

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 20 August 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Tola, 56 Peckham High Street, London SE15 5DP	
<b>Ward(s) or groups affected:</b>		Rye Lane	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Treadgold Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Tola, 56 Peckham High Street, London SE15 5DP.
2. Notes:
  - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Tola, 56 Peckham High Street, London SE15 5DP, under section 34 of the Act. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the sub-committee for determination. The premises licence is attached as Appendix A.
  - Paragraphs 8 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.
  - Paragraphs 13 to 25 of this report deal with the representations submitted in respect of the application. Copies of the representations, and related correspondence, are attached in Appendices C and D.
  - A map showing the location of the premises is attached as Appendix F.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a new licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
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 interested parties 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 current premises licence**

8. The current premises licence in respect of the premises known as Tola, 56 Peckham High Street, London SE15 5DP allows the following licensable activities:
- Live music, recorded music, entertainment similar to live & recorded music and performances of dance:
    - Monday to Thursday from 10:00 to 23:00
    - Friday to Sunday from 10:00 to 03:00
  - The sale of alcohol to be consumed on the premises:
    - Monday and Tuesday from 10:00 to 00:00 (midnight)
    - Wednesday to Saturday from 10:00 to 03:00
    - Sunday from 10:00 to 00:30
  - Late night refreshment:
    - Monday to Thursday from 23:00 to 02:00
    - Friday to Sunday from 23:00 to 03:00
  - Opening hours:
    - Monday to Thursday from 10:00 to 03:00
    - Friday to Sunday from 10:00 to 04:00
  - Mr Thomas Barclay Broadbent is the designated premises supervisor (DPS) in respect of the premises.

9. A copy of the existing premises licence is attached as Appendix A.

### **The variation application**

10. On 30 May 2019 Treadgold Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Tola, 56 Peckham High Street, London SE15 5DP.

11. The application is summarised as follows:

- To change the layout of the premises as per the plan provided with the application. To amend condition 307 to allow an 'accommodation limit' of 229 persons. To amend condition 844 to reflect the proposed change to the accommodation limit. To remove conditions 122, 345, 847 and 848 from the licence.
- To add the following condition to the licence

“That a written dispersal policy shall be devised regarding the premises and a copy of it shall be kept / be accessible at the premises at all times that the premises are in operation. The policy should include (but not necessarily be limited to) the following:

- Details as to how customer / staff egress at the premises shall be managed to minimise causing nuisance.
- Details of public transport in the vicinity and how customers will be advised in respect of it.
- Details of the management of taxis to and from the premises.
- Details of the management of any 'winding down' period at the premises.
- Details of the use of security and stewarding in respect of managing customer dispersal from the premises.
- Details of any cloakroom facility at the premises and how it is managed.
- Details of road safety in respect of customers leaving the premises.
- Details of the management of ejections from the premises.
- Details of how refuse / waste in the local vicinity arising through the operation of the premises will be cleared up (e.g. flyer clean up, post event clean up).

All staff employed at the premises shall be trained in the latest version of the dispersal policy and records of such training (including the printed name of the trainee, signature of the trainee, declaration that the training was understood and the date of the training) shall be kept as an annex of the policy. The dispersal policy shall be made immediately available to emergency service and / or council officers on request.”

- To amend the closing times of the premises to:
  - Wednesday and Thursday: 03:30
  - Friday and Saturday: 05:00
  - Sunday: 04:00
- To amend the terminal hours in respect of live music, recorded music, entertainment similar to live & recorded music and performances of dance to:
  - Wednesday and Thursday: 03:30

- Friday and Saturday: 05:00
  - Sunday: 04:00
- To amend the terminal hours in respect of the sale of alcohol to:
    - Friday and Saturday: 04:30
    - Sunday: 03:30
  - To allow the following non standard timings in regards to licensable activities and opening hours:
    - That on New Year's Eve all licensable activities shall be allowed from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
    - That on New Year's Eve opening hours shall be allowed from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
12. The application form provides the applicant's operating schedule. Parts E, F, G, H, J, K, L and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should an amended premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be included in the licence.
13. Copies of the application, additional information in support of the application and an email clarifying permitted hours sought are attached as Appendix B.

