

Item No. 6.	Classification: Open	Date: 23 January 2020	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Talking Drum, 610 Old Kent Road, London SE15 1JB	
Ward(s) or groups affected:		Old Kent Road	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Talking Drum Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Talking Drum, 610 Old Kent Road, London SE15 1JB.
2. Notes:
 - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Talking Drum, 610 Old Kent Road, London, SE15 1JB 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 licensing sub-committee for determination. The premises licence is attached as Appendix A.
 - Paragraphs 10 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 B.
 - Paragraphs 14 to 17 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached in Appendix C.
 - A map showing the location of the premises is attached as Appendix E.

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 Talking Drum, 610 Old Kent Road, London, SE15 1JB allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 12:00 to 22:30
 - Opening hours:
 - Monday to Sunday: 12:00 to 23:00
 - Ejiroghene Oputah 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 12 November 2019 Talking Drum 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 Talking Drum, 610 Old Kent Road, London, SE15 1JB.
11. The application is summarised as follows:
- To amend the hours permitted for the sale of alcohol to: Sunday to Saturday between 12:00 and 23:30 hours.

- To allow the sale of late night refreshment to: Sunday to Saturday between 23:00 and 23:30 hours
- To amend the opening hours of the premises to: Sunday to Saturday between 12:00 and 00:00 hours (midnight)
- To allow for the following non standard timings:
 - New Year Eve licensable activities to cease at 02:30 hours and the premises to close at 03:00 hours
- To amend the following licence condition:

847 “That there shall be a personal license holder on the premises at all times when the premises are authorised to sell alcohol.”

To be amended to read:

“That a written document authorising specified staff to make sales of alcohol on behalf of the designated premises supervisor shall be kept at the premises and shall be prominently displayed at the bar service area where it can easily be seen and read. The authorisation document shall be kept free from obstructions at all times. The authorisation document shall be shown to officers of the council or police on request.”

12. The application form provides the applicant’s operating schedule. Parts I, 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. A copy of the application is attached as Appendix B.

Representations from responsible authorities

14. The Metropolitan Police Service submitted a representation objecting to the proposed amendment to condition 847. The applicant offered an alternative amendment to condition 847 that would require a personal licence holder being at the premises between 20:00 hours and the close of the premises on each day. The Metropolitan Police Service accepted this alternative amendment to condition 847 and subsequently withdrew their representation.

Representations submitted by other persons

15. Two representations objecting to the application have been submitted by ‘other persons’. One of the other persons (hereafter referred to as ‘party 1’) is a local resident and the second other person (hereafter referred to as ‘party 2’) is a representative of a local Tenants and Residents Association.
16. In summary the representations submitted by the other persons contend that the proposed hours of operation are not suited to the locale. The other persons further contend that an extension of the premises’ operating hours may see the return of problems at the premises and in the local area, when the premises were previously

operated as 'Luxford Bar' by the same proprietors, that led to the prior premises licence issued in respect of premises being revoked.

17. Copies of the representations submitted by responsible authorities, other persons, and correspondence related to the representations are attached to this report as appendix C.

Conciliation

18. The applicant was sent copies of the representations and was advised that, via the licensing unit, the applicant could contact the other persons who had submitted representations should the applicant wish to attempt to conciliate the other persons, and that the applicant could contact the Metropolitan Police Service directly should the applicant wish to attempt to conciliate the Metropolitan Police Service.
19. The applicant offered an alternative amendment to condition 847. The Metropolitan Police Service accepted this alternative amendment to condition 847 and subsequently withdrew their representation.
20. The applicant provided responses to the other persons' representations, and the other persons in turn provided comments further to these responses. Neither of the other persons have withdrawn their representations, and so the other persons' representations must be considered by the licensing sub-committee.
21. At the hearing to determine the application the licensing sub-committee will be apprised as to any conciliation, whether partial or full, of any other person that submitted a representation in respect of the application.

