

| | | | |
|------------------------------------|--------------------------------|--|---|
| Item No. 6. | Classification: Open | Date: 7 March 2019 | Meeting Name: Licensing Sub-Committee |
| Report title: | | Licensing Act 2003: Vinegar Yard, 1-7 Fenning Street, London SE1 3QR | |
| Ward(s) or groups 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 The FIS Bar Limited for a time-limited premises licence on 4 February 2019 to 14 February 2021 to be granted under the Licensing Act 2003 in respect of the event to be held on Vinegar Yard, 1-7 Fenning Street, London SE1 3QR.
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 20 of this report deals with the representations received to the premises licence application and conciliations progress made. Copies of the relevant representations from responsible authorities and correspondence from conciliation process are attached as Appendices B and C.
 - d) Paragraph 21 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 premises licence application

8. On 11 January 2019, The FIS Bar Limited applied to this council for the grant of a time-limited premises licence for an event to be held on 14 February 2019 to 14 February 2021 in respect of Vinegar Yard, 1-7 Fenning Street, London SE1 3QR. The premises is described as a warehouse building on the ground and first floors with outside space to used for events.
9. The application is summarised as follows:
 - Films (indoors and outdoors):
 - Monday to Friday: 12:00 to 22:30
 - Saturday and Sunday: 11:00 to 22:30
 - Live music (indoors and outdoors):
 - Monday to Friday: 12:00 to 22:30
 - Saturday and Sunday: 11:00 to 22:30
 - Recorded music (indoors outdoors):
 - Monday to Wednesday from 12:00 to 23:00
 - Thursday and Friday from 12:00 to 23:30
 - Saturday from 11:00 to 23:30
 - Sunday from 11:00 to 23:00

- Anything of a similar description (indoors and outdoors):
 - Monday to Friday from 12:00 to 22:30
 - Saturday and Sunday from 11:00 to 22:30
 - Late night refreshment (indoors):
 - Thursday: 23:00 to 23:30
 - Friday and Saturday: 23:00 to 00:30
 - Supply of alcohol (on and off the premises):
 - Monday to Thursday: 12:00 to 23:00
 - Friday: 12:00 to 01:00
 - Saturday: 11:00 to 01:00
 - Sunday: 11:00 to 23:00.
 - Operating hours of premises:
 - Monday to Wednesday: 12:00 to 23:00
 - Thursday: 12:00 to 00:00
 - Friday: 12:00 to 01:00
 - Saturday: 11:00 to 01:00
 - Sunday: 11:00 to 23:00.
10. The premises licence application form provides the applicant operating schedule. Parts B, E, F, G, H, I, J, K, L and M 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 M 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 A.

Designated premises supervisor

11. The proposed designated premises supervisor is Marco Mendes who has a personal licence issued by North Hertfordshire District Council.

Representations from responsible authorities

12. Representations were submitted by the Metropolitan Police Service, licensing as a responsible authority and the planning department.
13. The Metropolitan Police Service representation states that the premises are situated on the boundary of the Borough and Bankside cumulative impact policy (CIP) area and are in a designated strategic cultural area under the Southwark council statement of licensing policy. The hours applied for are within that recommended under the policy. However the application makes reference to an accommodation limit of 600 persons at any one time and also refers to substantial food being available throughout its operation. However, they note that there are no restrictions to the service of alcohol as ancillary to a table meal. Although the application seeks closing before midnight on Sunday through to Wednesday, Thursday has a closing time of 00:30 and Friday and Saturday have a closing time of 01:30, it does not

satisfy some of the factors mentioned in the policy. A premises such as this is likely to add to the existing cumulative impact. The police state that they feel that the applicant has not sufficiently addressed Southwark's cumulative impact policy in their application.

