

Item No. 5.	Classification: Open	Date: 29 October 2020	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Chapter 72, 72 Bermondsey Street, London SE1 3UD	
Ward(s) of group(s) affected		London Bridge and West Bermondsey	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Chapter 72 Ltd to vary the premises granted under the Licensing Act 2003 in respect of the premises known as Chapter 72, 72 Bermondsey Street, London SE1 3UD
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation Under Section 34 of the Licensing Act 2003, in respect of the premises known as Chapter 72, 72 Bermondsey Street, London SE1 3UD. Permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and other persons and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 12 of this report provides a summary of the current licence and of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A. The current licence and the notice of decision from the licensing sub-committee meetings of (29 November 2016 and 27 November 2017) are attached as Appendix B.
 - c) Paragraphs 13 to 20 of this report deal with the representations submitted and any further correspondence in respect of the application. A copy of the representation from responsible authority/ies is attached as Appendix C. Copies of the representations from other persons are attached as Appendix D. Copies of conciliatory response/s is also attached as Appendix E.
 - d) Paragraph 27 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.
 - e) 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 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 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 persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

The current premises licence

8. The current premises licence was issued to Chapter 72 Ltd on 18 December 2017 following a variation application which had representations made to it and was therefore determined by the licensing sub committee on 27 November 2017. The decision made at this hearing is attached as part of

Appendix B. The premises is described as a coffee shop. The premises licence allows for the following activities and times:

- **Sale and supply of alcohol (on and off the premises)**
 - Monday to Saturday: 11:00 to 22:00
 - Sunday: 11:00 to 21:00
- **Opening hours**
 - Monday to Saturday: 07:00 to 22:30
 - Sunday: 08:00 to 21:30.

9. A copy of the premises licence is provided at Appendix B.

The variation application

10. On 2 September 2020, Chapter 72 Ltd applied to this council to vary the premises licence in respect of Chapter 72, 72 Bermondsey Street, London SE1 3UD. The proposed variation seeks to extend the licensable and operating hours of the premises licence. The application is summarised as amended following comments during the consultation period:

- **Sale and supply of alcohol (on the premises)**
 - Monday to Sunday: 11:00 to 22:30
- **Sale and supply of alcohol (off the premises)**
 - Monday to Saturday: 11:00 to 23:00
 - Sunday: 11:00 to 22:30
- **Opening hours**
 - Monday to Saturday: 07:00 to 23:00
 - Sunday: 08:00 to 23:00

11. The premises licence application form provides the applicant's operating schedule. Parts J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached to this report in Appendix A.

Designated premises supervisor

12. The designated premises supervisor is Rod Eslamieh who has a personal licence issued by Richmond Upon Thames Council.

Representations from responsible authorities

13. There is one representation from licensing as a responsible authority.
14. The licensing representation is submitted under the prevention of crime and disorder and the prevention of public nuisance licensing objectives and has regard to the Southwark statement of licensing policy 2019 - 2021. They advise that the premises is situated in a residential area and under the Southwark statement of licensing policy 2019 - 2021 the appropriate closing times for restaurants, cafes, public houses, wine bars or other drinking establishments is 23:00 daily.
15. The application is asking in excess of that which is recommended as appropriate within the licensing policy and the operating schedule offers no further control measures to address the licensing objectives or to convince the licensing sub-committee to divert from the hours as appropriate within the policy. Therefore to promote the licensing objectives they ask the applicant to bring the opening hours in line with the hours recommended as appropriate for a residential area.
16. The applicant has since made a reduction in the hours sought to the application.
17. The representation is attached as Appendix C.

Representations from other persons

18. There are 12 representations from other persons. The representations are in respect of the prevention of public nuisance and crime and disorder licensing objectives. The residents are concerned that the area is mainly classified as residential and they will be exposed to both internal and external noise nuisance. On internal noise they state that a move to later opening simply allows that there will be more public nuisance by way of noise transfer through the fabric of the building and dwellings that have adjoining walls and ceilings with the premises of Chapter 72. The division between the commercial ground floor and residential first floor of 72 Bermondsey Street dates back to 1970s and therefore not to the current standards required for any new conversions. As such it does not have sufficient sound insulation to deal with noise transmission.
19. On disturbance from external noise, there are concerns that the move to later opening means that there will be noise nuisance from Chapter 72 customers using the external tables. One of the historical characteristics of the terrace of buildings is the low heights between floors. As such the windows of the first floor flats have very little clearance above the table level on the street. They advise that in warmer weather, when the windows on first floor will be open, there will be increased late night noise interference from Chapter 72 customers using the external tables.

