

Item No. 6.	Classification: Open	Date: 4 April 2019	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Hayatt, 22 Camberwell Church Street, London SE5 8QU	
Ward(s) of group(s) affected		Camberwell Green	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Mr Rozikhel Sefatullah for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Hayatt, 22 Camberwell Church Street, London SE5 8QU.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as appendix A.
 - c) Paragraphs 12 to 19 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted responsible authorities are attached to this report in Appendices B and C. A copy of the current licence at the premises is attached at Appendix F. A map showing the location of the premises is attached to this report as Appendix G.
 - 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 21 January 2019 Mr Rozikhel Sefatullah applied to this council for the grant of a premises licence in respect of Hayatt – 22 Camberwell Church Street, London, SE5 8QU. The premises are described in the application simply as being:
- “[A] Lebanese and Moroccan restaurant [and outside area].”
9. The application and is summarised as follows:
- The sale by retail of alcohol (both on and off sales)
 - Monday to Saturday from 10:00 to 00:00
 - Sunday from 12:00 to 23:30
 - The provision of late night refreshment (both indoors and outdoors)
 - Monday to Wednesday from 23:00 to 01:30
 - Thursday to Saturday from 23:00 to 03:00
 - Sunday from 23:00 to 02:00
 - Opening hours:
 - Monday to Wednesday from 23:00 to 01:30
 - Thursday to Saturday from 23:00 to 03:00
 - Sunday from 23:00 to 02:00.
10. The proposed designated premises supervisor of the premises is Mr Rozikhel Sefatullah (who is also the premises licence applicant) and has a personal licence issued by the London Borough of Croydon.
11. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application and premises plan is attached to this report in Appendix A.

Representations from responsible authorities

12. Representations were submitted by the Metropolitan Police Service (Licensing Division), this council's environmental protection team, the planning authority and licensing authority. A fifth representation was submitted by this council's trading standards team, but has since been withdrawn.
13. The representation made by trading standards had requested additional conditions, which have since been agreed and therefore withdrawn. A copy of the representation and subsequent withdrawal area available in Appendix B. As a result, the following conditions have been agreed:
 - That a challenge 25 scheme shall be maintained at the premises requiring that staff selling alcohol request that any customer who looks under 25 years old, and who is attempting to purchase alcohol, provides valid photographic identification proving that the customer is at least 18 years old. Valid photographic identification is composed of a driving licence, passport, UK armed services ID card and any Proof of Age Standards Scheme (PASS) accredited card such as the Proof of Age London (PAL) card;
 - That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons, and the challenge 25 scheme in operation at the premises. A record of such training shall be kept / be accessible at the premises at all times and be made immediately available for inspection at the premises to council or police officers on request. The training record shall include the trainee's name (in block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received;
 - That clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating to the effect that a challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and stating what the acceptable forms of proof of age are. Such signage shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale. The signage shall be kept free from obstructions at all times;
 - That a register of refused sales of alcohol shall be maintained in order to demonstrate effective operation of the challenge 25 policy. The register shall be clearly and legibly marked on the front cover as a register of refused sales, with the address of the premises and with the name and address of the licence holder. The register shall be kept / be accessible at the premises at all times. On a monthly basis, the Designated Premises Supervisor (DPS) shall check the register to ensure it is being properly completed. The DPS shall sign and date the register to that effect and where appropriate take corrective action in a timely manner if the register is not being completed correctly. The register shall be made immediately available for inspection at the premises to council or police officers on request;
 - No unaccompanied children under the age of 16.
14. The Metropolitan Police Service has made a representation which asks for the applicant to agree to additional conditions and states that the hours requested are outside of the Southwark licensing policy.
15. The representation from this council's environmental protection team voices concerns in relation to the times applied for both the running of the restaurant and of the use of the rear garden and states that planning permission has been refused in this area. There are concerns that multiple visits to the premises have found that smoking is taking place in the area, contrary to the Health Act, as the area is enclosed.

16. The planning authority have confirmed that the rear garden is currently subject to a planning enforcement investigation and request a closure time of 22:00 for the area.
17. The representation from the council's licensing department in their role as responsible authority requests additional conditions and raises concerns with the applied hours.
18. All outstanding representations are available in Appendix C.

Representations from other persons

19. No additional representations have been received.

Conciliation

20. The applicant's agent has been sent copies of all representations. Only the representation made by trading standards has been withdrawn.