### **Representations from responsible authorities**

14. Representations have been submitted by this council's trading standards service, this council's health and safety service, the Metropolitan Police Service, this council's public health authority, and this council's licensing responsible authority.
15. The trading standards service's representation has been submitted in respect of the prevention of crime and disorder and the protection of children from harm licensing objectives. The representation suggests control measures relating to age verification that the trading standards service recommend should become conditions of any licence issued subsequent to the application.
16. The health and safety service require clarification regarding how the applicant will deal with public safety and requests that site specific risk assessments in respect of the premises are completed by a competent person and submitted to the health and safety service. The health and safety service object to the application until the prior matters have been addressed.
17. The public health authority's representation notes that the premises are located in the Peckham cumulative impact policy area. The representation contends that the proposed application is likely to add to the cumulative impact of licensed premises in the Peckham CIP area, and that applicant has not adequately addressed the presumption that the proposed changes will contribute to alcohol related disorder in the area. The public health authority recommends that the application be rejected in its current state.

18. The Metropolitan Police Service's representation notes that the premises are located in the Peckham cumulative impact policy area. The Metropolitan Police Service object to the proposed amendments to conditions 307 and 844, the proposed increase of the accommodation limit, the removal of conditions 345 and 848, any extension to the opening hours and any extension to the hours permitted for licensable activities. The Metropolitan Police Service contend that any extension to the opening hours and any extension to the hours permitted for licensable activities will add to the cumulative impact of licensed premises in the area.
19. The licensing responsible authority's representation notes that the premises are located in the Peckham cumulative impact policy area. The representation states that under section 130 of this council's statement of licensing policy there is a rebuttable presumption meaning that applications for new premises licences and / or premises licence variation applications that are likely to add to the existing cumulative impact of licensed premises in the area will normally be refused or subject to certain limitations. The representation further states that in such circumstances it is for the applicant to demonstrate that the operation of the premises will not, if the application is granted, further contribute to the negative cumulative impact of licensed premises in the locale, or be to the detriment of any of the licensing objectives. The Licensing responsible authority contends that the applicant has not addressed the presumption to refuse the application and recommend refusal of this application unless the applicant can demonstrate that the premises will not contribute to crime and disorder and public nuisance within the Peckham cumulative impact policy area.
20. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as Appendix C.

### **Conciliation**

21. The applicant was sent copies of the representations and was advised to directly contact the responsible authorities.
22. The applicant has been in correspondence, and / or had meetings, with all of the responsible authorities who submitted representations.
23. Subsequent to the applicant's correspondence and / or meetings with the responsible authorities, the council's health and safety service, the council's trading standards service and the council's director of public health withdrew their representations. Correspondence relating to the withdrawal of these representations is included in Appendix C.
24. The representations submitted by the Metropolitan Police Service and the licensing responsible authority remain outstanding and must be considered by the licensing sub-committee.
25. The licensing sub-committee will be informed as to any conciliation of the Metropolitan Police Service and the licensing responsible authority (or attempts to conciliate the Metropolitan Police Service and the licensing responsible authority) at the licensing sub-committee hearing to determine this application.

### **Representations from other persons**

26. Fourteen representations have been submitted by other persons. All of the representations submitted by other persons support the application and in summary

states that the proposed variation would not add to the negative cumulative impact of licensed premises in the local area, would not be to the detriment of any of the licensing objectives and would not lead to increased crime and disorder or anti-social behaviour in the locale.

