

Item No. 6.	Classification: Open	Date: 7 May 2020	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Unit 5, 12 – 16 Blenheim Grove, London SE15 4QL	
Ward(s) or groups affected:		Rye Lane	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Larry's Restaurant Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Unit 5, 12 – 16 Blenheim Grove, London SE15 4QL.
2. Notes:
 - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Unit 5, 12 – 16 Blenheim Grove, London SE15 4QL under section 34 of the Act. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the sub-committee for determination. The premises licence is attached as Appendix A.
 - Paragraphs 10 and 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.
 - Paragraphs 13 to 19 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached as Appendices C and D.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act 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, 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 Unit 5, 12 – 16 Blenheim Grove, London, SE15 4QL allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday: 07:00 to 23:30
 - Friday: 07:00 to 00:30
 - Saturday: 09:00 to 00:30
 - Sunday: 09:00 to 17:30
 - Recorded music:
 - Monday to Friday: 06:00 to 00:30
 - Saturday and Sunday: 08:00 to 00:30
 - Opening hours:
 - Monday to Thursday: 06:30 to 00:00
 - Friday and Saturday: 06:30 to 01:00
 - Sunday: 08:00 to 18:00
 - Matthew Bushnell 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 7 February 2020 Larry's Restaurant Limited applied under section 34 of the Licensing Act 2003 to vary the premises licence issued in respect of the premises known as Unit 5, 12 – 16 Blenheim Grove, London SE15 4QL.

11. The application is summarised as follows:

- To amend the opening hours to:
 - Monday to Thursday: 06:00 to 00:30
 - Friday to Saturday: 06:00 to 01:30
 - Sunday: 06:00 to 00:30
- To amend the hours permitted for the sale of alcohol to:
 - Monday to Thursday: 07:00 to 00:00 (midnight)
 - Friday to Saturday: 07:00 to 01:00
 - Sunday: 07:00 to 00:00
- To amend the hours permitted for recorded music indoors to:
 - Monday to Thursday: 06:00 to 00:00
 - Friday to Saturday: 06:00 to 01:00
 - Sunday: 06:00 to 00:00
- To apply to allow the provision of late night refreshment as follows:
 - Monday to Thursday: 23:00 to 00:00
 - Friday to Saturday: 23:00 to 01:00
 - Sunday: 23:00 to 00:00
- To apply to allow for the sale of alcohol to be consumed off the premises (off sales).
- To amend the floor plan in respect of the premises.

NB – The applicant amended the application and now only seeks to amend the floor plan in respect of the premises and to allow for off sales of alcohol at the premises.

- The application form provides the applicant's operating schedule. Parts F, 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 defined 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 any additional conditions to be included in the licence.

12. A copy of the application is attached as Appendix B.

Representations from responsible authorities

13. The Metropolitan Police Service and this council's licensing responsible authority have submitted representations regarding the application.

14. The Metropolitan Police Service initially objected to the extension of operating hours applied for, and inclusion of an external area in respect of the amended floor plan. In subsequent correspondence with the applicant the Metropolitan Police Service proposed that the application be modified to include measures, relating to off sales of alcohol being sold in sealed containers and also the licensee procuring permission from the council for the use of any external area prior to using the external area, which would become conditions of any licence issued regarding the application. The applicant agreed to the conditions proposed by the Metropolitan Police Service. The Metropolitan Police Service withdrew their representation.
15. The licensing responsible authority's representation notes that the premises are located in the Peckham cumulative impact policy area. The licensing responsible authority states that according to section 130 of this council's statement of licensing policy there is a rebuttable presumption meaning that applications for new premises licences and / or variations to existing premises licences that are likely to add to the existing negative cumulative impact of licensed premises in the Peckham cumulative impact policy area will normally be refused, or shall be subject to certain limitations.
16. In such circumstances it is for the applicant to demonstrate that the application will not, if granted, negatively impact on any of the licensing objectives. The licensing responsible authority contend that the applicant has not addressed the presumption to refuse this application and recommend refusal of the application unless the applicant can demonstrate that the premises will not contribute to crime and disorder and public nuisance within the Peckham cumulative impact policy area as a result of the proposed changes to the premises licence. The licensing responsible authority requests that the applicant provide a written dispersal policy and an 'accommodation limit' for the premises (an 'accommodation limit' being the maximum number of people permitted at the premises at any one time). The licensing responsible authority also proposes that the application be modified to include measures, relating to the sale of alcohol to be consumed off the premises, which would become conditions of any licence issued regarding the application. No objection in this representation was raised concerning the amendment to the layout of the premises.
17. Copies of the representations submitted by responsible authorities, and related correspondence, are attached to this report as Appendix C.

