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| Item No. 5. | Classification: Open | Date: 16 May 2019 | Meeting Name: Licensing Sub-Committee |
| Report Title | | Licensing Act 2003: Midnight Munchies, 332b Camberwell New Road, London SE5 0RW | |
| Ward(s) of group(s) affected | | Camberwell Green | |
| From | | Director of Environment | |

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Midnight Munchies Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Midnight Munchies, 332b Camberwell New Road, London SE5 0RW 8QZ.
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 18 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 Appendix B. 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 an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.

6. In carrying out its licensing functions, a licensing authority must also have regard to
- The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence application

8. On 15 March 2019 Midnight Munchies Limited applied to this council for the grant of a premises licence in respect of Midnight Munchies, 332b Camberwell New Road, London SE5 0RW. The premises are described in the application simply as being:

“Premises comprises of two floors, a ground floor and a basement and shall operate as a food establishment specialising in desserts.

On the ground floor is a serving counter and a customer eating area.

The basement comprises of an eating area, kitchen, office and toilet. The eating area provides a maximum of 40 ‘covers’.

It is acknowledged that these premises sit within the Council's cumulative impact policy area (Camberwell). The nature and style of these premises, along with the proposed measures are designed so as not to add to the overall cumulative impact in the area.

These premises are primarily a restaurant / café premises which fall outside of the type of premises to which the policy refers, where the rebuttable presumption is to refuse new applications...”

9. The application and is summarised as follows:
- The sale by retail of alcohol (both on and off sales):
 - Sunday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 01:00 (the following day)
 - The provision of late night refreshment (both indoors and outdoors):
 - Sunday to Thursday from 23:00 to 00:00
 - Friday and Saturday from 23:00 to 01:00 (the following day)
 - Opening hours:
 - Sunday to Thursday from 09:00 to 00:30
 - Friday and Saturday from 09:00 to 01:30 (the following day).

10. The proposed designated premises supervisor of the premises is Josephine Mochia who is awaiting a personal licence by London Borough of Croydon. Josephine Mochia is the Director of Midnight Munchies Limited.
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. A representation has been submitted by this council's environmental protection team and licensing responsible authority. These representations are available in Appendix B.
13. The environmental protection team made a representation drawing members' attention to the premises being within the Camberwell cumulative impact policy area. They note a lack of planning permission, a history of complaints of noise and raise concerns in regards to the running of the business.
14. The representation from the council's licensing authority again draws on the location of the premises within the cumulative impact policy area, and the hours associated with this. They advise that the hours requested by the applicant fall outside of the Southwark licensing policy. There are also concerns regarding the consumption of alcohol without food.
15. The Metropolitan Police Service (Licensing Division) have not made an objection, but note that the premises lies within the Camberwell cumulative impact policy area. This is included for information in Appendix C.
16. The planning department have not made an objection, but have made comment on the application, which is also included for information in Appendix C.

Representations from other persons

17. There are no additional representations from other persons.

Conciliation

18. The applicant's agent was sent copies of all the submitted representations. At the point that this report was published, no representations had been conciliated.

Premises history

19. The premises has been previously run as a café under the name 'SE5 Café'. No premises licence was in place, although a number of TENs were issued to the premises between February and May 2019 which are unrelated to the current applicant. The premises has remained closed since that time.
20. There is no recent history of complaints at this premises since it has remained closed. However, under previous management, complaints had been received in relation to noise/music egress and unlicensed activities.

Map

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

Presco Food and Wine, 12 Camberwell Green, London SE5 7AF, licenced for:

- The sale by retail of alcohol (off sales):
 - Monday to Sunday: 24 hours

Old Dispensary, 325 Camberwell New Road, London SE5 0TF, licensed for:

- The sale by retail of alcohol (on and off sales):
 - Monday to Sunday : 09:00 to 00:30
- The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 00:30

Tesco Stores, 316-322 Camberwell New Road, London SE5 0RW, licensed for:

- The sale by retail of alcohol (off sales):
 - Monday to Sunday: 06:00 to 23:00

Perfect Grilled Chicken, 336 Camberwell New Road, London SE5 0RW, licensed for:

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

UK Food and Wine, 338 Camberwell New Road, London SE5 0RW, licensed for:

- The sale by retail of alcohol (off sales):
 - Monday to Sunday: 08:00 to 01:00 (the following day)

Supersave Express, 350 Camberwell New Road, London SE5 0RW, licensed for:

- The sale by retail of alcohol (off sales):
 - Monday to Sunday: 24 hours

Camberwell Superstore, 34 Camberwell Church Street, SE5 8QZ, licensed for:

- The sale by retail of alcohol (off sales only):
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30

The Camberwell Shark, 332c Camberwell New Road, London SE5 0RW, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Wednesday and Thursday: 12:00 to 22:00
 - Friday and Saturday: 12:00 to 22:30.

Southwark council statement of licensing policy

22. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. 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. To be read in conjunction with Appendix B to the policy.
- 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.

23. 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.

24. Within Southwark's statement of licensing policy, the premises are identified as being within the Camberwell cumulative impact policy (CIP) area. Under the Southwark statement of licensing policy 2016 - 2020 the local CIP applies to the following premises:

- night clubs, pubs and bars, off-licences, grocers, supermarkets, convenience stores and similar premises

25. The premises is also within the Camberwell district town centre area. Under the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for the following categories of premises:

- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00
- Public houses, wine bars or other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00
- Night clubs (with sui generis planning classification):
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00.

Camberwell CIP

26. On 5 November 2008, council assembly agreed that it was appropriate and necessary to introduce a local policy dealing with the cumulative impact of licensed premises in the Camberwell area.

27. 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.

28. The classes of premises to which the policy applies is defined as follows – nightclubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores and similar premises.

Resource implications

29. 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 B.

Consultation

30. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

31. 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

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

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

Principles for making the determination

34. 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.

35. 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.

36. 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

37. 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.

38. The four licensing objectives are:

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

39. 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.

40. 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.

41. 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

42. 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

43. 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.
44. 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

45. 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.
46. 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.

47. 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.
48. 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.
49. 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.
50. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
51. 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.
52. 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

53. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

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

BACKGROUND DOCUMENTS

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

APPENDICES

| Name | Title |
|------------|--|
| Appendix A | Application for a premises licence |
| Appendix B | Representations submitted by responsible authorities |
| Appendix C | Notifications submitted by police and planning |
| Appendix D | Map of the local area |

AUDIT TRAIL

| | | |
|---|---|--------------------------|
| Lead Officer | Mick Lucas, Director of Environment | |
| Report Author | Andrew Heron, Principal Licensing Officer | |
| Version | Final | |
| Dated | 2 May 2019 | |
| Key Decision? | No | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments sought | Comments included |
| Director of Law and Democracy | Yes | Yes |
| Strategic Director of Finance and Governance | Yes | Yes |
| Cabinet Member | No | No |
| Date final report sent to Constitutional Team | | 2 May 2019 |