

Item No. 6.	Classification: Open	Date: 10 October 2019	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: The Brunel, 47 Swan Road, London SE16 4JN	
Ward(s) or groups affected:		Rotherhithe	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made on behalf of Southwark Council's environmental protection team, under Section 51 of the Licensing Act 2003 (the Act), for the review of the premises licence held by Punch Partnerships (PTL) Limited in respect of the premises known as The Brunel, 47 Swan Road, London SE16 4JN.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 14 and 15 of this report. A copy of the premises licence review application is attached 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) The application for the review of the premises licence is supported by representations. Copies of the representations are attached as Appendix C. Details of the representations are provided in paragraphs 19 and 20 of this report. 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 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 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, 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 persons 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 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence issued in respect of the premises allows the provision of licensable activities as follows:
- Recorded music, live music, performances of dance, entertainment similar to live or recorded music:
 - Sunday to Thursday: 09:00 to 00:00 (midnight)
 - Friday and Saturday: 09:00 to 01:00
 - The sale of alcohol to be consumed on or off the premises:
 - Sunday to Thursday: 10:00 to 00:30
 - Friday and Saturday: 10:00 to 01:30
 - Late night refreshment:
 - Monday to Saturday: 23:00 to 00:30.

10. The opening hours of the premises are as follows:
 - Sunday to Thursday: 08:00 to 01:00
 - Friday and Saturday: 08:00 to 02:00.
11. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached to this report as Appendix B.

Designated premises supervisor (DPS)

12. The current designated premises supervisor (DPS) specified in respect of the licence is Kukasz Adamczyk.

The review application

13. On 15 August 2019 an application was submitted on behalf of Southwark Council's environmental protection team, under Section 51 of the Licensing Act 2003 (the Act), for the review of the premises licence held by Punch Partnerships (PTL) Limited in respect of the premises known as The Brunel, 47 Swan Road, London SE16 4JN.
14. The review application was submitted in respect of the prevention of public nuisance licensing objective and relates to an alleged offence witnessed at the premises on 14 July 2019 as follows:
 - That loud music observed emanating from the premises at approximately 21:09 hours amounted to a Statutory Nuisance under Section 80 of The Environmental Protection Act 1990
15. The environmental protection team also note that various recent and historic complaints related to noise nuisance have been made in respect of the premises.
16. The environmental protection team recommends that condition 309 be removed from the premises licence issued in respect of the premises and that additional conditions, relating to the prevention of nuisance, are imposed on the licence.
17. The environmental protection team further recommends that a condition is imposed on the premises licence with the effect that section 177a of the Licensing Act 2003 does not apply to the additional conditions recommended to be imposed on the premises licence by the environmental protection team and to the following licence conditions:
 - 310 - That all exterior windows and doors excepting any that may be required to be locked open for the purposes of means of escape, shall be kept closed whenever public entertainment is being provided upon the premises
 - 315 - That while entertainment is being provided members of the public will not use the beer garden after 2200 hours
18. A copy of the full review application is attached to this report as Appendix A.

Representations from responsible authorities

19. The council's licensing responsible authority has submitted a representation in respect of the prevention of public nuisance licensing objective. The licensing responsible authority states that the council's licensing service has received complaints regarding noise escape from the premises. The licensing responsible authority notes that the council's noise and nuisance team witnessed a statutory nuisance at the premises and served a noise abatement notice regarding this nuisance. The licensing responsible authority therefore fully supports the review application.

Representations from other persons

20. One representation has been submitted on behalf of two 'other persons' who are both local residents living within the immediate vicinity of the premises. The representation states that they suffer a lot of noise and disturbance arising from the premises and also points out that there is a sheltered housing complex in the immediate vicinity of the premises.