Operating history

22. The director of the company who holds the current premises licence issued in respect of the premises was the director of the company that held the premises licence issued in respect of the premises when the premises were operated as 'Luxford Bar'. Therefore the operating history regarding the Luxford Bar is also included in this report.
23. A premises licence in respect of the premises was issued on 30 December 2015 to Luxford Bar Limited.
24. On 11 March 2016 a licensing inspection of the premises was undertaken by a licensing officer. At the time of the inspection breaches of four licence conditions were noted. A re-inspection of the premises was undertaken on 18 October 2016 and the premises were found to be being operated compliantly.
25. On 23 April 2016 a local resident (to be referred to as resident 1) made a complaint that loud music emanating from the premises was causing a nuisance when the premises were in operation. As a result of the complaint visits were made to the premises by licensing officers on 6 and 8 May 2016.
26. On 22 May 2016 resident 1 made a further complaint that loud music emanating from the premises was causing a nuisance when the premises were in operation.
27. As a result of the complaint of 22 May 2016 and subsequent enforcement action, on 21 October 2016 the premises' designated premises supervisor and Luxford Bar Ltd attended Camberwell Green Magistrates' Court and pleaded guilty to the breach of

an Abatement Notice contrary to Section 80(4) of the Environmental Protection Act 1990. The designated premises supervisor received a 12 month conditional discharge and Luxford Bar Ltd received a £600 fine, were ordered to pay costs of £400 and to pay a victim surcharge of £60.

28. On 28 January 2017 resident 1 made a further complaint that loud music emanating from the premises was causing a nuisance when the premises were in operation, and also an allegation that the premises were being operated outside of the operating hours permitted by the premises licence issued in respect of the premises. As a result of the complaint a visit was made to the premises by licensing officers on 29 January 2017. Subsequent to the visit of 29 January 2017 warning letters were sent to the licensee, DPS and the premises' manager.
29. On 27 March 2017 a different local resident made a complaint that loud music emanating from the premises was causing a nuisance when the premises were in operation. As a result of the complaint visits was made to the premises by licensing officers on 8, 9 and 16 April 2017.
30. On 18 June 2018 a complaint regarding public nuisance was received concerning noise caused by the patrons of the premises. The complainant alleged that on Sunday 10th June 2018 'loud and obnoxious' females and males could be heard 'screaming at the top of their voices' and using 'extremely disgusting language' which could be heard at 23:15 hours. The complainant allegedly phoned the premises at 23:20 and asked that a member of staff attend Green Hundred Road to move their patrons who had congregated outside the complainant's window. The noise allegedly continued until about 23:45 when the customers all got in their cars and left the locale. The noise had woken the complainant up and also prevented the complainant from going back to sleep. The complainant commented that this occurred every Sunday as Luxford Bar held an event every Sunday that was extremely popular and heavily attended. The complainant alleged that patrons drove to the event and persistently took up residents' parking places. The resident stated that similar problems occurred on bank holidays and New Year's Eve. The complainant also alleged that the complainant was never able to find a parking space near to the complainant's flat on Sunday evenings.
31. On 11 October 2018 a further resident made a complaint that public nuisance, in particular regarding Sunday nights, was being caused by that patrons of Luxford Bar who regularly made excessive noise when arriving at and leaving the premises and also for some time after the premises closed. It was alleged that patrons also regularly illegally parked along footpaths and drove in a dangerous fashion. It was alleged that the noise was very disturbing to residents and that the noise takes place directly under the windows of local blocks of flats, as well as in local housing estate car parks.
32. On 21 March 2019 the Metropolitan Police Service submitted an application to this council for the summary review of the premises licence issued in respect of the premises.
33. The application referred to two serious incidents at the premises and two instances of the breach of conditions of the premises licence issued in respect of the premises. The first serious incident occurred on Sunday the 02 December 2018. Police were called to the premises by a female claiming that she had been assaulted in the premises by her ex-partner. CCTV for this incident was requested by the investigating officer. The venue informed the officer that there was no CCTV coverage of the area where the incident took place. On receipt of CCTV footage

provided to the officer it was noted that at precisely 22:00 (when the incident was alleged to have taken place) the CCTV footage stopped, therefore the incident was not recorded. The victim was informed of this, and the victim alleged that she was aware that staff at the venue had been persuaded to delete CCTV footage.

