

Item No. 7.	Classification: Open	Date: 13 June 2019	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Kanella Latin House, 85 Camberwell Road, London SE5 0EZ	
Ward(s) of group(s) affected		Faraday	
From		Director of Environment	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application submitted by Angela Maria Aguilar Montesdeoca for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Kanella Latin House, 85 Camberwell Road, London SE5 0EZ.
2. Notes:
 - a) The application is for a premises licence and was submitted under Section 17 of the Licensing Act 2003. The application is subject to representations and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 8 to 10 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 17 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as Appendix B. A map showing the location of the premises is attached to this report as Appendix L.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to applications 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 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 April 2019 Angela Maria Aguilar Montesdeoca applied to this council for the grant of a premises licence in respect of Kanella Latin House, 85 Camberwell Road, London SE5 0EZ.
9. The application is summarised as follows:
- **Films**
 - Monday to Thursday: 10:00 to 23:00
 - Friday to Sunday: 10:00 to 02:00
 - New Years Eve : 10:00 to 06:00
 - **Recorded music (Indoors)**
 - Friday to Sunday: 10:00 to 02:00
 - New Years Eve: 10:00 to 06:00
 - **Late night refreshment**
 - Friday to Sunday: 23:00 to 02:00
 - New Years Eve: 23:00 to 05:00
 - **Sale of alcohol (on and off sales)**
 - Monday to Thursday: 10:00 to 23:00
 - Friday to Sunday: 10:00 to 02:00
 - New Years Eve: 10:00 to 06:00
 - No Off Sales after 22:00

- **Proposed opening hours of the premises**
 - Monday to Thursday]: 09:00 to 23:00
 - Friday to Saturday; 09:00 to 02:00
 - Sunday: 10:00 to 02:00
 - On New Years Eve : 09:00 to 06:00.
- The application and premises are explained as follows:

“The property is a restaurant located on the ground floor only within a terrace of shops with residential upper floors. These set back from the front and rear boundaries to overlook front and rear flat roof areas over the shops. Public access to the restaurant and other shops is from the front only. Access to the upper floors is from the rear part only also used for shop deliveries and collecting waste”.

10. The premises licence application form provides the applicant’s operating schedule. Parts B, 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 then the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached to this report as Appendix A.

Designated premises supervisor

11. The proposed designated premises supervisor (DPS) is Angela Maria Aguilar Montesdeoca.

Representations from responsible authorities

12. Representations were received by the Metropolitan Police Service and licensing as a responsible authority. Details of their objections are detailed at Appendix B.
13. The police state that the applicant has failed to consider the detail provided in Southwark’s statement of licensing policy with regard to the framework hours for restaurants within residential areas of 11pm. The police state that the applicant requested hours until 02:00 on a Friday and Saturday which would be three hours outside of recommended restaurant hours. No consideration has been given to additional control measures for the licensing sub committee to consider deviating from framework hours.
14. Additionally, the police advise that the applicant has not sufficiently addressed the prevention of crime and disorder licensing objectives. The police state that no clear, precise or enforceable conditions had been provided within the operating schedule.
15. Licensing as a responsible authority have made objections to this premises licence application. They state that the representation is submitted with concerns for the prevention of public nuisance, the prevention of crime and disorder, the protection of children from harm and public safety.
16. Additionally, licensing as a responsible authority advise that the premises, previously known as Red Sea has held a premises licence which was revoked by the licensing sub-committee on 21 January 2019 following a review submitted for serious crime and disorder by the Metropolitan Police Service. A copy of the notice of decision

from that hearing is attached to this representation as Appendix G. There are also concerns that the previous licensee Ms Letteberham Abraha Tafla may still be the controlling factor in this business and considering the previous history of this premises would have no confidence in her to promote the licensing objectives.

Representations from other persons

17. No representations have been received from other persons.

Conciliation

18. Following conciliation discussion between the applicant's agent, the police and licensing as a responsible authority the applicant's agent has now reduced the terminal hour for all licensable activities in this application in line with the Southwark statement of licensing policy 2016 -2020 which is detailed in Appendix J.
19. Additionally, the applicant's agent has conciliated with the police and agreed to amend the application operating schedule to state that Intoxicating liquor shall not be sold or supplied on the premises other than to persons having table food (Tapas or other table meals) and is for consumption by such person as an ancillary to this food. Details of this conciliation discussion and withdrawal of the Police objection is detailed at Appendix L
20. The terminal hour for all licensable activities sought by the applicant in this new premises licence application has been reduced to 23:00.
21. Additionally, the applicant has proposed additional supplementary conditions in relation to promoting the licensing objective of the prevention of crime and disorder. These conditions are detailed at Appendix K.
22. A lease agreement and companies house search document pertaining to the limited company which has been formed in the name of Kanella Latin House Ltd has been provided by the applicant. Both documents are detailed at appendix H and I.
23. At the time of publication of this report licensing as a responsible authority still maintain their objection to this application.

