

Item No. 5.	Classification: Open	Date: 28 June 2010	Meeting Name: Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – Nivla Restaurant, 51 Camberwell Road, London SE5 0EZ	
Ward(s) or groups affected:		Premises are within: Faraday	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by Alvin and Avril Cole for a grant of a Premises Licence under the Licensing Act 2003 in respect of the premises known as: Nivla Restaurant, Nivla Restaurant, 51 Camberwell Road, London SE5 0EZ.
2. *Notes:*
 - a) *This application forms a new application for a Premises Licence, under Section 17 of the Licensing Act 2003. The application is subject to representations from a Responsible Authority and Interested Parties and is therefore referred to the Sub-Committee for determination;*
 - b) *Paragraphs 8 to 13 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 as Appendix a and appendix b - amended schedule)*
 - c) *Paragraphs 14 to 16 of this report deal with the representations received to the Premises Licence application. (A copy of each of the relevant representations are attached as Appendices c & d).*

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 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.

MATTERS FOR CONSIDERATION

The Application for a New Grant

8. On 26 April 2010, an application was made by Alvin and Avril Cole for a grant of a Premises Licence in respect of both the basement and ground floor of the premises known as Nivla Restaurant, 51 Camberwell Road, London SE5 OEZ under section 17 of the Licensing Act 2003. A copy of the application is attached to the report as appendix a.

Reduction in Hours

9. After considering representations received from both the Metropolitan Police and the Environmental Protection Team the operating schedule and hours requested have been amended. A copy of the statement requesting amendments to the application is attached as appendix b.
10. The application is therefore summarized as follows:

To permit the provision of regulated entertainment

- (*recorded music and performance of dance*)
 - Monday to Thursday 11.00 to 00.00
 - Friday and Saturday 10.00 to 02.00 on the day following
 - Sunday between 14.00 hrs to 23.00
- To permit the provision of late night refreshment
 - Monday to Thursday 23.00 to 00.00
 - Friday and Saturday 23.00 to 02.00 on the day following
 - Sunday between 14.00 hrs to 23.00
- To permit the sale and or supply of alcohol
 - Monday to Thursday 11.00 to 00.00
 - Friday and Saturday 10.00 to 02.00 on the day following
 - Sunday between 14.00 hrs to 23.00
- Proposed opening hours of the premises are
 - Monday to Thursday from 07.00 to 00.30.
 - Friday and Saturday 07.00 to 02.30 on the day following

- Sunday from 13.00 hrs to 23.30
11. The application form provides the applicant's operating schedule. Parts F, G, L M and O set out the proposed operating hours in full.
 12. Part P of the application and appendix b provides any additional steps that are proposed by the applicant to promote the four licensing objectives as set out in the Licensing Act 2003. In the event that the Sub-Committee should approve the application any proposals stated here must become conditions on any subsequent Premises Licence issued.

Designated Premises Supervisor

13. The proposed designated premises supervisor Licence is Avril Cole. Note (however, Avril Cole is in the process of qualifying and obtaining a personal licence).

Representations From Interested Parties

14. There are six representations lodged by interested parties. The same letter has been submitted by all parties). The representation is primarily concerned with the possibility of noise nuisance, and anti social behaviour that may be experienced as a result of the proposed grant. A copy of the representation is attached as appendix c to the report.

Representations From Responsible Authorities

15. There are two representations lodged by the Metropolitan Police and the Council's Environmental Protection Team (EPT). Both representations outline control measures that should be undertaken to reduce the risk of crime and disorder and noise nuisance if the licence is granted. Copies of the representations are attached as appendix d to the report.

Conciliation

16. Conciliation was offered as part of the application process. This led to an amendment of the operating schedule and the reduction in hours (see appendix b). However both the Metropolitan Police and EPT are not satisfied that noise and disorder issues have been resolved. Copies of the email detailing this are attached as appendix d1. As such the application is being submitted for determination by the Licensing Sub-Committee.

The Local Area

17. A map of the local vicinity is attached appendix e. For the purposes of scale only the circle on the map has a 100-metre radius. The operating terminal hours of the following premises licensed for regulated entertainment and late night refreshment are shown on the map.

- T – Bar, 39 - 45 Camberwell Road (Mon -Sun – 03.30)
- D'Eclipse Bar & Restaurant – (Sun – Thurs – 00.30, Fri & Sat 03.00)
- Alabarma, 11 John Ruskin Street (Sun – Thurs -02.00; Fri & Sat until 03.00)
- Alabarma, 13 John Ruskin Street (Sun – Thurs -00.00; Fri & Sat until 01.00)
- Emukay Restaurant 91 Camberwell Rd (Mon – Sun: until 02:30hrs)

Late night refreshment

- Red Sea restaurant, 85 Camberwell Rd (Mon – Sun until 01.00 hrs)
- Winner, 3 Westmoreland Road, SE17 (Mon - Thurs till 00:00; Fri & Sa till 00.30; Sun till 23.30)

Southwark council statement of licensing policy

Council assembly approved the Southwark's statement of licensing policy on 4 November 2009. 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; and
 - Section 10 provides general guidance on the protection of children from harm.
18. 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

19. A fee of £190.00 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value Band B.

CONSULTATIONS

20. 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 'Southwark News' and a similar notice exhibited outside of the premises.

COMMUNITY IMPACT STATEMENT

21. 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

Strategic Director of Communities, Law & Governance

22. The Sub-Committee is asked to determine the application for a grant of a premises licence.
23. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested Parties must live in the vicinity of the premises. This will be decided on a case-by-case basis.

24. 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 and crime and disorder in the Borough.
25. 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 day on which the applicant was notified by the licensing authority of the decision to be appealed against.
26. The principles that Sub-Committee members must apply are set out below.

Principles for making the determination

27. 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.
28. 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.
29. 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

Conditions

30. 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.
31. 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.
32. 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.

33. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment 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.
34. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.
35. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing Procedures

37. 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.
38. As this matter relates to the determination of an application for a grant 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

39. 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.
40. 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.
41. 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.
42. 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.
43. Members will be aware of the Council's Code of Conduct that 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

44. 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	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 The Chaplin Centre 0207 525 5748

APPENDICES

No.	Title
Appendix A	Copy of the application
Appendix B	Copy of amended operating schedule
Appendix C	Copy of the representation from interested parties
Appendix D	Copies of representations from responsible authorities
Appendix D1	Copies of responses to amendments from responsible authorities
Appendix E	Copy of the local area map
Appendix F	List of representations (On closed agenda)

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	18 June 2010	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	18 June 2010	