

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 28 June 2010 at 10am.	<b>MEETING NAME</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003 – Wazobia Restaurant, 670 Old Kent Road, London, SE15 1JF	
<b>Ward(s) or groups affected:</b>		Premises are within: Livesey	
<b>From:</b>		Strategic Director of Environment & Housing	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Richard Bennetts to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London, SE15 1JF.
2. **Notes:**
  - *The application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London, SE15 1JF under Section 34 of the Licensing Act 2003. Existing 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 interested parties and is therefore referred to the Sub-Committee for determination;*
  - *Paragraphs 12 to 15 of this report provide a summary of the application under consideration by the Sub-Committee (A copy of the full application is provided as appendix A). and*
  - *Paragraphs 17 - 21 of this report deals with the representations and comments received to the application. (copies of relevant representations and conciliations are attached as appendices C and D).*

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provided a new licensing regime for the following activities:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment
4. Within Southwark, this council wholly administers the licensing responsibility.
5. The Act requires the licensing authority to carry out its functions 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; and
  - 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 Act provides licensing schemes for premises licences, club premises certificates, personal licences and temporary event notices.
8. In order to apply for a new premises licence or to vary an existing premises licence the applicant is required to provide all relevant information required to the licensing authority and to provide copies 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**

### **The current premises licence**

9. The current licence in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London, SE15 1JF was issued 23<sup>rd</sup> April 2009. It allows the following licensable activities.
  - Sale and Supply of alcohol to be consumed on the premises:  
Sunday - Thursday from 12.00- 00.00;  
Friday and Saturday from 12.00- 02.00
  - Late night refreshment:  
Sunday - Thursday from 23.00- 00.00;  
Friday and Saturday from 23.00- 02.00
  - Opening hours of the premises:  
Sunday - Thursday from 12.00- 00.00;  
Friday and Saturday from 12.00- 02.00
10. A copy of the existing premises licence is attached as appendix B.

### **The variation application**

11. On the 26<sup>th</sup> of April 2010, Richard Bennetts applied to this council to vary the existing premises licence issued in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London, SE15 1JF under section 34 of the Licensing Act 2003.

### **Details of the variation application**

12. The variation application is summarized as follows:
  - To extend the hours permitted for the sale / supply of alcohol:  
Friday and Saturday from 02.00 – 04.00;
  - To extend the hours permitted for late night refreshment:  
Friday and Saturday from 02.00 – 04.00;

- To extend the opening hours of the premises  
Friday and Saturday from 02.00 – 04.30;
  - To allow the provision of live music, recorded music, facilities for making music & facilities for dancing:  
Sunday - Thursday from 12.00- 00.00;  
Friday and Saturday from 12.00- 04.00
  - To change the time stated in conditions 315 & 424 from 22.00 to 01.00
13. A copy of the variation application is attached as appendix A to the report.
  14. The variation application form provides the applicant's operating schedule. Parts E, F, I, J, L, M and O set out the proposed operating hours in full.
  15. Part P of the variation application provides any additional steps that might be 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 licence conditions.

#### **Designated premises supervisor**

16. The designated premises supervisor under the existing premises licence is Richard Bennetts who holds a personal licence issued by Hertsmere Borough council.

#### **Representations from interested parties**

17. There are representations submitted by seven local residents. The representations are primarily concerned with the prevention of public nuisance and the prevention of crime and disorder. The representations are attached as appendix C to the report.

#### **Representations from responsible authorities**

18. A representation was submitted by the metropolitan police. The representation was concerned that the licensing objectives had not been sufficiently addressed in regards to the proposed variation. The police suggested conditions that they recommended be applied to licence should the variation be granted.
19. After conciliation and agreement with the applicant, the applicant agreed to amend the application to include conditions suggested by the police and also to amend the proposed variation to the existing conditions of the licence. The police have withdrawn their representation and the correspondence is attached as appendix D to the report.
20. A representation was submitted by the council's Environmental Protection Team. The representation was concerned that the proposed variation could give rise to public nuisance.
21. After conciliation and agreement with the applicant, the applicant agreed to amend the application to include measures suggested by the Environmental Protection Team. The Environmental Protection Team have withdrawn their representation and the correspondence is attached as appendix D2 to the report.

