

Item No. 5.	Classification: Open	Date: 10 November 2022	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Ibbs Bar (Legacy Restaurant), 53 Camberwell Road, London SE5 0EZ	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the licensing sub-committee considers an application submitted by Jimmy Lee on behalf of Roffo Court Residents under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Mohamed Fofanah in respect of the premises known as Ibbs Bar (Legacy Restaurant), 53 Camberwell Road, London SE5 0EZ
2. Notes:
 - a) The grounds for the review are stated in paragraphs 13 to 16 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The review application is supported by representations submitted by responsible authorities in Appendix B and by other persons in Appendix C. Details of the representations are provided in paragraphs 17 to 20.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix D. A map of the area that the premises are located in is attached as Appendix H.
 - 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 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. 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.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any Responsible Authority or other person to apply to the local Licensing Authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. A hearing date of 29 September 2022 had originally been set for this review. This was postponed by the licensing sub-committee to 10 November 2022 to allow for the submission of additional papers.
10. The premises licence allows the provision of licensable activities as follows:
 - The sale of alcohol to be consumed on the premises:
 - Monday to Thursday: 10:00 to 00:30
 - Friday to Sunday: 10:00 to 02:30
 - The provision of late night refreshment (indoors):
 - Monday to Thursday: 23:00 to 00:30
 - Friday to Sunday: 23:00 to 02:30

- The provision of regulated entertainment in the form of live and recorded music and the performances of dance, facilities for making music, facilities for dancing and provisions similar (indoors):
 - Monday to Thursday: 18:00 to 00:30
 - Friday to Sunday: 18:00 to 02:30
- Opening hours
 - Monday to Thursday: 10:00 to 01:00
 - Friday to Sunday: 10:00 to 03:00.

11. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix D.

Designated premises supervisor (DPS)

12. The current designated premises supervisor (DPS) named on the licence is Mohamed Fofanah, who holds a personal licence with the London Borough of Bexley.

The review application

13. On 4 August 2022, an application was submitted by Jimmy Lee under Section 51 of the Licensing Act 2003, for the review of the premises known as Ibbs (Legacy Restaurant), 53 Camberwell Road, London SE5 0EZ.

14. The review application was submitted in respect of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm licensing objectives and in summary states that the following has been witnessed and / or taken place at the premises:

- It is alleged that the operation of the premises gives rise to serious noise nuisance, anti-social behaviour and crime and disorder in the locale.
- That customers fight outside of the premises.
- That customers scream and shout outside of the premises.
- That customers play extremely loud music in their cars outside of the premises.
- That customers leave waste and broken glass from the premises in the surrounding streets.
- That customers urinate and vomit in the surrounding streets, that customers at the premises drink drive on leaving the premises.
- That local residents feel intimidated by customers of the premises.
- That customers leave half full containers of alcoholic drinks in the locale.
- That local residents (including children) are frequently woken from their sleep due to the operation of the premises.
- That customer parking obstructs local roads.
- That the premises are frequently operated in breach of the conditions of the premises licence issued in respect of the premises and that the council and the police have had to be contacted, and have had to investigate the premises, on multiple occasions due to problems arising due to the operation of the premises.

15. Full details of the grounds for the review are provided within review the application which is attached as Appendix A. The applicant has also provided a link to stills and short video clips which are intended to be used as part of their presentation at the hearing.
16. The review applicant has also provided additional papers which reformat his evidence in Appendix E.

Representations from responsible authorities

17. There are supporting representations submitted in support of the review application by the Metropolitan Police Service and the environmental protection team.
18. The representation from the police is made under the licensing objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance. It lists a number of times where the police have been called to the locality around Roffo Court as a result of behaviour from patrons of the premises. This representation is available in Appendix B. The Police have also supplied additional supporting documentation. This is available in Appendix F.
19. The representation from Southwark's environmental protection team (EPT) is made in support of the review under the licensing objective of the prevention of public nuisance. EPT state that they and the noise team have received several complaints and have made several visits to the premises about loud music and public nuisance. This representation is available in Appendix B.

Representations from other persons

20. Supporting representations have been received from 15 other persons, including Councillor McIntosh (one of the Ward Councillors for Faraday), the Roffo Court Residents Association (which includes as petition) and 13 other individual residents. These representations are attached as Appendix C.

Representations from the premises licence holder

21. The representative for the premises licence holder has submitted a statement from Mohammed Fofanah. This is available in Appendix G.

Operating History

22. The original licence was granted in September 2011.
23. On 14 August 2020, the licence was transferred to the current premises licence holder, Mohamed Fofanah. The DPS title was also transferred into his name at the same time.
24. On 11 September 2021, the premises was reviewed by a local resident. They withdrew that review on the same day.
25. Following complaints made to the police and environmental protection, an online meeting was arranged with residents of Roffo Court on 3 November 2021. This

resulted in the police and licensing officers engaging with the premises. In addition, a temporary CCTV camera was located in the vicinity of the premises.

