

Item No. 5.	Classification: Open	Date: 28 July 2022	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Ormside Projects, Units 32 A, B & C, Penarth Centre, Ormside Street, London SE15 1TR	
Ward(s) of group(s) affected		Old Kent Road	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by PC32 Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as: Ormside Projects, Units 32 A, B & C, Penarth Centre, Ormside Street, London SE15 1TR.
2. Notes:
 - a) This application is for a premises licence and has been submitted under Section 17 of the Licensing Act 2003. The application is subject to representations submitted by responsible authorities and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 8 to 11 of this report provide a summary of the application. A copy of the application is attached to this report as Appendix A.
 - c) Paragraphs 13 to 28 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report in Appendices B and C. A map showing the location of the premises is attached to this report as Appendix F.
 - 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 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.

KEY ISSUES FOR CONSIDERATION

The premises licence application

8. On 6 June 2022 PC32 Limited applied to this council for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Ormside Projects, Units 32 A, B & C, Penarth Centre, Ormside Street, London SE15 1TR.

9. The hours applied for are summarised as follows:
 - Plays, films, live music, recorded music, performances of dance and anything similar to live music, recorded music or performances of dance (all indoors)
 - Monday to Wednesday: 12:00 – 00:00 (midnight)
 - Thursday: 12:00 – 02:00
 - Friday and Saturday: 10:00 – 06:00
 - Sunday: 12:00 – 02:00

 - The sale of alcohol to be consumed on and off the premises:
 - Monday to Wednesday: 12:00 – 00:00
 - Thursday: 12:00 – 02:00
 - Friday and Saturday: 10:00 – 06:00
 - Sunday: 12:00 – 02:00

- Late night refreshment (indoors):
 - Monday to Wednesday: 23:00 – 00:00
 - Thursday: 23:00 – 02:00
 - Friday and Saturday: 23:00 – 05:00
 - Sunday: 23:00 – 02:00

- Opening hours:
 - Monday to Wednesday: 12:00 – 00:30
 - Thursday: 12:00 – 02:30
 - Friday and Saturday: 10:00 – 06:30
 - Sunday: 12:00 – 02:30

- Non-standard timings:
 - On New Year’s Eve all permitted licensable activities can take place at the premises from the terminal hour for licensable activities on New Year’s Eve until the commencement of the permitted hours on New Year’s Day.
 - On any day preceding a Bank Holiday the hours for licensable activities at the premises will reflect those for Friday or Saturdays.

10. The premises and intended operation of the premises is described in the application as follows:

“Founded in 2015 by Michael Levitt, Ormside Projects is a multidisciplinary arts centre and events venue occupying the first floor of the Penarth Centre, offering unparalleled facilities and resources for the development and presentation of a diverse range of grass roots, musical and artistic projects.”

Designated premises supervisor

11. The proposed designated premises supervisor of the premises is Mr Michael Levitt. Mr Levitt is the director of the applicant company, PC32 Limited.
12. Copies of the application, an email from the applicant requesting that a letter supporting the application be included as an addendum to the application and the letter supporting the application are attached to this report as Appendix A.

Representations from responsible authorities

13. Representations objecting to the application were submitted by this council’s trading standards service, by the Metropolitan Police Service, by this council’s environmental protection team, by this council’s planning service and by this council’s licensing unit in its role as a responsible authority (referred to as ‘the licensing responsible authority’).

