

Item No. 7.	Classification: Open	Date: 18 April 2019	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Luxford Bar, 610 Old Kent Road London SE15 1JB – Review under Section 53A and Section 167	
Ward(s) or groups affected:		Faraday	
From:		Director of Environment	

RECOMMENDATION

1. That the licensing sub-committee considers:
 - a) an application made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area for the review of the premises licence in respect of the premises known as Luxford Bar, 610 Old Kent Road London SE15 1JB and
 - b) a review instigated under section 167 of the Licensing Act 2003 following notification from the courts of the issue of a closure order issued under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014.
2. Notes:
 - a) The grounds for the review are stated in this report. A copy of the premises licence review application is attached as Appendix A and further information as Appendix B.
 - b) A copy of the closure notice is included in Appendix I.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C.
 - 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 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 the review of a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both).

KEY ISSUES FOR CONSIDERATION

The premises licence

8. The premises in respect of the premises licence consists of a restaurant on the ground floor of a railway arch 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 C.

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 20:00hrs on 01 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 02 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 10pm 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 02 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:
- 289: CCTV to be kept for 31 days, the CCTV only went back to 14/01/2019
 - 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 Police 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 A1.
22. On 31 March 2019 a Police officer of the rank of inspector served a closure notice under section 76 of the Anti-social Behaviour, Crime and Policing Act 2014, this notice closes the premises to all persons, unless exemptions are specified, for a period of 24 hours, the notice can be extended for a further 24 hours by a Police Officer of the rank of Superintendent.
23. On 2 April 2019 the police obtained a closure order from the Magistrates courts section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 for a period of three months.
24. The information provided to the Court in open session provides further evidence submitted by the police in support of their application. A copy of the closure order and information is included as Appendix B.

Representations from the premises licence holder

25. At the time of writing no further representations have been submitted from the premises licence holder for the full review.
26. Representations and further evidence from the premises licence holder submitted in regard to interim steps are submitted as Appendix D.

Representations from responsible authorities

27. At the time of writing no representations have been submitted by Responsible Authorities. Representations from Responsible Authorities can be received anytime up to 24-hours before the review application on 18 April 2019.

Representations from other persons

28. At the time of writing two representations have been submitted by other persons one from the Unwin and Friary TRA a second from a resident. Representations from other persons can be received within 10 working days up to the date of the hearing.
29. A copy of the representations are included in Appendix J.
30. Any further representations received within the time will be presented at the hearing.

Interim steps

31. A hearing to decide if it was appropriate to impose interim steps pursuant to s.53A Licensing Act 2003 was held on 22 March 2018.
32. The Licensing Sub-Committee decided to suspend the premises licence until the review application has been determined.

33. On 22 March 2019 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.
34. The representations stated 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.
35. On 26 March 2019 the Licensing Sub-Committee considered the representation under s.53B Licensing Act 2003 and the Police evidence and decided to lift the suspension of the premises licence and impose the alternative interim steps to add operating conditions.
36. On 28 March 2019 a further representation was received from the premises licence holder to the conditions imposed as steps to promote the licensing objectives.
37. On 01 April 2019 Licensing Sub-Committee considered the further representations under s.53B Licensing Act 2003 and decided to further modify steps imposed by adjusting three of the operating conditions, the final interim steps are:
 - i. That the suspension of the premises licence is withdrawn.
 - ii. That an ID scanning system of a specification to the reasonable satisfaction of the Police shall be installed and maintained at the premises. The system should be capable of sharing information about banned customers with other venues, identify the hologram on ID, read both passports and ID cards and be able to identify fake or forged ID documents to a reasonable standard. The system will be in operation at all times after 21:00 when the premises are in operation and will be used to record the details of all persons entering (and re-entering) the premises including staff, members of the public, performers and their assistants. Entry to the premises will not be permitted without the production of the relevant ID document.
 - iii. That at all times the premises are in operation under the premises licence there will be a minimum of 5-people to include: the owner(s), directors, senior managers and personal licence holders trained to a satisfactory standard able to operate the ID scan system and CCTV and able to retrieve data from the system on request of police, council or other authorised officers.
 - iv. That from 21:00 hours at least two SIA registered door supervisors will be provided with, and will use, electronic search wands. The electronic search wands shall be used at all times that the premises are open in respect of the search of all persons who wish to enter and re-enter the premises. This includes all DJ's and associated staff and their equipment.
 - v. That a refusals register is maintained in respect of the ID scan. This register will be immediately available for inspection on the request of police, council or authorised officers.
 - vi. That all staff will be trained in the use and maintenance of both the CCTV and ID scanner. Records shall be kept pertaining to such training will be

updated every 6 months and shall be made immediately available to officers of the police and the council upon request.

- vii. Condition 343 of the premises licence (*"A Police Event Risk Assessment Form must be submitted to Southwark Police Licensing Unit 14 days in advance of any event at the premises when the premises will be in operation under the Licensing Act 2003 if a DJ or MC is performing at the premises and the event is promoted in some form by either the venue or an outside promoter, and whether entry to the event is free, by invitation only, through pay on the door, by ticket or any combination thereof"*) is suspended.

