

Item No. 7.	Classification: Open	Date: 20 August 2019	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Ormside Projects, Unit 32B and C, Penarth Centre, Ormside Street, London SE15 1TR	
Ward(s) of group(s) affected		Old Kent Road	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application submitted by PC32 Limited for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Ormside Projects, Unit 32B and C, Penarth Centre, Ormside Street, London SE15 1TR.
2. Notes:
 - a) The application is for a club premises certificate 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 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
 - c) Paragraphs 12 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as Appendix B. A map showing the location of the premises is attached to this report as Appendix D.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to 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 18 June 2019 PC32 Limited applied to this council for the grant of a premises licence in respect of Ormside Projects, Unit 32B & C, Penarth Centre, Ormside Street, London SE15 1TR.
9. The application is summarised as follows:
- **Plays, performances of dance**
 - Monday to Sunday from 12:00 to 01:00
 - **Films**
 - Monday to Sunday from 12:00 to 02:00
 - **Live music, recorded music and anything similar to live music, recorded music and performances of dance**
 - Sunday to Thursday from 12:00 to 03:00
 - Friday and Saturday from 12:00 to 07:00
 - **Late Night Refreshment**
 - Sunday to Thursday from 23:00 to 03:00
 - Friday and Saturday from 23:00 to 07:00*

*NB – late night refreshment pertains to the sale of hot food and beverages between 23:00 and 05:00, and so if the licence was granted as applied for late night refreshment would finish at 05:00 on Friday and Saturday.

- **Supply of alcohol for consumption on the premises**
 - Sunday to Thursday from 12:00 to 03:00
 - Friday and Saturday from 12:00 to 07:00

- **Proposed opening hours of the premises**
 - Sunday to Thursday from 12:00 to 03:30
 - Friday and Saturday from 12:00 to 07:00

- **Non standard timings**
 - On New Year's Eve all permitted licensable activities can take place at the premises from the terminal hour for licensable activities on New Year's Eve until the commencement of the permitted hours on New Year's Day
 - On any day preceding a Bank Holiday the hours for licensable activities at the premises will reflect those for Saturdays.
 - On New Year's Eve the premises may remain open from the terminal operating hour on New Year's Eve until the commencement of the permitted hours on New Year's Day.
 - On any day preceding a Bank Holiday the opening hours of the premises will reflect those for Saturdays.

- **The premises, the current operation of the premises and the proposed future operation of the premises are described in the application as follows:**
 - "Founded in 2015 by artist Michael Levitt, Ormside operates as a cultural centre allowing for development and presentation of projects. Ormside is located on the 1st floor of the Penarth Centre within the creative industrial district of South Bermondsey.

The space acts as a cultural hub, bringing together inter-disciplinary professionals; showcasing a fully independent, highly selective programme of events.

The core principle is one of versatility, within the framework of an acoustically designed and treated space. World class, custom-built audio and visual presentation equipment alongside a community of technical specialists help to facilitate immersive and thought provoking experiences.

Ormside Project Space is a platform for promotion of interdisciplinary practices, emerging talents and international collaborations. The space is in constant transformation; with a dedication to live performances and time-based art.

Its goal is to foster the creation of a meeting place where traditional creative roles are dissolved, where the culture industry is challenged, and where vital new concepts of art making are imagined and shared.

Artists, designers, musicians, filmmakers, curators, writers, and friends investigate diverse theories and practices towards the performative through durational forms of live performances, installations, discourses, publications, workshops and screenings.

The Penarth Centre is a non-residential light industrial building. Neighbours include artist studios, mechanics, industrial businesses and churches. Good relationships have been established between the businesses in the area and Ormside have been at the heart of this partnership; which is reflected in the operating schedule proposed in this application.

Working together as a community, we have made notable gains to tackle antisocial behaviour and make the area safer. Ormside continue to work to prevent Public Nuisance and no complaints of nuisance have been received by the premises to date.

From experience, almost everyone attending events at the premises arrives by public transport, taxi or by foot / cycle. In the unlikely event of anyone attending an event by car, Ormside Street at night is largely free for parking-space unless there is a religious holiday - in which case we can provide access to Penarth Centre's large private car park.

Excellent Past History - The premises has to date operated under Temporary Event Notices, these have extended to the hours applied for in this application. To date no complaints have been received in respect of these Notices.

To date the space has been used for:

- Music & Arts shows
- Video, film and photo shoots
- Installations and exhibitions
- Film screenings
- Talks, meetings and conferences
- Workshops & classes
- Live broadcast events
- Rehearsal space
- Building & construction space

The premises is set to undergo a refurbishment, which will include a change in the current layout of the premises; the new layout is reflected in the submitted plans. The Premises Licence will not be used until such time as the plans reflect the new layout of the premises.