27. Copies of the representations submitted by other person are attached to this report as Appendix D.

### **Operating history**

28. On 5 October 2005 a premises licence was issued in respect of the premises to Mr Tola Cole and Mr Godwin Ehizele.
29. On 6 January 2015 the Metropolitan Police Service submitted a review application regarding the premises licence issued in respect of the premises. A licensing sub-committee hearing in respect of the review application was held on 2 February 2015 and the licence was amended to its current form.
30. On 13 November 2017 the licence was transferred with immediate effect to Treadgold Limited.
31. On 2 February 2018 a licensing officer conducted a licensing induction with the managing director of Treadgold Limited (Mr Diggy Nelson) during which the role and remit of the Licensing Unit, and the terms and conditions of the licence, were explained.
32. On 20 March 2017 Mr Thomas Barclay Broadbent was specified as the DPS of the premises with immediate effect.
33. On 30 May 2019 Treadgold Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Tola, 56 Peckham High Street, London SE15 5DP.
34. A licensing sub-committee hearing to determine the application had been scheduled to take place on 25 July 2019, however the time limit to hold the hearing was extended under section 11 of The Licensing Act 2003 (Hearings) Regulations 2005 as it was deemed in the public interest to do so.
35. A list of all temporary event notices submitted in respect of the premises is attached in Appendix E.

### **Deregulation of entertainment**

36. 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.
37. 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').
38. The showing of films has not been de-regulated.

## Map

39. A map of the area is attached to this report as appendix F. The premises are identified at the centre of the map. The following premises are in the area displayed on the map:

### **The Hope, 3 Melon Road, London SE15 5QW** licensed for:

- The sale of alcohol to be consumed on the premises, recorded music:
  - Monday to Thursday from 10:00 to 00:00 (midnight)
  - Friday to Sunday from 10:00 to 01:00
- Late night refreshment:
  - Monday to Thursday from 23:00 to 00:30
  - Friday to Sunday from 23:00 to 01:30

### **Peckham Town Square, Peckham High Street, London SE15** licensed for:

- Films, live music, recorded music, anything similar to live or recorded music, performances of dance and plays:
  - Sunday to Thursday from 10:00 to 20:00
  - Friday and Saturday from 10:00 to 21:00

### **Delta Express Pizza, 9 Peckham High Street, London SE15 5EB** licensed for:

- Late night refreshment:
  - Sunday to Thursday from 23:00 to 02:30
  - Friday and Saturday from 23:00 to 04:00

### **Morley's, 10 Peckham High Street, London SE15 5DT** licensed for:

- Late night refreshment:
  - Monday to Sunday from 23:00 to 05:30

### **Price Cutter Food and Wine, 12 Peckham High Street, SE15 5DT** licensed for:

- The Sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 00:00 to 00:00 (24 hours)

**Dixie Chicken, 16 Peckham High Street, London SE15 5DT** licensed for:

- Late night refreshment:
  - Sunday to Tuesday from 23:00 to 23:30
  - Wednesday and Thursday from 23:00 to 03:00
  - Friday and Saturday from 23:00 to 05:00

**Kam Foh, 19 Peckham High Street, London SE15 5EB** licensed for:

- Late night refreshment:
  - Monday to Thursday from 23:00 to 23:30
  - Friday and Saturday from 23:00 to 00:00

**Tiwa 'N' Tiwa (African Good Food Concept), 34b Peckham High Street, London SE15 5DP** licensed for:

- The sale of alcohol to be consumed on the premises:
  - Monday to Thursday from 12:00 to 00:30
  - Friday to Sunday from 12:00 to 02:00
- Late night refreshment:
  - Monday to Thursday from 23:00 to 00:30
  - Friday to Sunday from 23:00 to 02:00

**The Unity Centre, 37 – 39 Peckham High Street, London SE15 5EB** licensed for:

- Films, live music, plays, recorded music:
  - Monday to Wednesday from 09:00 to 00:00
  - Thursday and Saturday from 09:00 to 05:00
  - Sunday from 09:00 to 02:00
- The sale of alcohol to be consumed on the premises:
  - Monday to Wednesday from 10:00 to 00:00
  - Thursday and Saturday from 10:00 to 05:00
  - Sunday from 10:00 to 02:00
- Entertainment similar to live or recorded music:
  - Monday to Wednesday from 10:00 to 00:00
  - Thursday and Saturday from 10:00 to 02:00
  - Sunday from 10:00 to 23:00
- Performances of dance:
  - Monday to Wednesday from 10:00 to 00:00
  - Thursday and Saturday from 10:00 to 05:30
  - Sunday from 10:00 to 04:30

