

Item No. 5.	Classification: Open	Date: 11 May 2023	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG	
Ward(s) of group(s) affected		Rye Lane	
From		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Muhammad Baloch for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from three responsible authorities and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 17 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.
 - c) Paragraphs 18 to 27 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted are attached in Appendix C of this report. A map showing the location of the premises is attached to this report as Appendix E.
 - 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 procedure, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.

5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current premises licence

8. While this application is for a new premises licence it should be noted that the applicant is currently the premises licence holder of an existing premises licence at this premises.
9. The current premises licence was issued on 17 May 2022 to Muhammad Baloch after being determined by the Licensing Sub-Committee. The decision was to change the start time for the sale of alcohol from 07:00 to 09:00 and impose 8 conditions in addition to the conditions in the application operating schedule.
10. The hours on the current licence are:
 - The sale by retail of alcohol (off the premises):
 - Monday to Sunday: 09:00 to 23:00
 - Opening hours:
 - Monday to Sunday: 07:00 to 23:00.
11. The designated premises supervisor (DPS) is Naseem Baluch.
12. A copy of the current premises licence is attached as Appendix A.

13. A copy of the notice of decision dated 17 May 2022 is attached as Appendix A1.

The premises licence application

14. On 8 December 2022 Muhammad Baloch applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG. The premises and purpose is described as follows:

- “A convenience store offering range of groceries, goods and off licence 9am to 11am (licence number 876417)”

15. The hours applied for are summarised as follows:

- The sale by retail of alcohol (off the premises):
 - Monday to Sunday: 24 hours
- Opening hours:
 - Monday to Sunday: 24 hours.

16. The premises licence application form provides the applicant’s operating schedule. Parts I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application.

17. Members are reminded that as this is a new premises licence application that the conditions on the current licence, including the eight conditions imposed at the previous licensing sub-committee meeting on 17 May 2022 will not be automatically replicated on this licence, should the application be granted. Additionally, if this licence should be granted it will not automatically replace the current licence, leaving a situation where there could be two separate licences in existence with the same premises licence holder and DPS but with different operating hours and conditions.

18. A copy of the application is attached to this report in Appendix B.

Designated premises supervisor

19. The proposed designated premises supervisor is Naseem Baluch who holds a personal licence issued by Southwark Council.

Representations from responsible authorities

20. There are three representations received from responsible authorities namely the Metropolitan Police Service, the environmental protection team (EPT) and licensing.

21. The representation submitted by the Metropolitan Police Service was concerned that the application has not addressed the licensing objectives within the operating schedule, in particular the prevention of crime and disorder. Additionally, the

applicant has not made any consideration to the venue being in the Peckham cumulative impact area.

22. The police also contend that the hours requested are excessively outside the guidelines set out in the Southwark statement of licensing policy for the Peckham major town centre area. The police further state that the applicant should be aware of the Southwark statement of licensing policy regarding operating hours and cumulative impact following their previous applications hearing. The police object to the granting of the application.
23. The EPT representation objects to the grant of the application on the grounds of the prevention of public nuisance through cumulative impact and states that any increase in alcohol sales in the already saturated cumulative impact area is likely to contribute to a cumulative impact on public nuisance from street drinking, drunkenness, street fouling, and rowdy conduct in the street.
24. The EPT also state that the application has not addressed the potential cumulative impact in the immediate vicinity of the shop or the creeping additional impact that cannot be attributable to particular premises, once the patrons are out of vicinity of the premises. In addition, the applicant has not given any reason why this premises should be considered an exception to the cumulative impact policy.
25. The representation by licensing as a responsible authority is based on the Southwark statement of licensing policy 2021 – 2026 and relates to the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.
26. The representation states that the premise is situated within the Peckham major town centre and under the Southwark licensing policy the appropriate closing times for off-licences and alcohol sales in grocers and supermarkets is 00:00 daily. They further state that the proposed hours of 24 hours every day are significantly outside of the recommended hours.
27. Licensing also raise that the premises is within the Peckham cumulative impact area and under the policy the policy there is a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations.
28. The representation states that the applicant has not addressed the presumption to refuse this application within the operating schedule. The current licence is adequate and appropriate for the area and asks that the committee reject the application in full.
29. The representations can be found in Appendix C.
30. The police and the licensing authority have submitted additional evidence relating to visits to the premises on 24 February 2023, 25 February 2023, 26 February 2023 and 9 March 2023 where alleged breaches of the premises licence were witnessed.
31. The additional evidence can be found in Appendix C1.

Representations from other persons

32. There are no representations from other persons.

Conciliation

33. The representations were provided to the applicant, who was advised that the applicant could provide a reply to the representations if the applicant so wished.
34. At the time of the writing of this report all of the representations remain outstanding and so must be considered by the licensing sub-committee in their determination of the application.
35. At the hearing to determine this application the licensing sub-committee will be apprised as to any further conciliation that may have taken place.

