

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 6 August 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Theo's, 2-4 Grove Lane, London SE5 8SY	
<b>Ward(s) or groups affected:</b>		Camberwell Green	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by East 12<sup>th</sup> Restaurants Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Theo's, 2-4 Grove Lane, London SE5 8SY.
2. Notes:
  - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Theo's, 2-4 Grove Lane, London SE5 8SY, 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 an outstanding representation submitted by a local resident and is therefore referred to the sub-committee for determination.
  - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
  - Paragraphs 9 to 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. A map showing the location of the premises is attached as Appendix E.
  - Paragraphs 13 to 28 of this report deal with the representations submitted in respect of the application. Representations are attached as Appendix C and Appendix D.

## 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, 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 the Theo's, 2-4 Grove Lane, London, SE5 8SY was issued on 23<sup>rd</sup> May 2017 and allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
    - Sunday to Thursday: 11:00 to 23:00
    - Friday and Saturday: 11:00 to 23:30
  - Opening hours:
    - Sunday to Thursday: 08:00 to 23:30
    - Friday and Saturday: 08:00 to 00:00 (midnight)
  - A copy of the existing premises licence is attached as Appendix A.

### **The variation application**

9. On 15 May 2020 East 12<sup>th</sup> Restaurants 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 Theo's, 2-4 Grove Lane, London SE5 8SY.
10. The application for variation is to add off sales of alcohol for delivery and takeaway (sold ancillary to food only) and to extend the use of the rear garden area from 21:00 to 22:00.
11. A copy of the application is attached to this report as Appendix B.

### **Designated premises supervisor**

12. The designated premises supervisor (DPS) under the existing premises licence is Adam Clark, holding a personal licence with the London Borough of Brent.

### **Representations from responsible authorities**

13. The licensing responsible authority has made representation raising concerns regarding the extended use of the rear garden and asking for clarification on conditions 341 and 305, namely:
  - **341** That the rear garden and all doors and windows from the indoor licensable area to the rear of the premises shall close at 20.00pm on Sunday and 21.00pm Monday to Saturday;
  - **305** That signage shall be displayed at the entrance to the back garden stating that the area is closed to patrons from 20.00 on Sunday and 21.00 on Monday to Saturday.
14. The application does not address changes to these conditions in light of the hours of the application. In addition to address the off sales, additional conditions are requested, namely:
  - Any 'off sales' of alcohol shall be provided in sealed containers and taken away from the premises.
  - That clear legible signage shall be prominently displayed where it can be easily seen and read, requesting that alcohol sold as 'off sales' should not be opened and consumed in the vicinity of the premises.
15. A response has been forthcoming to the licensing responsible authority. The representation and response are available in Appendix C.
16. Southwark's planning authority has not made representation, but have provided a comment, which is also included for members' information in Appendix C.

### **Representations from other persons**

17. One local resident has made representation, which is available in Appendix D.
18. The complainant believes that the granting of the variation will create public nuisance and be a threat to public safety. There are ongoing concerns in relation to a saturation of licensed premises in the area and that the granting of off sales could lead to the increase in rubbish and alcohol consumption in the immediate vicinity. There is also a concern that the hours for off-sales as applied, are excessive, as the premises does not have late night refreshment on their premises licence
19. The objector states that there are already localised issues with patrons consuming alcohol from other premises and that the granting of off sales will exacerbate this. There are concerns about access to their property having experiences issues in the past. The Objector claims to have experienced abuse trying to access their address.
20. There is a further complaint regarding a notice and a noisy sanding machine. The objector claims that off sales already take place from the premises and that the council has failed to investigate this.

21. The objector has added photographs of what he believes to show customers consuming alcohol outside of the premises and a video of a patron in the rear garden.
22. The objector states that the application was not advertised correctly at the premises and that the Council has failed to address this. The objector has contended that the correct procedure has not been adhered to regarding this application and the date on the poster and wants the application to be rejected.
23. The licensing authority have extended the consultation period twice (by two days in total) to ensure that the full 28 days consultation period was given; the objector made their representation on the last day.
24. The licensing authority would not consider lightly rejecting an application where there is a minor error, but in this case it is believed that residents are not disadvantaged by that error and, if rejected, the same application would be submitted the next day. The objector knew of the application from an early date, was also sent a copy of the application, discussed the application with his neighbours and, after extensive emails advising they can, made the attached representation.
25. Licensing case law is helpful on this issue, in R (D&D Bar Services Ltd) -v- Romford Magistrates Court and the London Borough of Redbridge [2014] EWHC 213 Admin) where a notice had 2 minor errors the appeal judge at the High Court, HHJ Blackett states:

*"...in my view it could never have been the intention of Parliament that minor errors on a notice or advertisement for a licensing review should make any subsequent consideration of the licence void. Such an approach would lead to absurd consequences. It is clear that there must be substantial compliance with Regulations 38(1) (a) and 39 but the process should not be frustrated by minor errors."*
26. This makes the case that a minor error in not following regulations would not necessarily be fatal to the proceedings, what we have to decide is if the consequence of the defect is to invalidate the proceedings so that the applicant has to start again, in our view in this case it does not. The objector may raise this matter at the licensing Hearing; if they do, Members may deal with the issue at that time, under legal advice.

