

Item No. 5.	Classification: Open	Date: 4 March 2021	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN	
Ward(s) or groups affected:		Borough and Bankside	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by a local resident for a review of the premises licence issued in respect of Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 13 to 18 of this report. A copy of the premises licence review application is attached as Appendix A. A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B.
 - b) The review application attracted representations submitted by the Metropolitan Police Service, the environmental protection team (EPT), and licensing (as a responsible authority). Comments were also received from the planning department. Copies of the representations are attached as Appendix C. Representations submitted by other persons are attached as Appendix D.
 - c) A map of the area that the premises are located in is attached as Appendix E.
 - 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 current licence issued in respect of the premises known as Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN was issued to Lant Street Wine Company following a variation application. The licence was granted on 8 April 2019.
10. The premises licence allows for the following activities
 - **Films**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30
 - **Recorded Music**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30

- **Sale of alcohol for consumption on/off premises**

- Monday to Saturday: 08:00 to 23:00
- Sunday: 10:00 to 22:30

- **Operating Hours**

- Monday to Saturday: 08:00 to 23:00
- Sunday 10:00 to 22:30.

11. 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 B.

Designated premises supervisor (DPS)

12. The designated premises supervisor is David Wilcock who has a personal licence issued by Barnet Council.

The review application

13. On 7 January 2021 an application for the review of the premises licence was submitted by a local resident. The grounds for the review relate to the following licensing objectives:

- The prevention of crime and disorder
- The prevention of public nuisance.

14. The application details that conditions on the premises licence have been persistently breached with non-compliance of the licenced hours, the licenced number of patrons and outside smokers, unsupervised access and entrance door left open. Large-scale temporary events have been held without the necessary temporary event notices given to the licencing authority that have further breached conditions of the licence. Capacity of 80 persons in the warehouse at 59 has been advertised on the company's web site.

15. In June 2019, without planning permission, the company established a drinking establishment in the ground floor and basement of the warehouse 59 Lant Street, directly beneath applicant's home causing severe noise and disturbance to his residential amenity. A noise abatement notice was served on 11 November 2019, due to statutory nuisance in breach of the Environmental Protection Act 1990. An enforcement notice under the Town and Country Planning Act was served on 19 November 2020 (Ref.19/EN/ 0482) requiring the company to "Cease bar use at the land".

16. The drinking establishment has caused or necessitated:

- Persistent Southwark noise team call outs
- Ward member visit to applicants home and the bar
- On-going involvement by the Metropolitan Police due to anti-social behaviour
- Physical threats against the applicant by the company recorded by the Metropolitan Police.

- “Common assault” by a director of the company recorded as a crime by the Metropolitan Police
 - 15 months of correspondence with my MP, ward councillors, Southwark’s noise team, licencing unit, planning department, access for information team and customer resolution tea
 - Significant on going stress and anxiety over an extensive period.
17. The review application in its entirety and the table of complaints are attached as Appendix A.

Representations from responsible authorities

18. There are representations/comments submitted by the Metropolitan Police Service, environmental protection team EPT), licensing (as a responsible authority). There are also comments from the planning department.
19. The police made comments on reported incidents mentioned and confirm there are no other incidents other than those mentioned in the review application. They have also reviewed the premises licence and found that a number of conditions they would normally recommend for a premises of this type are not on the licence. If the licensing sub-committee do not revoke the licence as the applicant has requested then they would suggest that conditions listed in their representation could assist in stopping any further issues.
20. The police state that the removal of recorded music from the licence and the exemption given before 23.00 to premises with an on licence. This would only allow background music which they believe is all that is required for wine tasting.
21. EPT support the review in that the current permitted licensable activities have caused a statutory noise nuisance. They also state that the premises does not currently have relevant planning permission to run as drinking establishment and there is insufficient noise insulation between the commercial premises and adjoining residential units to prevent public nuisance in the future.
22. EPT also state that it is the case that the undertaking of licensable activities in 59 Lant Street, in the current circumstances, has caused noise nuisance. At present there is no planning permission in place for the use of the premises as a drinking establishment. Whilst there are appeals currently in progress, and a new application for permanent change of use has been submitted, it is important to note that 59 Lant Street has not previously, and does not currently have permission for A4 (drinking establishment use).
23. The use of the old warehouse as a drinking establishment may be considered acceptable if adequate noise insulation was installed. However, at present there is inadequate insulation to protect adjoining residents from public nuisance from the use of the licensable activities currently permitted.
24. The licensing representation draws attention to the history of complaints emanating from the premises. Supporting documents are provided in the form of warning letters and a comprehensive list of visits carried out by enforcement officers as part of night time economy visits.

