

Item No. 6.	Classification: Open	Date: 29 October 2018	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Black Swan Studios, 2-3 Black Swan Yard, London SE1 3XW	
Ward(s) of group(s) affected		London Bridge and West Bermondsey	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Colorset Inc Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Black Swan Studios, 2-3 Black Swan Yard, London, SE1 3XW.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
 - c) Paragraphs 12 to 19 of this report deal with the representations submitted in respect of the application. Copies of the representation submitted by the responsible authorities and attached to this report in Appendix B and copies of representations from other persons attached in Appendix C. 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, 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 premises licence application

8. On 30 August 2018 Colorset Inc Limited applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Black Swan Studios, 2-3 Black Swan Yard, London SE1 3XW. The premises are described in the application as being:
- "Open plan multi purpose, self contained, ground floor space with refreshment area and bar area. Brick walls, concrete flooring."
9. The hours applied for are summarised as follows:
- The sale by retail of alcohol (on sales only):
 - Monday to Friday from 12:00 to 23:00
 - Saturday and Sunday from 10:00 to 23:00.
 - Opening hours:
 - Monday to Friday from 12:00 to 23:00
 - Saturday from 10:00 to 23:00
 - Sunday from 10:00 to 23:30.
10. The Designated Premises Supervisor is to be Thomas Phelan, who holds a personal licence with the Borough of Broxbourne Council.
11. The premises licence 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 premises licence 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 application. A copy of the application and premises plan is attached to this report in Appendix A.

Representations from responsible authorities

12. Representations have been received from three responsible authorities, but have since all been conciliated.
13. A representation had been received from the Metropolitan Police (Licensing Division) which raises concerns regarding the prevention of crime and disorder. Six additional conditions were requested and have since been agreed. The representation is therefore withdrawn. The conditions are:
 - That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises.
 - That all CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council. There will be at least one person on duty at all times that is familiar with the operation of the CCTV and able to download the footage upon request.
 - That all staff are trained in their responsibilities under the licensing act 2003 and training records to be kept and signed and updated every six months. The records shall, upon request, be made immediately available to officers of the police and the council.
 - That there shall be no more than five smokers outside at any time and this shall be monitored by staff.
 - That two SIA registered door supervisors will be engaged when the premises are in operation. They will be employed at all times until the end of business and all patrons have vacated the premises they will be engaged to monitor admission and readmissions to the premises, security, protection, screening and dealing with conflict.
14. A sixth condition requiring off sales to be in sealed containers is no longer required as the Applicant has withdrawn the off sales element of the application.
15. A representation has been provided by this council's environmental protection team, again asking for additional conditions. These have been accepted the representation withdrawn. These conditions are:
 - That clearly legible signage will be prominently displayed at all exits where it can be seen and easily read, requesting that customers leave the premises in a quiet and orderly manner that is respectful to neighbours.
 - That customers may not be allowed to congregate outside the premises.
 - That the entrance door will be fitted with a thick, close fitting fireproof curtain to minimise noise outbreak as patrons enter and exit the premises.
 - That external areas will be closed to patrons at 22.00.
 - That noise from plant, patrons and activities at the premises will be managed to ensure that public nuisance shall not be caused in the vicinity of the premises or intrude inside the nearest or most exposed noise sensitive premises.
 - That external waste handling, collections and deliveries will only occur between 08:00 and 20:00.

16. A representation has been submitted by the licensing authority in their role as responsible authority. The representation asks for an adjustment in hours for the sale of alcohol and additional conditions, which have been agreed and the representation subsequently withdrawn. The new hours and conditions are as follows:
- The sale by retail of alcohol (on sales only):
 - Monday to Friday from 12:00 to 22:30
 - Saturday from 10:00 to 22:30
 - Sunday from 10:00 to 22:00.
 - The accommodation limit for the premises shall not exceed 120 patrons.
 - That the written dispersal policy shall be kept at the premises with the licence and made available for inspection by authorised officers of the council or the police and all relevant staff shall be trained in the implementation of the dispersal policy.
17. The representations and details of withdrawals between the applicant and the responsible authorities are all available in Appendix B.