Smoking areas have been set aside, both of these areas fall within the demise of the building and do not block the public highway.

Operating Hours – Only on a maximum of two nights per week will the premises open for licensable activities beyond midnight; this will be controlled by condition.”

10. The premises licence application form provides the applicant's operating schedule. Parts A, 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) of the premises is Michael Levitt.

Representations submitted by responsible authorities

12. Representations have been submitted by this council's health and safety service, this council's public health team, this council's trading standards service, the Metropolitan Police Service and by this council's licensing responsible authority.
13. The health and safety service require clarification of various matters, and objects to the application in respect of the protection of public safety licensing objective until the required clarifications have been provided.
14. The public health team notes that the closing times proposed in the application are later than those recommended, in this council's statement of licensing policy, for licensed premises in residential areas. The director of public health recommends that the application in its current state should be rejected and further recommends that the closing times of the premises are amended to 23:00 daily and that the timings regarding alcohol sales are amended to finish at 22:30 daily.
15. The trading standards service recommended that various control measures be included in the application, and that these control measures should become conditions of any licence issued subsequent to the application. The applicant agreed to the proposed conditions (with minor amendments) and the trading standards service subsequently withdrew their representation.
16. The Metropolitan Police Service notes that the closing times proposed in the application are later than those recommended, in this council's statement of licensing policy, for licensed premises in residential areas, and also that nightclubs are not deemed as appropriate for residential areas. The metropolitan police service states that events taking place in the locale (and the Penarth Centre itself) have previously resulted in serious disorder including shootings, stabbings and anti-social behaviour. The metropolitan police service contend that the premises are not suited to holding events and object to the granting of the application with regard to the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The metropolitan police service recommends that, should the licensing sub-committee be minded to grant the licence, the premises close at 23:00 daily.
17. The licensing responsible authority notes that the closing times proposed in the application are later than those recommended, in this council's statement of licensing policy, for licensed premises in residential areas, and also that nightclubs are not deemed as appropriate for residential areas. The licensing responsible authority objects to the granting of opening hours later than 23:00 daily. The licensing responsible authority suggests that the applicant consider amending the application so that alcohol sales cease at 22:30, that late night refreshment is removed from the application, that all other licensable activities finish at 23:00 daily and that the premises close at 23:00 daily. The licensing responsible authority also requests that the applicant provide an accommodation limit for the premises and a written dispersal policy.

18. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as Appendix B.

Representations from other persons

19. No representations have been submitted by other persons.

Conciliation

20. The applicant provided a response to the trading standards service's representation and the trading standards service subsequently withdrew their representation.
21. All of the other representations submitted remain outstanding and must be considered by the licensing sub committee.
22. The licensing sub-committee will be informed as to any conciliation of the remaining objectors (or attempts to conciliate the remaining objectors) at the licensing sub-committee hearing to determine this application.

Premises history

23. No licence has been held under the Licensing Act 2003, or any prior licensing legislation, in respect of the premises.
24. A list of temporary event notices (TENS) submitted in respect of the premises is attached as Appendix C.

Deregulation of entertainment

25. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08.00 and 23.00 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.
26. 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').
27. The showing of films has not been de-regulated.

Map

28. A map showing the location of the premises is attached to this report as appendix C. The following licensed premises are also shown on the map and provide licensable activities as stated:

DIY Space for London Members Club, 96 - 108 Units 3-4 Ormside Street London SE15 1TF licensed for:

- Films
 - Monday to Saturday from 16:00 to 22:30
 - Sunday from 16:00 to 22:30
- Live music, recorded music, the sale of alcohol to be consumed on the premises
 - Monday to Thursday from 18:00 to 23:00
 - Friday from 18:00 to 00:00
 - Saturday from 15:00 to 00:00
 - Sunday from 15:00 to 23:00.

Southwark council statement of licensing policy

29. 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.

30. 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.

31. According to this council's Statement of Licensing Policy the premises are located in a residential area. Closing times as stated below are suggested in the statement of licensing policy for the following types of licensed premises located in residential areas:
- Restaurants
 - Monday to Sunday:23:00
 - Public houses, wine bars, or other drinking establishments and bars in other types of premises
 - Monday to Sunday:23:00
 - Nightclubs
 - Not suitable for residential areas

Resource implications

32. 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 A.

Consultation

33. 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

34. 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

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

Principles for making the determination

37. 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.

38. 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.
39. 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

40. 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.
41. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
42. 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.
43. 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.
44. 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

45. 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

46. 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.
47. 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

48. 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.
49. 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.

50. 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.
51. 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.
52. 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.
53. 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.
54. 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.
55. 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

56. 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

57. 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	Copies of the representation submitted by responsible authorities, and related correspondence
Appendix C	List of TENs submitted in respect of the premises
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Mick Lucas, Director of Environment	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	6 August 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	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	8 August 2019	