

Item No. 5	Classification: Open	Date: December 22 2008	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 Costcutter 393-395 Lordship Lane SE22	
Ward(s) or groups affected:		Premises are within: East Dulwich	
From:		Director of Environment and Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by Mohammed Najib Khan to vary a Premises Licence granted under the Licensing Act 2003 in respect of the premises known as Costcutter 393-395 Lordship Lane SE22.
2. **Notes:**
 - a) *This application forms a new application to vary a Premises Licence, under Section 34 of the Licensing Act 2003. The application is subject to representations from Responsible Authorities and Interested Parties and is therefore referred to the Sub-Committee for determination; (A copy of the premises licence is attached to the report as Appendix B)*
 - b) *Paragraph 9 to 12 of this report provide a summary of the application the Premises Licence under consideration by the Sub-Committee (A copy of the full application is provided at Appendix A)*
 - c) *Paragraphs 13 to 18 of this report deal with the representations received to the Premises Licence application. (A copy of each of the relevant representations are attached at Appendix C)*

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for:
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) 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
 - a) The prevention of crime and disorder;
 - b) The promotion of public safety
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to

- a. The Act itself;
 - b. The Guidance to the act issued under Section 182 of the Act;
 - c. Secondary regulations issued under the Act;
 - d. The Licensing Authority's own Statement of Licensing Policy
 - e. The application, including the operating schedule submitted as part of the application
 - f. Relevant representations
7. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing Justices Licences, Public Entertainment Licences and Night café Licences were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licences into the relevant licences under the new system. Licences that were so converted were converted on existing terms, conditions and restrictions. Now that 6 August date having now passed operators had apply for new licences.
 8. 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 under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

Meeting adjourned to the 22 December 2008

9. On the 17 November 2008, the Licensing Sub-Committee, the applicant, and members of the interested parties met to hear the variation application. During the licensing officers' presentation, the sub-committee and all other persons present were told of the objectors request to adjourn the hearing. This request was made so that a conciliation meeting could be arranged to discuss the fact, that the letter withdrawing the objection from the police had not been entered as part of the report, and that the police had not attended the hearing to explain their decision. The applicant and all 31 persons of the interested party were invited to attend the conciliation meeting which was held on the 25 December 2008 in St Thomas More Church Hall, Lordship Lane SE22. The Licensing Sub-Committee hearing has been adjourned to the 22 December 2008 at 10am.

The Conciliation Meeting

10. On the 25 November 2008 conciliation was held in the St Thomas Church Hall. The meeting was attended by a number of interested parties, Licensing Officers, David Swaby and David Franklin, the Police Licensing Officer, Paul Compton – Licensing Police, and David Malone – speaking on behalf of local residents. A number of issues were discussed and concluded.
11. The Licensing Police Service has indicated that they will be willing to stand as a witness at the next committee hearing, if called by the interested parties, in order to clarify their position regarding their conciliation of the initial objection, and to make clear their position on crime and disorder.
12. The applicant's representative emailed the licensing unit on the 28 November 2008, in response to an email, in which was requested the reasons why the applicant or representative did not attend the conciliation meeting. The representative in her response

indicated that, she was of the impression that the conciliation meeting was arranged to discuss the reason why the police had conciliated with the applicant. They also said that there would be little chance of the matter being conciliated at this particular meeting, as the applicant had already tried to contact Fr John O'Conner by telephone.

The Application for the variation of Premises Licence

13. On the 4 July 2007 Mr Mohammed Najib Khan applied to vary the premises licence in respect of the premises at 393-395 Lordship Lane SE22.
14. The application is summarized by the applicant company as follows
15. To extend the provision of: -
 - Sale by retail of alcohol, to extend the licensed hours for alcohol which is currently 06:00 – 02:00 to the proposed hours, 00:00 – 00:00 (24 hours) Monday to Sunday.
16. Part 3 of the variation Premises Licence application form provides the applicant's operating schedule. Part 4 sets out the proposed operating hours in full. Part P deals with the steps proposed to meet the licensing objectives.
17. The serving hatch operation, will work as follows. The shop will be closed to the public from 24:00 to 06:00 hours. There will be service for all goods including the sale of alcohol through a window only. This has been agreed by the police as it provides an additional security measure.
18. A copy of the application for the Premises Licence made in accordance with Section 34 the Licensing Act 2003 is attached to the report as Appendix A.

Operating History

19. On the 25 September 2008 a programmed inspection was carried out at the premises known as Costcutter 393-395 Lordship Lane SE22. During the inspection the following was noted.
 - Fire Risk Assessment, not available for inspection.
 - Staff Training Book, not available for inspection.
20. On the 17 October 2008 a meeting was arranged between the licensing officer and Mr Husain the Area Manager. During the meeting the following items were produced.
 - The Fire Risk Assessment folder
 - The Staff Training Book

Representations From Responsible Authorities

21. There were two representations from Responsible Authorities, One from the Metropolitan Police Service. The representation was primarily concerned with; the substantial increase in hours and the failure to adequately address the four licensing objectives. The representation has since been conciliated (A copy of the representation and conciliation is attached the report as Appendix C)
22. The second from the Environmental Protection Team. The representation has since been conciliated after being advised by the applicant's representative that the main premises will

be closed between the hours of 02:00 and 06:00 and the sale of alcohol will be by way of window service only. (A copy of the representation is attached the report as Appendix C)