- Late night refreshment:
  - Monday to Saturday from 23:00 to 23:30

**O'Bar, 43a Peckham High Street, London SE15 5EB** licensed for:

- Live music, recorded music, anything similar to live or recorded music, performances of dance:
  - Monday to Wednesday from 09:00 to 04:30
  - Thursday from 09:00 to 05:30
  - Friday and Saturday from 09:00 to 06:00
  - Sunday from 09:00 to 05:30
- Late night refreshment:
  - Monday to Wednesday from 09:00 to 04:00
  - Thursday from 09:00 to 04:30
  - Friday and Saturday from 09:00 to 05:00
  - Sunday from 09:00 to 04:30
- The sale of alcohol to be consumed on and off the premises:
  - Monday to Thursday from 09:00 to 05:00
  - Friday to Sunday from 09:00 to 05:30

**Shangeetha Supermarket Limited, 58-60 Peckham High Street, London SE15 5DP** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 07:00 to 00:00

**Little Hut, 59 Peckham High Street, London SE15 5EB** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Saturday from 08:00 to 23:00
  - Sunday from 10:00 to 22:30

**The Kentish Drovers, 71 – 79 Peckham High Street, London SE15 5RS** licensed for:

- The provision of late night refreshment:
  - Sunday to Thursday from 23:00 to 00:30
  - Friday and Saturday from 23:00 to 01:00
- The sale of alcohol to be consumed on and off the premises:
  - Sunday to Thursday from 09:00 to 00:30
  - Friday and Saturday from 09:00 to 01:00

**Peckham Space, 89 Peckham High Street, London SE15 5RS** licensed for:

- Films, boxing / wrestling, indoor sporting events, live music, recorded music, anything similar to live or recorded music, performances of dance and plays:
  - Monday to Sunday from 10:00 to 23:00

**Yesil Irmak, 107 Peckham High Street, London SE15 5RS** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 00:00 to 00:00 (24 hours)

**The Greyhound P/H, 109 Peckham High Street, London SE15 5SE** licensed for:

- The sale of alcohol to be consumed both on and off the premises and the provision of recorded music:
  - Monday to Sunday from 09:00 to 01:00
- Provision of late night refreshment:
  - Monday to Saturday from 23:00 to 23:30
- Live music:
  - Monday from 16:00 to 23:00
  - Friday and Saturday from 20:00 to 00:00
  - Sunday from 14:00 to 00:00

**The Red Bull, 116 Peckham High Street, London SE15 5ED** licensed for:

- The provision of live music, recorded music and the sale of alcohol for consumption off the premises:
  - Sunday to Thursday from 09:00 to 23:00
  - Friday and Saturday from 09:00 to 00:00 (midnight)
- The sale of alcohol for consumption on the premises:
  - Sunday to Thursday from 09:00 to 22:30
  - Friday and Saturday from 09:00 to 23:30
- The provision of late night refreshment:
  - Friday and Saturday from 23:00 to 00:00

**Chick Chicken, 117 Peckham High Street, London SE15 5SE** licensed for:

- Late night refreshment:
  - Monday to Thursday from 23:00 to 01:00
  - Friday and Saturday from 23:00 to 02:00
  - Sunday from 23:00 to 00:00

**Payless, 121-125 Peckham High Street, London SE15 5SF** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Sunday to Thursday from 06:00 to 01:00
  - Friday and Saturday from 06:00 to 02:00

**Peckham News, 133 Peckham High Street, London SE15 5SI** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 09:00 to 23:00

**The Clock Tower, 1a Rye Lane, London SE15 5EW** licensed for:

- Films, live music, plays:
  - Monday to Thursday from 19:00 to 23:00
  - Friday and Saturday from 19:00 to 06:00
  - Sunday from 19:00 to 04:00
- Recorded music, anything similar to live or recorded music, the sale of alcohol to be consumed on the premises:
  - Monday to Thursday from 19:00 to 23:00
  - Friday and Saturday from 19:00 to 05:00
  - Sunday from 19:00 to 00:00
- Late night refreshment:
  - Friday and Saturday from 23:00 to 06:00
  - Sunday from 23:00 to 05:00

