

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 4 April 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: London Bridge Kebab Limited, 19 London Road, London SE1 6JX	
<b>Ward(s) of group(s) affected</b>		St George's	
<b>From</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by London Bridge kebab Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as London Bridge Kebab Limited, 19 London Road, London, SE1 6JX.
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 28 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. 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

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 12 November 2018 London Bridge Kebab Limited applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as London Bridge Kebab Limited, 19 London Road, London, SE1 6JX. The application was validated on the 13 February 2019 by the Licensing Authority.
9. The premises are described in the application as being: "Shop and Premises."
10. The hours applied for are summarised as follows:
- Late Night Refreshment (on sales only):
    - Monday to Thursday from 23:00 to 01:00
    - Friday and Saturday from 23:00 to 03:00
    - Sunday from 23:00 to 01:00
  - Opening hours:
    - Monday to Thursday from 11:00 to 01:00
    - Friday and Saturday from 11:00 to 03:00
    - Sunday from 11:00 to 01:00
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 is attached to this report in Appendix A.

### **Representations from responsible authorities**

12. Representations have been received from three responsible authorities which are detailed in Appendix B.
13. A representation had been received from the Metropolitan Police Service (Licensing Division) which states It should be noted that this premises is located within the Elephant and Castle major town centre according to Southwark's statement of licensing policy 2016 to 2020.

14. The Metropolitan Police Service state the closing time for restaurants and cafes as per the policy is midnight Sunday to Thursday and 01:00 on Friday and Saturday. The applicant has not given any consideration to Southwark's licensing policy and they do not appear to have carried out any risk assessments as to the potential impact on the licensing objectives before submitting their operating schedule.
15. The Metropolitan Police state that the operating schedule does not contain any precise or enforceable control measures to promote any of the licensing objectives.
16. Additionally the police state that a similar application was submitted in 2017 which was rejected by the licensing sub-committee. The notice of decision highlights the lack of enforceable control measures in their application and that the hours applied for are outside of that permitted under their planning restrictions. The Metropolitan Police state the applicant has not evidenced how they intend to promote the licensing objectives, in particular the prevention of crime and disorder, and it is for these reasons this application should be refused.
17. A representation has been provided by this council's environmental protection team (EPT). EPT state a similar premises licence application for longer hours at the premises was sought in 2017, whereby Southwark's licensing sub-committee rejected the application on 15 November 2017.
18. EPT state the late night hours sought for late night refreshment and opening exceed the recommended hours for takeaways in this part of the borough, as outlined within Southwark's licensing policy 2016-2020.
19. Additionally EPT state the hours sought also exceed those permitted within the planning permission for the site. Section M part d) of the application form also does not contain any practical measures to control noise or public nuisance. EPT also state that if the site were open until 01:00 on week nights and 03:00 on weekends then the use could conceivably cause noise disturbance and public nuisance to the existing residents living directly above the unit.
20. A representation had been received from public health as a responsible authority. Public health state whilst the applicant is not seeking a licence for the sale of alcohol, this licensing application still raises concerns due to the potential to generate public nuisance and in relation to the prevention of crime and disorder.
21. Public health state as per the Home Office's guidance, the provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy. Furthermore, it has been shown that late night food takeaways can generate crime and disorder due to large numbers of intoxicated individuals congregating in and around the venue.
22. Additionally, public health recommends that the opening hours be amended to be in line with the Southwark statement of licensing policy's recommended hours for a takeaway/restaurant.
23. A representation has been made by the licensing authority in their role as responsible authority. Licensing as a responsible authority state that their 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 and the prevention of public nuisance.
24. Licensing as a responsible authority state this premise is situated within the Elephant and Castle major town centre area and under the Southwark statement of licensing policy 2016 – 2020 the appropriate closing times for a take-away establishment on Sunday to Thursday is 00:00 and for Friday and Saturday is 01:00. As the opening hours applied for

are in excess of what it deemed appropriate for this area within the statement of licensing policy and to promote the licensing objectives they ask the applicant to consider reducing the hours applied for to be in line with the licensing policy and to bring the licensable activity in line as follows:

- Premises to close on Sunday to Thursday at 00:00 and for Friday and Saturday at 01:00.
  - Late night refreshment to cease on Sunday to Thursday at 00:00 and for Friday and Saturday at 01:00.
25. Additionally, licensing as a responsible authority state the application has not adequately addressed any of the licensing objectives and ask the applicant to provide an operating schedule that addresses the licensing objectives. licensing as a responsible authority also state due to the limited information provided with the application the applicant should provide the following information:
- A written dispersal policy (to be conditioned)

### **Planning**

26. A memo was received from Planning as a responsible authority on the 12 December 2018 which is detailed at Appendix C.
27. Planning as a responsible authority state the authorised hours of use of the premises for a hot food takeaway (A5) use are 12:00 to 22:00 on Monday to Thursday, 12:00 to 23:00 on Friday and Saturday, and 12:00 to 18:00 on Sunday and bank holidays, as per planning permission reference 0000685. Operation outside of these hours requires planning permission, and may be subject to a planning enforcement investigation if carried out without planning permission

### **Representations from other persons**

28. No representations were received from other persons.

### **Conciliation**

29. All representations received by the licensing authority have been sent to the applicant. At the time this report was written the applicant has not conciliated with any of the responsible authorities who have made representation to this application.