### **Conciliation**

27. The representation from the licensing responsible authority has been responded to and is available in Appendix C.
28. The representation from the local resident has been provided to the applicant. The applicant is aware of whom the objector is, as there has been a history of issues between them.

### **Operating history**

29. The premises licence was originally applied for in February 2015 and granted following a sub-committee hearing. A minor variation was further granted in May 2017 in regards to the layout of the internal licensed area and the use of the rear garden.
30. On 10 January 2018 East 12<sup>th</sup> Restaurants Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence to add off sales of alcohol for delivery and takeaway. This application was withdrawn.
31. The premises has never applied for temporary events notices.

32. The following is a historical list of complaints received in relation to the premises (followed by follow-up visits carried out by officers in paragraph 33). While historical complaints are not necessarily relevant to the current application, the resident objector has stated that the council has failed to investigate licence breaches by the premises:

Date	Complainant	Complaint
12/01/2016	Local resident	Complaint of noise from premises (to Noise Team)
13/01/2016	Local resident	Complaint of music from premises (to EPT)
20/01/2016	Local resident	Complaint of breaches of licence; people drinking glasses of wine outside the premises, people in the premises drinking and not eating a meal and noise (to Licensing)
27/02/2016	Local resident	Complaint of music from premises (to Noise Team)
18/05/2016	Local resident	Complaint of use of the rear garden beyond hours with windows and doors open. Noise from drunken patrons leaving the premises. Complaint of drinks offered to patrons awaiting food (to Licensing).
From 30/03/2017 to 25/04/2017	Local resident	Multiple complaints via email and telephone recorded on a single data entry. Complaints of: <ul style="list-style-type: none"> <li>• Licence breaches</li> <li>• Use of the rear garden beyond hours</li> <li>• Patrons drinking on the pavement</li> <li>• The absence of the DPS</li> <li>• That the licence holder is a 'proxy holder'</li> <li>• Noise disturbances</li> <li>• Doors and windows remaining open (or being slammed)</li> </ul>
From 25/07/2017 to 03/08/2017	Local resident	Complaint regarding not being informed of the minor variation. Complaint of unlicensed late night refreshment and on-going noise issues and licence breaches.  On 31/07/2017 the Complainant came to the Council offices and met with the Principal Licensing Officer and Licensing Manager.  On 03/08/2017 the Principal met with owners/management at the premises and discussed all concerns. No breaches were found. Further observations/inspections to be carried out.
09/02/2018	Local resident	Complaint regarding previous variation application. Errors on the premises notice. The Notice was inspected, corrected and the consultation was recommenced. The application was withdrawn.
25/06/2018	Local resident	Complaint regarding the layout of the premises in relation to how the Council had taken measurements of the premises for planning purposes. Complaint that changes should not have been a minor variation. Advice given.
27/06/2019	Local resident	Claim that premises is breaching Condition 341

Date	Complainant	Complaint
		'That the rear garden and all doors and windows from the indoor licensable area to the rear of the premises shall close at 20.00 on Sunday and 21.00 Monday to Saturday'. Complainant stated that he had tried to sort this informally with management and has written to them twice. The premises was inspected and found to be fully compliant.

33. It should be noted that all complaints are from one local resident. This local resident is the author of the representation against this application.
34. As a result of the complaints received by the Licensing Authority, the premises has been visited and has had observations carried out. A list of visits and observations by Licensing Enforcement Officers conducted to the premises are as follows:

Date	Time	Outcome
21/01/2016	00:10	Full inspection carried out – found to be fully compliant.
21/05/2016	21:30	Inspection of rear garden – which was closed. Appropriate signage in place. Some people stood out the front of the premises.
08/04/2017	20:45	Observations: Nobody out front, all quiet.
02/06/2017	18:36	Visit further to complaint – No patrons in the rear garden, no patrons out front smoking or drinking. Noted that the door from the kitchen leading to the rear beer garden was closed and bolted and locked shut. The immediate front of the premises was checked and no bottles or glasses were left discarded in the immediate front vicinity of the premises.
23/06/2017	20:15	Visit further to on-going complaint. No patrons of the premises drinking at the front or rear of premises beer garden.
14/07/2017	20:25	Compliance check. No patrons of the premises at the front of the premises with drinks /no smokers were also located at the front of the premises. Rear garden was unoccupied. No issues in relation to compliance.
15/07/2017	19:10	Observations: Nobody outside all quiet.
29/07/2017	19:40	Visit to premises. No patrons located outside the premises drinking. Rear beer garden checked no patrons located in the rear beer garden.
18/08/2017	20:30	Visit to premises. X5 patrons outside the premises by the main entrance waiting to collect their pizza orders. The premises internally was very busy with almost all covers within the premises taken by seated diners eating and drinking. No patrons located outside the premises drinking. A check of the rear garden was made and it was noted that no patrons were drinking in the garden. No issues of concern were noted.
25/08/2017	21:40	Visit to premises. No patrons of the premises located at the front of the premises drinking or smoking. Check of the rear garden and noted no patrons located there.
27/08/2017	20:05	Observations: Nobody outside, very quiet.
08/09/2017	20:38	Visit to premises. No patrons of the premises located at

Date	Time	Outcome
		the front of the premises drinking or smoking. Check of the rear garden and noted no patrons located there.
02/12/2017	19:36	Observations: three people smoking outside front of building; it was raining outside.
23/12/2017	19:22	Observations: Nobody outside, very quiet.
26/01/2018	22:00	Visit to premises. Entered the premises and noted that windows and doors in the kitchen were closed. No patrons of the premises located outside the premises drinking. Full inspection completed and the premises was found to be fully compliant.
24/02/2018	21:35	Inspection carried out as current variation application. Duty Manager could not find full licence or operate CCTV. Warning email sent, will return to check compliance.
09/03/2018	20:20	Re-inspection as part of current variation application. Fully compliant. Manager very helpful. Discussed the representation by local resident- they are well aware of the resident and are looking at offering to reduce off sales hours.
06/04/2019	23:39	Premises quiet, three people stood outside smoking.
06/07/2019	22:35	Full inspection as a result of complaint. Premise found to be fully compliant at time of inspection.

## Map

35. A map of the area is attached to this report as Appendix E. There are many licensed premises, those in the immediate vicinity are:

### **The Hill Bakery & Deli - 4a Grove Lane, London SE5 8SY**

- The sale by retail of alcohol (off sales):
  - Monday to Thursday: 09:00 to 19:00
  - Friday and Saturday: 10:00 to 20:00
  - Sunday: 10:00 to 16:00

### **Hermits Cave, 28 Camberwell Church Street, London SE5 8QU**

- The Sale by retail of alcohol (both on and off sales)
  - Monday to Wednesday: 10:00 to 00:00
  - Thursday to Saturday: 10:00 to 02:00
  - Sunday: 10:00 to 01:00
- The provision of late night refreshment:
  - Monday to Wednesday: 23:00 to 00:00
  - Thursday to Saturday: 23:00 to 02:00
  - Sunday: 23:00 to 01:00
- The provision of regulated entertainment in the form of films, live and recorded music, performances of dance and anything similar:
  - Monday to Wednesday: 10:00 to 00:00
  - Thursday to Saturday: 10:00 to 02:00

- Sunday: 10:00 to 01:00

**Tazze Grill, 22 Camberwell Church Street, London SE5 8QU**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday: 10:00 to 00:00
- The provision of late night refreshment (indoors):
  - Monday to Wednesday: 23:00 to 00:30
  - Thursday and Saturday: 23:00 to 02:00
  - Sunday: 23:00 to 01:00

**London Food and Wine, 12 Camberwell Church Street, London SE5 8QU**

- The sale by retail of alcohol to be consumed off premises:
  - Monday to Sunday: 08:00 to 03:00

**Food and Wine, 4 Camberwell Church Street, London SE5 8QU**

- The sale by retail of alcohol to be consumed off premises:
  - Monday to Sunday: 00:00 to 00:00

**The Crooked Well, 16 Grove Lane, London SE5 8SF**

- The sale by retail of alcohol (both on and off sales):
  - Sunday to Thursday: 10:00 to 00:00
  - Friday and Saturday: 10:00 to 01:00
- The provision of late night refreshment (indoors):
  - Sunday to Thursday: 23:00 to 00:00
  - Friday and Saturday: 23:00 to 01:00
- The provision of regulated entertainment in the form of films, live and recorded music (indoors):
  - Sunday to Thursday: 10:00 to 00:00
  - Friday and Saturday: 10:00 to 0: 1:00

