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| Item No. 5. | Classification: Open | Date: 17 September 2020 | Meeting Name: Licensing Sub-Committee |
| Report title: | | Licensing Act 2003: Foodlink, 98-100 Wyndham Road, London SE5 0UB | |
| Ward(s) or groups affected: | | Camberwell Green | |
| From: | | Strategic Director of Environment and Leisure | |

RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by the Metropolitan Police (Licensing Division) under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Sohail Khan in respect of the premises known as Foodlink – 98-100 Wyndham Road, London SE5 0UB.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 12 to 15 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The review application is supported by representations submitted by trading standards and the licensing authority in their roles as responsible authorities. Copies of the representations are attached as Appendix B. Details of the representations are provided in paragraphs 16 to 19.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C. A map of the area that the premises are located in is attached as Appendix D.
 - d) A copy of the Council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:

- The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence allows the provision of licensable activities as follows:
- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 06:00 to 00:00
 - Opening Hours:
 - Monday to Sunday: 00:00 to 00:00.
10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix C.

Designated premises supervisor (DPS)

11. The current Designated Premises Supervisor (DPS) named on the licence is Sohail Khan, who is also the licensee of the premises.

The review application

12. On 23 July 2020, an application was submitted by the Metropolitan Police Service, under Section 51 of the Licensing Act 2003, for the review of the premises known as Foodlink, 98-100 Wyndham Road, London SE5 0UB.
13. The review application was submitted in respect of the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives. The and in summary states that the following has been witnessed and / or taken place at the premises:
- On Friday 3 July 2020 at 19.58, police executed two search warrants at Foodlink, 98-100 Wyndham Road and 108 Wyndham Road, London SE5 issued by Croydon

Magistrate's court. Sohail Khan, the licence holder and designated premises supervisor was on the premises and became aggressive and obstructive.

- Police searching the private basement storage area found twelve wraps of what is believed to be a cocaine and heroin mix, which was subsequently tested and found to contain cocaine and opiates. Under the counter, the searching officer found a hammer and a large bread knife, which appeared to be kept there to use as weapons.
- The full licence and summary were not made available and breaches were found in relation to the following licence conditions were found:
 - Condition 342: That all staff concerned with the supply of intoxicating liquor undergo a recognised training scheme for such duties.
 - Condition 843: That staff training shall be recorded stating that each employee understands that alcohol and cigarettes are not to be purchased from customers and or a door to door sales person.
 - Condition 340: That an approved CCTV be installed both inside and out and a recording shall be kept for 31 days.
- On Thursday 9 July 2020, officers from the licensing and night time economy team in the company of Southwark trading standards carried out another licensing inspection.
- Officers again found a number of breaches of the licence relating to the following licence conditions:
 - Condition 101: Every supply of alcohol under the premises licence must be made, or authorised by, a person who holds a personal licence.
 - Condition 336 - A personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.
 - Condition 342: That all staff concerned with the supply of intoxicating liquor undergo a recognised training scheme for such duties.
 - Condition 345: That a refusals book will be kept at the premises and maintained at all times.
 - Condition 341: That the adoption and implementation of a recognised Proof of Age scheme.
 - Condition 344: That any person who appears to be under the age of 21 will be asked to sign a universally recognised form of ID. (i.e. proof of age card, passport or photo driving licence), before being allowed to purchase alcohol.
 - Condition 488: That (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either (a) a holographic mark; or (b) an ultraviolet feature.