23. Responses were also received from the Fire Brigade and the Planning Department. (A copy of the letter is attached to the report as Appendix C)

Representations from interested parties

24. There are (30) thirty representations from Interested Parties. The representations are primarily concerned with the existing number of licensed premises in the area, and the substantial increase in the licensed hours for the sale of alcohol.
25. Due to the volume of representations from the Interested Parties, the licensing conciliation service was not initially offered to the applicant or the interested parties. The matter is therefore referred to licensing sub-committee.
26. A copy of the representations are attached the report as Appendix D.
27. There is an email from the Rt. Hon. Tessa Jowell MP who writes on behalf of her constituents. A copy of the email is attached the report as Appendix E.

Map of the vicinity

28. A map of the local vicinity is attached at Appendix F, the circle drawn on the map is for scale reference and has a diameter of 100m.

Licensed premises in the vicinity

29. Vals Stores, 387 Lordship Lane. Licensed for the sale of alcohol to be consumed off the premises, Monday to Saturday 08:00 – 23:00 and on Sunday 10:00 – 22:30 hours.
30. Off Licence 373 Lordship Lane. Licensed for the sale of alcohol to be consumed off the premises, Monday to Saturday 08.00 – 23.00 and on Sunday 10.00 – 01.00.
31. Dulwich Kebab House 342 Lordship Lane, licensed for the late night refreshment Monday to Thursday 23.00 – 00.00 Friday to Sunday 23.00 – 01.00.
32. Bombay Bicycle Club 340 Lordship Lane licensed for the sale of alcohol on the premises, Monday to Saturday 10.00 – 23.30 and on Sunday 10.00 – 22.00.
33. Le Moulin Restaurant 377 Lordship Lane, licensed for the sale of alcohol on the premises Monday to Saturday 11.00 – 00.00 and on Sunday 12.00 – 23.30.
34. Euro Foods 369 Lordship Lane licensed for the sale of alcohol off the premises Monday to Sunday 08.00 – 23.00.
35. The Plough, 381 Lordship Lane. Licensed for the sale of alcohol on/off the premises Monday to Sunday 10:00 – 00:00 hours.

Southwark Council Statement of Licensing Policy

36. The Southwark Statement of Licensing Policy was approved by Council Assembly on 8 December 2004. Sections of the Statement that are considered to be of particular relevance to this application are

- a. Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
- b. 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
- c. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
- d. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
- e. Section 8 provides general guidance on ensuring public safety including safe capacities
- f. Section 9 provides general guidance on the prevention of nuisance
- g. Section 10 provides general guidance on the protection of children from harm.

37. The purpose of Southwark's Statement of Licensing Policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the Sub-Committee when considering the applications. However, the Sub-Committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

RESOURCE IMPLICATIONS

38. A fee of £190 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 B.

CONSULTATIONS

39. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in the December edition of the South London Press. A similar notice was exhibited outside of the premises.

COMMUNITY IMPACT STATEMENT

40. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

CONCURRENT REPORT BY STRATEGIC DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

41. The Sub-Committee is asked to determine the application for a Premises Licence under Section 34 of the Licensing Act 2003.

42. The principles which Sub-Committee members must apply are set out below.

Principles for making the determination

43. The general principle is that applications for Premises Licence applications 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 interested party or responsible authority
- Have not been withdrawn (in this case, the initial objections from the Fire Service have 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. The Sub-Committee's discretion is thus limited. It can only modify the Conditions put forward by the applicant, or refuse the application, if it is necessary to do so. 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. 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 1988 when making its decision to do all it can to prevent crime and disorder in the Borough.

48. Interested Parties, 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.

49. The Sub-Committee's decision is thus limited. It can only modify the conditions put forward by the applicant, refuse the application, if it is necessary to do so. Condition 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.

50. The four licensing objectives are

- a. The Prevention of Crime and Disorder
- b. Public Safety
- c. The prevention of Nuisance; and
- d. The protection of Children From Harm

51. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
52. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
53. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

54. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

Hearing Procedures

55. 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.

56. 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

57. Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

58. Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.
59. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.
60. The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
61. Members will be aware of the Council's Code of Conduct which requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

Guidance

62. Members are required to have regard to the DCMS 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.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748
Lead Officer	Gill Davies, Director of Environment & Leisure	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	

Dated	December 16 2008	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Strategic Director for Legal and Democratic Services	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	December 15 2008	

APPENDICES

No.	Title
Appendix A	The Variation Application
Appendix B	The Premises Licence
Appendix C	Representation by the Responsible Authority
Appendix D	Representations by the Interested Parties
Appendix E	Map of the Vicinity
Appendix F	Email from Tessa Jowell MP

AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community safety and Enforcement	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	
Dated	22 December 2008	
Key Decision	No	
Consultation with other Officers / Directorates		
Officer Title	Comments sought	Comments included
Strategic Director of Legal & Democratic Services	No	No