- viii. That there will be no externally promoted events.

38. Representations and further evidence from the premises licence holder submitted in regard to interim steps are submitted as Appendix D.
39. The three notices of decision are attached as Appendix E.

Closure order issued by the Magistrate's Court

40. On 10 April 2019 the licensing authority received notification from Magistrates' Court that the Metropolitan Police applied for a closure order which was granted and has been served under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014.
41. The premises owner can appeal the order within 21 days to the Crown Court. The Crown Court
42. The effect of this is that under section 167 of the Licensing Act 2003 the relevant licensing authority must review the premises licence. The review must commence within 10 working days and must be determined within 28 days.
43. The closure order lasts for 3 months, the Police can apply for a 3 month extension to the closure order.
44. The receipt of the closure order by the Licensing Authority triggers a review of the premises licence which must commence within 10 working days and must be determined within 28 days.
45. The Police submitted evidence in both an open session and a closed session of the court. A copy of the information submitted in open session is attached in Appendix B.
46. The Licensing Sub-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.
47. A copy of the closure notice is submitted as Appendix I.

Operating History

48. 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.

49. 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.
50. On 22 May 2016 the resident made a further complaint of loud music loud music emanating from the premises causing a nuisance when the premises are in operation.
51. As a result of the incident on 22 May 2016, on 21 October 2016 the DPS Ms Mavoungou and Luxford Bar attended Camberwell Green Magistrates' Court and pleaded guilty to the breach of an Abatement Notice contrary to s.80(4) Environmental Protection Act 1990. Ms Mavoungou received a 12-month conditional discharge and Luxford Bar received a £600 fine and ordered to pay costs of £400 and a victim surcharge of £60.
52. 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.
53. 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.
54. On 18 June 2018 a complaint of public nuisance was received concerning noise coming from the patrons of Luxford Bar & Kitchen. The complainant advised that on Sunday 10th June 2018. loud obnoxious females and males could be heard screaming on the top of their voices of which extremely disgusting language could be heard at 23:15 . The complainant phoned the premises at 23:20 and asked that a member of staff attend Green Hundred Road to move their patrons who had congregated outside the complainant's window. The noise continued until about 23:45 when they all got in their cars and decided to leave. The noise woke the complainant up from their sleep but also prevented them from going back to sleep. The complainant commented that this occurred every Sunday as Luxford Bar hold an event every Sunday that is extremely popular and heavily attended. Patrons drive to the event and take up resident parking; a bank holidays and New Year's Eve being even worse. The complainant also alleged that they could no longer go on Sunday evenings as they were never able to find a parking space nearby.
55. 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 Luxford Bar regularly made large amounts of noise when arriving and leaving and for some time after the premises close. Patrons also regularly illegal parking along footpaths and drive in a dangerous fashion. The noise was very disturbing to residents as it was alleged, takes 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.
56. Details of night-time licensing inspections and visits to the premises are attached as appendix F.

57. A list of all Temporary Event Notices submitted in respect of the premises is attached in appendix G.

The local area

58. A map of the local area is attached at Appendix H.

Southwark Council statement of licensing policy

59. Council assembly approved Southwark's statement of licensing policy 2016-20 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.

60. 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.

Resource implications

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

Consultation

62. There is no public consultation for an interim hearing.
63. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

Community impact statement

64. 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

65. The sub-committee is asked to determine, under Section 53C of the Licensing Act 2003, following an application, made under Section 53A of the same act, for a review of premises licence.
66. 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.
67. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

68. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where:
 - The application is properly made in accordance with Section 53C of the Act.
 - The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.
69. 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.
70. 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:
 - Modify the conditions of the licence by altering, omitting or adding any condition.
 - Exclude a licensable activity from the scope of the licence.
 - Remove the designated premises supervisor.
 - Revoke the premises licence.

71. For the purpose of determining a relevant representation under section 53 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
72. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
73. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
74. 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 an appropriate and proportionate response.
75. 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.
76. With regard to the interim steps, the licensing authority has the same considerations as with the determination of the review under s.53C, with the exception of revocation, where the alternative is the suspension of the licence. The steps will remain in place until the determination of the review application or the determination of any appeal of it.
77. The authority may decide to take no action is if it finds no interim steps are appropriate to promote the licensing objectives.
78. 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 an appropriate and proportionate response.
79. 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

80. 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

81. 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
 - 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.

82. 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

83. 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.

84. 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.

85. 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.
86. 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.
87. 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.
88. 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.
89. 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.
90. 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

91. 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

92. 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	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 review application & supporting documentation
Appendix B	Copy of closure order & application supporting documentation
Appendix C	Copy of the existing premises licences
Appendix D	Representation from PLH & supporting evidence
Appendix E	Notices of decision pertaining to the interim steps
Appendix F	Council NTE Licensing visits
Appendix G	Temporary event notices
Appendix H	Map of local area
Appendix I	Copy of closure order
Appendix J	Representations from other persons

AUDIT TRAIL

Lead Officer	Strategic Director of Environment and Leisure	
Report Author	David Franklin, Team Leader Licensing	
Version	Final	
Dated	11 April 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	11 April 2019	