### **Premises history**

30. A previous new premise licensing application was made for this premises on the 8 August 2017 which was refused by the licensing sub-committee on the 10 November 2017. The decision notice which provides the reason for the refusal of this licensing application is detailed in Appendix D.
31. The licensing department have not received any complaints registered against the premises in the last year:

### **Map**

32. A map showing the location of the premises is attached to this report as Appendix E. The following are a list of licensed premises in the immediate vicinity of the application:

**Paladar 4-5 London Road, London SE1 6JZ**

- Live music - indoors and outdoors:
  - Monday to Saturday: 20:00 to 01:00
- Recorded music - indoors and outdoors:
  - Monday to Saturday: 18:00 - 00:00
- Late night refreshment - indoors and outdoors:
  - Monday to Saturday: 23:00 - 02:00
- Sale by retail of alcohol to be consumed on premises:
  - Monday to Saturday: 11:00 - 02:00
  - Sunday: 11:00 - 23:00
- Sale by retail of alcohol to be consumed off premises:
  - Monday to Sunday: 11:00 - 23:00.

**The Island Café, 1 Flat Iron Square, Union Street, London SE1 0AB**

- Late night refreshment - indoors:
  - Monday to Saturday: 23:00 - 23:30
- Sale by retail of alcohol to be consumed on premises:
  - Monday to Saturday: 10:00 - 23:00
  - Sunday: 12:00 - 22:30
- Sale by retail of alcohol to be consumed off premises:
  - Monday to Saturday: 10:00 - 23:00
  - Sunday: 12:00 - 22:30.

**Superway Supermarket Ltd, 16 London Road, London SE1 6JZ**

- Sale by retail of alcohol to be consumed off premises:
  - Monday to Sunday: 00:00 - 00:00.

**London Southbank University, 100-116 London Road, London SE1 6JF**

- Indoor sporting event:
  - Monday to Saturday: 10:00 - 23:00
  - Sunday: 12:00 - 22:30
- Late night refreshment - indoors
  - Monday to Sunday: 23:00 - 23:30

- Sale by retail of alcohol to be consumed on premises:
  - Monday to Saturday: 10:00 - 23:00
  - Sunday: 12:00 - 22:30
- Sale by retail of alcohol to be consumed off premises:
  - Monday to Saturday: 10:00 - 23:00
  - Sunday: 12:00 - 22:30

**The Albert Arms, 1 Gladstone Road, London SE1 6EY**

- Films - indoors:
  - Monday to Saturday: 10:00 - 00:00
  - Sunday: 12:00 - 23:00
- Live Music – indoors:
  - Monday to Saturday: 17:00 - 00:00
  - Sunday: 12:00 - 23:00
- Recorded music - indoors:
  - Monday to Saturday: 08:00 - 00:00
  - Sunday: 10:00 - 23:00
- Facilities for making music – indoors:
  - Monday to Saturday: 17:00 - 00:00
  - Sunday: 12:00 - 23:00
- Facilities for dancing – indoors:
  - Monday to Saturday: 17:00 to 00:00
  - Sunday: 12:00 - 23:00
- Late night refreshment - indoors:
  - Monday to Saturday: 23:00 -00:30
  - Sunday: 23:00 - 23:30
- Sale by retail of alcohol to be consumed on premises
  - Monday to Saturday: 08:00 - 00:00
  - Sunday: 10:00 - 23:00
- Sale by retail of alcohol to be consumed off premises
  - Monday to Saturday: 08:00 - 00:00
  - Sunday: 10:00 - 23:00.

## Southwark council statement of licensing policy

33. 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.
34. 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.
35. Within Southwark's statement of licensing policy, the premises sits outside of a cumulative impact policy area but within a residential 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 23:00
  - Closing time for Public Houses Wine bars or other drinking establishments:
    - Monday to Sunday until 23:00.

## **Resource implications**

36. 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**

37. 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**

38. 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**

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

### **Principles for making the determination**

41. 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.
42. 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.
43. 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

44. 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.
45. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
46. 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.
47. 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.
48. 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

49. 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

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 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**

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. 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.

58. 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.

59. 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

60. 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

61. 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	Application for a premises licence
Appendix B	Representations submitted by Responsible Authorities
Appendix C	Planning memo dated 12 December 2018
Appendix D	Decision Notice dated 10 November 2017
Appendix E	Map of the locality

### AUDIT TRAIL

<b>Lead Officer</b>	Ian Smith, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Richard Kalu, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	22 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>		22 March 2019