Premises history

21. The premises licence was initially issued on 2 February 2016. On 9 January 2017 Sefatullah Rozikhel applied under section 34 of the Licensing Act 2003 to vary the premises licence issued in respect of the premises formally known as Shanghai Taste Chinese and Thai Restaurant. The application was heard by the Southwark Licensing Sub Committee on 20 March 2017. A copy of the notice of decision is available in Appendix D.
22. On 21 March 2018, a complaint was received from a local resident regarding the premises that it was opening beyond hours – sometimes until 07:00 the following day and deliver until 06:00.
23. On 23 March 2018, the premises was visited by licensing enforcement officers to conduct an inspection further to the receipt of the complaint. Neither the full licence nor summary were available for inspection, in addition, there were multiple breaches of conditions to which a warning letter was issued. In addition, viewed CCTV recordings proved that the premises had indeed been trading beyond hours permitted on the licence. The premises was re-visited on 26 May, and 15 and 29 June 2018 to re-inspect, but the premises was closed with the frontage papered over as a result of renovations.
24. On 2 May 2018 another variation application was received. Again, the application went before the Licensing Sub Committee on 13 July 2018, a copy of the notice of decision is also available in Appendix D.
25. On 27 October 2018 at 23:50 the premises was again visited to conduct a full inspection. Multiple failures were discovered for which a warning letter was sent. A copy is available in Appendix E. It was during this visit, since the refurbishment, that it was realized that the premises had vastly extended the licensable area beyond the existing plans lodged with the licensing authority, including a large rear garden containing an enclosed structure where patrons were smoking shisha. It was noted that the designated premises supervisor had also gone away. Advice was given that many of the conditions of the licence were not fit for purpose and that with the new areas, such significant alterations would require a whole new premises licence application.
26. On 08 November 2018 a vary DPS application was made for Mr Rozikhel Sefatullah to become the DPS. This has produced the current licence, which is available in Appendix F. A copy of the existing plans lodged with the Authority is also included for Members' information.

27. On 9 November 2018 and new premises licence application was made, but was rejected due to inactivity by the Applicant. The current application was submitted on 21 January 2019.
28. On 23 January 2019, the premises was again visited. The rear garden was still in use, multiple licence failures were discovered and there were issues accessing the CCTV. A warning letter was again issued and is also available with the previous warning letter in Appendix E.
29. No temporary event notices have been submitted in regards to the premises.

Map

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

London Food and Wine, 12 Camberwell Church Street, London SE5 8QU

- The sale of alcohol to be consumed both off the premises:
 - Monday to Sunday: 08:00 to 03:00 (the following day).

The Tiger , 18 Camberwell Green, London SE5 7AA

- The sale of alcohol to be consumed on and off the premises:
 - Sunday to Thursday: 09:00 to 01:30 (the following day)
 - Friday and Saturday: 09:00 to 03:30 (the following day)
- The provision of late night refreshment (indoors):
 - Sunday to Thursday: 23:00 to 01:30 (the following day)
 - Friday and Saturday: 23:00 to 02:30 (the following day)
- The provision of regulated entertainment in the form of recorded music, live music, and performance of dance (indoors):
 - Monday to Thursday: 09:00 to 02:00 (the following day)
 - Friday and Saturday: 09:00 to 04:00 (the following day)
 - Sunday: 09:00 to 01:00 (the following day).

Golden Grill, 20 Camberwell Green. London SE5 7AA

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday: 11:00 to 02:00 (the following day)
 - Sunday: 13:00 to 22:30
- The provision of late night refreshment (indoors):
 - Sunday to Thursday: 23:00 to 02:00 (the following day)
 - Friday and Saturday: 23:00 to 04:00 (the following day).

Hermits Cave, 28 Camberwell Church Street, London SE5 8QU

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Thursday: 10:00 to 00:00 (midnight)
 - Friday and Saturday: 10:00 to 02:00 (the following day)
 - Sunday: 10:00 to 01:00 (the following day)
- The provision of late night refreshment (indoors):
 - Monday to Thursday: 23:00 to 00:00 (midnight)
 - Friday and Saturday: 23:00 to 02:00 (the following day)
 - Sunday: 23:00 to 01:00 (the following day)
- The provision of regulated entertainment in the form of recorded music, live music, films, and performance of dance (indoors):
 - Monday to Thursday: 10:00 to 00:00 (midnight)
 - Friday and Saturday: 10:00 to 02:00 (the following day)
 - Sunday: 10:00 to 01:00 (the following day).