**Morrison's, Unit 3, The Aylesham Centre Rye Lane, London SE15 5EW** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 06:00 to 23:00

**Mountview Academy of Theatre Arts, 120 Peckham Hill Street, London SE15 5JT** licensed for:

- Films, Live music, recorded music, anything similar to live and recorded music, performances of dance, plays:
  - Monday to Saturday: from 09:00 to 23:30
  - Sunday: from 10:00 to 22:00

**Well Street Pizza, 120 Peckham Hill Street, London SE15 5JT** licensed for:

- The sale of alcohol to be consumed on and off the premises
  - Monday to Thursday: from 12:00 to 23:30
  - Friday and Saturday from 11:30 to 00:30

- Sunday from 11:30 to 23:30
- Late Night refreshment:
  - Sunday to Thursday from 23:00 to 00:00
  - Friday and Saturday from 23:30 to 01:00

**Westland Coffee and Wine, 120 Peckham Hill Street, London SE15 5JT** licensed for:

- The sale of alcohol to be consumed on and off the premises
  - Monday to Sunday from 11:00 to 23:30
- Late Night refreshment:
  - Monday to Sunday from 23:00 to 00:30

**Katie's Kebab, 130 Peckham Hill Street, London SE15 5JT** licensed for:

- Late night refreshment:
  - Monday to Sunday from 23:00 to 02:00

**Rakh's News, 157-159 Peckham Hill Street, London SE15 5JZ** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Saturday from 08:00 to 23:00
  - Sunday from 10:00 to 22:30

**Katie's Kebab, 165 Peckham Hill Street, London SE15 5JT** licensed for:

- Late night refreshment:
  - Monday to Sunday from 23:00 to 02:00

### **Southwark council saturation policy for Peckham**

40. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in March 2019 when full council assembly approved the 2019 - 2021 statement of licensing policy.
41. 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.
42. The effect of this special policy is that is to create a presumption that applications for new premises licences 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.

43. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

### **Southwark council statement of licensing policy**

44. Council Assembly approved Southwark's Statement of Licensing Policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. 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.

45. 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.

46. The premises fall within a residential area. The statement of licensing policy recommends the following closing times in respect of the types of premises stated:

- Night clubs (with 'sui generis' planning classification)
  - Monday to Thursday: 01:00
  - Friday and Saturday: 03:00
  - Sunday: 00:00

- Restaurants and cafes:
  - Sunday to Thursday: 00:00
  - Friday and Saturday: 01:00
  
- Public houses, wine bars or other drinking establishments:
  - Sunday to Thursday: 23:00
  - Friday and Saturday: 00:00.

### **Resource implications**

47. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band B has been paid by the applicant company in respect of this application.

### **Consultation**

48. Consultation has been carried out in respect of 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 at the premises for a period of 28 consecutive days.

### **Community impact statement**

49. 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**

50. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
51. The principles which sub-committee members must apply are set out below.

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

52. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
53. The general principle is that applications for variation 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.
54. 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 other party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

55. 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:
- Add to, omit, and/or alter the conditions of the licence or,
  - Reject the whole or part of the application for variation.

### **Conditions**

56. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
57. The four licensing objectives are
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
58. 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.
59. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
60. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
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 to vary the premises licence, 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
- This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

64. 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.
65. 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.
66. 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.

- 67. 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.
- 68. 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.
- 69. 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.
- 70. 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**

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

**Strategic Director of Finance and Governance**

- 72. 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	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

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## APPENDICES

Name	Title
Appendix A	Copy of the premises licence
Appendix B	Copies of the application, a document in support of the application and related correspondence
Appendix C	Copies of the representations submitted by the responsible authorities, and related correspondence
Appendix D	Copies of the representations submitted by other persons
Appendix E	Temporary event notices submitted in respect of the premises
Appendix F	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	7 August 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>		8 August 2019