

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 18 June 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Albany Convenience Store, 5A Westmoreland Road, London SE17 2AX	
<b>Ward(s) or groups affected:</b>		Faraday Ward	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Alhaji Turay to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Albany Convenience Store, 5A Westmoreland Road, London SE17 2AX
2. Notes:
  - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Albany Convenience Store – 5A Westmoreland Road, London SE17 2AX, under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities (the Metropolitan Police Service (Licensing Division), trading standards, environmental protection, health and safety and licensing authority) and is therefore referred to the sub-committee for determination.
  - Paragraphs 10 to 15 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application and site plan is attached as Appendix B. A map showing the location of the premises is attached as Appendix D.
  - Paragraphs 17 to 23 of this report deal with the representations submitted in respect of the application. Copies of the representations and related correspondence are attached in Appendix C.

## 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 issued in respect of the premises known as Albany Convenience Store, 5A Westmoreland Road, London, SE17 2AX was issued on 14 December 2011 and allows the following licensable activities:
- The sale of alcohol to be consumed off the premises:
    - Monday to Friday from 06:00 to 23:30
    - Saturday from 07:30 to 23:30
    - Sunday from 08:00 to 21:00
  - Opening hours:
    - Monday to Friday from 06:00 to 23:30
    - Saturday from 07:30 to 23:30
    - Sunday from 08:00 to 21:00
9. A copy of the existing premises licence is attached as Appendix A.

### **The variation application**

10. On 17 February 2020 Alhaji Turay 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 Albany Convenience Store, 5A Westmoreland Road, London SE17 2AX. The application was initially rejected and the consultation had to be restarted due to issues with the external blue notice. All issues were resolved by restarting the consultation.
11. The application is described as follows, "The premises is set in a mixed retail parade just off the A215 Camberwell Road where it joins Walworth road. It has a lock-up shop unit comprising a sales area, rear area, rear storage, and a separate WC. It is set

behind a glazed shop front with an electric roller shutter. shops adjacent to the premises, are Arments Pie and Mash and Sigma Stars. It is painted in blue with a silver shutter and located it is located directly opposite Cafe Silam Restaurant [sic.]”.

12. The application seeks to add:

- On sales of alcohol:
  - Monday to Wednesday from 11:00 to 01:00
  - Thursday to Sunday from 11:00 01:30
- Late night refreshment:
  - Monday to Wednesday from 23:00 to 02:00
  - Thursday to Sunday from 23:00 02:30
- Opening hours:
  - Monday to Wednesday from 10:00 to 20:00
  - Thursday to Sunday from 10:00 to 03:00

13. The application states that there would be seasonal variations on Christmas Day, Boxing Day, New Years Eve, New Years Day and Sierra Leone Independence Day; but provides no detail on what that variation would be.

14. The premises licence application form provides the applicant’s operating schedule. Part M sets out the proposed 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.

15. A copy of the application is attached to this report as Appendix B.

#### **Designated premises supervisor**

16. The designated premises supervisor (DPS) under the existing premises licence is Alhaji Turay, the current licence holder.

#### **Representations from responsible authorities**

17. Representations have been received from the Metropolitan Police Service (licensing division), trading standards, health and safety and the licensing authority. Copies of these objections were forwarded to the applicant. Copies of the responsible authorities’ representations are available in Appendix C. A response from the applicant to the responsible authorities is also appended.

18. The Metropolitan Police Service (licensing division) are concerned that the change of business operation will have a detrimental impact on the local area and points to a history of antisocial behaviour in the locality, at times directly associated with the premises. If the sub-committee were minded to grant the licence, a raft of stringent conditions have been requested, however, they ask that the application be rejected in full.

19. Southwark trading standards believe that the premise is unsuitable for alcohol to be consumed on the premises while it is also being operated as a “convenience” shop simultaneously; where anyone of any age can enter the premise unaware alcohol is being consumed on the premises. They ask that the application be rejected.
20. Southwark health and safety raises concerns regarding public safety, due to a history of the premises selling alcohol out the rear of the premises.
21. The Southwark licensing authority raises concerns that the application includes a hand-drawn plan of the premises showing where the new alcohol on-sales bar area will be positioned. The authority provides a history of enforcement action. There are concerns that the application does not include any conditions to control the consumption of alcohol in the sensitive yard area to the rear of the premises, nor does the application include a maximum capacity for the premises. The Southwark licensing authority recommends that the application be refused.

### **Representations from other persons**

22. There are no further representations to this application.

### **Conciliation**

23. The Applicant was sent copies of the representations received. At this time the Objectors’ representations remain outstanding and must be considered by the licensing sub-committee. It is noted that the responsible authorities have stated in each representation, that the premises is not suitable for the addition of on sales. Responsible authorities have requested that the application be rejected in full. The response from the Applicant is appended in Appendix C.

