

| | | | |
|-------------------------------------|--------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------|
| Item No. 5. | Classification: Open | Date: 27 July 2023 | Meeting Name: Licensing Sub-Committee |
| Report Title | | Licensing Act 2003: Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN | |
| Ward(s) of group(s) affected | | Borough and Bankside | |
| From | | Strategic Director of Environment, Neighbourhoods and Growth | |

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Lant Street Wine Company Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as the Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN.
2. Notes:
 - a) The application seeks to vary the premises licence held in respect of the premises known as the Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by a responsible authority and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraph 8 of this report provides a summary of the current premises licence issued in respect of the premises. A copy of the current premises licence is attached as Appendix A.
 - c) Paragraphs 9 to 13 of this report provide a summary of the application. A copy of the application is attached to this report as Appendix B.
 - d) Paragraphs 14 to 24 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as Appendices C. A map showing the location of the premises is attached to this report as Appendix F.
 - e) 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. The current version of the premises licence issued in respect of the premises known as the Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN was issued on 4 March 2021 and allows the following licensable activities:
 - **Films – indoors:**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30

- **Recorded – indoors:**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30

Note: recorded music is exempt under the Licensing Act 2003 between 08:00 and 23:00 at a premises which holds a premises licence and on sales of alcohol are available, where the capacity is under 500 persons.

- **The sale of alcohol to be consumed on the premises:**
 - Monday to Saturday: 08:00 to 22:30
 - Sunday: 10:00 to 22:00
- **The sale of alcohol to be consumed off the premises:**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30
- **Opening hours:**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30

9. A copy of the existing premises licence is attached as Appendix A.

The variation application

10. On 8 July 2023 Lant Street Wine Company Limited applied to this council to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Lant Street Wine Company, 59-61 Lant Street, London SE1 1QN.

11. The application is summarised as follows:

- A Wine Bar at No. 59, adjoining a retail Wine Shop at No. 61. No. 59 has been granted Change of Use, Planning Permission to operate "... the ground floor of No. 59 Lant Street from wine warehouse (Use Class B8) to a wine bar (Sui generis) in connection with the existing use of No. 61 Lant Street as a wine shop."
- Annex 2:
 - Remove Condition 125.
 - Remove Condition 127b
 - Condition 307: Increase the combined accommodation limit of No. 59-61 to 120 persons. The current capacity was set when the Premises operated solely as a Wine Shop at No. 61.

12. The application also asked for the sale of alcohol for both on and off the premises for the same times as the off sales, this indicates that the on sales are requested to increase to the following times:
 - **The sale of alcohol to be consumed on the premises:**
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30
13. The applicant has subsequently stated that it was not his intention to extend the on sales of alcohol.
14. A copy of the application is attached to this report as Appendix B.

Representations from responsible authorities

15. Representations were received from two responsible authorities, the Metropolitan Police Service and the environmental protection team.
16. The police representations states that the premises is within Borough and Bankside cumulative impact area and is concerned that the application did not propose adequate control measures with regards to the prevention of crime and disorder to address the removal of conditions and increase in the times for on sales of alcohol.
17. The applicant stated that it was not his intention to increase the hours for the on sales of alcohol and agreed a number of conditions offered by the police.
18. The police therefore withdrew their representation.
19. The environmental protection team representation is concerned under the grounds of the prevention of public nuisance with only with the proposed amendment to condition 307 to increase the maximum customer capacity from 32 to 120 persons.
20. They state that the acoustic reports conducted reports by RBA Acoustics were based on the noise created by 32 patrons, not 120, and these reports were to show the performance of the sound insulation works to meet compliance with part of condition 843:
 - “That there shall be no on sales of alcohol at the premises until a scheme of noise isolation has been submitted to the EHO and approved. The details of the scheme thus approved shall be implemented in full and maintained permanently thereafter. The scheme shall ensure that a minimum airborne sound insulation of 55dB DnT,w + Ctr is provided between the ground and first floor premises.

Furthermore the solution shall ensure that a noise level of 25dBA Leq5mins is not exceeded in the first floor flat above the premises due to noise from the use of the premises.”

21. The environmental protection team have asked for further testing to be conducted to ascertain if the current sound insulation would meet the condition should the capacity be increased to 120 persons.
22. A copy of both representations submitted and the conditions agreed with the Metropolitan Police Service are attached as appendix C.