Premises history

24. A premises licence was issued to Ms Zege Abraha and Ms Letteberhan Tafla on 16 January 2008. Ms Abraha was specified as the designated premises supervisor (DPS).
25. On 18 February 2010 a licensing inspection of the premises was undertaken. One breach of the Licensing Act 2003 was substantiated in that the premises licence summary was not displayed at the premises. A re-inspection of the premises was undertaken on 12 March 2010 and the premises were found to be operating compliantly.
26. On 5 November 2010 an application, to have immediate effect, was submitted to transfer the licence to Ms Letteberhan Tafla solely. On the same date an application, to have immediate effect, was submitted to specify to have immediate effect, as the DPS of the premises. An amended licence, pursuant to the above, was issued on 5 November 2010.

27. On 20 December 2010 an application to vary the licence was submitted. The application sought to extend the hours in respect of the licensable activities permitted by the licence and also to add further licensable activities to the licence. The application was refused by the licensing sub-committee on 7 February 2011.
28. On 14 July 2011 an application to vary the licence was submitted. The application sought to extend the hours in respect of the licensable activities permitted by the licence and also to add further licensable activities to the licence. The application was granted and an amend licence was issued on 9 September 2011. The application issued on 9 September 2011 is the current licence.
29. On 10 July 2016 police officers visited the premises. The premises were operating outside of permitted operating hours and the following breaches of the premises licence were noted; (i) there was no personal licence holder working at the premises (breach of condition 336), (ii) there were no SIA registered door supervisors working at the premises (breach of condition 290) and (iii) CCTV footage could not be made immediately available to police officers (breach of condition 289). A closure order was served under section 19 Criminal and Justice Police Act 2001 in regards to the above.
30. On 22 July 2016 a licensing officer attended the premises and undertook an induction with the licensee. During the induction the terms and conditions of the licence were fully explained, and the possible consequences of breaching licence conditions, or committing offences under the Licensing Act 2003, was explained to the licensee.
31. On 3 August 2016 an application to vary the licence was submitted. The application sought to extend the hours in respect of the licensable activities permitted by the licence. The application was withdrawn on 6 September 2016.
32. On 7 August 2016 the premises were inspected by a licensing officer and a police officer as part of the Night Time Economy Team (NTET) duties on that date. The following breaches of the premises licence were noted; (i) there were no SIA registered door supervisors working at the premises (breach of condition 290), (ii) the CCTV system was not operational and CCTV footage could not be made immediately available to police officers (breach of conditions 288 & 289) and (iii) there were no staff training records as required by condition 4AB. The licensing officer explained the licence breaches and explained the conditions and the consequences should further breaches of the licence be substantiated.
33. This premises licence was issued on 3 October 2016, further to an expedited review initiated by the Metropolitan Police Service on 7 September 2016 following a violent incident. The application went to an Interim Hearing of the Southwark licensing sub-committee on 9 September 2016 with the full Hearing held on 3 October 2016. Copies of both notices of decision are available in Appendix D and Appendix E for member's information.
34. The licence has remained unchanged in that time; however a minor variation application was made on 24 August 2018 to amend the hours as above. This application was rejected. A full variation application was made on 5 September 2018 to extend alcohol and opening times and to amend conditions; however, this application was withdrawn at its Hearing on 26 October 2018.
35. Since this licence was granted, temporary events notices have been applied for and issued. The table below outlines temporary events notices submitted at the premises in the last 12 months.

