

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 17 September 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Transfer and Variation of Designated Premises Supervisor Applications – Foodlink, 98-100 Wyndham Road, London SE5 0UB	
<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 Gul Mohammad to transfer and vary the designated premises supervisor (DPS) for a premises licence under the Licensing Act 2003 in respect of the premises known as Foodlink, 98-100 Wyndham Road, London SE5 0UB.
2. This is an application to transfer the premises licence, submitted under Section 42 of the Licensing Act 2003. The application to vary the DPS is submitted under Section 37 of the Act. The applications are subject to an objection notice from the Metropolitan Police Service and is therefore referred to the sub-committee for determination.
3. Paragraphs 12 to 14 of this report provide a summary of the application under consideration by the sub-committee. Copies of the applications are attached as Appendices A and B. A copy of the current premises licence is attached as Appendix C.
4. Paragraphs 27 to 28 of this report deals with the police objection notice received to the transfer application. A copy of the relevant police objection notice is attached as Appendix D.
5. 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

6. 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.

7. Within Southwark, the licensing responsibility is wholly administered by this council.
8. 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.
9. 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.
10. The application to transfer a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
11. The police may submit an objection notice to an application to transfer a premises licence when relevant to the promotion of the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **Premises licence transfer and vary DPS**

12. Applications for a transfer and vary DPS were received on 14 September 2020 to remove Sohail Khan as the premises licence holder and DPS of Foodlink, 98-100 Wyndham Road, London SE5 0UB.
13. The effect of an application to transfer a premises licence or a vary DPS is that it will have immediate interim effect unless an objection is received from the Police.
14. Copies of the applications are attached as Appendices A and B.

### **Premises history**

15. A premises licence was issued to the premises on 16 January 2008.
16. 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.

17. 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.
18. On 22 November 2013 at 01:10 officers again visited the premises and were advised that there was no personal licence holder on site and no DPS.
19. 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.
20. 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**

21. 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.
22. The DPS was varied in May 2015 from Muzffar Hussain to Ashaq Hussain and to Naveed Ali in October 2016.
23. 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.

24. On 23 July 2020, an application was submitted by the Metropolitan Police under Section 51 of the Licensing Act 2003, for the review of the premises licence.
25. Applications for a transfer and vary DPS were received on 14 September 2020 to remove Sohail Khan as the premises licence holder and DPS.
26. On 16 September 2020, the Metropolitan Police submitted a representation against both the transfer and vary DPS.

### **The police objection**

27. The police upon receipt of the application to transfer the premises licence holder submitted an objection notice on 16 September 2020. A copy of the representation is available in Appendix D.
28. The representation considers that there has been no real change of business ownership and that the applications are an attempt to circumvent the review process.

### **Consideration by the sub-committee**

29. It has not been possible to reach a negotiated outcome of this matter and the sub-committee is asked to consider whether the Police objection notice is upheld under the necessity to promote the licensing objective of crime and disorder and refuse the application to transfer.

### **The local area**

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

### **Community impact statement**

31. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the pursuit of the crime and disorder objective.
32. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

### **Southwark council statement of licensing policy**

33. Council assembly has approved Southwark's Statement of Licensing Policy 2019 - 21. Sections of the statement that are considered to be of particular relevance to this application are:
  - Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
  - Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence

- Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998
  - Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
  - Section 8 provides general guidance on ensuring public safety including safe capacities
  - Section 9 provides general guidance on the prevention of nuisance
  - Section 10 provides general guidance on the protection of children from harm.
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.

#### **Resource implications**

35. A fees have been paid by the applicant in respect of these application being the statutory fees payable for the transfer and vary DPS of a premises licence.

#### **Consultations**

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

#### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

##### **Director of Legal Services**

37. The sub-committee is asked to determine the application for the transfer of a premises licence under Section 42 of the Licensing Act 2003.
38. The principles which sub-committee members must apply are set out below.

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

39. The general principle is that applications for the transfer of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.
40. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.

41. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

### **Reasons**

42. If the sub-committee determines that it is necessary to refuse the application to transfer the premises licence, it must give reasons for its decision.

### **Hearing procedures**

43. Subject to the licensing hearing regulations, the licensing sub-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.
44. This matter relates to the determination of an application for a premises licence under section 42 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.
45. 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.

46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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

53. 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

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

## REASONS FOR LATENESS

55. The Metropolitan Police Service objected to the transfer and variation of the designated premises supervisor application on 16 September 2020.

## REASONS FOR URGENCY

56. The Metropolitan Police Service requested that this matter be dealt with prior to the review of the premises licence. This was accepted by the Southwark legal team.

## 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 transfer application
Appendix B	Copy of the vary DPS application
Appendix C	Premises licence
Appendix D	Police Representation
Appendix E	Map

## 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>	16 September 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>	16 September 2020	