Operating History

21. Available records show that a justice's licence, issued under the now repealed Licensing Act 1964, was previously held in respect of the premises prior to 2005.
22. An application to convert the justice's licence into a premises licence via 'grandfather rights' under the Licensing Act 2003 was applied for in 2005. The application was granted and a premises licence was issued in respect of the premises to Mr Stephen Purcell and Mr Paul McManus on 7 September 2005.
23. On 13 November 2009 the licence was transferred to Punch Taverns PLC.
24. On 30 June 2017 Kukasz Adamczyk was specified as the DPS of the premises and remains the DPS of the premises.
25. On 8 March 2018 the licence was transferred to Punch Partnerships (PTL) Limited.
26. On 31 July 2019 a minor variation application was submitted to allow the premises to open at 08:00 hours. The application was granted and an amended licence was issued on 14 August 2019.
27. Between 7 August 2006 and 26 April 2015, when the premises were operating under prior management, 11 noise complaints were made to the council's licensing unit. The complaints alleged that entertainment and patron noise was causing nuisance in the locale.
28. The licensing unit received complaints on 8 October 2018 and 15 July 2019 alleging that entertainment and patron noise was causing nuisance in the locale.
29. Details of visits made to the premises by licensing officers are included in the representation that has been submitted by the licensing responsible authority.
30. On 15 August 2019 an application was submitted on behalf of Southwark Council's environmental protection team, under Section 51 of the Licensing Act 2003 (the Act),

for the review of the premises licence held by Punch Partnerships (PTL) Limited in respect of the premises known as The Brunel, 47 Swan Road, London SE16 4JN.

The local area

31. A map of the area is attached to this report as Appendix D. The premises are shown at the centre of the map. The following licensed premises are also shown on the map:

The Mayflower, 117 Mayflower Rotherhithe Street, London SE16 4NF licensed for:

- The sale of alcohol for consumption on and off the premises:
 - Monday to Saturday: 11:00 to 01:00
 - Sunday: 12:00 to 00:00
- The provision of late night refreshment:
 - Monday to Saturday: 23:00 to 00:00
 - Sunday: 23:00 to 23:30

Eren's Grocers, 22-24 Albion Street, London SE16 7JQ, licensed for:

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

Water House, 30-32 Albion Street, London SE16 7JQ, licensed for:

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

Nisa Local, 77 Albion Street, London SE16 7HX, licensed for:

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

Rainbow Chinese Take-Away & Restaurant, 35-37 Brunel Road, London SE16 4LA licensed for:

- Recorded music and the sale of alcohol for consumption on the premises:
 - Monday to Saturday: 16:00 to 00:00
 - Sunday: 12:30 to 23:30
- The provision of late night refreshment:
 - Monday to Saturday: 23:00 to 00:00
 - Sunday: 23:00 to 23:30

Londis Newsplus, 39-41 Brunel Road, London SE16 4LA licensed for:

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

Simplicity Restaurant, 1 Tunnel Road, London SE16 4JJ, licensed for:

- The sale of alcohol to be consumed on the premises:
 - Sunday to Thursday: 10:00 to 00:00
 - Friday and Saturday: 10:00 to 01:00
- The provision of late night refreshment
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00

The Brunel Museum, Brunel Engine House, Railway Avenue, London SE16 4LF, licensed for:

- Films, live music, plays:
 - Monday to Sunday: 10:00 to 23:00
- Performances of dance, recorded music, alcohol to be consumed on or off the premises:
 - Monday to Sunday: 10:00 to 00:00.

Southwark council statement of licensing policy

32. 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.
33. 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.
34. 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 premises licensed to sell alcohol and located in residential areas:
- Public houses, wine bars, or other drinking establishments and bars in other types of premises:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00

Resource implications

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

Consultation

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

Community impact statement

37. 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

38. 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.

39. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

40. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
41. 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.
42. 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.
43. 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.
44. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
45. 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.
46. 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.
47. 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

48. 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

49. 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.

50. 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

51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
57. 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.
58. 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

59. 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

60. 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	The premises licence
Appendix C	Copies of the representations submitted
Appendix D	Map of area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure		
Report Author	Wesley McArthur, Principal Licensing Officer		
Version	Final		
Dated	25 September 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		27 September 2019	