Applicant	Activities	Dates	Counter Notice
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	11/03/2017 – 12/03/2017 01:00 – 05:00 Both Days	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	16/04/2017 – 17/04/2017 12:00 – 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	20/05/2017 – 20/05/2017 01:00 – 05:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	26/08/2018 – 27/08/2018 00:00 – 04:00	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	09/09/2018 – 10/09/2018 00:00 – 03:30	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	16/09/2018 – 17/09/2018 00:00 – 02:30	No
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	23/09/2018 – 24/09/2018 12:00 – 03:00	Yes. Late TEN objected to by Police
Letteberhan Abraha Tafla	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	23/12/2018 – 24/12/2018 10:00 to 03:00	Yes. Late TEN objected to by Police
Letteberhan	Sale by retail of alcohol to be	27/01/2019 –	Yes –

Applicant	Activities	Dates	Counter Notice
Abraha Tafla	consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	28/12/2019 11:30 to 03:00	Rejected
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	20/03/2019 – 26/03/2019 11:00 to 02:00	Application withdrawn
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises	24/03/2019 – 25/03/2019 12:00 to 23:00	Yes – Rejected
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	27/03/2019 – 02/04/2019 11:00 to 23:00 on Wednesday, Thursday, Monday & Tuesday 11:00 to 02:00 Friday, Saturday and Sunday	No
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	29/03/2019 – 31/03/2019 11:00 to 02:00	Application withdrawn
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	29/03/2019 – 31/03/2019 11:00 to 02:00	No
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	12/04/2019 – 14/04/2019 11:00 to 02:00 on the 12 th and 13 th /04/2019 11:00 to 00:00 on the 14/04/2019	No

Applicant	Activities	Dates	Counter Notice
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	20/04/2019 to 21/04/2019 11:00 – 02:00	Police Objection TEN's Rejected
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	27/04/2019 to 28/04/2019 11:00 – 02:00	Police Objection TEN's Rejected
Angela Maria Aguilar Montesdeoca	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	25/05/2019 to 26/05/2019 11:00 – 23:00	No

36. On 5 September 2018, an inspection was carried out at the premises, during which 8 breaches were found, further to which the licence holder signed a simple caution. A second inspection took place on 15 December 2018, during which further breaches were discovered.
37. On 22 November 2018, an application was submitted by the Metropolitan Police under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Letteberhan Abraha Tafla in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ. This application is attached at Appendix F.
38. The review application was submitted in respect of the prevention of crime and disorder licensing objective and in summary states that the following has been witnessed and / or taken place at the premises.
- The premises was the subject of a summary licence review in September 2016 following an incident of serious crime and disorder. A male victim was punched and kicked to the ground and had his finger bitten by the suspect. The victim received injuries consistent with grievous bodily harm. On 9 September 2016 at the interim measures hearing, the licensing sub committee suspended the premises licence pending the full review hearing on the 3 October 2016.
 - At the full review hearing on 3 October 2016 representations the Licensing Sub Committee suspended the premises licence for a period of six weeks and modified the premises licence.
 - The premises licence holder agreed to change the operation of the premises to a restaurant and would no longer provide any type of regulated entertainment.
 - On 13 August 2018 at around 02:00 the police were called to the premises to a suspected attempted murder. On arrival it was established that a male had tried to gain entry to the premises but was refused due him being intoxicated. The male suspect left the premises then returned later and attempted to stab a

member of the security team outside of the venue. The male suspect was detained and arrested for attempted murder. Further investigation showed that in fact the suspect for the attempted murder had been allowed access to the premises, CCTV from the venue shows him apparently intoxicated and drinking what appears to be a bottle of beer on the dance floor.

- The premises was operating in breach of its premises licence and was open to the public at least two-and-a-half hours after they should have been closed to the public.
 - On 5 September 2018 at 18:00 a representative from Southwark Council's licensing team visited the premises and found it to be operating in breach of eight of the conditions of the premises licence.
 - On 30 October 2018 the licensing sub-committee convened to consider an application from the premises licence holder for a variation to the premises licence to extend the hours permitted for the sale of alcohol and opening times. The premises licence holder and their representative provided evidence to the sub-committee as to why the variation should be granted.
 - During this evidence it became apparent that the premises regularly provided regulated entertainment by way of a DJ over the weekends, it also became apparent that there still remained only one personal licence holder at the premises, one of the promises made by the premises licence holder on 3 October 2016 was that a further two staff would become personal licence holders in breach of Condition 851. The application was then withdrawn by the Applicant at the Hearing.
39. On 21 January 2019 at the licensing sub-committee the premise licence for Red Sea, 85 Camberwell Road, London SE5 0EZ was revoked.
40. On 5 February 2019 an application was received to transfer the premises licence for Red Sea, 85 Camberwell Road, London SE5 0EZ to a new premises licence holder detailed on the application as Angela Maria Aguilar Montesdeoca.
41. This transfer application was rejected and the applicant was advised that the premises licence could not be transferred as it had been revoked. The applicant was advised that the previous premises licence holder had not lodged an appeal with the magistrates in the allotted period of time required so there was in fact no licence to transfer.