Representations from other persons

18. Representations have been received from two persons in the immediate vicinity. One is concerned with the hours. The other appears to have ongoing issues with the premises and has submitted objections to a planning application, using the same complaints for the licensing application. Redacted versions of the representations are available in Appendix C.

Conciliation

19. All representations were sent to the applicant. All representations from the responsible authorities have been conciliated and withdrawn. The applicant has been offered the opportunity to write to the objectors. At the time this report was composed, this had not taken place.

Premises history

20. The premises has previously held a premises licence under the name of Black Swan Yard Limited. This company was dissolved in November 2017 and the licence was not transferred within the legislative timeframe and therefore lapsed. A copy of the previous licence is available for members' information in Appendix D. A new application has therefore been submitted, though this is not a new premises.
21. The premises has been granted a number of temporary events notices in the last year as listed below:

Applicant	Activities	Dates	Counter Notice
Tom Phelan	Sale by retail of alcohol to be consumed on/off the premises Provision of Regulated Entertainment	8/11/2017 to 18/11/2017 12:00 to 22:00	No
Russell Milton	Sale by retail of alcohol to be consumed on/off the premises	15/09/2018 to 15/09/2018 10:00 to 22:00	No
Lucy Chilvers	Provision of late night	21/09/2018 to	No

Applicant	Activities	Dates	Counter Notice
	refreshment Provision of Regulated Entertainment	21/09/2018 17:00 to 23:00	

22. The licensing department has one complaint registered against the premises in the last year:

Date	Complainant	Complaint	Action
30/07/2018	Local Resident	Noise from music	Complainant written to, visits carried out by night time economy (NTE) team on 03/08/2018 and 01/09/2018, no issued found

Map

23. A map showing the location of the premises is attached to this report as Appendix E. Bermondsey Street has a growing number of licensed premises, the following are a list of licensed premises in the immediate vicinity of the application:

Fashion and Textile Museum, 83 Bermondsey Street, London SE1 3XF

- The sale by retail of alcohol (on sales):
 - Monday to Sunday from 09:00 to 23:00.
- The provision of regulated entertainment in the form of films, live and recorded music, indoor sporting events and performances of dance (indoors):
 - Monday to Sunday from 09:00 to 23:00.

Chapter 72, 72 Bermondsey Street, London SE1 3UD

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 07:00 to 22:30
 - Sunday from 08:00 to 21:30.

Giddy Grocer, 80 Bermondsey Street, London SE1 3UD

- The sale by retail of alcohol (off sales):
 - Monday to Sunday from 11:00 to 23:00.
- The sale by retail of alcohol (on sales):
 - Monday to Sunday from 11:00 to 22:30.
- The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Sunday from 11:00 to 23:00.

B Street Deli, 88 Bermondsey Street, London SE1 3UB

- The sale by retail of alcohol (both on and off sales)
 - Monday to Sunday from 09:00 to 23:30.
- Late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 23:30

Southwark council statement of licensing policy

24. 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.
25. 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.
26. Within Southwark's statement of licensing policy, the premises sits outside of a cumulative impact policy area and within a residential area. Under the Southwark statement of licensing policy 2016-2020 the premises within this application would fall under the recommended closing times:

- Closing time for Restaurants and Cafes:
 - Monday to Sunday until 23:00.
- Closing time for Public Houses Wine bars or other drinking establishments:
 - Monday to Sunday until 23:00.

Resource implications

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

Consultation

28. 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

29. 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

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

Principles for making the determination

32. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
33. 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.
34. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence.

- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premises supervisor.
- To reject the application.

Conditions

35. 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.
36. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
37. 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.
38. 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.
39. 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

40. 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

41. 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.
42. 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

43. 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.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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.

49. 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.
50. 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

51. 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

52. 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 premises licence
Appendix B	Representations submitted by Responsible Authorities
Appendix C	Representations submitted by Other Persons
Appendix D	Copy of previous premises licence
Appendix E	Map of the locality

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	16 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
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