14. The trading standards service requested that various proposed licence conditions relating to the protection of children from harm licensing objective be included in the application. The applicant agreed to this and the trading standards service withdrew their representation.
15. The Metropolitan Police Service's representation notes that a premises licence in respect of the premises is already held by the applicant, and that the operating hours sought in this application are significantly longer than those permitted by the existing premises licence. The representation states that, according to this council's statement of licensing policy, the premises are located in a residential area and that the closing times recommended in the statement of licensing policy for licensed premises in residential areas are 23:00 daily.
16. The Metropolitan Police Service acknowledges that the immediate vicinity of the premises also houses light industrial units, multi-use event spaces and workspaces. The Metropolitan Police Service have liaised with the applicant and are aware that the premises have also been operated under temporary event notices. Whilst the Metropolitan Police Service notes that there has been no reported crime and disorder regarding temporary event notices submitted in respect of the premises, the Metropolitan Police Service states that if this application is granted it would entitle the applicant to hold events until 06:30 hours on over 100 occasions per year, increasing the possibility of crime and disorder arising due to the operation of the premises.
17. The Metropolitan Police Service recommends that, should the licensing sub-committee be minded to grant the application, licence conditions stipulating the maximum number of customers permitted at the premises at any one time (the 'accommodation limit'), and requiring that a dispersal policy be devised and implemented at the premises, be imposed by the licensing sub-committee.
18. The environmental protection team's representation notes that, according to this council's statement of licensing policy, the premises are located in a residential area, that the closing times recommended in the statement of licensing policy for licensed premises in residential areas is 23:00 daily and that it is recommended that nightclubs are not located in residential areas. The environmental protection team contend that the premises will, in effect, be operated as a nightclub should this application be granted.
19. The environmental protection team refers to two noise complaints made to the council, but notes that no public or statutory nuisance has been witnessed as a result of the premises' operation. The environmental protection team states that the immediate, and wider, vicinity of the premises are subject to granted planning applications to allow a significant amount of residential dwellings to be built. It is the environmental protection team's view that any expansion of operations at the premises should be considered a nuisance risk to the new dwellings to be built in the locale.
20. The environmental protection team request that, if the licensing sub-committee are minded to grant the application, various conditions relating to the prevention of public nuisance be imposed on any premises licence issued subsequent to the application.

21. The planning service contends that the proposed operation of the premises appears to be that of a night club, and that no planning permission has been submitted to allow the use of the premises as a nightclub. The planning service notes that there are two residential dwellings in the Penarth Centre itself, and that 4700 new homes are planned for the locale. The planning service is concerned regarding the risk of public nuisance arising from the proposed operation of the premises in respect of existing and potential local residents. The planning service objects to the application.
22. The licensing responsible authority notes that, according to this council's statement of licensing policy, the premises are located in a residential area, that the closing times recommended in the statement of licensing policy for licensed premises in residential areas is 23:00 daily and that it is recommended that nightclubs are not located in residential areas.
23. The licensing responsible authority states that a premises licence in respect of the premises is held by the applicant, and that the operating hours permitted by the existing licence are already 'generous'. The licensing responsible authority contends that the use of an additional unit at the premises is likely to increase footfall in the area thus increasing the risk of nuisance arising due to the operation of the premises.
24. The licensing responsible authority recommends that, should the licensing sub-committee be minded to grant the application, licence conditions (i) stipulating the maximum number of customers permitted at the premises at any one time (the 'accommodation limit'), (ii) imposing a closing time for the external areas of the premises and (iii) requiring that it be made clear which premises licence is in use when the premises are operating (if the existing premises licence isn't surrendered), be imposed by the licensing sub-committee.
25. Copies of the representations submitted by responsible authorities, and related correspondence, are attached to this report in Appendix B.

Representations from other persons

26. 118 representations in support of the application have been submitted by 'other persons' (to be referred to as other persons 1 to 118 elsewhere in this report). 74 of the other persons live outside of the borough of Southwark and the remainder live and / or work in the borough of Southwark.
27. In summary, the other persons' representations contend that the premises are currently operated to a very high standard and that the proposed operation of the premises will not be detrimental to the promotion of the prevention of crime and disorder, the protection of public safety or the prevention of public nuisance licensing objectives. The representations also stress the cultural importance of the premises, however this is not a matter that the licensing sub-committee can consider in their determination of the application.
28. Copies of the representations submitted by the other persons are attached to this report in Appendix C.

Conciliation

29. All of the representations were sent to the applicant. Following discussions between the trading standards service and the applicant, the trading standards service withdrew their representation.
30. At the time of the writing of this report the representations submitted by the Metropolitan Police Service, by this council's environmental protection team, by this council's planning service and by this council's responsible authority remain in place and must therefore be considered by the licensing sub-committee in its determination of the application.
31. At the hearing to determine this application the licensing sub-committee will be apprised as to any conciliation, whether partial or full, of the responsible authorities whose representations remain in place.