34. The second serious incident occurred at 20:00 on 1 January 2019. A male victim was stabbed in the stomach. The victim received a lacerated bowel and artery and spent several days in hospital having had an operation to repair the damage.
35. On 2 February 2019 police officers visited the premises and noted that conditions of the premises licence issued in respect of the premises were being breached and served a section 19 closure notice under the Criminal Justice and Police Act 2001.
36. On the 16 March 2019 police officers visited the premises and noted that the same conditions of the premises licence issued in respect of the premises were again being breached.
37. On 31 March 2019 a police officer of the rank of inspector served a closure notice in respect of the premises under section 76 of the Anti-Social Behaviour, Crime and Policing Act 2014. The notice closed the premises to all persons, unless exemptions were specified, for a period of 24 hours.
38. On 2 April 2019 the police obtained a closure order from the Magistrates Courts under section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014 closing the premises for a period of three months.
39. On 18 April 2019 a licensing sub committee hearing was held to determine the review submitted by the police on 21 March 2019. The decision of the licensing sub committee was to revoke the premises licence issued in respect of the premises. No appeal of the sub-committee's decision to revoke the licence was submitted by the licensee during the permitted appeal period. A copy of the notice of decision pertaining to the hearing of 18 April 2019 is attached in Appendix D.
40. On 20 June 2019 Talking Drum London Limited applied to this council for the grant of a premises licence in respect of Talking Drum, 610 Old Kent Road, London SE15 1JB. The application was subject to representations and was referred to the licensing sub-committee for determination. The licensing sub-committee considered the application on 16 September 2019 and granted the application. The current premises licence was issued on 15 October 2019. A copy of the notice of decision pertaining to the hearing of 16 September 2019 is attached in Appendix D.
41. On 12 November 2019 Talking Drum 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 Talking Drum, 610 Old Kent Road, London SE15 1JB.

Deregulation of entertainment

42. 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.
43. 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').
44. The showing of films has not been de-regulated.

Map

45. A map of the area is attached to this report as appendix E. The premises are identified at the centre of the map. The following premises are in the area displayed on the map and are licensed as stated:

Mingles Restaurant, 1 Peckham Park Road, London SE15 6TR licensed for:

- Sale of alcohol to be consumed on the premises and recorded music:
 - Sunday to Thursday: 10:00 to 22:30
 - Friday and Saturday: 10:00 to 23:30.
- Late night refreshment:
 - Friday and Saturday: 23:00 to 23:30.

Classic News, 17 Peckham Park Road, London SE15 6TR licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 08:00 to 23:30.

M & N Off-Licence, 20 Peckham Park Road, London SE15 6TW licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 08:00 to 01:00

B & M Stores, 593-613 Old Kent Road, London SE15 1LA licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 08:00 to 22:00

Mama Leah's, 660 Old Kent Road, London SE15 1JF licensed for:

- Sale of alcohol to be consumed on the premises and recorded music:
 - Sunday to Thursday: 12:00 to 22:30
 - Friday and Saturday: 12:00 to 01:00

- Late night refreshment:
 - Friday and Saturday: 23:00 to 01:00.
- Live music:
 - Friday and Saturday from 23:00 to 01:00.

Lickin' Fingers, 626b Old Kent Road, London SE15 1JB licensed for:

- Sale of alcohol to be consumed on the premises:
 - Sunday to Thursday: 10:00 to 23:00
 - Friday and Saturday: 10:00 to 23:30.
- Sale of alcohol to be consumed off the premises:
 - Sunday to Thursday: 10:00 to 23:30
 - Friday and Saturday: 10:00 to 00:30 the following day.
- Recorded music:
 - Sunday to Thursday: 10:00 to 23:30
 - Friday and Saturday: 10:00 to 00:00 (midnight).
- Live music
 - Friday and Saturday: 23:00 to 00:00.

Southwark council statement of licensing policy

46. 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.
47. 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.
48. 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.

Resource implications

49. A fee of £315.00 being the statutory fee payable for premises within non-domestic rateable value band C has been paid by the applicant company in respect of this application.

Consultation

50. 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

51. 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

52. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.

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

Principles for making the determination

54. 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.

55. 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.

56. 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.

57. 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

58. 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.

59. The four licensing objectives are

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

60. 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.

61. 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.

62. 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.

63. 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

64. 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

65. 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

66. 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.
67. 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.
68. 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.
69. 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.
70. 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.
71. 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.
72. 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

73. 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

74. 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	Copy of the premises licence
Appendix B	Copy of the application
Appendix C	Copies of the representations submitted
Appendix D	Copies of the notices of decision pertaining to the licensing sub committee hearings of 18 April 2019 and 16 September 2019
Appendix E	Map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	8 January 2020	
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	10 January 2020	