

Item No. 5.	Classification: Open	Date: 12 September 2019	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Bermondsey Arts Club, 102A Tower Bridge Road, London SE1 4TP	
Ward(s) or groups affected:		London Bridge & West Bermondsey	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Bermondsey Arts Club for a premises licence to vary the premises granted under the Licensing Act 2003 in respect of the premises known as Bermondsey Arts Club, 102A Tower Bridge Road, London SE1 4TP.
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Bermondsey Arts Club, 102A Tower Bridge Road, London SE1 4TP under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 12 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. A copy of the existing premises licence is attached as Appendix B.
 - c) Paragraphs 13 to 20 of this report deals with the representations received to the premises licence application and conciliations progress made. Copies of the relevant representations from responsible authorities are attached as Appendix C.
 - d) Paragraph 24 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix D.
 - e) 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 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 current premises licence

8. The current premises licence was issued on 11 September 2015 to Bermondsey Art Club. The premises licence allows for the following activities and times:
 - Films (indoors):
Monday to Sunday from 09:00 to 02:00
 - Live Music (indoors):
Monday to Sunday from 09:00 to 02:00

- Recorded music (indoors):
Monday to Sunday from 09:00 to 02:00
- Performance of dance (indoors):
Monday to Sunday from 09:00 to 02:00
- Late night refreshment (indoors):
Sunday to Thursday from 23:00 to 23:30
Friday and Saturday from 23:00 to 00:30
- Sale of alcohol for consumption on/off the premises:
Monday to Sunday from 09:00 to 02:00
- Opening hours
Monday to Sunday from 09:00 to 02:30

9. A copy of the premises licence is provided as Appendix B.

The variation application

10. On 17 July 2019, Bermondsey Arts Club applied to this council to vary the premises licence issued in respect of the premises known as Bermondsey Arts Club, 102A Tower Bridge Road, London SE1 4TP.

The application is summarized as follows:

- Recorded music (indoors)
Monday to Sunday from 09:00 to 05:00
- Supply of alcohol (on the premises)
Monday to Sunday from 09:00 to 05:00
- Operating hours
Monday to Sunday from 09:00 to 05:00
- To Amend condition 4AD - which states:

“That one SIA registered Door Supervisor shall be employed from 22.00 hours until the terminal hour on Sundays to Wednesdays and from 21:00 until the terminal hour on Thursdays to Saturdays when licensable activities are taking place”.

It is proposed proposed that the premises shall have SIA agents only on Fridays and Saturdays from 21:00 until closing time.

11. The variation to the premises application form provides the applicant operating schedule. Parts F, J, K, L,M, N O and P set out the proposed operating hours and operating controls 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 the information provided in part P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix A.

Designated premises supervisor

12. The proposed designated premises supervisor is George Garnier who has a personal licence issued by Lambeth Council.

Representations from responsible authorities

13. Representations have been submitted by the Metropolitan Police Service, licensing (as a responsible authority) and public health.
14. The police representation states that the premises are situated in a residential area as designated by the Southwark statement of licensing policy 2019-2021. The premises is situated in a residential area in very close proximity to a large number of residential dwellings. The recommended closing time for bars within residential as detailed in Southwark's statement of licensing policy is 23:00. The current licence allows for very generous hours outside of this policy already.
15. The police advise that the applicant has not provided any detail or additional control measures as to why the committee should consider moving even further outside of their policy. Although the applicant has asked for additional hours they have also asked to remove the provision for the employment of SIA staff between Sunday and Thursday. To have a premises open to the public until 05:00 on each day of the week without SIA employed between Sunday and Thursday would undermine the prevention of crime and disorder licensing objective. The police have submitted a number of conditions to be considered by the applicant.
16. The licensing representation is concerned with public nuisance and the prevention of crime and disorder. Licensing advise that the premises is situated within a residential area and under the Southwark statement of licensing policy 2019-2021 the closing times appropriate for public houses, wine bars, other drinking establishments and restaurants and cafes is 23:00 hours daily. Night clubs (with sui generis planning classification) are not considered appropriate for this area.
17. Licensing further state that the premises already has opening hours in excess of what is appropriate within the licensing policy. The application has not provided any further control measures to address the licensing objectives. The application seeks to remove/amend condition 4AD (regarding SIA door supervisor's and wants to provide them only on a Friday and Saturday) which is designed to promote the prevention of crime and disorder and the prevention of public nuisance.
18. Public health are concerned that a further extension of the hours of operation raises considerable concerns which are not adequately addressed by the applicant. Additionally, this premises is located relatively close to local residents and therefore the dispersal from events, daily, has the potential to result in public nuisance and disturb local residents.
19. The representations are attached as Appendix C.