Premises licensing history

36. On 6 August 2006 a premises licence was issued in respect of the premises to Muhammed Islam and Saima Shahzadi. The premises licence allowed for the sale of alcohol 24 hours a day and 24 hours a day opening hours.
37. On 15 June 2009 the licence was transferred to Kiran Israr. Kiran Israr was also specified as the designated premises supervisor on this date.
38. On 19 June 2017, an application was submitted by this council's trading standards service under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Kiran Israr in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG.
39. On 27 June 2017 an application, to have immediate effect, was submitted to specify Aamir Ali as the DPS of the premises. The application was granted and issued on 27 June 2017. The licensee remained Kiran Israr.
40. A licensing sub-committee hearing to determine the review application submitted in respect of the premises on 19 June 2017 took place on 15 September 2017. At the hearing the licensing sub-committee decided to revoke the premises licence issued in respect of the premises.
41. On 4 September 2018 High Street Food Store Limited applied for a premises licence to allow the off-sales of alcohol at the premises between 09:00 and 23:00 daily. By 2 October 2018 representations had been received by this council's licensing responsible authority, this council's trading standards service and by the Metropolitan Police Service. The application was withdrawn on 3 October 2018. High Street Food Store Limited is now dissolved. Companies House records show that the director of High Street Food Store Limited was a Mr Ali Yasir.
42. On 25 April 2021 Mr. Abdul Aziz Umer applied to this council for the grant of a new premises licence in respect of Peckham Food and Wine, 176 Peckham High Street, Peckham, London SE15 5EG. Representations were received from the police, trading standards, environmental protection team and licensing responsible authorities. The application was refused as the applicant did not satisfactorily address cumulative impact.

43. On 20 December 2021 Muhammad Baloch applied for the grant of a new premises licence in respect of Peckham Food and Wine. Representations were received from the police, trading standards, environmental protection team and licensing responsible authorities.
44. The licensing sub-committee determined the application on 17 May 2022 and granted the application with an amendment to change the start time for the sale of alcohol from 07:00 to 09:00 and imposed eight conditions in addition to the conditions in the application operating schedule. This is the current premises licence.

Temporary event notices

45. The applicant submitted four temporary event notices (TEN) each for multiple dates, two of which were rejected as they did not meet the statutory criteria by either exceeding the number of days on one TEN or failed to leave 24 hours between TENS.
46. The TENS not rejected allowed the premises, in conjunction with the current premises licence, to be open and sell alcohol as follows:
 - From 23:00 hours on 23 December 2022 to 23:00 hours on 25 December 2022
 - From 23:00 hours on 27 December 2022 to 23:00 on 2 January 2023.
47. A list of TENS is provided in Appendix D.

Map

48. A map showing the location of the premises is attached to this report as Appendix E. The following are a list of similar licensed premises in the vicinity of the application:

Binder Off Licence, 149 Peckham High Street, London SE15 5SL, licensed for:

- Sale by retail of alcohol to be consumed off the premises:
 - Monday to Sunday: 10:00 to 00:00
- Opening hours:
 - Monday to Sunday: 24 hours

Peckham News, 133 Peckham High Street, London SE15 5SL, licensed for:

- Sale by retail of alcohol to be consumed off the premises:
 - Monday to Sunday: 09:00 to 23:00
- Opening hours:
 - Monday to Sunday: 06:00 to 23:00

Yesil Irmak, 107 Peckham High Street London SE15 5RS, licensed for:

- Sale by retail of alcohol to be consumed off the premises:
 - Monday to Sunday: 09:00 to 23:00
- Opening hours:
 - Monday to Sunday: 06:00 to 23:00.

Southwark Council statement of licensing policy

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

51. 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.
52. 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:

[Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/revised-guidance-issued-under-section-182-of-licensing-act-2003)

Cumulative Impact Area (CIA)

53. The premises are situated in the Peckham cumulative impact area which applies to the following types of premises:
 - Night clubs, public houses and bars, off-licences, supermarkets, grocers, convenience stores and similar premises
54. The premises are situated in the Peckham major town centre, according to the council's statement of licensing policy.
55. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for premises operating as:
 - Off-licences and alcohol sales in grocers and supermarkets:
 - Daily: 00:00.

Climate change implications

56. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
57. 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.
58. 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.

59. 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

60. 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

61. 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.

62. 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 who have 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.

63. 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>.

64. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

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

Consultation

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive - Governance and Assurance

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

Principles for making the determination

70. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
71. The principles which sub-committee members must apply are set out below.
72. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
73. Relevant representations are those which:
- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an interested party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
74. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence.
 - To exclude from the scope of the licence any of the licensable activities to which the application relates.
 - To refuse to specify a person in the licence as the premises supervisor.
 - To reject the application.

Conditions

75. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
76. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
77. 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.
78. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
79. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

80. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

Hearing procedures

81. 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.

82. This matter relates to the determination of an application for a premises licence under Section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

83. 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.
84. 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.
85. 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.
86. 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.

87. 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.
88. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
89. 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.
90. 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

91. 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

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

APPENDICES

Name	Title
Appendix A	Current premises licence
Appendix A1	Notice of decision from 17 May 2022
Appendix B	Application for a premises licence
Appendix C	Representation from responsible authorities
Appendix C1	Additional evidence from responsible authorities
Appendix D	List of temporary event notices
Appendix E	Map of the locality

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
Report Author	David Franklin, Principal Licensing Officer	
Version	Final	
Dated	24 April 2023	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Assistant Chief Executive - Governance and Assurance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		25 April 2023