Representations from other persons

23. There are no representations submitted by other persons.

Conciliation

24. The Metropolitan Police Service representation has been conciliated with the applicant with the addition of 11 conditions to promote the licensing objective for the prevention of crime and disorder.
25. At the time of the writing of this report the representation from the environmental protection team remains in place.

Premises licensing history

26. The original premises licence in respect of the premises was issued to Waterloo Wine Co on 6 August 2005 for 61 Lant Street.
27. The premises licence was transferred on 24 February 2015 to the current licence holder, Lant Street Wine Company Limited.
28. The premises licence was varied on 8 April 2019 to include on sales of alcohol and recorded music. It was also extended the premises to include 59 Lant Street.
29. An application to review the premises licence, submitted by an "other person" was determined by the licensing sub-committee on 4 March 2021. The decision was to place an additional seven conditions, including condition 843, on the licence.
30. A copy of the notice of decision from the licensing sub-committee meeting of 4 March 2021 is attached at Appendix D.
31. There have been no temporary event notices submitted in respect of the premises since January 2019.

Complaints

32. Since October 2019 eight complaints have been received by the licensing team regarding this premises from one local resident, six relate to public nuisance and two relate to the breach of licence conditions.
33. A number of visits to the premises by licensing officers investigating the allegations and are listed in Appendix E.

34. Three warning letters were sent dates 13 November 2019 for breach of condition 307, 23 December 2019 for breach of condition 307 and 12 October 2021 for breach of conditions 836, 840 and 941.

Map

35. A map showing the location of the premises is attached to this report as Appendix F. Nearby licensed premises are listed with their terminal hour:
- The Gladstone, 64 Lant Street, London SE1 (Sunday to Thursday until 23:30 and Friday and Saturday until 00:30)
 - Joes Kitchen, 5-7 Marshalsea Road, London SE1 (Monday to Sunday until 23:00)
 - Trinity Public House, 202 Borough High Street, London SE1 (Monday to Wednesday until 00:30, Thursday to Saturday until 02:30 and Sunday until 00:00)
 - Amo La Pasta, 218-220 Borough High Street, London SE1 (Monday to Sunday until 23.00)
 - Chicken Cottage, 226 Borough High Street, London SE1 (Monday to Wednesday until 00:00 and Thursday to Saturday until 03:00)
 - Supersave Express, 223-237 Borough High Street, London SE1 (Monday to Sunday 24 hours per day).

Southwark Council statement of licensing policy

36. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
37. 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.
38. 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.
39. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links for these 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)

40. The premises are situated in the Borough and Bankside Cumulative Impact Area.
41. The premises also falls within Borough and Bankside Strategic Cultural Area and Bankside and Borough District Town Centre Area

42. Under the Southwark's statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for the categories of premises stated:

- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00
- Public houses, wine bars or other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00
- Off-licences and alcohol sales in grocers and supermarkets:
 - Monday to Sunday: 00:00.

Climate change implications

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

44. 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.

45. 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.

46. 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

47. 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

48. 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.
49. 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.
50. 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>.

51. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

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

Consultation

54. 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 at both the front and rear of the premises.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

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

Principles for making the determination

57. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
58. The principles which sub-committee members must apply are set out below.
59. 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.
60. 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.
61. 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

62. 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.
63. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
64. 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.
65. 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.
66. 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

67. 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

68. 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.

69. 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

70. 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.
71. 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.
72. 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.

73. 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.
74. 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.
75. 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.
76. 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.
77. 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

78. 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, Finance

79. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------|
| Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file | Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH | Mrs Kirty Read Tel: 020 7525 5748 |

APPENDICES

| Name | Title |
|------------|----------------------------------------------------------------|
| Appendix A | The current premises licence issued in respect of the premises |
| Appendix B | The variation application |
| Appendix C | Representations from responsible authorities |
| Appendix D | Premises licence review notice of decision 4 March 2021 |
| Appendix E | Licensing officer visits to the premises |
| Appendix F | Map showing the location of the premises |

AUDIT TRAIL

| | | |
|-------------------------------------------------------------------------|------------------------------------------------------------------------------|--------------------------|
| Lead Officer | Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth | |
| Report Author | David Franklin, Principal Licensing Officer | |
| Version | Final | |
| Dated | 11 July 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, Finance | Yes | Yes |
| Cabinet Member | No | No |
| Date final report sent to Constitutional Team | | 13 July 2023 |