

Item No. 5.	Classification: Open	Date: 26 July 2010	MEETING NAME Licensing Sub-Committee
Report title:		Licensing Act 2003 – The Grand Union P.H, 26 Camberwell Grove, London SE5 8RE	
Ward(s) or groups affected:		Premises are within: Brunswick Park	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Adam Saword to vary a Premises Licence granted under the Licensing Act 2003 in respect of the premises known as: The Grand Union P.H, 26 Camberwell Grove, London SE5 8RE.
2. **Notes:**
 - a) *The application seeks to vary existing licensable activities held under current legislation in respect of the premises known as: The Grand Union P.H under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from interested parties and is therefore referred to the Sub-committee for determination;*
 - b) *Paragraphs 12 to 15 of this report provide a summary of the application under consideration by the Sub-committee (A copy of the full application is provided as appendix A).*
 - c) *Paragraphs 16 - 21 of this report deals with the representations and comments received to the application).*

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for:
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) The provision of late night refreshment
4. Within Southwark, this Council wholly administers the licensing responsibility.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are
 - a) The prevention of crime and disorder;
 - b) The promotion of public safety
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.

6. In carrying out its licensing functions, a licensing authority must also have regard to
 - a. The Act itself;
 - b. The Guidance to the act issued under Section 182 of the Act;
 - c. Secondary regulations issued under the Act;
 - d. The Licensing Authority's own Statement of Licensing Policy
 - e. The application, including the operating schedule submitted as part of the application
 - f. Relevant representations

7. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing justice's licences, public entertainment licences and night café licences were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licences into the relevant licences under the new system. Licences that were so converted were converted on existing terms, conditions and restrictions. The 6 August date having now passed operators are still able to apply to secure the new licences before the date upon which the new licensing regime comes into being – 24 November 2005 – but must now apply for new licences.

8. 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 under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current Premises Licence

9. The current licence in respect of the premises known as The Grand Union P.H, 26 Camberwell Grove, London SE5 8RE was issued on 1 December 2009. It allows the following licensable activities.
 - Live music; recorded music; facilities for dancing; entertainment similar to live/recorded music
Sunday – Thursday from 10.00- 23.00;
Friday & Saturday from 10.00- 00.00
 - Late night refreshment
Monday – Saturday from 23.00 to 23.30
 - Sale and Supply of alcohol on and off the premises:
Sunday – Thursday from 10.00- 23.00;
Friday & Saturday from 10.00- 00.00
 - Operating hours of premises;
Sunday – Thursday from 09.00- 23.30;
Friday & Saturday from 09.00- 00.30

10. A copy of the existing Premises Licence is attached as Appendix B.

The variation application

11. On 5 May 2010, Adam Saword applied to this Council to vary the Premises Licence issued in respect of the premises known as The Grand Union P.H, 26 Camberwell Grove, London SE5 8RE under section 34 of the Licensing Act 2003.

Details of the variation application

12. The variation application is summarized as follows:

- To permit the inclusion of these new activities; films, performance of dance and provision of facilities for making music and dancing
 - Sunday to Wednesday from 10.00 to 23.00
 - Thursday to Saturday from 10.00 to 01.00 on the day following
- To extend the terminal hour permitted for recorded music;
 - Thursday from 23.00 to 01.00 on the day following
 - Friday to Saturday from 00.00 to 01.00 on the day following
- To reduce the terminal hour permitted for live music
 - Friday and Saturday from 00.00 to 23.00
- To extend the terminal hours for the provision of late night refreshment
 - Thursday - Saturday from 23.30 to 01.30 on the day following
 - Sun from 23.00 to 23.30
- To extend the terminal hour for the sale and supply of alcohol:
 - Thursday from 23.00 to 01.00 on the day following
 - Friday & Saturday from 00.00 to 01.00 on the day following
- To extend the opening hours for the following days
 - Thursday - Saturday from 09.00 to 01.30 on the day following

A copy of the variation application is attached as Appendix a to the report.

13. The variation application form provides the applicant's operating schedule. Parts B, E, F, G, I, J, L M and O set out the proposed operating hours in full.

14. Part P of the variation application provides any additional steps that might be proposed by the applicant to promote the four licensing objectives as set out in the Licensing Act 2003. In the event that the sub-committee should approve the application any proposals stated here must become licence conditions.

Designated Premises Supervisor

15. The designated premises supervisor under the existing premises licence is Luke Jenkins, he holds a personal licence issued by London Borough of Islington.

Representations from Interested Parties

16. There are representations lodged by The Camberwell Society, The Chair of Grove Lane Residents Association and fifty-one (51) interested parties. The representations are primarily concerned with the prevention of public and noise nuisance, public safety and crime and disorder. The representations are attached as appendix C to the report.

Representations from Responsible Authorities

17. There was one representation lodged by the Metropolitan Police. The representation outlined control measures that should be undertaken to increase safety and to reduce nuisance if the licence is granted.

18. However after conciliation and agreement with the applicant, the following conditions have been incorporated into the operating schedule by the applicant. Accordingly, these conditions will be attached should the licence be granted. The Police have therefore withdrawn their representation.

- An approved CCTV be installed both inside and outside with a 31 day tape bank, which must be maintained in full working order and a member of staff must be readily available to download images at the request of Police or London Borough Of Southwark licensing Officers.
- That suitable notices shall be displayed and announcements made requesting people to leave the premises in a quiet and orderly manner so as not to disturb local residents.
- That a Personal Licence holder is on the premises and on duty at **all** times that intoxicating liquor is supplied.