25. Planning submitted comments with regard to the planning status of the premises.
26. The representations are attached as Appendix C.

Representations from other persons

27. Representations were submitted by 17 local residents, some of whom reside in flats that form part of the building. They oppose the idea of a review or revocation of the licence and believe the business is run with utmost professionalism and consideration and is a true lynchpin of the local community. The Wine merchant is and has been part of the community for a long time and they have not experienced the level of noise or anti-social behaviour mentioned by the review applicant. The representations are attached as Appendix D.

Operating History

28. A premises licence was transferred and was first issued on 24 Feb 2015 to Lant Street Wine Company, then only occupying 61 Lant Street, SE1, with Mr David Wilcock as the designated premises supervisor (DPS).
29. A variation application was made on 8 February 2019 to include number 51 Lant Street, to add on licence and regulated entertainment to the premises licence. The plans submitted with this application only related to the ground floor. The application received representations and was granted with conditions after the conciliation process was utilised.

Complaints and visits

30. Following complaints received by the licensing unit, a visit was conducted on 14 October 2019. Licensing officers inspected the premises and found the following conditions being breached:
 - **307** - The accommodation limit for the premises shall not exceed 32 patrons. A licensing officer carried out a further visit on 22 November 2019 and witnessed two further breaches of the following conditions.
 - **340** - The written dispersal policy shall be kept at the premises and made available for inspection by authorised officers of the council or the police. All relevant staff shall be trained in the implementation of the policy.
 - **4AB** - That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons, and the challenge 25 scheme in operation at the premises. A record of such training shall be kept / be accessible at the premises at all times and be made immediately available for inspection at the premises to council or police officers on request. The training record shall include the trainee's name (in block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received.
31. Warning letters dated 13 November 2019 and 23 December 2019 were sent to the premises licence holder regarding these issues. (these letters form part of representation submitted by licensing as a responsible authority in Appendix C.

32. There have been numerous visits made to the premises to ascertain compliance. The visit log and details of night time visits to the premises by council licensing officers are provided in representation submitted by licensing as a responsible authority as part of Appendix C.
33. There is no history of temporary events notices at the premises.

Business and Planning Act

34. 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.

The local area

35. A map of the local area is attached as Appendix E. The premises is identified by a diamond at the centre of the map. For purposes of scale only, the circle on the map has a 100 metre radius. The following licensed premises including terminal hours are also shown on the map:
- The Gladstone, 64 Lant Street, London SE1 (Sunday to Thursday until 23:30 and Friday and Saturday until 00:30)
 - Joes Kitchen, 5-7 Marshalsea Road London SE1 (Monday to Sunday until 23:00)
 - Trinity P.H, 202 Borough High Street, London SE1 (Monday to Wednesday until 00:30, Thursday to Saturday until 02:30 and Sunday until 00:00)
 - Amo La Pasta, 218-220 Borough High Street, London SE1 (Monday to Sunday until 23:00)
 - Chicken Cottage, 226 Borough High Street, London SE1 (Monday to Wednesday until 00:00 and Thursday to Saturday until 03:00)
 - Supersave Express, 223-237 Borough High Street, London SE1 (24 hours).

Borough and Bankside cumulative impact area

36. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises (saturation/cumulative impact policy) on 4 November 2009 and extended the area in April 2011. This premises falls within the policy area.
37. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
38. The effect of this special policy is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Southwark council statement of licensing policy

39. Council assembly approved Southwark's statement of licensing policy 2021 - 2026 on 25 November 2020. The policy came into effect on 1 January 2021. 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.
40. 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.
41. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Restaurants:
 - Friday and Saturday: 01:00
 - Sunday to Thursday: 00:00

- Public houses, wine bars or other drinking establishments:
 - Friday to Saturday: 00:00
 - Sunday to Thursday: 23:00.

Resource implications

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

Consultation

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

Community impact statement

44. 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 Governance

45. 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.

46. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

47. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.

48. 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.

49. 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.
50. 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.
51. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
52. 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.
53. 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.
54. 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

55. 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

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.
57. 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

58. 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.
59. 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.
60. 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.

61. 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.
62. 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.
63. 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.
64. 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.
65. 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

66. 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

67. 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	Copy of the current premises licence
Appendix C	Representations from responsible authorities
Appendix D	Representations from other persons
Appendix E	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Social Regeneration		
Report Author	Dorcas Mills, Principal Licensing Officer		
Version	Final		
Dated	22 February 2021		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Law and Governance	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
Cabinet Member	No	No	
Date final report sent to Constitutional Team		22 February 2021	