

|                                     |                                |   |   |
|-------------------------------------|--------------------------------|---|---|
| <b>Item No.</b><br>6.               | <b>Classification:</b><br>Open | <b>Date:</b><br>21 March 2019                       | <b>Meeting Name:</b><br>Licensing Sub-Committee |
| <b>Report Title</b>                 |                                | Licensing Act 2003: 28 Peckham Rye, London SE15 4JR |   |
| <b>Ward(s) of group(s) affected</b> |                                | Rye Lane  |   |
| <b>From</b>                         |                                | Strategic Director of Environment and Leisure       |   |

## RECOMMENDATION

1. That the licensing sub-committee considers whether an application for a premises licence submitted by Madelaine Beevers be granted under the Licensing Act 2003 in respect of 28 Peckham Rye, London SE15 4JR.
2. Notes:
  - a) The application was submitted under Section 17 of the Licensing Act 2003. The application is subject to representations and is therefore referred to the licensing 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 16 of this report deal with the representations submitted in respect of the application. Copies of the representations, and related correspondence, are attached to this report as Appendices B and C. A map showing the location of the premises is attached to this report as Appendix D.
  - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to applications 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

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 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 18 December 2018 Madelaine Beevers applied to this council for the grant of a premises licence in respect of 28 Peckham Rye, London, SE15 4JR.
9. The application is summarised as follows:
- **Films**
    - Thursday from 19:00 to 22:00
  - **Sale of alcohol to be consumed on the premises**
    - Monday from 12:00 to 17:00
    - Tuesday to Friday from 12:00 to 22:00
    - Saturday from 10:00 to 22:00
    - Sunday from 10:00 to 17:00
  - **Proposed opening hours of the premises**
    - Monday from 07:30 to 17:30
    - Tuesday to Friday from 07:30 to 22:30
    - Saturday from 09:00 to 22:30
    - Sunday from 09:00 to 22:30
  - The premises, and the intended operation of the premises, are described in the application as follows:
    - *"The premises is a cafe that could be described as long and thin. It is 76 square metres and consists of an open plan main room at the front with kitchen, storage rooms and toilets at the back. Through the kitchen there is access to a small yard but this has no access / exit to street. The main room has a fully glazed frontage and counter / bar along the left hand side. The main front door is the only entrance / exit to the property. Any*

*activities such as talks or film screenings will take place in the back section."*

10. The premises licence application form provides the applicant's operating schedule. Parts B, 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 then 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 is attached to this report as Appendix A.

#### **Designated premises supervisor**

11. The proposed designated premises supervisor (DPS) is Madelaine Beevers.

#### **Representations from responsible authorities**

12. Representations were submitted by this council's environmental protection team, the Metropolitan Police Service and by this council's licensing responsible authority.
13. The environmental protection team's representation sought clarification of the licensable area and where it was intended by the applicant that certain activities may take place in the premises. The applicant provided a response to the Environmental Protection Team and the Environmental Protection Team withdrew their application.
14. The Metropolitan Police Service's and licensing responsible authority's representations both suggested different control measures that the Metropolitan Police Service and licensing responsible authority recommended should become conditions of any licence issued subsequent to the application. The applicant agreed to amend the application to include the suggested control measures and the representations were withdrawn
15. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as Appendix B.

#### **Representations from other persons**

16. A representation objecting to the application was submitted by an 'other person', that being a local resident. The representation outlined a number of concerns that the local resident had regarding the impact of the proposed operation of the premises. After correspondence between the applicant and the resident, the resident's only remaining concern is that the proposed operation of the premises may give rise to noise nuisance. Although the applicant has addressed the issue of noise, the resident doesn't think that the applicant has addressed the applicants concerns sufficiently and so is not in a position to withdraw their representation. Copies of the representation and related correspondence are attached to this report as Appendix C.

#### **Conciliation**

17. The applicant has been in correspondence with the local resident who submitted a representation objecting to the application in an effort to address the concerns raised in the representation, however at this time the representation remains outstanding and must be considered by the licensing sub-committee.

## Premises history

18. No licence has been held in respect of the premises under current, or prior, licensing legislation.
19. On 18 December 2018 Madelaine Beevers applied to this council for the grant of a premises licence in respect of 28 Peckham Rye, London, SE15 4JR.

## Deregulation of entertainment

20. On 6 April 2015 entertainment became deregulated and as a result:
  - Live unamplified music is deregulated between 08:00hrs and 23:00hrs 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.
21. 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').
22. The showing of films has not been de-regulated.