### **Operating history**

24. The current premises licence was issued on 14 February 2011.
25. On 27 January 2017 Alhaji Turay applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence again to provide on sales. The application received representations from the Metropolitan Police Service (licensing division), the Southwark licensing authority, environmental protection, public health and trading standards, but was withdrawn before coming to a hearing.
26. An inspection was carried out on 14 September 2019. During the inspection the officers witnessed breaches of the following conditions, for which a warning letter was sent:
  - 288 - That the CCTV system installed upon the premises shall be maintained in good working condition and operable at all times and CCTV shall be positioned to capture each sale of alcohol.
  - 289 - That recordings taken by the CCTV system installed upon the premises shall be kept and made available for inspection by authorised officers for a period of thirty-one (31) days.
  - 343 - That an EPOS system is installed upon the premises.

27. A new application was received on 7 February, but was rejected. The current application was received on 17 February 2020.
28. No complaints have been received by the Licensing Unit in regards to the premises in the last 12 months. No temporary events notices have been applied for

### **Map**

29. A map of the area is attached to this report as Appendix D. The following are premises in the local vicinity that are licensed for alcohol:

#### **Winner, 3 Westmoreland Road, London SE17 2AX**

- Late night refreshment (outdoors):
  - Monday to Saturday from 23:00 to 00:30
  - Sunday 23:00 to 23:30

#### **Marquis Restaurant and Bar, 10 Arnside Street, London SE17 2AP**

- The sale by retail of alcohol (on sales):
  - Monday to Thursday from 09:00 to 00:00 (midnight)
  - Friday to Sunday from 09:00 to 00:30 (the following day)
- Late night refreshment (indoors and outdoors):
  - Monday to Thursday from 09:00 to 00:00 (midnight)
  - Friday to Sunday from 09:00 to 00:30 (the following day)

#### **Ibbs Restaurant, 6 Arnside Street, London SE17 2AP**

- The sale by retail of alcohol (on sales):
  - Monday to Thursday from 12:00 to 22:30
  - Friday and Saturday from 12:00 to 23:30
  - Sunday 12:00 to 22:00
- Late night refreshment (indoors):
  - Friday and Saturday from 23:00 to 23:30

#### **Red Lion, 407 Walworth Road, London SE17 2AW**

- The sale by retail of alcohol (on sales):
  - Monday to Thursday from 10:00 to 00:00 (midnight)
  - Friday and Saturday from 10:00 to 01:00 (the following day)
  - Sunday 12:00 to 00:00 (midnight)
- The provision of regulated entertainment in the form of live music (indoors):
  - Friday to Sunday from 20:00 to 00:00 (midnight)

- The provision of regulated entertainment in the form of recorded music (indoors):
  - Monday to Thursday from 10:00 to 00:00 (midnight)
  - Friday and Saturday from 10:00 to 01:00 (the following day)
  - Sunday 12:00 to 00:00 (midnight)

**University of Suya, 403a Walworth Road, London SE17 2AW**

- The sale by retail of alcohol (on sales only)
  - Monday to Friday from 12:00 to 22:00
  - Saturday from 12:00 to 23:00

**Costcutter, 25 Camberwell Road, London SE5 0EZ**

- The sale by retail of alcohol (off sales only):
  - Monday to Sunday 24hours-a-day

**Umashiv News, 23 Westmoreland Road. London SE17 2AX**

- The sale by retail of alcohol (off sales only):
  - Monday to Saturday from 08:00 to 23:00
  - Sunday from 10:00 to 22:30

**La Luna, 380 Walworth Road, London SE17 2NG**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday from 11:00 to 00:00 (midnight)
  - Sunday from 12:00 to 22:30
- Late night refreshment (indoors):
  - Monday to Saturday from 23:00 to 00:30 (the following day)
  - Sunday from 23:00 to 00:00 (midnight)

**Bay Root, 8 Camberwell Road, London SE5 0EN**

- The sale by retail of alcohol (on and off sales):
  - Monday to Sunday from 12:00 to 23:00

**Abokobi Ghanaian Restaurant, 33 Camberwell Road, London SE5 0EX**

- The sale by retail of alcohol (on sales only):
  - Monday to Sunday from 12:00 to 23:30
- Late night refreshment (indoors):
  - Monday to Sunday from 23:00 to 23:30

**Astra Newsagents, 22 Camberwell Road, London, SE5 0EN**

- The sale by retail of alcohol (off sales only):
  - Monday to Sunday from 06:00 to 22:00.

**Southwark Council statement of licensing policy**

30. 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.

31. 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.

**Cumulative impact zone (CIZ)**

32. The premises is not situated in any of Southwark's cumulative impact zones, however, this is a residential area.

33. Under the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for these categories of premises:
- Closing time for public houses, wine bars and other drinking establishments:
    - 23:00 daily
  - Closing time for off-licences:
    - 23:00 daily.

### **Resource implications**

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

### **Consultation**

35. 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**

36. 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**

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

### **Principles for making the determination**

39. 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.
40. 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.
41. 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.

42. 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**

43. 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.
44. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
45. 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.
46. 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.
47. 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.
48. 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**

49. 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**

50. 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**

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. 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.
57. 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**

58. 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**

59. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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 existing premises licence
Appendix B	Copy of the application and plan
Appendix C	Copies of representations submitted by responsible authorities
Appendix D	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	28 May 2020	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		5 June 2020