Application history

32. A premises licence is currently held in respect of Units 32 B & C, Penarth Centre, Ormside Street, London SE15 1TR by PC32 Limited. The licence number is 868596.
33. The premises licence allows for the following licensable activities:
 - Plays, films, live music, recorded music, performances of dance and anything similar to live music, recorded music or performances of dance (all indoors)
 - Sunday to Thursday: 12:00 – 23:00
 - Friday and Saturday: 10:00 – 00:00
 - The sale of alcohol to be consumed on the premises
 - Sunday to Thursday: 12:00 – 23:00
 - Friday and Saturday: 10:00 – 00:00
 - Late night refreshment (indoors)
 - Friday and Saturday: 23:00 – 00:00
 - Opening hours:
 - Sunday to Thursday: 07:00 – 23:30
 - Friday and Saturday: 07:00 – 00:30
 - Non-standard timings:
 - On the day before any Bank Holiday licensable activities shall be permitted between 12:00 and 00:00 and the opening hours of the premises shall be 12:00 - 00:30.

- On New Year's Eve licensable activities shall be permitted from the end of permitted hours until the start of permitted hours for licensable activities the following day.

A copy of premises licence number 868596 is attached to this report as Appendix D.

34. Details of temporary event notices in respect of the premises are attached in Appendix E.

Map

35. A map showing the location of the premises is attached to this report as appendix F. The following licensed premises are also shown on the map and provide licensable activities as stated:

Zinea Foods (Zinea Global Services Limited) Unit 3, 96-108 Ormside Street, London SE15 1TF, licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 09:00 – 21:00

Foodstars Peckham, Foodstars Peckham, 107-109 Ormside Street, London SE15 1TF licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 11:00 – 23:00
- Late night refreshment:
 - Monday to Sunday: 23:00 – 03:00

Deliveroo SP Ltd, 145 Ormside Street, London SE15 1TF licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 10:00 to 23:00

Winner Cash & Carry, Units 16 And 17, The Penarth Centre, Penarth Street, London SE15 1TR licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 09:00 – 22:00

Southwark Council statement of licensing policy

36. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
37. 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.
38. 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.
39. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. Links are below:

Southwark policy:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

Section 182 Guidance:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

Cumulative Impact Area (CIA)

40. The premises are not situated in a cumulative impact area
41. The premises are situated in a residential area according to the council's statement of licensing policy.
42. Under the Southwark's statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within residential areas for the categories of premises stated:
 - Restaurants, cafes, event premises / spaces where the sale of alcohol is included in, and ancillary to, a range of activities including meals, public houses, wine bars, or other drinking establishments and bars in other types of premises:
 - 23:00 daily
 - Nightclubs are not considered suitable for residential areas

Climate change implications

43. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
44. Climate change is not a legal factor in the consideration of a grant of a premises license under the current licensing objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by the operation of the premises.
45. Examples of such agreements may be:
 - Not use single use plastics, such as disposable plastic glasses, when selling alcohol at the premises.
 - Encourage patrons not to drive to venues by providing details of public transport on their webpages/tickets.
46. The council's climate change strategy is available at:

<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

48. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the Council to consider all individuals when carrying out its functions.
49. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.
50. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 – 2026 at:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

51. The equalities impact assessment is available at:

<https://moderngov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf>

Health impact statement

52. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

Resource implications

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

Consultation

54. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

55. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
56. The principles which sub-committee members must apply are set out below.

Principles for making the determination

57. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
58. The principles which sub-committee members must apply are set out below.
59. 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.
60. 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.
61. 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:
 - To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence.
 - To exclude from the scope of the licence any of the licensable activities to which the application relates.
 - To refuse to specify a person in the licence as the premises supervisor.
 - To reject the application.

Conditions

62. 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.
63. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
64. 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.
65. 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.
66. 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

67. 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

68. 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.

69. 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

70. 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.
71. 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.
72. 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.
73. 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.

74. 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.
75. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
76. 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.
77. 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

78. Members are required to have regard to the Home Office 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

79. 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 Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copies of the application, an email from the applicant requesting that a letter supporting the application be included as an addendum to the application and the letter supporting the application
Appendix B	Copies of the representations submitted by responsible authorities, and related correspondence
Appendix C	Copies of the representations submitted by 'other persons'
Appendix D	Copy of premises licence number 868596
Appendix E	Details of temporary events notices in respect of the premises
Appendix F	Map showing the location of the premises

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	14 July 2022	
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		14 July 2022