

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 15 February 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Kaycees, 92 Tower Bridge Road, London SE1 4TP	
<b>Ward(s) or groups affected:</b>		London Bridge and West Bermondsey	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Sasikumar Manokarasa to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Kaycees, 92 Tower Bridge Road, London SE1 4TP.
2. Notes:
  - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Kaycees, 92 Tower Bridge Road, London SE1 4TP under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 10 to 13 of this report provide a summary of the application under consideration by the sub-committee. Copies of the existing premises licence and of the full application is attached as Appendices A and B.
  - c) Paragraphs 14 to 21 of this report deals with the representations received to the premises licence application and any conciliation progress made. Copies of the relevant representations from responsible authorities are attached as Appendix C.
  - d) Paragraph 28 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix D.
  - e) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 provides a regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment

- The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
  5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
    - The prevention of crime and disorder
    - The promotion of public safety
    - The prevention of nuisance
    - The protection of children from harm.
  6. In carrying out its licensing functions, a licensing authority must also have regard to:
    - The Act itself
    - The guidance to the act issued under Section 182 of the Act
    - Secondary regulations issued under the Act
    - The licensing authority's own statement of licensing policy
    - The application, including the operating schedule submitted as part of the application
    - Relevant representations.
  7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The current premises licence**

8. The premises licence allows for the following activities:
  - Sale of alcohol for consumption off premises:
    - Sunday to Wednesday from 06:00 to 23:00
    - Thursday to Saturday from 06:00 to 02:00.
  - Operating hours:
    - Sunday to Wednesday from 06:00 to 23:00
    - Thursday to Saturday from 06:00 to 02:00.
9. A copy of the premises licence is provided as Appendix B.

### **The variation application**

10. On 27 December 2018, Sasikumar Manokarasa applied to this council to vary the premises licence issued in respect of the premises known as Kaycees, 92 Tower Bridge Road, London SE1 4TP. The premises is a convenience store.
11. The variation application is summarised as follows:

- Sale of alcohol for consumption off premises:
    - Monday to Sunday 24 hours
  - Operating hours:
    - Monday to Sunday 24 hours.
12. The variation to the premises application form provides the applicant operating schedule. Parts J, K, L, M, N and O and P set out the proposed operating hours and operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix B.

### **Designated premises supervisor**

13. The designated premises supervisor (DPS) is Sasikumar Manokarasa who has a personal licence issued by Greenwich Council.

### **Representations from responsible authorities**

14. There are representations submitted by the Metropolitan Police Service, licensing (as a responsible authority) and trading standards.
15. The police highlight that the current hours are already in excess of those recommended for off licence premises in this area as per Southwark's statement of licensing policy. The policy states that the terminal hour for the supply of alcohol will be no later than 23:00. They also cite that following a trading standards and Licensing inspection on 18 and 22 January 2019 respectively, the premises was found to be in breach of a number of licence condition which also led the seizure of goods.
16. The licensing representation is submitted under the prevention of crime and disorder and public nuisance, they state that the current licence already has generous hours outside of the policy hours and the applicant does not add any further control measures to the operating schedule to promote the licensing objectives. They also refer to both licensing and trading standards inspections where breaches of the licence conditions were found and goods seized. They currently have no faith in the applicant to promote the licensing objectives and recommend that the application is refused.
17. The trading standards representation makes references to both inspections mentioned by both police and licensing and to the breaches of licensing conditions and the seizure of goods. They object to this major variation which does not comply with the principles set out in the statement of licensing policy.
18. Trading standards have submitted a review of the premises licence in respect of the test purchases, breaches of licence conditions and seizure of goods.
19. The representations are attached as Appendix C.

## Representation from other persons

20. There are no representations from other persons.

## Conciliation

21. The representations were forwarded to the applicant. The licensing sub-committee will be updated of any developments on 15 February 2019.