20. They further advise that during the opening hours of the premises there is inevitably an overspill and a steady stream of people who drink and smoke outside the premises shouting and talking loudly and disturbing residents. Furthermore, it takes at least half an hour and often much longer for the bars to clear and all patrons to disperse after closing time. The noise impact and public disturbance to residents by extending the hours is obvious. The residents say that they have a right to enjoy their property and amenities.
21. The representation is attached as Appendix D.

Conciliation

22. The representations have been forwarded to the applicant. The applicant has responded by reducing the hours sought by amending the operating schedule. The corresponding email is attached as Appendix E. The licensing sub-committee will be updated on 29 October 2020 of any developments.

Premises History

23. The initial application for Chapter 72 was met by representations from responsible authorities and other persons. The application was determined by the licensing sub-committee on 29 November 2016. The notice of decision from the meeting is attached as part of Appendix B.
24. The current premises licence was issued to Chapter 72 Ltd on 18 December 2017 following a variation application which had representations made to it and was therefore determined by the licensing sub committee on 27 November 2017. The notice of decision from this meeting is attached as part of Appendix B.

Temporary events notices

25. The premises has applied for some temporary events notices this year.

Applicant	Activities	Dates	Counter Notice
Rod Esiemeh	The sale by retail of alcohol (on premises)	26, 27, 28 Mar 2020 22:00 to 23:00	No
Rod Esiemeh	The sale by retail of alcohol (on premises)	17, 18, 19 Sept 2020 22:00 to 23:00	No

Complaints

26. A complaint was received on 15 June 2020 from a local resident who observed groups of customers who had bought drinks sold in plastic glasses with straws from the premises and congregating outside the premises and causing a noise nuisance.

Deregulation of entertainment

27. On 6 April 2015 entertainment became deregulated and as a result:
- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
28. Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
29. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
30. The showing of films has not been de-regulated.

Business and Planning Act

31. The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

Map of the local area

32. A map showing the location of the premises is attached to this report as Appendix F. The following are a list of the licensed premises in the immediate vicinity of the application.
- Suchard Free House, 2 Crucifix Lane, London SE1 (Monday to Sunday: 01:30)
 - Globe House, 37 Bermondsey Street SE1, (Monday to Sunday: 00:00)
 - International Wine and Spirit Centre, 39-45 Bermondsey Street, SE1(Monday to Sunday: 21.00)
 - The Hide, 39-45 Bermondsey Street (Ground Floor), London SE1 (Monday and Tuesday: 01:30, Wednesday to Saturday: 02:30 and Sunday: 00.30)

- Black Swan Yard Ltd, 2-3 Black Swan Yard, London SE1 (Monday to Saturday: 23:00 and Sunday: 22:00)
- Rooftop Café, 40 Bermondsey Street (Monday to Sunday: 01:30)
- Street Feast. 42 – 44 Bermondsey Street (Monday to Sunday: 01:00)
- Tanner & Co, 50 Bermondsey Street (Monday to Sunday: 02:30)
- Giddy Grocer, 80 Bermondsey Street, London SE1 (Monday to Sunday: 23:00)
- The Fashion and Textile Museum, 83 Bermondsey Street, London SE1 (Monday to Sunday: 23.00)
- B Street Deli Ltd, 88 Bermondsey Street, London SE1 (Monday to Sunday: 00:00)
- Woolpack, 98 Bermondsey Street, London SE1 (Sunday to Thursday: 23:30; and Friday and Saturday: 00:30)
- The Garrison PH, 99 Bermondsey Street, London SE1 (Monday to Thursday: 23:30, Friday and Saturday: 00:30 and Sunday: 22:30)
- Jose, 104 Bermondsey Street, London SE1 (Monday to Sunday: 23:00)
- Casse croute, 109 Bermondsey Street (Monday to Saturday: 23:00 Sunday: 19:00)
- Tee'z Mini Market, 92 Bermondsey Street, London SE1 (Monday to Saturday: 23.00 and Sunday: 22:00)

Cumulative impact area

33. The premises sits outside of a cumulative impact area but within a residential area.

Southwark council statement of licensing policy

34. 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.
35. 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.
36. Within the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Restaurants, cafes, public houses, wine bars or other drinking establishments: 23:00 daily.

Resource implications

37. A fee of £315.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

Consultation

38. 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

39. 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

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

Principles for making the determination

42. 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.
43. 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.
44. 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.
45. 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

46. 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.
47. The four licensing objectives are
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
48. 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.
49. 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.
50. 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.
51. 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

52. 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

53. 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

54. 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.
55. 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.

56. 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.
57. 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.
58. 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.
59. 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.
60. 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

61. 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

62. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Variation application
Appendix B	Current licence
Appendix C	Representation from responsible authority
Appendix D	Representation from other persons
Appendix E	Conciliation correspondence
Appendix F	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	19 October 2020	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		19 October 2020