

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 1 August 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: The Horseshoe Inn, 26 Melior Street, London SE1 3QP	
<b>Ward(s) or groups affected:</b>		London Bridge and West Bermondsey	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by a local resident for a review of the premises licence issued in respect of the premises known as The Horseshoe Inn, 26 Melior Street, London SE1 3QP.
2. Notes:
  - a) The grounds for the review are stated in paragraph 12 and 13 of this report. A copy of the full application is provided as Appendix A.
  - b) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B.
  - c) Paragraphs 14 to 20 of this report deals with the representations submitted in regards to the review application. Copies of the representations together with responses received to the representations are attached as Appendices C, D and E.
  - 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 applications 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. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The current licence issued in respect of the premises known as The Horseshoe, 26 Melior Street, SE1 3QP was issued on 30 September 2005. The licence permits the following licensable activities during the hours shown:
- Films (indoors):
    - Monday to Saturday from 10:00 to 00:00
    - Sunday from 12:00 to 23:00
  - Indoor Sports:
    - Monday to Saturday from 10:00 to 00:00
    - Sunday from 12:00 to 23:00
  - Live music (indoors):
    - Monday to Saturday from 10:00 to 00:00
    - Sunday from 12:00 to 23:00
  - Recorded music (indoors):
    - Monday to Saturday from 10:00 to 00:00
    - Sunday from 12:00 to 23:00

- Late Night Refreshment (indoors):
  - Monday to Saturday from 23:00 to 00:30
  - Sunday from 23:00 to 23:30
- The sale by retail of alcohol to be consumed on and off premises:
  - Monday to Saturday from 10:00 to 00:00
  - Sunday from 12:00 to 23:00
- The opening hours of the premises are as follows:
  - Monday to Saturday from 10:00 to 00:30
  - Sunday from 12:00 to 23:30.

10. A copy of the current premises licence is attached to the report as Appendix B.

#### **Designated premises supervisor**

11. The designated premises supervisor (DPS) is Peter Alan Collie, who holds a personal licence issued by Southwark Council.

#### **The application for a review of the premises licence**

12. On 9 June 2019 an application for the review of the premises licence was submitted by an other person (local resident). The grounds for the review relate to the following licensing objectives of the prevention of public nuisance.
13. The concerns of the resident is that despite the fact that the current licence stipulates that the outside of the pub will be closed at 22:30 and the balcony at the rear of pub will close at 23:00, the pub also has a rear garden, a completely open space, where currently customers are allowed to drink, shout and generally be very loud until midnight or later. This has an effect on residents in the adjacent and nearby flats. He does not understand why the rear garden does not have a closing time stipulated in the licence condition.

#### **Representation and comments from responsible authorities**

14. A representation has been submitted by the licensing team (as a responsible authority).
15. They advise that the premises is situated within the cumulative impact area for Borough and Bankside and the licensing sub committee may want to consider bringing the hours of operation for the rear garden in line with that of the hours recommended within the Southwark statement of licensing policy. In submitting this representation and to promote the prevention of public nuisance they recommend that the licensing sub- committee consider the following:
- That an accommodation limit is set for the rear garden area.
  - That the rear garden area is closed to patrons at 22:00
16. A copy of the representation is attached as Appendix C.

### **Representations from other persons in support of review application**

17. There are two further representations submitted by other persons, one from the review applicant reiterating issues raised and the other from a local in support of the review.

### **Representations from other persons in support of the premises**

18. There are two representations submitted in support of the premises. They mention that the Horseshoe is a respectable business that does not cause a public nuisance. The outdoor garden is very well maintained and sanctuary for locals. They advise that the garden closes at a reasonable hour and the area is closely monitored by security. They also state that they have not heard any disturbances after midnight as alleged in the review application.
19. These representations are attached as Appendix D.

### **Submission from the licence holder**

20. The licence holder has submitted a statement to demonstrate their proactive response to the review application. This is attached as Appendix E.

