

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 7 September 2023	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Unit 229 - Shadow licence, Arch 229, Bank End, London SE1 9FJ	
<b>Ward(s) of group(s) affected</b>		Borough and Bankside	
<b>From</b>		Strategic Director of Environment, Neighbourhoods and Growth	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Mark Bermondsey (Guernsey) Limited for four premises licences to be granted under the Licensing Act 2003 in respect of the premises known as Unit 229 - Shadow licence, Arch 229, Bank End, London SE1 9FJ
2. Notes:
  - a) These application forms are for new premises licences, submitted under Section 17 of the Licensing Act 2003. The applications are subject to representations and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 13 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 A.
  - c) Paragraphs 14 to 24 of this report deal with the representations submitted in respect of the application. Copies of the responsible authority representations submitted are attached in Appendix B and other persons in Appendix C of this report. The existing premises licence is in Appendix D. 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 premises licence application**

8. On 13 July 2023 Mark Bermondsey (Guernsey) Limited applied for premises licences to be granted under the Licensing Act 2003 in respect of the premises known as Unit 229 - Shadow licence, 229 Arch Bank End SE1 9FJ
  
9. The premises are described as:
  - Licensed premises, shadow licence relating to an existing premises licence.
  
10. The hours applied for are summarised as follows:
  - Films (indoors):
    - Monday to Saturday: 10:00 to 00:00
    - Sunday: 10:00 to 23:00
  
  - Recorded music (indoors):
    - Monday to Saturday: 10:00 to 00:00
    - Sunday: 10:00 to 23:00
  
  - Late night refreshment (indoors and outdoors):
    - Monday to Saturday: 23:00 to 00:00

- The sale by retail of alcohol (on and off the premises):
    - Monday to Saturday: 10:00 to 00:00
    - Sunday: 10:00 to 23:00
  - Opening hours:
    - Monday to Saturday: 10:00 to 00:00
    - Sunday: 10:00 to 23:00
11. 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.
12. A copy of the application is attached to this report in Appendix A.

### **Designated Premises Supervisor**

13. The proposed designated premises supervisor is Lilly Lin who does not currently hold a personal licence.

### **Representations from responsible authorities**

14. There is one representation received from the licensing responsible authority.
15. The representation submitted by licensing was concerned that the states that their representation relates to the promotion of the all four licensing objectives.
16. The licensing representation says that they do not object to the grant of the licence but, to ensure that it can be ascertained what premises licence any one of the premises are being operated under at any time and to ensure that proper enforcement action can be requested further conditions.
17. The representation from the licensing responsible authority has been conciliated with the following conditions agreed:
- The licensing authority and police are informed at least 14 days prior to the provision of licensable activities under this licence. A record of this (such as an email trail) shall be kept at the premises.
  - When this licence is used to provide licensable activities and the licence summary is displayed on the premises, the licence summary of any other premises licence will not be displayed at the same time.
  - That at any time, the management / supervisory staff on duty at the premises, and any other staff involved in the provision of licensable activities at the premises, shall know which premises licence the premises are being operated under and shall be able to express this immediately to responsible authority officers on request.

- In an event that the current licence ( ) is revoked through a review, the Premises Licence Holder of this Shadow Premises Licence, shall allow a cooling off period of 30 days before allowing Licensable Activities to be permitted by this Shadow Premises Licence.
- In an event that the current licence ( ) is revoked through a review, the management (DPS, Premises Licence Holder and Management Team), of that licence, will have no involvement directly or indirectly in running the venue, thereafter.

18. The representations and agreed conditions can be found in Appendix B.

### **Representations from other persons**

19. There is one representations made by an “other person” who is a resident in the vicinity of the premises.
20. The representation is concerned with increased pollution and noise from traffic, noise from music and from smoking outside, talking outside all evening and when the premises closing
21. The applicant’s representative has engaged with the resident and explained that the premises subject to these applications already benefit from premises licences that cover the same hours and licensable activities detailed in these applications, and therefore licensable activities can already be provided.
22. He explained that the application is a duplicate licence “shadowing” the existing licence, that can be retained by the landlord so as to protect their interests in the event that the existing licences were to lapse, most often due to the insolvency of the tenant. The application will not allow anything to take place at the site that cannot already take place.
23. At the time of writing these representations remain outstanding.
24. The representation can be found in Appendix C

### **Premises licensing history**

25. This premises have recently been granted premises licences.
26. The premises have not to date operated under the existing premises licence.
27. A copy of the existing premises licence and the notice of decision are contained in Appendix D.

### **Temporary event notices**

28. No temporary event notices have been submitted for this premises.

## Map

29. A map showing the location of the premises is attached to this report as Appendix E.

## Southwark Council statement of licensing policy

30. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
31. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
- Section 3 – Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
  - Section 5 – Determining applications for premises 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.
32. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.
33. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links 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://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

### **Cumulative impact area (CIA)**

34. The premises are situated in the Borough and Bankside cumulative impact area. The CIA will not apply to this premises as the applications cannot be used at the same time as the existing premises licence, therefore they cannot contribute to raising cumulative impact in the area.
35. The premises are situated in the Bankside, Borough, London Bridge Strategic Cultural & Bankside and Borough District Town Centre, according to the council's statement of licensing policy.
36. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for premises operating as:
  - 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
  - Nightclubs (with 'sui generis' planning classification):
    - Monday to Thursday: 01:00
    - Friday and Saturday: 03:00
    - Sunday: 00:00
  - Event premises/ spaces where sale of alcohol is included in, and ancillary to, range of activities including meals:
    - Friday and Saturday: 01:00
    - Sunday to Thursday: 00:00

### **Climate change implications**

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

38. 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.
39. 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.
40. 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**

41. 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**

42. 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.
43. 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.
44. 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>.

45. The equalities impact assessment is available at:

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

## **Health impact statement**

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

## **Resource implications**

47. 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**

48. 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**

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

### **Principles for making the determination**

51. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
52. The principles which sub-committee members must apply are set out below.
53. 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.
54. 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.



55. 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**

56. 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.

57. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

58. 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.

59. 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.

60. 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**

61. 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

62. 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.
63. 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

64. 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.
65. 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.

66. 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.
67. 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.
68. 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.
69. 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.
70. 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.
71. 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**

72. 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**

73. 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	Application for a premises licence
Appendix B	Representation from responsible authority
Appendix C	Representations from other person
Appendix D	Existing premises licence
Appendix E	Map of the locality

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
<b>Report Author</b>	David Franklin, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	21 August 2023	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Assistant Chief Executive - Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		24 August 2023