Representation from other persons

20. There are no representations from other persons.

Conciliation

21. The representations were forwarded to the applicant. The licensing sub committee will be updated of any developments on 12 September 2019.

History of premises

22. The initial premises licence was granted in 14 May 2014. A variation application to change the designated premises supervisor to the current person was submitted on 11 August 2015.

Complaints

23. There have been no complaints specifically related to the premises received by the licensing team within the last 12 months.

Temporary events notices (Tens)

A number of tens have been issued to the premises this year as listed below

2 to 3 Feb 2019	02:00 till 05:00
9 to 10 Feb 2019	00:00 till 05:00
16 to 17 Feb 2019	02:00 till 05:00
22 to 23 Feb 2019	02:00 till 05:00
2 to 3 Mar 2019	02:00 till 05:00
24 to 25 Mar 2019	01:00 till 05:00

The local area

24. A map of the area is attached to this report as Appendix D. The premises is identified by a triangle 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 terminal hours are also shown on the map:

Public houses/restaurant/off licence

- Crystal China, 78-80 Tower Bridge Road, London SE1 (Monday to Sunday until 00.30)
- Tower Express, 72 Tower Bridge Road, London SE1 (Monday to Saturday until 23:00 and Sunday until 22:30)
- Tower Tandoori, 74-76 Tower Bridge Road, London SE1 (Monday to Sunday until 00.30)
- Bottle 85 Ltd, 85 Tower Bridge Road, London SE1 (Sunday to Thursday until 23.00 and Friday and Saturday until 00:00)
- Jad Grill Lebanese Cuisine, 88 Tower Bridge Road, London SE1 (Monday to Sunday until 02.00)
- Basillico Ltd, 103 Tower Bridge Road, London SE1 (Sunday to Thursday until 00.00 and Friday and Saturday until 00:30)

- Kaycee, 92 Tower Bridge Road, London SE1(Sunday to Wednesday until 00:00 and Friday and Saturday until 02:00)
- Cheung Wah, 213 Grange Road, London SE1 (Monday to Sunday until 00:00)
- Sainsburys, 13-14 Bermondsey Square, London SE1 (24 hours - alcohol until 00:00)
- Hand & Marigold, 244 Bermondsey Street, London SE1 (Monday to Saturday until 23:00).

Deregulation of entertainment

25. 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 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.

Southwark council statement of licensing policy

28. 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.
29. 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.
30. Within the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for the categories of premises as follows:
- Restaurant, cafés, public houses, wine bars or other drinking establishments: 23:00 daily
 - Hotel bars and guest houses : No restrictions for residents

Resource implications

31. A fee of £190 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

32. 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

33. 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

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

Principles for making the determination

36. 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.
37. 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.
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 other 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:
 - Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation.

Conditions

40. 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.
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 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.
44. 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.
45. 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

46. 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

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.
- 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

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. 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.

54. 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

55. 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

56. 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

APPENDICES

Name	Title
Appendix A	Variation application
Appendix B	Current licence
Appendix C	Representations from responsible authorities
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	30 August 2019	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		30 August 2019