26. On 4 August 2022, an application was submitted by Jimmy Lee under Section 51 of the Licensing Act 2003.

27. The following is a list of recent temporary events notices issued for the premises:

Temporary events notices (TENs)

Applicant	Dates	Activities	Counter Notice
Mohamed Mansaray	27/08/2021 to 28/08/2021 from 03:00 to 04:00	Late TEN: Sale by retail of alcohol and late night refreshment for 70 persons	No
Mohamed Fofanah	10/12/2021 to 11/12/2021 from 03:00 to 04:00	Late TEN: Sale by retail of alcohol, late night refreshment and entertainment for 80 persons	Yes – late TEN, Police objection

Recent complaints to the licensing department

28. The following is a table of most recent complaints to the licensing department regarding the premises (this does not include complaints made to the noise team (EPT):

Date	Complainant	Complaint	Outcome
28/08/2021	Local Resident	Issue is with people congregating outside and singing loudly.	

The local area

29. A map of the local area is attached as Appendix H. There are other licensed premises in the immediate vicinity (100 metres):

Emukay Restaurant , 91 Camberwell Road, London SE5 1EZ, licenced for:

- The sale by retail of alcohol (on and off sales):
 - Monday to Sunday: 10:00 to 02:30 (the following day)
- The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 03:00 (the following day)
- The provision of regulated entertainment in the form of performances of dance, live music, recorded music and anything similar (indoors):
 - Monday to Sunday: 20:00 to 02:30 (the following day)

Red Sea, 85 Camberwell Road, London SE5 0EZ, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Sunday to Thursday: 12:00 to 23:00
 - Friday: 12:00 to 00:00 (midnight)
 - Saturday: 12:00 to 02:00 (the following day)
- The provision of late night refreshment (indoors):
 - Friday: 23:00 to 00:00 (midnight)
 - Saturday: 23:00 to 02:00 (the following day)

Southbank Nightclub t/a/ La Estacion, 57-59 Camberwell Road, London SE5 0EZ, licensed for:

- The sale of alcohol to be consumed on the premises:
 - Sunday to Wednesday: 10:00 to 00:00
 - Thursday: 10:00 to 02:30
 - Friday and Saturday: 10:00 to 04:30
- The provision of late night refreshment (indoors and outdoors):
 - Sunday to Wednesday: 23:00 to 00:00
 - Thursday: 23:00 to 02:30
 - Friday and Saturday: 23:00 to 04:30
- The provision of regulated entertainment in the form of films, live music, recorded music, performances of dance and anything similar (indoors):
 - Sunday to Wednesday: 10:00 to 00:00
 - Thursday: 10:00 to 02:30
 - Friday and Saturday: 10:00 to 04:30

Abokobi Ghanaian Restaurant, 33 Camberwell Road, London SE5 0EZ, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday: 12:00 to 23:30
- The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 23:30:

Dallas Chicken and Ribs, 30 Camberwell Road, London SE5 0EN, licensed for:

- The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 01:00 (the following day):

Astra Newsagents, 22 Camberwell Road, London SE5 0EN, licensed for:

- The sale by retail of alcohol (off sales only):
 - Monday to Sunday: 06:00 to 22:00

Costcutter Supermarket, 25 Camberwell Road, London SE5 0EZ, licensed for:

- The sale by retail of alcohol (off sales only):
 - Monday to Sunday: 24 hours per day.

Southwark Council statement of licensing policy

30. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
31. 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.
32. 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.

33. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The 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)

34. The premises are not situated in a cumulative impact area. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for this categories of premises indicated:

- Closing time for restaurants and cafes: 23:00 daily
- Closing time for public houses: 23:00 daily
- Closing time for night clubs (with 'sui generis' planning classification): These are not considered appropriate for this area.

Climate change implications

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

36. 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.

37. 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.

38. 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

39. 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

40. 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.
41. 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.
42. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 – 2026 is available at:

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

43. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

45. There is no fee associated with this type of application.

Consultations

46. 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

47. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same Act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
48. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

49. Under Section 51, the licensing authority must hold a hearing to determine the review and any relevant representations.
50. The four licensing objectives are:
 - The prevention of crime and disorder
 - The protection of public safety
 - The prevention of nuisance
 - The protection of children from harm.
51. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
 - Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
52. For the purpose of determining a relevant representation under Section 52 of the Act a “relevant representation” means representations which:
 - Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
53. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
54. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.

55. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
56. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

57. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

58. 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.

59. This matter relates to the review of the premises licence under Section 51 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

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.

66. 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.

67. 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

68. Members are required to have regard to the Home Office Revised 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

69. The head of community safety and enforcement has confirmed that the costs of this process 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 020 7525 5748

APPENDICES

Appendix A	Copy of the review application
Appendix B	Representation from responsible authorities
Appendix C	Representation from other persons
Appendix D	Copy of the current premises licence
Appendix E	Additional submission from the Applicant for the review
Appendix F	Additional documentation from the Metropolitan Police
Appendix G	A statement from the premises licence holder
Appendix H	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Team Leader - Licensing	
Version	Final	
Dated	28 October 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	28 October 2022	