19. The representation and agreed conditions are attached as appendix D to the report

Applicant's response statement to interested party representations

20. A statement was issued by the applicant having had regards to the representations received, copies were distributed to residents for their information. A copy of the statement is attached as appendix E to the report.

Interested Parties comments on applicants response

21. Interested parties comments on the proposals offered in the statement have been received and copies are attached as appendix F.

Recent information relating to the premises

22. On 1 December 2009 an application was made to transfer the licence from the previous owners to Adam Saword.

23. On 14 June 2010 an application was made for change of designated premises supervisor to Luke Jenkins.

Temporary Event Notices

24. Temporary events notices have been used on occasions to extend the terminal hours of the premises licence. Below is a table of Tens given since the licence was transferred to Adam Saword.

From		To	
01Jan 10	00:00	01Jan 10	03:00
03 April 10	00:00	04 April 10	03:00
01May 10	00:00	02 May 10	03:00
04 June 10	00:00	05 June 10	03:00
02 July 10	00:00	04 July 10	03:00

The Local Area

25. A map of the local area is attached as appendix F. The operating terminal hours of the following premises licensed for regulated entertainment and late night refreshment are shown on the map:

- Cube Bar (Club Couture) 58A Camberwell Church Street, SE5 8QZ (Mon – Wed – 01.00; Thurs – 02.00 Fri & Sat – 03.00; Sun – 23.00)
- The Castle P.H, 65 Camberwell Church Street, London SE5 (Mon – Thurs– 00.30; Fri & Sat – 03.00 & Sun – 00.30)
- FM Mangal, 54 Camberwell Church Street, SE5 8QZ. ((Mon – Wed -01.30– Thurs Fri & Sat – 02.30 & Sun- 00.30)
- Le Petit Parisien, 16 Grove Lane, SE5 (Mon – Thurs & Sun – 00.30, Fri & Sat – 01.30)
- Fuljaltu Social Club, 84 Camberwell Church Street, SE5 8QZ (Mon – Thurs 23.00 Fri & Sat – 03.30; Sun till 22.30)

Late Night Refreshment

- The Vineyard, 3 Camberwell Grove, SE5 (Monday – Sat till 00.30; Sunday till 00.00)
- Morleys Fast Food, 56 Camberwell Church Street, SE5 (Mon – Thurs - 02.00 and Fri & Sat 03.30)
- The House Gallery, 70 Camberwell Church Street, SE5. (Mon- Sat- 23.00)
- Welcome Noodle Bar, 69 Camberwell Church Street, SE5 8TR (Mon- Sat- 00.30; Sun – 00.00)

Southwark council saturation policy for Camberwell

26. Council assembly approved the introduction of a special policy for Camberwell on the cumulative impact of a concentration of licensed premises (saturation policy) on 05 November 2008.

27. The decision to introduce saturation policy was taken with regard to the committee’s concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.

28. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant

can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

29. The applicant has been advised to address the committee's concerns around cumulative impact at the meeting.

Southwark Council Statement of Licensing Policy

30. Council Assembly approved the Southwark Statement of Licensing Policy on 4 November 2009. Sections of the Statement that are considered to be of particular relevance to this application are

- a. Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
- b. Section 5 which sets out the Council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
- c. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
- d. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
- e. Section 8 provides general guidance on ensuring public safety including safe capacities
- f. Section 9 provides general guidance on the prevention of nuisance
- g. Section 10 provides general guidance on the protection of children from harm.

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.

Community Impact Statement

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

Resource implications

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

Consultation

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

The Strategic Director of Communities, Law & Governance

35. The sub-committee is asked to determine the application for a variation of a converted premises licence.
36. The requirement is to give all parties a fair, unbiased hearing.
37. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case-by-case basis.
38. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under Section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent and crime and disorder in the borough.
39. Interested parties, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the Magistrates' Court within a period of 21 days beginning with day on which the applicant was notified by the licensing authority of the decision to be appealed against.
40. The principles that sub-committee members must apply are set out below.

Principles for making the determination

41. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
42. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
43. 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 (in this case, the initial objections from the Fire Service have been withdrawn).
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
44. If relevant representations are received then the Sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to
 - Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation

Conditions

45. The sub-committee's discretion is thus limited. It can only modify the

conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.

46. The four licensing objectives are

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of nuisance; and
- d. The protection of children from harm.

47. 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.

48. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.

49. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.

50. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing Procedures

52. 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.
53. As this matter relates to the determination of an application to vary under section 34 of the Licensing Act 2003, regulation 26(1)(a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the Licensing Sub-committee

54. 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.
55. 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.
56. 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.
57. 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.
58. Members will be aware of the Council's Code of Conduct that requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

Guidance

59. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

APPENDICES

No.	Title
Appendix A	Copy of the variation application
Appendix B	Copy of the existing premises licence
Appendix C	Copies of the representations from interested parties
Appendix D	Copies of the representations and agreed conditions from Met Police
Appendix E	Copy of the statement from licensee
Appendix F	Copies of responses to the statement
Appendix G	Copy of the local area map
Appendix H	List of representations (On closed agenda)

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	16 July 2010	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law and Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	16 July 2010	