

<b>Item No.</b> 8.	<b>Classification:</b> Open	<b>Date:</b> 17 October 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Unit R4, Block H6 Elephant Park, London SE1	
<b>Ward(s) of group(s) affected</b>		North Walworth	
<b>From</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Lendlease (Elephant and Castle) Retail Limited for a provisional statement to be granted under the Licensing Act 2003 in respect of the premises known as Unit R4, Block H6 Elephant Park, London, SE1.
2. Notes:
  - a) This application forms a new application for a provisional statement, submitted under Section 29 of the Licensing Act 2003. The application is subject to representations from the Licensing Authority and local residents and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 10 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 11 to 14 of this report deal with the representations submitted in respect of the application. A copy of the representation submitted by Licensing as a responsible authority is attached to this report in Appendix B with other persons in Appendix C. A map showing the location of the premises is attached to this report as Appendix D.
  - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.

5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
  - The prevention of crime and disorder
  - The promotion of public safety
  - The prevention of nuisance
  - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
  - The Act itself
  - The guidance to the act issued under Section 182 of the Act
  - Secondary regulations issued under the Act
  - The licensing authority's own statement of licensing policy
  - The application, including the operating schedule submitted as part of the application
  - Relevant representations.
7. The 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 provisional statement application**

8. On 23 August 2018 Lendlease (Elephant and Castle) Retail Limited applied to this council for the grant of a provisional statement in respect of Unit R4, Block H6 Elephant Park, London SE1. The address is described in the application as being:
  - “..Development Site following the grant of planning permission 14/AP/3439.  
  
Retail/Leisure units to be delivered to shell specification as per the attached enclosed schedule of works and plans of the site and premises.  
  
Unit R2, Block H6, Elephant Park, including external area outlined in blue. The proposed use is pursuant to planning permission 14/AP/3439. Please also refer to the enclosed plans of the site and premises.  
  
The premises is proposed to operate as a café with external seating area...”
9. The application and is summarised as follows:
  - The sale by retail of alcohol (both on and off sales)
    - Sunday to Thursday from 10:00 to 23:00
    - Friday and Saturday from 10:00 to 00:00.
  - The provision of late night refreshment (indoors):
    - Friday and Saturday from 23:00 to 00:00

- Opening hours
    - Monday to Friday from 08:00 to 23:30
    - Friday and Saturday from 08:00 to 00:30
  - Non standard timings
    - On New Year's Eve these hours are to be extended from the end of the permitted hours to 02:00 on New Year's Day.
10. The provisional statement application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, 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 provisional statement be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the granting of the provisional statement. A copy of the application and premises plan is attached to this report in Appendix A.

### **Representations from responsible authorities**

11. A representation from the council's licensing department in their role as responsible authority requests additional conditions. The representation is available in Appendix B. At the point this report was sent for publication, the representation had not been conciliated.

### **Representations from other persons**

12. Two representations have been received from local residents who oppose the application. The representations do not contain great detail but state a concern regarding the potential hours for the venue, the potential for noise and the proximity to residential properties. All representations from other persons are available in Appendix C.

### **Conciliation**

13. The applicant was sent copies of all representations on 24 September 2018. It was suggested to the applicant's legal representative that they write to all those objecting. At the date this report was composed, such correspondence has not been forthcoming.
14. The representation from the licensing authority remains outstanding.

### **Premises history**

15. The building is a new build and has no history associated with it.

### **Map**

16. A map showing the location of the premises is attached to this report as Appendix D. Whilst there are many licensed premises in Elephant and Castle centrally, there are no premises currently in the immediate vicinity.

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

17. Council assembly approved Southwark's statement of licensing policy 2016 - 20 on 25 November 2015. The policy came into effect on 1 January 2016. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.

- Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
  - Section 6 – Local cumulative impact policies. This sets out this authority’s approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy
  - Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
  - Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
  - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
  - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
  - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
18. 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.
19. Within Southwark’s statement of licensing policy 2016 - 2020, the premises are identified as being outside of a cumulative impact policy (CIP) area and within the Elephant and Castle major town centre area, with no premises affected. The following closing times are recommended in the statement of licensing policy:
- Closing time for restaurants and cafes:
    - Sunday to Thursday: 00:00
    - Friday and Saturday: 01:00.
  - Closing time for public houses, wine bars and other drinking establishments:
    - Sunday to Thursday: 23:00.
    - Friday and Saturday: 00:00.

### **Resource implications**

20. 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 bands B.

### **Consultation**

21. 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**

22. 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**

23. The sub-committee is asked to determine the application for a provisional statement under section 29 of the Licensing Act 2003.
24. The principles which sub-committee members must apply are set out below.

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

25. The general principle is that applications for provisional statement 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.
26. 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.
27. 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.
28. Where premises are being or are about to be constructed, extended or otherwise altered for the purpose of being used for one or more licensable activities, investors may be unwilling to commit funds unless they have some assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed. The 2003 Act does not define the words “otherwise altered”, but the alteration must relate to the purpose of being used for one or more licensable activities.
29. Any person falling within section 16 of the 2003 Act (namely, being an applicant for a premises licence) can apply for a premises licence before new premises are constructed, extended or changed. This would be possible where clear plans of the proposed structure exist and the applicant is in a position to complete an operating schedule including details of:
  - The activities to take place there.
  - The time at which such activities will take place.
  - The proposed hours of opening.
  - Where the applicant wishes the licence to have effect for a limited period, that period
  - The steps to be taken to promote the licensing objectives.
  - Where the sale of alcohol is involved, whether supplies are proposed to be for consumption on or off the premises (or both) and the name of the designated premises supervisor the applicant wishes to specify.
30. In such cases, the licensing authority would include in the licence the date upon which it would come into effect. A provisional statement will normally only be required when the information described in paragraph 32 is not available.

31. The 2003 Act provides for a person (if aged 18 or over), who has an interest in the premises to apply for a “provisional statement”. The provisional statement is not time limited, but the longer the delay before the premises licence is made, the more likely it is that there will be material changes and that the licensing authority will accept representations.
32. When a hearing is held, the licensing authority must decide whether, if the premises were constructed or altered in the way proposed in the schedule of works and if a premises licence was sought for those premises, it would consider it appropriate for the promotion of the licensing objectives to:
- Attach conditions to the licence;
  - Rule out any of the licensable activities applied for
  - Refuse to specify the person nominated as premises supervisor or reject the application.
33. It will then issue the applicant with a provisional statement setting out the details of that decision together with its reasons.
34. The licensing authority must copy the provisional statement to each person who made relevant representations, and the chief officer of police for the area in which the premises is situated. The licensing authority should give full and comprehensive reasons for its decision.
35. When a person applies for a premises licence in respect of premises (or part of the premises or premises which are substantially the same) for which a provisional statement has been made, representations by responsible authorities and other persons will be excluded in certain circumstances. These are where:
- The application for a licence is in the same form as the licence described in the provisional statement;
  - The work in the schedule of works has been satisfactorily completed;
  - Given the information provided in the application for a provisional statement, the responsible authority or other person could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and
  - There has been no material change in the circumstances relating either to the premises or to the area in the proximity of those premises since the provisional statement was made.
36. Any decision of the licensing authority on an application for a provisional statement will not relieve an applicant of the need to apply for planning permission, building control approval of the building work, or in some cases both planning permission and building control.

### **Conditions**

37. 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.
38. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety

- The prevention of nuisance
  - The protection of children from harm.
39. 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.
40. 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.
41. 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**

42. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a provisional statement application, it must give reasons for its decision.

### **Hearing procedures**

43. 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.
44. 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**

45. 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.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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**

53. 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

54. 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	Kirby Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Application for a provisional statement
Appendix B	Representation from the licensing authority
Appendix C	Representations submitted by other persons
Appendix D	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration		
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer		
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
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Director of Law and Democracy	Yes	Yes	
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