The café now has 58 internal covers.”*

12. The premises licence application form provides the applicant’s operating schedule. Parts J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of any additional conditions that will be attached to any licence granted subsequent to the application.
13. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

14. The proposed designated premises supervisor (DPS) is Stephen James Midgley.

Representations from responsible authorities

15. Representations have been submitted by the Metropolitan Police Service and this council’s Licensing responsible Authority.
16. The Metropolitan Police Service’s representation suggests various control measures that it is recommended should become conditions of any licence issued subsequent to the application.
17. The licensing responsible authority’s representation suggests various control measures that it is recommended should become conditions of any licence issued subsequent to the application.
18. Copies of the representations submitted by responsible authorities are attached as Appendix C.

Representations from other persons

19. Three representations have been submitted by ‘other persons’. One of the representations has been submitted by a local stakeholder group and the other two representations have been submitted by local residents. The other persons are referred to as parties 1 to 3. In summary the representations are concerned that the proposed variation would be to the detriment of public safety because people may be encouraged to enter and leave the area when it is dark, that there may be a risk to children’s safety due to the proximity of the premises to the children’s playground on Strakers Road and that the proposed extension of alcohol sales until 21:00 could lead to noise nuisance, anti-social behavior and crime and disorder in the locale. The representations all recommend that the hours permitted for the sale of alcohol are not extended until 21:00.
20. The representations submitted by ‘other persons’ are attached as Appendix D.

Conciliation

21. The applicant was sent copies of all the representations and invited to respond to them. At the time of the writing of this report all of the representations remain outstanding and must be considered by the licensing sub-committee. At the hearing to consider the application the licensing sub-committee will be apprised as to the withdrawal of any of the representations, or of any agreement reached in regards to any of the representations.

Premises history

22. The premises licence in respect of the premises was originally issued to Fiona Halton Consultancy Limited on 4 August 2009.
23. The licence was transferred to the current licensee, ESCI Limited, on 21 October 2016.
24. Nour-Eddine Fahimi was specified as the DPS in respect of the premises on 2 November 2016.
25. Nour-Eddine Fahimi was removed as DPS, and Stephen James Midgley was specified as the DPS in respect of the premises, on 11 July 2017.
26. On 11 July 2018 ECSI Limited applied to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as The Round, Strakers Road, London, SE15 3UA.
27. There have been no licensing visits to the premises.
28. No complaints have been submitted to the Licensing Unit in respect of the premises.
29. No TENs have been submitted in respect of the premises.

Deregulation of entertainment

30. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08:00hrs and 23:00hrs on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
 - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
31. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').

32. The showing of films has not been de-regulated.

Map

33. A map showing the location of the premises is attached to this report as appendix E. The following licensed premises are also shown on the map and provide licensable activities as stated:

Peckham Rye Common, Peckham Rye, SE15 3JA

Licensed for films, live music, recorded music, anything similar to live or recorded music, performances of dance:

Monday to Thursday	10:00	21:00
Friday and Saturday	10:00	22:00
Sunday	11:00	21:00

Opening hours 00:00 00:00 (24 hours)

The Clockhouse, 196a Peckham Rye, SE15 9QA

Licensed for the sale of alcohol to be consumed on and off the premises

Sunday to Thursday	11:00	00:00 (midnight)
Friday and Saturday	11:00	01:00 the following day

Live music, recorded music, anything similar to live or recorded music, films and performances of dance:

Sunday to Thursday	11:00	23:30
Friday and Saturday	11:00	00:00

Late night refreshment:

Sunday to Thursday	23:00	00:00
Friday and Saturday	23:00	01:00 the following day

Southwark council statement of licensing policy

34. 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 of 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.
35. 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.
36. Within Southwark’s statement of licensing policy 2016 - 2020 the premises are identified as being within a residential area. The closing time recommended in the statement of licensing policy for restaurants, cafes, public houses, wine bars or other drinking establishments in residential areas is 23:00 daily.

Resource implications

37. A fee of £190.00 has been paid by the applicant in respect of the application this being the statutory fee payable for premises within non-domestic rateable value band B.

Consultations

38. 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 was exhibited at the premises for a period of 28 consecutive days.

Community impact statement

39. 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

40. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
41. The principles which sub-committee members must apply are set out below.

Principles for making the determination

42. 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.
43. 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.
44. 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.
45. 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

46. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
47. The four licensing objectives are
 - a. The prevention of crime and disorder
 - b. Public safety
 - c. The prevention of nuisance; and
 - d. The protection of children from harm.
48. 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.
49. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.

50. 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 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
51. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

52. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

Hearing procedures

53. 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
54. 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.

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

55. 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.
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. 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.
61. 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

62. Members are required to have regard to the Home Office 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

63. 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 and Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the current premises licence
Appendix B	Copy of the application
Appendix C	Copies of representations submitted by responsible authorities
Appendix D	Copies of the representations submitted by 'other persons'
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	11 September 2018	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to constitutional team	12 September 2018	