

Item No. 6.	Classification: Open	Date: 13 September 2022	Meeting name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Presco Food and Wine, 133-135 Southampton Way, London SE5 7EW – Transfer of Premises Licence and Variation of Designated Premises Supervisor	
Ward(s) or groups affected:		St Giles Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Soho Sweets (UK) Limited to transfer the premises licence, submitted under Section 42 of the Licensing Act 2003 in respect of the premises known as Presco Food and Wine, 133-135 Southampton Way, London SE5 7EW.
2. That the licensing sub-committee considers an application made by Soho Sweets (UK) Limited to also vary the designated premises supervisor (DPS) under Section 37 of the Act.
3. Notes:
 - a) The applications are subject to objection notices from the Metropolitan Police Service and are therefore referred to the sub-committee for determination.
 - b) Paragraphs 12 to 14 of this report provide a summary of the application under consideration by the sub-committee. A copy of the current premises licence is attached as Appendix A. Copies of the applications are attached as Appendices D and E.
 - c) Paragraphs 26 to 27 of this report deals with the police objection notice received to the transfer application. A copy of the relevant police objection notice is attached 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

4. 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.
5. Within Southwark, the licensing responsibility is wholly administered by this council.
6. 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.
7. 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.
8. The application to transfer a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
9. The police may submit an objection notice to an application to transfer a premises licence when relevant to the promotion of the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

Premises licence transfer and variation of designated premises supervisor

10. The premises licence had been in the name of Mohammed Ahmadzai as licence holder and DPS. A copy of the premises licence is available in Appendix A.
11. Mohammed Ahmadzai surrendered the premises licence on 4 July 2022. A copy of the surrender is available in Appendix B. Once a licence is surrendered, there is a 28 day period in which it can be transferred to a different entity.
12. Alcohol has continued to be sold at the premises without a licence. A warning letter was sent to the premises on 20 July 2022. A copy of that warning letter is available in Appendix C.
13. An application to transfer the premises was received on 21 July 2022, to take place with immediate effect. This application was to remove Mohammed Ahmadzai as the licence holder and replace it with Soho Sweets (UK) Limited. A copy of the application is available in Appendix D.
14. An application for the variation of the DPS was made on 5 August 2022, to take place with immediate effect. A copy of the application is available in Appendix E.
15. The effect of an application to transfer a premises licence or a vary DPS is that it will have immediate interim effect unless an objection is received from the Police.

Premises history

16. A premises licence was first issued to the premises on 30 September 2005. The latest licence was transferred with a variation of DPS to Mohammed Ahmadzai in March 2020.
17. On 15 August 2022, the Metropolitan Police submitted a representation against both the transfer and variation of DPS.

The police objection

18. The police upon receipt of the application to transfer the premises licence holder and to vary the DPS submitted an objection notice on 15 August 2022. A copy of the representation is available in Appendix F.

19. Based on information received by the police from trading standards, the representation considers that to grant the application to transfer the premises licence for the above premises would undermine the licensing objectives, in particular the prevention of crime and disorder. It is believed the persons that have the overriding control of the premises have previously held premises licences that were subject to reviews of the premises licence, resulting in the revocation of the premises licence.

Consideration by the sub-committee

20. It has not been possible to reach a negotiated outcome of this matter and the sub-committee is asked to consider whether the police objection notice is upheld under the necessity to promote the licensing objective of crime and disorder and refuse the application to transfer.

The local area

21. A map of the local area is attached as Appendix G. There is one similarly licensed premises in the vicinity (100 metres), namely:

Costcutter, 156 Southampton Way, London SE5 7EW

- The sale by retail of alcohol (off sales):
 - Monday to Sunday from 00:00 to 00:00.

Southwark council statement of licensing policy

22. Council assembly approved Southwark's statement of licensing Policy 2021 – 2026 on 25 November 2020. The policy came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this Authority relies in determining licence applications.
- Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
- Section 6 – Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to

which they apply. To be read in conjunction with Appendix B of 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.
23. 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.
24. Link to the Southwark policy:

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

25. Link to 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)

26. The premises is situated within the Camberwell CIA.
27. Under the Southwark statement of licensing policy 2021 - 2026 the local CIA applies to the following premises:

- Clubs, pubs and bars, off-licences, grocers, supermarkets, convenience stores and similar premises.
28. The premises is within the Camberwell District Town Centre Area. Under the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for the following categories of premises:
- Closing time for off-licences and alcohol sales in grocers and supermarkets:
 - Monday to Sunday: 23:00 daily.

Camberwell CIA

29. On 5 November 2008, council assembly agreed that it was appropriate and necessary to introduce a local policy dealing with the cumulative impact of licensed premises in the Camberwell area.
30. The boundary of the area is defined as follows: From Camberwell New Road at the junction with Wyndham Road progressing via Camberwell Road / Bowyer Place / Edmund Street / Benhill Road / Wilson Road / Graces Road / Graces Mews / Camberwell Grove (via alley) / Grove Lane / De Crespigny Park / Denmark Hill following the Lambeth boundary to Coldharbour Lane / Denmark Road / Flodden Road and Camberwell New Road returning to the start.
31. The classes of premises to which the policy applies is defined as follows: night clubs, pubs and bars, off-licences, grocers, supermarkets, convenience stores and similar premises.

Climate change implications

32. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
33. 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.
34. 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.

35. 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

36. 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

37. 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.

38. 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.

39. 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>.

40. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

42. A fees have been paid by the applicant in respect of these application being the statutory fees payable for the transfer and vary DPS of a premises licence.

Consultation

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

44. The sub-committee is asked to determine the application for the transfer of a premises licence under Section 42 of the Licensing Act 2003.
45. The principles which sub-committee members must apply are set out below.

Principles for making the determination

46. The general principle is that applications for the transfer of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.
47. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.
48. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

Reasons

49. If the sub-committee determines that it is necessary to refuse the application to transfer the premises licence, it must give reasons for its decision.

Hearing procedures

50. Subject to the licensing hearing regulations, the licensing sub-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.
51. This matter relates to the determination of an application for a premises licence under section 42 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

52. 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.

53. 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.
54. 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.
55. 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.
56. The sub-committee can only consider matters within the application that have been raised through the objection notice submitted by the police. This will be decided on a case to case basis.
57. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making objection 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.
58. All interested parties 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

59. 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

60. 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 & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Tel: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Premises licence
Appendix B	Licence surrender
Appendix C	Warning letter
Appendix D	Copy of the transfer application
Appendix E	Copy of the variation of the designated premises supervisor application
Appendix F	Police representations
Appendix G	Map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	31 August 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	31 August 2022	