

<b>Item No.</b> 6.	<b>Classification:</b> open	<b>Date:</b> 26 March 2019	<b>Meeting Name</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Luxford Bar, 610 Old Kent Road London SE15 1JB	
<b>Ward(s) or groups affected:</b>		Old Kent Road	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers whether the interim steps impose on the 22 March 2019 are appropriate for the promotion of the licensing objectives and determine whether to withdraw, or modify, the those steps following representations made by the premises licence holder Luxford Bar Limited to the licensing sub-committee decision to in respect of the premises known Luxford Bar, 610 Old Kent Road London SE15 1JB.
2. **Notes:**
  - a) Under section 53B(8) of the licensing act 2003 the Licensing Authority must consider if interim steps are appropriate for the promotion of the licensing objectives within 48hours following the submission of representations under Section 53B(6) of the licensing act 2003.
  - b) A copy of the representations are attached as Appendix A.

## BACKGROUND INFORMATION

### The Licensing Act 2003

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 summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the Licensing Authority to respond by taking interim steps quickly, where appropriate, pending a full review.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

8. The premises in respect of the premises licence consists of a restaurant called the Luxford Bar, 610 Old Kent Road London SE15 1JB.
9. The premises licence was first issued on 30 December 2015 under the current premises licence holder name of Luxford Bar Limited.
10. On 05 January 2017 Luxford Bar Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence. This application was rejected in March 2017 as it was not advertised in accordance with regulations.
11. On 11 November 2017 Luxford Bar Limited again applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence to extend the hours for the sale of alcohol and opening times. This was heard at a licensing sub-committee hearing on 16 February 2018, at which point the variation was granted.
12. On 09 April 2018 Luxford Bar Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence to extend the hours for the regulated entertainment and late night refreshment in line with the alcohol hours. This application was granted as unopposed.
13. The details of the current premises licence are as follows:
  - Opening hours:
    - Sunday to Thursday from 11:30 to 23:30
    - Friday and Saturday from 11:30 to 01:00
  - The sale by retail of alcohol (on sales only):
    - Sunday to Thursday from 11:30 to 23:00
    - Thursday and Friday from 11:30 to 00:30
  - The provision of late night refreshment (indoors):
    - Friday and Saturday from 23:00 to 00:30
  - Regulated entertainment in the form of live music and recorded music, films, Entertainment similar to live/recorded music and performances of dance (indoors):
    - Sunday to Thursday from 11:30 to 23:00
    - Thursday and Friday from 11:30 to 00:30
14. A copy of the premises licence is attached as Appendix B.

### **Designated premises supervisor**

15. The designated premises supervisor (DPS) is Melodie Mavoungou who has been DPS since the licence was first issued.

### **The review application and certificate**

16. On 21 March 2019 the Metropolitan Police Service applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Luxford Bar, 610 Old Kent Road London SE15 1JB.
17. The application refers to a serious incident at 20:00 on 1 January 2019. The matter involves the suspect stabbing the male in the stomach on what is described as the dance floor inside the premises. The victim received a lacerated bowel and artery and spent several days in hospital having had an operation to repair the damage. This investigation is still ongoing.
18. A second incident refers On Sunday the 2 December 2018 where Police were called to the premises by a female claiming that she had been assaulted by her ex-partner. She alleges that she was thrown to the ground by her hair outside of club after being punched by the same suspect inside the venue. CCTV for this incident was requested by the investigating officer. The venue informed the officer that there was no coverage of the area where the incident took place. On receipt of the footage the officer noted that at precisely 22:00 the footage stops, therefore the incident was not covered. The victim was informed of this, who stated that she was aware that staff at the venue had been persuaded to delete the footage.
19. On the 2 February 2019 Police officers from the night time economy visited the premises and found two breaches of the premises licence and served a section 19 closure notice, the breaches are:
  - a. 289: CCTV to be kept for 31 days, the CCTV only went back to 14 January 2019
  - b. 336: A personal licence holder shall be on the premises at all times after 8pm when intoxicating liquor is being supplied. There was no personal licence holder on the premises.
20. On the 16 March 2019 officers from the night time economy team visited the premises and found the same two breaches of the premises licence. 289 and 336.
21. A copy of the application, supporting statements and certificate are attached to this report as Appendix C.

### **Representations on behalf of the premises licence holder**

22. On 25 March 2018 the DPS Melodie Mavoungou submitted representations on the behalf of the premises licence holder. Two separate emails were also received from both directors of Luxford Bar Limited giving Melodie Mavoungou the authority to speak on behalf of the company.
23. The representations state that the evidence given by the Police is inaccurate information, an inaccurate depiction of incidents and that a personal license holder being on grounds on the mentioned dates.
24. The DPS will present supporting evidence before or at the hearing.
25. The representations are attached as Appendix A.

