

Item No. 6.	Classification: Open	Date: 10 January 2023	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Costless, 23-25 Camberwell Road, London SE5 0EZ	
Ward(s) or groups affected:		Faraday Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee reconsiders an application submitted by this Council's Trading Standards service under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Mohammad Choudrey in respect of the premises known as Costless, 23-25 Camberwell Road, London SE5 0EZ.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 12 to 20 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) A copy of the chronology of events leading to the review is provided in Appendix B.
 - c) The review application is supported by representations submitted by responsible authorities in Appendix C. Details of the representations are provided in paragraphs 21 to 23.
 - d) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix D.
 - e) A copy of the Magistrates' Court appeal bundle, relating to the appeal of the 31 March 2022 decision is available as Appendix F on the website in the appendices supplemental agenda.
 - f) A map of the area that the premises are located in is attached as Appendix G.
 - g) 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. The premises licence allows the provision of licensable activities as follows:
 - The sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 00:00 to 00:00
 - Opening hours:
 - Monday to Sunday: 00:00 to 00:00
10. 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)

11. The current designated premises Supervisor (DPS) named on the licence is Zakir Hussain, who holds a personal licence with the London Borough of Newham. This was issued on 7 February 2022.

The review application

12. On 7 February 2022, an application was submitted by the council's trading standards service under Section 51 of the Licensing Act 2003, for the review of the premises known as Costless, 23-25 Camberwell Road, London SE5 0EZ.
13. 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:
14. On Thursday 27 January 2022 Ray Moore, a principal trading standards enforcement officer with the London Borough of Southwark, visited the premises. The purpose of the visit was at the request of both the police and licensing team administration. Mr Moore was informed by the licensing team administration that the business had not paid its license fee and was effectively unlicensed. The police had also claimed that they had received complaints that the business was selling alcohol that was being consumed in the surrounding streets leading to anti-social behaviour.
15. The following other issues were found:
 - No premises licence holder or DPS present, or employee with a personal licence.
 - Lack of invoices for stock.
 - Breaches of premises licence conditions (100; 101; 288; 289; 326; 336 and 342):
 - **Condition 100** - No supply of alcohol may be made under the Premises Licence a) at a time when there is no Designated Premises Supervisor in respect of the Premises Licence; or b) at a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.
 - **Condition 101** - Every supply of alcohol under the Premises Licence must be made, or authorised by, a person who holds a Personal Licence.
 - **Condition 288** - That the CCTV system installed upon the premises shall be maintained in good working condition and operable at all times.

- **Condition 289** - That recordings taken by the CCTV system installed upon the premises shall be kept and made available for inspection by authorised officers for a period of thirty one (31) days.
 - **Condition 326** - That all appropriate staff shall be trained in the age identification scheme required at the premises and records of training shall be kept and made available for inspection by authorised officers of the Council.
 - **336** A personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.
 - **Condition 342** - That all staff concerned with the sale or supply of intoxicating liquor will attend a recognised training scheme and that a record will be kept of the names of staff and dates attended.
 - Lack of staff training materials.
16. On 28 January 2022 an officer from the licensing team made a test purchase at 20:30 of a can of Guinness Draft Beer and witnessed a white male purchase four cans of beer.
 17. On Saturday 29 January 2022 police went to the premises shortly after midnight and witnessed alcohol being served.
 18. Trading standards as a responsible authority has asked that the licensing sub-committee consider all options with respect to this business given that it appears to have been operating without a designated premises supervisor for two years and appears to be badly run. Trading standards are seeking revocation of the premises licence.
 19. Full details of the grounds for the review are provided within review the application. A copy of the review application is attached as Appendix A.
 20. A full chronology of events leading to the review are available at Appendix B.

Representations from responsible authorities

21. There are supporting representations submitted in support of the review application by the Metropolitan Police Service and the licensing authority.
22. The representation from the police is made under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. It outlines antisocial issues being caused in the locality by customers purchasing alcohol from the premises, leading to complaints from local residents. This representation is available in Appendix C.
23. The licensing authority's representation is made in support of the review under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance; and draws attention previous inspection failures from 2019, many of which are repeated in 2022. This representation together with a schedule of licensing visits to the premises and is available in Appendix C.