## Premises history

22. The premises licence was initially granted on 5 Feb 2013. The licence was transferred to the current owner/DPS on 7 April 2015.
23. A minor variation was submitted on 25 Jan 2019 in an attempt to reword condition 340 to include certain brands of beer. A representation was made by trading Standard as a result of the visit made on 22 January 2019 that these were the very products that were seized in contravention of condition 340. There were a number of issues with other licensing conditions relating to preventing the sale of alcohol to minors. The minor variation was refused.
24. An inspection of the premises took place on 22 January 2019 when the following breaches were found:
  - Condition **4AA** - That the premises shall operate an 'Challenge 25' policy whereby customers purchasing alcohol who appear to be under 25 years of age will be asked for an approved form of proof of age to verify their age. Approved forms shall include a driving licence, passport or a Proof of Age Standards Scheme (PASS) approved proof of age card.
  - Condition **4AB** - That all staff involved in the sale of alcohol shall attend a training course which will include training in the 'Challenge 25' policy, age recognition, the law relating to the sale of alcohol and how to prevent and/or deal with conflict. A record of their training, including the dates that each member of staff is trained and an accurate summary of the training material/content, shall be available for inspection at the premises on request by the council's authorised officers or the police.
  - Condition **4AC** - That 'Challenge 25' signage shall be displayed at entrances to the premises, areas where alcohol is displayed for sale and at points of sale to inform customers that a 'Challenge 25' policy applies and proof of age may be required.
  - Condition **293** - That all staff are trained in their responsibilities under the licensing act 2003 and training records to be kept and updated every six months.
  - Condition **340** - No beers/ciders in single cans, bottles or multi-packs with an ABV of above 5.5% will be displayed/sold or offered for sale from the premises.

25. Regarding condition **340** the following items were seized by the trading standards officer:

- 12 x 600ml bottles of Guinness Foreign Extra 7.5% alc
- 14 x 375ml bottles of Guinness Foreign Extra 7.5% alc
- 11 x 284ml Dragon Stout 7.5% alc
- 1 x 500ml can of Scrumpy Jack 6% alc 6 x 650ml bottles Desperado Beer 5.9% alc
- 11 x 350ml Desperado Beer 5.9% alc.
- 12 x 500ml cans of Desperado Beer 5.9% alc.

### Temporary event notices (TENs)

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

No.	Date of event	Time of event and activities
1	16 to 19 Dec 2018	23:00 to 02:00 - Alcohol
2	22 to 28 Dec 2018	24 hours - Alcohol
3	30 Dec 2018 to 5 Jan 2019	24 hours - Alcohol
4	22 -27 Jan 2019	24 hours Alcohol

27. There were no counter notices served to these TENs.

### The local area

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

#### Public houses/restaurants/off licences:

##### **Jad Grill Lebanese Cuisine, 88 Tower Bridge Road, London SE1**

- Monday to Sunday until 02:00

##### **Crystal China, 78-80 Tower Bridge Road, London SE1**

- Monday to Sunday until 00:30

##### **Tower Tandoori, 74-76 Tower Bridge Road, London SE1**

- Monday to Sunday until 00:30

##### **Tower Express, 72 Tower Bridge Road, London SE1**

- Monday to Saturday until 23:00 and Sunday until 22:30

**Bermondsey Arts Club, 102A Tower Bridge Road, London SE1**

- Monday to Sunday until 02:30

**Bottle 85 Ltd, 85 Tower Bridge Road, London SE1**

- Sunday to Thursday until 23:00 and Friday and Saturday until 00:00

**Basillico Ltd, 103 Tower Bridge Road, London SE1**

- Sunday to Thursday until 00:00 and Friday and Saturday until 00:30.

**Deregulation of entertainment**

29. 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 is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.

30. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

**Southwark statement of licensing policy**

31. Council assembly approved Southwark's Statement of Licensing Policy 2016-2020 on 25 November 2015. The policy came into effect on 1 January 2016. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this Authority relies in determining licence applications
- Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
- Section 6 – Local cumulative impact policies. This sets out this Authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
- Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification.
- Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.

- Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
  - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
  - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
32. 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.
33. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Restaurant, Cafés, Public Houses Wine bars or other drinking establishments:  
23:00 daily

#### **Resource implications**

34. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

#### **Consultations**

35. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited outside of the premises for a period of 28 consecutive days.

#### **Community impact statement**

36. 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**

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

## **Principles for making the determination**

39. 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.
40. 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.
41. 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.
42. 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**

43. 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.
44. The four licensing objectives are
  - a. The prevention of crime and disorder
  - b. Public safety
  - c. The prevention of nuisance
  - d. The protection of children from harm.
45. 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.
46. 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.
47. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap

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

48. Members are also referred to the Home Office guidance on conditions.

### **Reasons**

49. 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**

50. 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.

51. 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**

52. 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.

53. 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.
54. 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.
55. 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.
56. 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.
57. 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.
58. 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**

59. 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

60. 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 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	Current licence
Appendix B	Variation application
Appendix C	Representations from responsible authorities
Appendix D	Map of the local area

### AUDIT TRAIL

<b>Lead Officer</b>	Ian Smith Strategic Director of Environment and Leisure	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
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<b>Dated</b>	31 January 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	31 January 2019	