### **Operating history**

21. The current licence was issued on 30 September 2005 to Mr Peter Alan Collie who is also the designated premises supervisor to date.

### **Complaints history**

22. There have been three complaints to the licensing unit regarding noise and antisocial behaviour from the patrons of the premises. Licensing officers investigating the complaints visited the premises on 27 April 2019 at 22:40 hours and found the premises to be in breach of the following condition 345; a) That the outside of the pub will be closed at 22:30 in the front; b) That the balcony at rear of pub will close at 23:00. A warning letter regarding the breach was sent to the licensee on 7 May 2019. A copy of the warning letter is attached as Appendix F.

### **The local area**

23. A map of the area is attached to this report as Appendix G. The premises is identified by a diamond at the centre of the map. For purposes of scale only, the circle on the map has a 100 metre radius. The following licensed premises including terminal hours are also shown on the map:

#### Public houses and restaurants

- Vinegar Yard, 1-7 Fenning Street, London SE1(Sunday to Thursday until 23:00, Friday and Saturday until 00:00)
- Vinegar Yard, 80-82 St Thomas Street, London SE1 (Sunday to Thursday until 23:00 and Friday and Saturday until 23:15)
- Yo, SuShi, Wolfson House, 49 St Thomas Street, London SE1 (Monday to Saturday 23:30 Sunday until 23:00)
- The Savanna, Unit SU58 London Bridge Station, London SE1(Monday to Sunday until 22:30)

- Texas Joe's, 8-9 Snowfields, London SE1(Monday to Sunday until 23:30)
- Lost Rivers Deli Bar, 7-13 Melior Street, London SE1 (Sunday to Thursday until 23:30, Friday and Saturday until 00:00)
- Londrino, 36 Snowsfields, London SE1(Sunday to Thursday until 00:00, Friday and Saturday until 00:30)
- Globe House, 37 Bermondsey Street, London SE1(Monday to Sunday until 00:00)
- Tanner & Co, 50 Bermondsey Street, London SE1 (Monday to Sunday ` 02:30)

### **Deregulation of entertainment**

24. On 6 April 2015 entertainment became deregulated and as a result:
- Live unamplified music is deregulated between 08:00 to 23:00 on any premises.
  - Live amplified music is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.
25. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

### **Borough and Bankside cumulative impact area**

26. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises (saturation/cumulative impact policy) on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.
27. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
28. The effect of this special policy is to create a presumption that applications for new premises licenses or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
29. The applicant has been advised to address the committee's concerns around cumulative impact at the meeting.
30. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Restaurants and Cafes:

- Sunday to Thursday: 00:00
  - Friday and Saturday: 01:00
  - Public Bars, Wine Bars and other drinking establishments
    - Sunday to Thursday: 23:00
    - Friday and Saturday: 00:00
  - There are no restriction times for hotel bars and guest houses.
31. 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.
32. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

### **Resource implications**

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

## **Consultation**

34. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

## **Community impact statement**

35. 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**

36. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
37. The principles, which sub-committee members must apply, are set out below.

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

38. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
39. 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.
40. 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
  - Suspend the licence for a period not exceeding three months
  - Revoke the licence.
41. For the purpose of determining a relevant representation under section 52 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.
42. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
  43. 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.
  44. 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.
  45. 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**

46. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
  - The holder of the licence
  - The applicant
  - Any person who made relevant representations
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

47. 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.
48. This matter relates to the review of the premises licence under section 51 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**

49. 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.
50. 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.
51. 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.
52. 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.
53. 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.

54. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
55. 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.
56. 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

57. 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

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

### BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 Home Office revised guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file	Licensing Unit Hub 1 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read Phone number: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Review application
Appendix B	Current premises licence
Appendix C	Responsible authority representation
Appendix D	Representations in support and against the review application
Appendix E	Licensee response to review application
Appendix F	Warning letter
Appendix G	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	19 July 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	19 July 2019	