14. The Licensing representation mentions that the premises is situated in the Bankside, Borough, London Bridge strategic cultural area. The representation is based on the Southwark statement of licensing policy 2016 – 2020 and relates to the licensing objectives for the prevention of crime and disorder, the prevention of public nuisance licensing objectives. The premises also falls within the CIP area for Borough and Bankside. Under the Southwark Statement of Licensing Policy 2016 - 2020 the local CIP applies to night clubs, public houses and bars, restaurants and cafes, off-licences, supermarkets, convenience stores and similar premises.
15. The licensing responsible authority also describe the operating schedule as lacking and does not adequately address the four licensing objectives. The applicant has not addressed the presumption to refuse this application within the operating schedule and licensing recommend refusal of this application unless the applicant can demonstrate that the premises will not contribute to crime and disorder and public nuisance within the policy area. There is not enough information within the description of the premises to show how this premises will operate and further clarification is sought on this point. Licensing reserve the right to comment further once this information is provided. The applicant has been asked to consider conditions relating to off sales.
16. The planning department object to this proposed licence under the objective of prevention of nuisance. The application seeks to licence a large open area that has no planning permission for an A class use and for which no assessment has been made in respect of the impacts that a large licenced premises may have. It is likely to be a significant source of noise. This application has no noise impact assessment, no dispersal strategy and no obvious means of controlling noise from a large open area that on the plan is shown as tables for drinking.
17. The planning department state that the council does look to support meantime uses that have a community benefit. It is acknowledged that retaining public houses can provide a significant benefit where those businesses are community hubs and part of the social life of the immediate area. Creating a large area for drinking such as this in an area well served by licensed premises would have a negligible community benefit. Switching focus from sale of alcohol to provision of a cultural venue would increase the benefit provided to the area, but noise impacts would need to be assessed and mitigated against.
18. Copies of the representations are attached as Appendix B.

Representation from other persons

19. There are no representations from other persons.

Conciliation

20. The representations received were forwarded to the applicant. The conciliation process has resulted in planning withdrawing their representation on the understanding that a planning application will be made for a temporary use of this site. That application should be accompanied by a noise impact assessment.

Correspondence relating to the process are attached as Appendix C. The licensing sub-committee will be updated on 7 March 2019.

The local area

21. A map of the area is attached to this report as Appendix D. 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. The following licensed premises are also shown on the map:

Public houses and restaurants

- YO! Sushi, Wolfson House, 49 St Thomas Street, London SE1 (Monday to Saturday until 23:30 and Sunday until 23:00)
- The Savanna, Unit SU58 London Bridge Station, London SE1 (Monday to Sunday until 22:30)
- Bob's Lobster, Unit SU59 London Bridge Station, London SE1 (Sunday to Wednesday until 00:00 and Thursday to Saturday until 01:00)
- The Horseshoe Inn, 26 Melior Street, London SE1 (Monday to Saturday until 00:30 and Sunday until 23:30)
- Texas Joe's, 8-9 Snowfields, London SE1 (Monday to Sunday until 23:30)
- Lost Rivers Deli Bar, 7-13 Melior Street, London SE1 (Sunday to Thursday until 23:30 and Friday and Saturday until 00:00)
- Londrino, 36 Snowsfields, London SE1 (Sunday to Thursday until 00:00 and Friday and Saturday until 00:30)
- Champor Champor, 62 - 64 Weston Street, London SE1 (Monday to Sunday until 00:30).

Deregulation of entertainment

22. 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.
23. 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').

Borough and Bankside cumulative impact zone

24. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises

(saturation/cumulative impact policy) on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.

25. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
26. The effect of this special policy is to create a presumption that applications for new premises licenses or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
27. The applicant has been advised to address the committee's concerns around cumulative impact at the meeting.

Southwark statement of licensing policy

28. 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.

29. 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.
30. 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:
- Closing time for restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00.
 - Public bars, wine bars and other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00
 - There are no restriction times for hotel bars and guest houses.

Resource implications

31. A fee of £100.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band A.

Consultation

32. 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

33. 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

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

Principles for making the determination

36. 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.

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 interested 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:
- 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

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. 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

44. 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

45. 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.
46. 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

47. 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.

48. 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.
49. 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.
50. 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.
51. 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.
52. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
53. 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.
54. 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

55. 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

56. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|---|--|--------------------------------------|
| Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file | Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH | Mrs Kirty Read Tel: 020 7525 5748 |

APPENDICES

| Name | Title |
|------------|---|
| Appendix A | Application premises licence |
| Appendix B | Representation from responsible authorities |
| Appendix C | Conciliation correspondence |
| Appendix D | Map of local area |

AUDIT TRAIL

| | | |
|---|--|--------------------------|
| Lead Officer | Ian Smith, Strategic Director of Environment and Leisure | |
| Report Author | Dorcas Mills, Principal Licensing Officer | |
| Version | Final | |
| Dated | 22 February 2019 | |
| 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 | 22 February 2019 | |