#### **Conciliation**

22. It was not possible to reach a conciliation between the applicant and the interested parties.

## Disability discrimination act

23. The Southwark Disablement Association has not made comments regarding this application.

## Operating History of the premises

24. The current licensee, Mr. Richard Bennetts, applied for the premises licence that has been issued in respect of the premises on the 12 of January 2009. At the time of the application representations were submitted by interested parties and the police. The applicant was able to conciliate with the police but not the interested parties. A licensing sub-committee hearing was subsequently held on the 15<sup>th</sup> of April 2009 and the licence was approved with amendments to the permitted operating hours of the premises and permitted hours for licensable activities. A premises licence was duly granted in respect of the premises on the 23<sup>rd</sup> of April 2009.
25. On the 24<sup>th</sup> of October 2009 licensing officers conducted an inspection of the premises. During the inspection two breaches of licence were noted. The breaches related to a lack of signage requesting that customers leave the premises quietly and the lack of an SIA registered door supervisor being on duty. A warning letter was sent to the licensee in regards to the aforementioned breaches of licence. A copy of the warning letter is attached to this report as Appendix F.
26. On the 10<sup>th</sup> of March 2010 a re-inspection of the premises was conducted. At the time of the inspection the premises was found to be operating in full compliance with the premises licence issued in respect of the premises. A compliance letter was subsequently sent to the premises. A copy of the compliance letter is attached to this report as Appendix G.
27. On 26<sup>th</sup> April 2010 Richard Bennetts applied to this council to vary the existing premises licence issued in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London, SE15 1JF under section 34 of the Licensing Act 2003.

## The local area

28. A map of the local area is attached as appendix E. The premises are identified by a diamond at the centre of the map. For purposes of scale-only a circle with a 100 meter radius is shown on the map. The following licensed premises are also shown on the map:

Premise Name	No	Street	Premise Type	Activities & Times
Vasluiet Ltd	650	Old Kent Road	Grocery	<b>Sale of alcohol off premises</b> Mon - Fri 06:00 to 22:00 Sat 08:00 to 22:00 Sun 10:00 to 22:00
Costcutter	656-658	Old Kent Road	Grocery	<b>Sale of alcohol off premises</b> Mon - Sun 24 hours
Prince Of Wales	14	Ruby Street	Public House / nightclub	<b>Entertainment</b> Mon - Wed 09:00 to 01:00 Thu 09:00 to 02:00 Fri - Sat 10:00 to 05:00 Sunday 12:00 to 04:00 <b>Sale of alcohol on &amp; off premises</b>

				Mon - Wed 10:00 to 01:00 Thursday 10:00 to 02:00 Fri - Sat 10:00 to 04:00 Sunday 12:00 to 02:00
KFC	670	Old Kent Road	Restaurant	<b>Late Night Refreshment</b> Sun - Thur 23:00 to 02:00 Fri - Sat 23:00 to 05:00
New Haven Restaurant	664	Old Kent Road	Restaurant	<b>Sale of alcohol on premises</b> Mon - Sun 07:00 to 01:00 <b>Late night refreshment</b> Mon - Sun 07:00 to 02:00
Connect Supermarket	681	Old Kent Road	Grocery	<b>Sale of alcohol off premises</b> Mon - Thu 06:00 to 23:00 Fri - Sat 06:00 to 02:00 Sun 06:00 to 22:00

### Southwark council Statement of Licensing Policy

29. Council assembly approved the Southwark Statement of Licensing Policy on 2 April 2008. 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, as well as relating to cumulative effect and saturation policies;
  - Section 8 provides general guidance on ensuring public safety including safe capacities;
  - Section 9 provides general guidance on the prevention of nuisance
  - Section 10 provides general guidance on the protection of children from harm.
30. 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

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

### CONSULTATIONS

32. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in a local news and a similar notice exhibited outside of the premises.

## **COMMUNITY IMPACT STATEMENT**

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

## **SUPPLEMENTARY ADVICE FROM THE STRATEGIC DIRECTOR OF COMMUNITIES, LAW & GOVERNANCE**

34. The sub-committee is asked to determine the application for a variation of a converted premises licence.
35. The requirement is to give all parties a fair, unbiased hearing.
36. 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.
37. 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.
38. 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.
39. The principles that sub-committee members must apply are set out below.

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

40. 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.
41. 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.
42. 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
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
43. 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**

44. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
45. The four licensing objectives are
  - The prevention of crime and disorder;
  - Public safety;
  - The prevention of nuisance; and
  - The protection of children from harm.
46. 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.
47. 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.
48. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films, in respect of door supervisors, irresponsible drinks promotions, alcohol dispensing, free tap water and minimum measures.
49. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

## **Reasons**

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

## **Hearing Procedures**

51. 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.
52. As this matter relates to the determination of an application to vary 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.

### **Council's multiple roles and the role of the licensing sub-committee**

53. 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.
54. 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.
55. 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.
56. 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.
57. 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**

58. 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 DOCUMENTS

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	Kirty Read at the Chaplin Centre Telephone 0207 525 5748

## APPENDICES

No.	Title
Appendix A	Copy of the variation application
Appendix B	Copy of the existing premises licence
Appendix C	Copy of the representation from interested parties
Appendix D	Copy of police representation and conciliation
Appendix D2	Copy of Environmental Protection Team representation and conciliation
Appendix E	Copy of local area map
Appendix F	Copy of warning letter sent to licensee
Appendix G	Copy of compliance letter sent to licensee
Appendix H	List of representations (On closed agenda)

## AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Wesley McArthur, Licensing Enforcement Officer	
Version	Final	
Dated	17 June 2010	
Key Decision?	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law and Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	17 June 2010	