Chicks Peri Peri Chicken (Organica Pizza), 5 Camberwell Church Street, SE5 8TR

- The provision of late night refreshment (indoors):
 - Sunday to Thursday: 23:00 to 01:30 (the following day)
 - Friday and Saturday: 23:00 to 02:30 (the following day).

Bolu Kebab Restaurant, 7 Camberwell Church Street, London SE5 8TR

- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday: 09:00 to 03:00 (the following day)
 - Friday and Saturday: 09:00 to 04:00 (the following day)
 - Sunday: 12:00 to 03:00 (the following day)
- The provision of late night refreshment (indoors):
 - Monday to Sunday 23:00 to 05:00 (the following day).

Portuguese Café Deli, 11 Camberwell Church Street, London SE5 8TR

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday: 08:00 to 00:00 (midnight)
- The provision of late night refreshment (indoors):
 - Monday to Saturday: 23:00 to 00:00 (midnight)
 - Sunday: 23:00 to 23:30.

Wuli Wuli, 15 Camberwell Church Street, London SE5 8TR

- The sale of alcohol to be consumed on and off the premises:
 - Sunday to Thursday: 12:00 to 23:00
 - Friday and Saturday: 12:00 to 01:00 (the following day).

- The provision of late night refreshment (indoors):
 - Sunday to Thursday: 23:00 to 23:30
 - Friday and Saturday: 23:00 to 01:00 (the following day).

Cannon and Cannon Fine Foods, 17-21 Camberwell Church Street, London SE5 8TR

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday: 11:00 to 23:00.

Stormbird, 25 Camberwell Church Street, London SE5 8TR

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Wednesday: 10:00 to 00:00 (midnight)
 - Thursday; 10:00 to 02:00
 - Friday and Saturday: 10:00 to 03:00 (the following day)
 - Sunday: 10:00 to 00:00 (midnight)

- The provision of late night refreshment (indoors):
 - Monday to Wednesday; 23:00 to 00:00 (midnight)
 - Thursday: 23:00 to 02:00
 - Friday and Saturday; 23:00 to 03:00 (the following day)
 - Sunday: 23:00 to 00:00 (midnight)

- The provision of regulated entertainment in the form of recorded music, live music, films, and performance of dance (indoors):
 - Monday to Wednesday: 10:00 to 00:00 (midnight)
 - Thursday: 10:00 to 02:00
 - Friday and Saturday: 10:00 to 03:00 (the following day)
 - Sunday: 10:00 to 00:00 (midnight).

Southwark council 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 Southwark’s statement of licensing policy, the premises are identified as being within the Camberwell cumulative impact policy area. The boundary of the area is defined as follows: from Camberwell New Road at the junction with Wyndham Road progressing via Camberwell Road / Bowyer Place / Edmund Street / Benhill Road / Wilson Road / Graces Road / Graces Mews / Camberwell Grove (via alley) / Grove Lane / De Crespigny Park / Denmark Hill following the Lambeth boundary to Coldharbour Lane / Denmark Road / Flodden Road and Camberwell New Road returning to the start.
34. The classes of premises to which the policy applies is defined as follows: night clubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores and similar premises. Therefore relevant times recommended in the statement of licensing policy for licensed premises in this area are as follows:
- Closing time for restaurants and cafes:
 - Sunday to Thursday is 00:00
 - Friday and Saturday is 01:00.

Resource implications

35. 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 bands A.

Consultation

36. 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

37. 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

38. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

39. The principles which sub-committee members must apply are set out below.

Principles for making the determination

40. 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.

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 interested 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:

- 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

43. 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.

44. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- 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 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.

47. 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

48. 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

49. 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.

50. 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

51. 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.

52. 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.

53. 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.
54. 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.
55. 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.
56. 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.
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 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

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	Application for a premises licence
Appendix B	Conciliated representation from trading standards
Appendix C	Representations submitted by responsible authorities
Appendix D	Notices of decision from 20 March 2017 and 13 July 2018
Appendix E	Warning letter from visits on 27 October 2018 and 23 January 2019
Appendix F	Copy of current premises licence and plans
Appendix G	Map of the local area

AUDIT TRAIL

Lead Officer	Ian Smith, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	21 March 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	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	22 March 2019	