

Item No. 6.	Classification: Open	Date: 26 October 2018	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Red Sea, 85 Camberwell Road, London SE5 0EZ	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Letteberhan Abraha Tafla to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ.
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting.
 - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
 - 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. A map showing the location of the premises is attached as Appendix F.
 - Paragraphs 13 to 18 of this report deal with the representations submitted in respect of the application by the responsible authorities and local resident and are attached in Appendices C and D.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
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 interested parties 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 current licence was issued on 3 October 2016 following an expedited review. The current premises licence is issued to Letteberhan Abraha Tafla trading as Red Sea, 85 Camberwell Road, London SE5 0EZ. The licence permits the following:
- The sale of alcohol to be consumed on the premises:
 - Sunday to Thursday from 12:00 to 23:00
 - Friday from 12:00 to 00:00
 - Saturday from 12:00 to 02:00
 - The provision of late night refreshment (indoors):
 - Friday from 23:00 to 00:00
 - Saturday from 23:00 to 02:00
 - Opening hours:
 - Sunday to Thursday from 08:00 to 01:00
 - Friday from 08:00 to 02:30
 - Saturday from 08:00 to 02:30.
 - A copy of the existing premises licence is attached as Appendix A.

The variation application

9. On 25 May 2018 Letteberhan Abraha Tafla applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises trading as Red Sea, 85 Camberwell Road, London SE5 0EZ

10. The application for variation is described as:

- Extension of permitted hours in respect of the sale of alcohol and opening times.
- Amend condition 853 accordingly to new times if granted (namely amending the following):

“That the times for licensable activities shall be modified as follows: Sunday to Thursday from 12.00 to 23.00, Friday from 12.00 to 00.00 and Saturday from 12.00 to 02.00 (to close 30 minutes later with all customers to have left the premises.”

- To amend condition 851 to state:

"That a personal license holder shall be in the premises at all times that licensable activities are taking place.".

11. The application seeks the following hours:

- The sale by retail of alcohol (on sales only):
 - Friday and Saturday from 12:00 to 02:00
 - Sunday from 12:00 to 01:00
- The provision of late night refreshment (indoors):
 - Friday and Saturday from 23:00 to 02:00
 - Sunday from 23:00 to 01:00
- Opening hours:
 - Friday and Saturday from 12:00 to 02:30
 - Sunday from 12:00 to 01:30.

A copy of the application is attached to this report as **Appendix B**.

Designated premises supervisor

12. The designated premises supervisor (DPS) under the existing premises licence is Letteberhan Abraha Tafla (the applicant) holding a personal licence with the London Borough of Southwark.

Representations from responsible authorities

13. The Metropolitan Police (Licensing Division) have made a representation, as they believe that the premises is already run as a nightclub at times, as opposed to a restaurant (contrary to Condition 842 of Annex 3 of the Operating Schedule). The police also draw members' attention to a recent violent incident which took place at the premises and appears to have taken place outside of licensed hours. To date, no review has been forthcoming. The representation goes on to comment that the granting of additional hours has the potential to be detrimental to surrounding residential dwellings.

14. This council's public health department has made representation against the application with concerns regarding the location of the premises being within a residential area and also notes that the current granted hours are beyond that of the Southwark licensing policy and that the proposed hours would take the premises further outside of that.
15. Southwark's planning department has made a representation advising that the grant would take the premises beyond its current planning permissions and that in addition there have been reports of the premises having been used as a nightclub.
16. Southwark licensing authority (LA) has made a representation against the extension of hours as those already awarded are 'generous' for the area and are already in excess of the Southwark licensing policy. Attention is drawn to a failed inspection which took place during the consultation period on 5 September 2018. Enforcement action is not to be taken at this time by the licensing authority until the police have considered what action to take regarding the recent violent incident.
17. Copies of all representations are available in Appendix C.

Representations from other persons

18. A representation was received from one local resident, stating that there are existing issues with noisy patrons on egress from the premises. The representation from the resident is redacted and available in Appendix D.

Conciliation

19. All representations were sent to the applicant on 4 October 2018, with contact details for the responsible authorities. An offer was made to forward a response to the resident objector, but one has not been forthcoming. At the point of the report going to publication, no representations had been withdrawn.

Operating history

20. The current premises licence was issued on 3 October 2016, further to an expedited review initiated by the Metropolitan Police on 7 September 2016 following a violent incident. The application went to an interim hearing of the Southwark licensing sub-committee on 9 September 2016 with the full Hearing held on 3 October 2016. Copies of both notices of decision are available in Appendix D for member's information.
21. The licence has remained unchanged in that time; however a minor variation application was made on 24 August 2018 to amend the hours as above. This application was rejected and this current full variation application under consideration was made in its place.
22. Since the current licence was granted, temporary event notices have been issued. The table below outlines those temporary event notices.