### **The review procedure**

26. A hearing to decide if it was appropriate to impose interim steps was held on 22 March 2018.

27. The licensing sub-committee decided to suspend the premises licence until the review application has been determined. A copy of the decision and reasons are attached as Appendix D.
28. The current hearing is for the purpose of considering representations made on behalf of the premises licence holder Luxford Bar Limited by the DPS Melodie Mavoungou and whether the interim steps imposed on the 22 March 2019 are appropriate for the promotion of the licensing objectives and to determine whether to withdraw, or modify, those steps.
29. In considering the interim steps the licensing sub-committee must have regard to:
  - a. the certificate that accompanied the application;
  - b. any representations made by the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated); and
  - c. any representations made by the holder of the premises licence.
30. The review is currently being consulted on and is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full hearing of the licensing sub-committee.
31. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

### **Operating History**

32. On 11 March 2016 a licensing inspection of the premises was undertaken by a licensing officer. At the time of the inspection breaches of licence conditions 336, 4A1, 347 and 309 were noted. A re-inspection of the premises was undertaken on 18 October 2016 and the premises were found to be being operated compliantly.
33. On 23 April 2016 a local resident made a complaint of loud music emanating from the premises causing a nuisance when the premises are in operation.
34. On 22 May 2016 the resident made a further complaint of loud music emanating from the premises causing a nuisance when the premises are in operation.
35. On 28 January 2017 the resident made another complaint of loud music emanating from the premises causing a nuisance when the premises are in operation and an allegation that the premises were being operated outside of the operational hours permitted by the premises licence issued in respect of the premises. As a result of the complaint a visit was made to the premises on 29 January 2017. Subsequent to the visit of 29 January 2017 warning letters were sent to the licensee, DPS and premises manager as a result of the visit.
36. On 27 March 2017 a different local resident made a complaint of loud music emanating from the premises causing a nuisance when the premises are in operation.
37. On 18 June 2018 a complaint of public nuisance. My complaint concerns the noise coming from those who attended an event at Luxford Bar & Kitchen, on Sunday 10 June 2018. Which alleged that the noise began at around 23:15 consisting of loud obnoxious females and males screaming on the top of their voices of which extremely disgusting language could be heard at some points. I phoned Luxford at 23:20 and asked that a member of staff attend Green Hundred road to move those who had congregated downstairs outside my window and was told someone would come down and move them on. This then continued until about 23:45 when they all got in their cars and decided to leave. The noise not only woke me up from my sleep but also prevented me from going back to sleep. This

isn't a one off either, it occurs almost every Sunday as they hold an event at Luxford which is extremely popular and heavily attended. My other complaint also relates to the number of people that drive to this event and take up resident parking, of a bank holiday and New Year's Eve being the worst. It's got the point that I can't go out of a Sunday evening or I have to walk out of fear that I won't be able to find a parking space in the resident parking, along Green Hundred road or Bird in Bush road.

38. On 11 October 2018 another resident made a complaint of public nuisance regarding in particular on Sunday nights, when the resident alleges that patrons of this establishment regularly make large amounts of noise while arriving and leaving, for some time after it is closed. There is also regularly much illegal parking along footpaths and dangerous driving associated with the same patrons. It is regular and very disturbing to residents as it tends to take place directly under the windows of blocks of flats, as well as in their carparks, as well as dangerous traffic-wise. The venue appears to have no interest whatsoever in mediating what goes on outside the premises.
39. Details of night-time licensing inspections and visits to the premises are attached as appendix E.
40. A list of all Temporary Event Notices submitted in respect of the premises is attached in appendix F.

#### **The local area**

41. A map of the local area is attached at Appendix G.

#### **Southwark Council statement of licensing policy**

42. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. The policy came into effect on 1<sup>st</sup> 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.

### **Resource implications**

43. There is no fee associated with this type of application.

### **Consultation**

44. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

### **Community impact statement**

45. 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**

46. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003 and representations against interim steps made by the premises licence holder.

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

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

48. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving representations to interim steps imposed.

- The representations are properly made in accordance with Section 53B of the Act.
- The licensing authority has considered the ground(s) of representations to be relevant to the licensing objective for prevention of crime and disorder and not a repeat of earlier matters.

49. The four licensing objectives are:

- The prevention of crime and disorder
- The protection of public safety
- The prevention of nuisance
- The protection of children from harm.

50. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Consider the current steps to be appropriate to promote the licensing objectives,
- Remove the interim steps, or
- Modify the interim steps.

51. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee. The steps can be modified and extended at the full hearing to until any appeal is determined.
52. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than a appropriate and proportionate response.
53. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

54. Where the authority takes interim steps an application for review it must notify the determination and reasons why for making it to:
  - The holder of the licence
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

55. 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
    - To 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.

56. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

### **Council's multiple roles and the role of the licensing sub-committee**

57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
63. 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.
64. There is no right of appeal to a magistrates' court against the licensing authority's decision regarding the setting of interim steps at this Stage.



## Guidance

65. 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

66. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

## REASONS FOR LATENESS

67. The reasons for lateness are that when an application for an expedited summary review is received from the police under section 53a of the Licensing Act 2003 the council's licensing authority has a statutory duty hold a hearing within 48 hours from receipt of the application to consider interim steps that may be placed on the premises licence until such time as the application can be fully determined.

## REASONS FOR URGENCY

68. The Council has a statutory duty under section 53a to hold an interim hearing within 48 hours of receipt of a summary review.

## 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	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

## APPENDICES

Name	Title
Appendix A	Copy of PLH representations
Appendix B	Copy of review application
Appendix C	Copy of the premises licences
Appendix D	Decision to impose interim steps and reasons
Appendix E	Licensing visits
Appendix F	Temporary event notices
Appendix G	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Ian Smith, Strategic Director of Environment and Leisure	
<b>Report Author</b>	David Franklin, Team Leader Licensing	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
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Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
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