## Map

23. A map showing the location of the premises is attached to this report as Appendix D. The following licensed premises are also shown on the map and provide licensable activities as stated:

- **The White Horse, 20 Peckham Rye, SE15 4JR** licensed for:

The provision of regulated entertainment and the sale of alcohol to be consumed on and off the premises

- Monday to Thursday between 08:00 and 00:00 (midnight)
- Friday and Saturday between 08:00 and 01:00 the following day
- Sunday between 12:00 and 23:30

The provision of late night refreshment

- Monday to Thursday between 23:00 and 00:00
- Friday and Saturday between 23:00 and 01:00 the following day
- Sunday between 23:00 and 23:30

- **Alpha Off Licence, 24 Peckham Rye, SE15 4JR** licensed for:

The sale of alcohol to be consumed off the premises

- Monday to Sunday between 06:00 and 23:00

- **Rye News, 34 Peckham Rye SE15 4JR** licensed for:

The sale of alcohol to be consumed off the premises

- Monday to Saturday between 08:00 and 23:00
- Sunday between 10:00 and 22:30

- **Guerrilla, 38 Peckham Rye, SE15 4JR** licensed for:

The provision of regulated entertainment and the sale of alcohol to be consumed on and off the premises

- Sunday to Thursday between 11:00 and 23:30
- Friday and Saturday between 11:00 and 01:30 the following day

The provision of late night refreshment

- Sunday to Thursday between 23:00 and 23:30
- Friday and Saturday between 23:00 and 01:30 the following day

- **Funkidory, 42 Peckham Rye, SE15 4JR** licensed for:

The sale of alcohol to be consumed on the premises

- Tuesday to Thursday between 17:00 and 23:00
- Friday between 16:00 and 00:00
- Saturday between 14:00 and 00:00
- Sunday between 14:00 and 22:00

Late night refreshment and recorded music

- Friday and Saturday between 23:00 and 00:00

- **Banh Banh, 46 Peckham Rye, SE15 4JR** licensed for:

The sale of alcohol to be consumed on the premises

- Tuesday to Saturday between 11:00 and 23:00
- Sunday between 11:00 and 22:30

- **Batch, 56 Peckham Rye, SE15 4JR** licensed for:

The sale of alcohol to be consumed on and off the premises, live music and recorded music

- Monday to Thursday between 17:00 and 23:00
- Friday between 17:00 and 01:00 the following day
- Saturday between 12:00 and 01:00 the following day
- Sunday between 12:00 and 23:00

- **Pedler Peckham Rye, 58 Peckham Rye, SE15 4JR** licensed for:

The provision of regulated entertainment and the sale of alcohol to be consumed on and off the premises

- Monday to Sunday between 09:00 and 01:00 the following day

The provision of late night refreshment

  - Monday to Sunday between 23:00 and 01:00 the following day
- **Full Garden, 230 Rye Lane, SE15 4NL** licensed for:
 

The provision of late night refreshment

  - Monday to Saturday between 23:00 and 00:00
- **Yilmaz Kebab, 277 Rye Lane, SE15 4UA** licensed for:
 

The provision of late night refreshment

  - Monday to Sunday between 23:00 and 05:00 the following day

Sale of alcohol to be consumed on the premises

  - Monday to Sunday between 11:00 and 23:00
- **Cheung's, 289 Rye Lane, SE15 4UA** licensed for:
 

The provision of late night refreshment

  - Monday to Sunday between 23:00 and 00:00
- **Mr Bao, 293 Rye Lane, SE15 4UA** licensed for:
 

The sale of alcohol to be consumed on the premises

  - Monday to Sunday between 10:00 and 23:00
- **Voodoo Ray's, Ground Floor, 285-287 , Rye Lane, SE15 4UA** licensed for:
 

The sale of alcohol to be consumed on and off the premises

  - Sunday to Thursday between 11:00 and 23:00
  - Friday and Saturday between 11:00 and 00:00

Late night refreshment

  - Friday and Saturday between 23:00 and 00:00

Recorded music, anything similar to live or recorded music

  - Sunday to Thursday between 10:00 and 23:00
  - Friday and Saturday between 10:00 and 00:00

### **Southwark council saturation policy for Peckham**

24. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in November 2015 when full council assembly approved the 2016 -2020 Statement of Licensing Policy.

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 that is to create a presumption that applications for new premises licences 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 committees concerns around cumulative impact at the meeting.

### **Southwark council 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. According to Southwark's statement of licensing policy the premises are located in Peckham Major Town Centre Area. Closing times as stated below are suggested in the statement of licensing policy for the following types of licensed premises located in residential areas:

- Restaurants and cafes:
  - Sunday to Thursday 00:00
  - Friday and Saturday 01:00 the following day
  
- Public houses, wine bars or other drinking establishments:
  - Sunday to Thursday 23:00
  - Friday and Saturday 00:00 the following day

### **Resource implications**

31. 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 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 similar notices were 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. Other persons 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 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.

## BACKGROUND DOCUMENTS

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

## APPENDICES

| Name       | Title   |
|------------|---|
| Appendix A | Copy of the application   |
| Appendix B | Copies of the representations, and related correspondence, submitted by the responsible authorities |
| Appendix C | Copies of the representation, and related correspondence, submitted by the other person             |
| 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>  | Wesley McArthur, Principal Licensing Officer             |                          |
| <b>Version</b>  | Final  |                          |
| <b>Dated</b>  | 7 March 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                            | No   | No                       |
| <b>Cabinet Member</b>   | No   | No                       |
| <b>Date final report sent to Constitutional Team</b>                    | 8 March 2019   |                          |