- Condition 847: That the licensee to adhere to a Challenge 25 policy where all customers who appear to be under the age of 25 and attempt to purchase alcohol or other age-restricted products are asked for proof of their age. The following proofs of age are the only ones to be accepted: a) proof of age cards bearing the Pass hologram symbol, b) UK Photo Driving licence c) Passport Notices will be prominently displayed at the entry and point of sale stating that CCTV is in use, challenge 25 is operated and the provisions of the licensing act regarding underage and proxy purchases and sales.
- Condition 340: That an approved CCTV be installed both inside and out and a recording shall be kept for 31 days.
- Police attended the premises again on the 15 July 2020 to collect the CCTV that had been requested but were advised the CCTV was not working for the period requested. This is a further breach of the licence as they have failed to provide the CCTV.
- The police have carried out four licensing inspections on the premises previously and on three occasions weapons have been found under the counter and on two occasions no personal licence holder was present. On all visits a number of breaches of the licence have been found.
- In October 2014 the premises licence was subject to a Section 53a review under the previous management after a very serious assault whilst the premises were operating in breach of the licence. Sohail Khan has held the freehold to the premises since 2012. He owns a number of properties, which have had council and police enforcement action against them due to poor management, and breaches of the licence. He is also the owner of another property on Wyndham Road which had a warrant executed on the same day as Foodlink and was believed to be used as a brothel with links to human trafficking; but advertising as a massage parlour.
- A prosecution was taken under planning legislation and confiscation under the Proceeds of Crime Act in April 2019 in relation of the unlawful conversion of 98-100 Wyndham Road from a public house to a shop and six flats without planning permission. The owners had failed to comply with a planning notice, which constituted an offence and continued to receive rent from the properties in breach of the notice. The application was for the sum the criminal benefit of £25,175.00. He was convicted and a confiscation order was issued on the 18 May 2019 for £18,000. Failure to pay a confiscation order can result in a prison sentence of up to five years.

14. The Metropolitan Police are seeking revocation of the premises licence.
15. Full details of the grounds for the review are provided within review the application. A copy of the review application is attached as Appendix A.

Representations from responsible authorities

16. There are supporting representations submitted in support of the review application by trading standards and the licensing authority.
17. The council's trading standards service representation is submitted in support of the police review in respect of a history of noncompliance at the premises.
18. The licensing authority's representation is made in support of the police review and draws attention to the history of the premises, breaches of conditions and the discovery of narcotics on the premises. In addition, the premises was subject to an expedited review by the Metropolitan Police Service in 2014 following a serious crime and disorder incident at

the premises. The notice of decision from the licensing sub-committee Hearing held on 23 December 2014 is attached as part of the representation.

19. Copies of the representations are attached as Appendix B.

Representations from other persons

20. No representations have been received by other persons.

Operating History

21. A premises licence was issued to the premises on 16 January 2008.
22. On 14 September 2013 officers visited and observed that there was no personal licence holder on the premises, no refusal book was not available, the licence was not available on site and the admission of staff of not always using the hatch. This resulted in a warning letter being issued.
23. On 5 November 2013 at 01:10 the store was observed to be allowing people to enter the premises and was not using the hatch to serve customers. No personal licence holder or designated premises supervisor (DPS) was on site at the premises.
24. On 22 November 2013 at 01:10 officers again visited the premises and were advised there was no personal licence holder on site and no DPS.
25. On 26 November 2014 the licence was reviewed under Section 53A (1)(b) of the Licensing Act 2003 as a result of the premises being associated with both serious crime and disorder. The notice of decision from the licensing sub-committee is contained with the representation of the licensing authority.
26. The review application was concerned with an incident that occurred on 19 November 2014 which amounted to a grievous bodily harm at the premises. The premises failed to operate in compliance with the conditions on the licence in particular condition 343 which states that "There will be window service only between the hours of 24:00 and 06:00. No members of the public will be allowed on the premises during this time", resulting in a member of staff being seriously injured. A member of staff attacked the males with a weapon prior to him being stabbed. CCTV was deleted in breach of licence condition as must be kept for 31 days. Four days later the premises was found breaching the same conditions again. There is a history of the premises not complying with the conditions stipulated on the licence especially in relation to window service between 24:00 and 06:00 and also having a personal licence holder on the premises at all times that alcohol is retailed.