Applicant	Activities	Dates	Counter Notice
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	31/12/2016 - 01/01/2017 01:00 - 05:30	No

Applicant	Activities	Dates	Counter Notice
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	11/02/2017 - 12/02/2017 01:00 - 05:00 Both Days	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	11/03/2017 - 12/03/2017 01:00 - 05:00 Both Days	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	16/04/2017 - 17/04/2017 12:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	20/05/2017 - 20/05/2017 01:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	24/06/2017 - 25/06/2018 12:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	19/08/2017 - 20/08/2017 12:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	27/08/2017 - 28/08/2017 12:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	30/09/2017 - 01/10/2017 01:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	16/12/2017 - 17/12/2017 01:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	24/12/2017 - 25/12/2017 01:00 - 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	26/08/2018 - 27/08/2018 00:00 - 04:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	09/09/2018 - 10/09/2018 00:00 - 03:30	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	16/09/2018 - 17/09/2018 00:00 - 02:30	No
Letteberhan	Sale by retail of alcohol to be	23/09/2018 -	Yes.

Applicant	Activities	Dates	Counter Notice
Abraha Tafla	consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	24/09/2018 12:00 - 03:00	Late TEN objected to by Police

23. There is no history of complaints regarding the premises, since this current licence was issued.

Deregulation of entertainment

24. 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 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.
25. 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').

Map

26. A map of the area is attached to this report as Appendix F. There are other licensed premises in the immediate vicinity:

Emukay Restaurant, 91 Camberwell Road, London SE5 0EZ:

- The sale of alcohol to be consumed both on and off the premises:
 - Monday to Sunday from 10:00 to 02:00.
- The provision of late night refreshment:
 - Monday to Sunday from 23:00 to 03:00.
- The provision of regulated entertainment in the form of live and recorded music, performances of dance and anything similar:
 - Monday to Sunday from 20:00 to 02:30.

Southbank Nightclub – 57-59 Camberwell Road, SE5 0EZ, licensed for:

- The sale by retail of alcohol (on sales only):
 - Sunday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 02:30
 - Friday and Saturday from 10:00 to 04:30.
- The provision of late night refreshment (indoors and outdoors):
 - Sunday to Wednesday from 23:00 to 00:00
 - Thursday from 23:00 to 02:30
 - Friday and Saturday from 23:00 to 04:30.
- The provision of regulated entertainment in the form of films, performances of dance, live music and recorded music (indoors):
 - Sunday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 02:30
 - Friday and Saturday from 10:00 to 04:30.

Legacy Restaurant, 53 Camberwell Road London SE5 0EZ, licenced for:

- The sale by retail of alcohol (on sales only):
 - Monday to Thursday from 10:00 to 00:30
 - Friday to Sunday from 10:00 to 02:30.
- The provision of late night refreshment (indoors):
 - Monday to Thursday from 23:00 to 00:30
 - Friday to Sunday from 23:00 to 02:30.
- The provision of regulated entertainment in the form of performances of dance, live music and recorded music (indoors):
 - Monday to Thursday from 18:00 to 00:30
 - Friday to Sunday from 18:00 to 02:30.

Dallas Chicken and Ribs – 30 Camberwell Road, SE5 0EN, licensed for:

- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 01:00.

Southwark council statement of licensing policy

27. 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.
28. 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.
29. This premises is outside of a cumulative impact policy area and within a residential area. Under the Southwark Statement of Licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Restaurants and cafes: 23:00 daily
 - Public houses, wine bars or other drinking establishments: 23:00 daily
 - Night clubs (with sui generis planning classification) are not considered appropriate for this area.

Resource implications

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

Consultation

31. Consultation has been carried out in respect of this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper twice (there was an error on the initial advert; however, this was

republished within the specified time period to the satisfaction of the Licensing Authority). A similar notice exhibited at the premises for a period of 28 consecutive days. This was inspected by a Licensing Officer during the consultation period and found to be compliant.

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

Principles for making the determination

35. 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.
36. 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.
37. 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.
38. 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

39. 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.
40. The four licensing objectives are:
- The prevention of crime and disorder

- Public safety
 - The prevention of nuisance
 - The protection of children from harm.
41. 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.
 42. 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.
 43. 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.
 44. 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

45. 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

46. 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.
47. 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

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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.

54. 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.
55. 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

56. 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

57. 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 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	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copy of representations from Responsible Authorities
Appendix D	Representations from other person
Appendix E	Notices of Decision from 9 September 2016 and 3 October 2016
Appendix F	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Andrew Heron, Principal Licensing Officer		
Version	Final		
Dated	9 October 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			10 October 2018