Deregulation of entertainment

42. On 6 April 2015 entertainment became deregulated and as a result:
- Live unamplified music is deregulated between 08:00hrs and 23:00hrs on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.

- Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
43. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
44. The showing of films has not been de-regulated.

The local area

45. A map of the local area is attached as Appendix M. The other licensed premises in the immediate vicinity are:

Emukay Restaurant, 91 Camberwell Road, London SE5 0EZ:

- The sale of alcohol to be consumed both on and off the premises
 - Monday to Sunday from 10:00 to 02:00.
- The provision of late night refreshment:
 - Monday to Sunday from 23:00 to 03:00.
- The provision of regulated entertainment in the form of live and recorded music, performances of dance and anything similar:
 - Monday to Sunday from 20:00 to 02:30.

Southbank Nightclub, 57-59 Camberwell Road, London SE5 0EZ, licensed for:

- The sale by retail of alcohol (on sales only):
 - Sunday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 02:30
 - Friday and Saturday from 10:00 to 04:30.
- The provision of late night refreshment (indoors and outdoors):
 - Sunday to Wednesday from 23:00 to 00:00
 - Thursday from 23:00 to 02:30
 - Friday and Saturday from 23:00 to 04:30.
- The provision of regulated entertainment in the form of films, performances of dance, live music and recorded music (indoors):
 - Sunday to Wednesday from 10:00 to 00:00
 - Thursday from 10:00 to 02:30
 - Friday and Saturday from 10:00 to 04:30.

Legacy Restaurant, 53 Camberwell Road, London SE5 0EZ, licenced for:

- The sale by retail of alcohol (on sales only):
 - Monday to Thursday from 10:00 to 00:30

- Friday to Sunday from 10:00 to 02:30.
- The provision of late night refreshment (indoors):
 - Monday to Thursday from 23:00 to 00:30
 - Friday to Sunday from 23:00 to 02:30.
- The provision of regulated entertainment in the form of performances of dance, live music and recorded music (indoors):
 - Monday to Thursday from 18:00 to 00:30
 - Friday to Sunday from 18:00 to 02:30

Dallas Chicken and Ribs, 30 Camberwell Road, London SE5 0EN, licensed for:

- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 01:00.

Southwark council statement of licensing policy

46. 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.
47. 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.
48. Within Southwark’s statement of licensing policy 2016 - 2020, the premises is outside of a cumulative impact policy area and within a residential area. Under the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Closing time for restaurants and cafes:
 - 23:00 daily.
 - Closing time for public houses, wine bars or other drinking establishments:
 - 23:00 daily
 - Night clubs (with sui generis planning classification) are not considered appropriate for this area

Resource implications

49. 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 band C.

Consultation

50. 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

51. 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

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

Principles for making the determination

54. 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.
55. 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.
56. 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

57. 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.
58. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
59. 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.
60. 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.

61. 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

62. 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

63. 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.

64. 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

65. 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.

66. 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.
67. 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.
68. 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.
69. 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.
70. 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.
71. 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.
72. 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

73. 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

74. 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	Copy of the application
Appendix B	Responsible Authority objection(s)
Appendix C	Copy of revoked premises licence number 010406
Appendix D	Notice of decision – 9 September 2016
Appendix E	Notice of decision – 3 October 2016
Appendix F	Copy of Review application – 22 November 2018
Appendix G	Decision Notice from Review application 21 January 2019
Appendix H	Lease Agreement
Appendix I	Companies House search
Appendix J	Applicants Agent conciliation discussion to reduce hours
Appendix K	Applicants Agent suggested supplementary proposed conditions
Appendix L	Applicants Agent and Police conciliation discussion and Police objection withdrawal
Appendix M	Map of the local area

AUDIT TRAIL

Lead Officer	Mick Lucas, Director of Environment	
Report Author	Richard Kalu, Principal Licensing Officer	
Version	Final	
Dated	22 May 2019	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	30 May 2019	