Appeal

27. The case was brought by Mr Ghazanfar Ali (t/a Foodlink) v. Southwark Council at Croydon Magistrates Court. A Consent Order was signed on 19 October 2015 and the Appellant was ordered to pay the council costs of £8312.90. The following conditions were to be added to the premises licence:
 - 1) The premises licence holder (whether directly or through his employees) shall not purchase any alcohol, cigarettes or tobacco products from door to door sellers.
 - 2) The premises licence holder shall ensure all receipts for goods bought include the following details:
 - The seller's name,
 - The seller's company details

- The seller's VAT details (if applicable)
- 3) The premises licence holder shall retain copies and/or all receipts for purchase of alcohol and tobacco products which must be kept at the premises for a minimum of six months from the date of purchase which may be inspected by a council officer or Police Officer, Trading Standards Officer of HMRC upon request.
 - 4) Staff training shall be recorded stating that each employee understand that alcohol and cigarettes are not to be purchased from customers and/or a door-to-door sales person.
 - 5) All purchases of alcohol and tobacco products must be undertaken by the premises licence holder or DPS or personal licence holder.
 - 6) Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display and at the point of sale.
 - 7) The Premises Licence Holder shall maintain an EPOS system at the premises which will flag up any age restricted products and any alcohol sales outside the permitted hours.
 - 8) The Licensee to adhere to a "Challenge 25" policy where all customers who appear to be under the age of 25 and attempt to purchase alcohol or other age-restricted products are asked for proof of their age.
 - 9) The Licensee to prominently display notices advising customers of the "Challenge 25" policy. The following proofs of age are the only ones to be accepted:
 - Proof of age cards bearing the "Pass" hologram symbol
 - UK Photo Driving Licence
 - Passport
 - 10) Notices will be prominently displayed at the entry and point of sale stating that CCTV is in use, challenge 25 is operated and the provisions of the licensing act regarding underage and proxy purchases and sales.
 - 11) Notices will be prominently displayed at the entry and at the point of sale stating that proxy challenge 25 is in and use and the provisions of the Licensing Act regarding underage and proxy purchases and sales.
 - 12) The permitted hours for the sale and supply of alcohol shall be amended to take place on Monday to Sunday between the hours of 06:00 and 00:00.
 - 13) The premises licence shall be suspended for four weeks.
28. The DPS was varied in May 2015 from Muzffar Hussain to Ashaq Hussain and to Naveed Ali in October 2016.
 29. A transfer application to the current licence holder was made on 24 September 2019 by Sohail Khan (transferring from Ghazanfor Ali) along with a vary DPS to the same name, Sohail Khan.
 30. On 23 July 2020, the current application was submitted by the Metropolitan Police under Section 51 of the Licensing Act 2003, for the review of the premises licence.
 31. There are no recent complaints regarding the premises, and there is no history of temporary events notices.

The local area

32. A map of the local area is attached as Appendix D. There are no other licensed premises in the immediate vicinity:

Southwark council statement of licensing policy

33. 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.

34. 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.

35. Within Southwark's statement of licensing policy, the premises is situated within a residential area and is not within a cumulative impact policy area. Under the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for this categories of premises indicated:

- Off-licences and alcohol sales in grocers and supermarkets:
 - 23:00 daily.

Resource implications

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

Consultations

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

Community impact statement

38. 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

39. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
40. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

41. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
42. The four licensing objectives are:
- The prevention of crime and disorder
 - The protection of public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
- Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
44. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

45. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
46. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
47. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
48. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

49. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
 - The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

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.

51. This matter relates to the determination of an application for a premises licence under section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
58. 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.
59. 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

60. 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

61. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

| Background papers | Held At | Contact |
|--|--|---|
| Licensing Act 2003 Home Office Revised Guidance 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 | Kirty Read Phone number: 020 7525 5748 |

APPENDICES

| No. | Title |
|------------|--------------------------------------|
| Appendix A | Copy of the review application |
| Appendix B | Supporting representations |
| Appendix C | Copy of the current premises licence |
| Appendix D | Map of local area |

AUDIT TRAIL

| | | |
|---|---|--------------------------|
| Lead Officer | Caroline Bruce, Strategic Director of Environment and Leisure | |
| Report Author | Andrew Heron, Principal Licensing Officer | |
| Version | Final | |
| Dated | 25 August 2020 | |
| Key Decision? | No | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments sought | Comments included |
| Director of Law & Democracy | Yes | Yes |
| Strategic Director of Finance and Governance | Yes | Yes |
| Cabinet Member | No | No |
| Date final report sent to Constitutional Team | 4 September 2020 | |