**Camberwell Superstore, 34 Camberwell Church Street, London SE5 8QZ**

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

**Daily Goods, 36 Camberwell Church Street, London SE5 8QZ**

- The sale by retail of alcohol (on and off sales):
  - Monday to Sunday: 10:00 to 22:00

**Van Hing, 42 Camberwell Church Street, London SE5 8QZ**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday: 11:00 to 00:00
  - Sunday: 12:00 to 23:30
- The provision of late night refreshment (indoors):
  - Monday to Saturday: 23:00 to 00:30
  - Sunday: 23:00 to 00:00

**I Go Chop, 46 Camberwell Church Street, London SE5 8QZ**

- The sale by retail of alcohol (on and off sales):
  - Sunday to Thursday: 10:00 to 23:30
  - Friday and Saturday: 10:00 to 00:30
- The provision of late night refreshment (indoors and outdoors):
  - Monday to Sunday: 23:00 to 05:00

**FM Mangal, 54 Camberwell Church Street, London SE5 8QZ**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Sunday: 12:00 to 00:00
- The provision of late night refreshment (indoors):
  - Monday to Wednesday: 23:00 to 01:00
  - Thursday to Saturday: 23:00 to 02:00
  - Sunday: 23:00 to 00:00
- The provision of regulated entertainment in the form of recorded and live music, performances of dance and anything similar (indoors):
  - Monday to Wednesday: 09:00 to 01:00
  - Thursday to Saturday: 09:00 to 02:00
  - Sunday: 12:00 to 00:00

**Portuguese Cafe Deli, 11 Camberwell Church Street, London SE5 8TR**

- The sale by retail of alcohol to (on and off sales):
  - Monday to Sunday: 08:00 to 00:00

**Wuli Wuli, 15 Camberwell Church Street, London SE5 8TR**

- The sale by retail of alcohol (on sales):
  - Sunday to Thursday: 12:00 to 23:00
  - Friday and Saturday: 12:00 to 01:00
- The provision of late night refreshment (indoors):
  - Sunday to Thursday: 23:00 to 23:30
  - Friday and Saturday: 23:00 to 01:00

**Nape, 21 Camberwell Church Street, London SE5 8TR**

- The sale by retail of alcohol (on and off sales):
  - Monday to Sunday: 11:00 to 23:00

**Funky Munky, 25 Camberwell Church Street, London SE5 8TR**

- The sale by retail of alcohol (both on and off sales):
  - Sunday to Wednesday: 10:00 to 00:00
  - Thursday: 10:00 to 02:00
  - Friday and Saturday: 10:00 to 03:00
- The provision of late night refreshment (indoors):
  - Sunday to Wednesday: 23:00 to 00:30
  - Thursday: 23:00 to 02:30
  - Friday and Saturday: 23:00 to 03:30
- The provision of regulated entertainment in the form of live and recorded music, performances of dance and anything similar (indoors):
  - Sunday to Wednesday: 10:00 to 00:00
  - Thursday: 10:00 to 02:00
  - Friday and Saturday: 10:00 to 03:00

**Communion, Basement Of Angels & Gypsies Restaurant, 29-33 Camberwell Church Street, London SE5 8TR**

- The sale by retail of alcohol (both on and off sales):
  - Sunday to Thursday: 11:00 to 00:30
  - Friday and Saturday: 11:00 to 03:00
- The provision of late night refreshment (indoors):
  - Sunday to Thursday: 23:00 to 00:30
  - Friday and Saturday: 23:00 to 03:00
- The provision of regulated entertainment in the form of live and recorded music, performances of dance and anything similar (indoors):

- Sunday to Thursday: 11:00 to 00:30
- Friday and Saturday: 11:00 to 03:00

**Kentucky Fried Chicken - 35 Camberwell Church Street, London, SE5 8TR**

- The provision of late night refreshment (indoors):
  - Sunday to Thursday: 23:00 to 02:00
  - Friday and Saturday: 23:00 to 03:30.

**Southwark council statement of licensing policy**

36. 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.

37. 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)**

38. The premises is within the Camberwell cumulative impact zone area and in the Camberwell district town centre area.
39. 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 restaurants and cafes:
    - Sunday to Monday to 00:00 (midnight)
    - Friday and Saturday to 01:00 (the following day).

### **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.

### **Consultations**

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 twice (there was an error on the initial advert; however, this was republished within the specified time period to the satisfaction of the Licensing Authority). A similar notice exhibited at the premises for a period of 28 consecutive days. This was inspected by a Licensing Officer during the consultation period and found to be compliant.

### **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**

<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	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

policy Case file		
------------------	--	--

## APPENDICES

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copy representation from Licensing and non-representation from Planning
Appendix D	Copy representation from other person (local resident)
Appendix E	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>	20 July 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>		20 July 2020