Representations from other persons

24. There are no other representations from other persons.

Operating History

22. The first licence was issued in 2007, issued to Mohammad Choudrey, with Mukhtar Ahmed as DPS.
23. In January 2016 the DPS was varied to John Hussein. However, the licensing department was later informed by trading standards that the DPS had gone away, so the licence holder was written to on 31 January 2022 to advise that a new variation of DPS application would need to be made and that alcohol could not be sold until this had taken place.
24. The application to review the licence was received on 7 February 2022 from trading standards.
25. Also on 7 February 2022, a variation of DPS application was received from the premises and changed to Zakir Hussain with immediate effect.
26. There is no history of temporary events notices for the premises, nor are there any recent complaints made to licensing.
27. The review application was heard by the Southwark licensing sub-committee on 31 March 2022. A copy of the notice of decision is available in Appendix E.
28. On 19 April 2022 an application was received the transfer the premises licence. The application did not remove Mohammad Choudrey as licence holder, rather it added Zakir Hussain as a second licence holder. This has now produced the latest premises licence which is available in Appendix D.
29. The applicant appealed that decision at the Magistrates' Court. This was heard on 22 November 2022. A copy of the Magistrates' Court appeal bundle is in Appendix F. It was agreed between the parties to remit the review back to the Southwark licensing sub-committee for reconsideration. The consent order agreeing to remit the case back to the licensing sub-committee is also attached at Appendix F.

The local area

30. A map of the local area is attached as Appendix G. There are other licensed premises in the immediate vicinity (100m):

Southbank Nightclub, 57-59 Camberwell Road, London SE5 0EZ, licensed for:

- The sale by retail of alcohol (on sales only):
 - Sunday to Wednesday: 10:00 to 00:00 (midnight)
 - Thursday: 10:00 to 02:30 (the following day)
 - Friday and Saturday: 10:00 to 04:30 (the following day)
- The provision of late night refreshment (indoors and outdoors):

- Sunday to Wednesday: 23:00 to 00:00 (midnight)
- Thursday: 23:00 to 02:30 (the following day)
- Friday and Saturday: 23:00 to 04:30 (the following day)
- The provision of regulated entertainment in the form of films, performances of dance, live music and recorded music (indoors):
 - Sunday to Wednesday: 10:00 to 00:00 (midnight)
 - Thursday: 10:00 to 02:30 (the following day)
 - Friday and Saturday: 10:00 to 04:30 (the following day)

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)

Legacy Restaurant, 53 Camberwell Road, London SE5 0EZ, licenced for:

- The sale by retail of alcohol (on sales only):
 - Monday to Thursday: 10:00 to 00:30 (the following day)
 - Friday to Sunday: 10:00 to 02:30 (the following day)
- The provision of late night refreshment (indoors):
 - Monday to Thursday: 23:00 to 00:30 (the following day)
 - Friday to Sunday: 23:00 to 02:30 (the following day)

- The provision of regulated entertainment in the form of performances of dance, live music and recorded music (indoors):
 - Monday to Thursday: 18:00 to 00:30 (the following day)
 - Friday to Sunday: 18:00 to 02:30 (the following day)

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, 5a Westmoreland Road, London SE17 2AX, licensed for:

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

H&G Cuisine, 33 Camberwell Road, London SE5 0EZ, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday: 10:00 to 23:00
 - Sunday: 10:00 to 21:30
- The provision of late night refreshment (indoors):
 - Monday to Saturday: 23:00 to 23:30.

Southwark Council statement of licensing policy

25. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
26. 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.
31. 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.
32. 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)

33. Within Southwark’s statement of licensing policy, the premises is not situated in a cumulative impact area.

34. Under the Southwark statement of licensing policy 2021-2026 the following closing times are recommended as appropriate within this area for the category of premises indicated:

- Closing time for off-licences is 23:00 daily.

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 an agreement may be:

- Not to 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.

Consultation

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 52 of the Licensing Act 2003, 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 of the 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 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 and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the review application
Appendix B	Chronology of events leading to review
Appendix C	Representations from responsible authorities
Appendix D	Copy of the current premises licence
Appendix E	Notice of decision from 31 March 2022
Appendix F	Magistrates' Court appeal bundle (closed item)
Appendix G	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	14 December 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	16 December 2022	