Representations submitted by other persons

18. Five other persons (all of whom are local residents) have submitted representations objecting to the application. In summary these representations contend that the local area is already saturated with premises licensed to sell alcohol, that the number of premises licensed to sell alcohol in the local area contribute significantly to crime & disorder, nuisance and anti social behaviour in the locale, that any extension of the premises' operating hours will further add to aforementioned problems in the area and that off sales of alcohol at the premises should not be permitted. The representations object to the application. No objections in these representations were raised concerning the amendment to the layout of the premises.
19. Copies of the representations submitted by other persons, and related correspondence, are attached to this report as Appendix D.

Conciliation

20. The applicant was sent copies of the representations and was advised that the applicant could contact the responsible authorities directly should the applicant wish

to attempt to conciliate the responsible authorities. The applicant was further advised that if the applicant wished to respond to the other persons' representations then the response should be provided to the licensing officer in charge of the application who would then forward the response to the other persons.

21. Following correspondence between the Metropolitan Police Service and the applicant, the Metropolitan Police Service withdrew their representation.
22. The applicant replied to the licensing responsible authority's representation, however at this time the licensing responsible authority's representation remains outstanding and must be considered by the licensing sub committee.
23. The other persons were advised of amendments made to the application; however at this time all of the other persons' representations remains outstanding and must be considered by the licensing sub committee.
24. At the hearing to determine the application the licensing sub-committee will be apprised as to any conciliation, whether partial or full, of the responsible authorities and / or any other persons.

Operating history

25. The premises licence in respect of the premises was originally issued on 11 January 2013.
26. The licence was transferred to Larry's Restaurant Limited on 13 January 2020. On 15 January 2020 Mr Matthew Bushnell was nominated as the designated premises supervisor in respect of the premises.
27. On 7 February 2020 Larry's Restaurant 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 Unit 5, 12 – 16 Blenheim Grove, London SE15 4QL.

Deregulation of entertainment

28. 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.
29. 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').
30. The showing of films has not been de-regulated.

Map

31. Due to IT problems a map of the area that the premises are located in could not be produced for this report. If a map can be produced prior to the hearing it will be made available prior to or at the hearing.
32. The following premises are also located on Blenheim Grove and are licensed as indicated:

Il Giardino Restaurant, 7 Blenheim Grove, London SE15 4QS licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Saturday: 11:00 to 00:00
 - Sunday: 12:00 to 23:30
- The provision of late night refreshment:
 - Monday to Saturday: 11:00 to 00:00
 - Sunday: 12:00 to 23:30

Honest Burgers, Units 1&2, 12-16 Blenheim Grove, London SE15 4QL licensed for:

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

Levan, Units 3 & 4, 12-16 Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Friday: 07:00 to 23:30
 - Saturday: 09:00 to 23:30
 - Sunday: 09:00 to 16:30

Brick Brewery, Railway Arch 209, Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on and off the premises
 - Monday to Friday: 11:00 to 22:30

Bar Story, Arch 213, Blenheim Grove, London SE15 4QL licensed for:

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

- The provision of late night refreshment:
 - Monday to Saturday: 10:00 to 00:30
 - Sunday: 10:00 to 00:30

Serious Pig, Railway Arch 221, Blenheim Grove, London SE15 4QL licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday: 10:00 to 19:00

London Barbeque School, 3 Dovedale Business Centre, Blenheim Grove, London SE5 4QN licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 11:00 to 22:00

The Sassoon Gallery, 4-5 Dovedale Business Centre, Blenheim Grove, London SE5 4QN licensed for:

- The sale of alcohol to be consumed on the premises, films, live music, recorded music, anything similar to live or recorded music and performance of plays:
 - Monday to Sunday: 12:00 to 00:00

Little Bird Gin Nights & Weekends, 22a, Dovedale Business Centre, Blenheim Grove, London SE15 4QN licensed for:

- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 10:00 to 19:00
- The sale of alcohol to be consumed off the premises:
 - Thursday to Sunday: 10:00 to 22:00.

Southwark Council saturation policy for Peckham

33. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in March 2019 when full council assembly approved the 2019 - 2021 statement of licensing policy.
34. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
35. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the

applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

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

Southwark Council statement of licensing policy

37. 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.

38. 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.

39. According to the statement of licensing policy the premises are located in Peckham major town centre area. Closing times as stated below are suggested in the statement of licensing policy for the following types of licensed premises located in Peckham major town centre area:

- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00
- 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

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

Consultation

41. 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

42. 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

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

Principles for making the determination

45. 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.
46. 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.
47. 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.

48. 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

49. 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.
50. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
51. 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.
52. 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.
53. 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.
54. 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

55. 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

56. 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

57. 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.
58. 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.
59. 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.

60. 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.
61. 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.
62. 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.
63. 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

64. 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

65. 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 by responsible authorities and related correspondence
Appendix D	Copies of the representations submitted other persons and related correspondence

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	21 April 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	23 April 2020	