

Item No. 5.	Classification: Open	Date: 12 September 2023	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: London Bridge Food & Wine, 85-87 Part Ground Floor Borough High Street, London SE1 1NH	
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 Shital Mehta for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as London Bridge Food & Wine 85-87 Part Ground Floor Borough High Street, London SE1 1NH.
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 and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 12 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 13 to 32 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. A map showing the location of the premises is attached to this report as Appendix D.
 - 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 18 July 2023 Mrs Shital Mehta applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as London Bridge Food & Wine, 85-87 Part Ground Floor Borough High Street, London SE1 1NH. The premises and purpose is described as follows:
 - "Off Licence and Convenience Store"
9. The hours applied for are summarised as follows:
 - The sale by retail of alcohol (off the premises):
 - Monday to Sunday: 06:00 to 00:00
 - Opening hours:
 - Monday to Sunday: 06:00 to 00:00.
10. 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.

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

Designated premises supervisor

12. The proposed designated premises supervisor is Mrs Shital Mehta who is applying to Three Rivers District Council for a personal licence.

Representations from responsible authorities

13. There were two representations received from responsible authorities namely the Metropolitan Police Service and licensing as a responsible authority.

14. The representation submitted by the Metropolitan Police Service was concerned that the premises are situated in the Borough and Bankside cumulative impact area (CIA). They state that the High Court approval of cumulative impact policies came in Westminster City Council v Middlesex Crown Court. In brief, it stated 'A licence could be refused on the sole ground that the area was already saturated with licensed premises'.

15. The representation goes on to state that Borough High Street has a high number of off licences premises. That the area has a large problem with street drinking and alcohol abuse and the associated crime and disorder that puts a heavy burden upon police, the London ambulance service and other emergency services.

16. The applicant has not submitted any mitigating reasons for another off licence to be granted in the CIA and its grant will only add to the cumulative impact and have a detrimental effect on the licensing objectives in particular that of prevention of crime and disorder.

17. The licensing representation states that the premises falls within, and are subject to, the Borough and Bankside CIA and section 131 this council's statement of licensing policy 2021 – 2026 states:

- "Applications made within specified cumulative impact areas (CIAs) are deemed likely to add to the potential impact the policy is intended to avoid. There is therefore an automatic presumption that such applications will be refused, however each application will be judged on its own merits."

18. Section 150 of the policy shows that the council has found that certain types of premises are likely to increase the negative cumulative impact in the Borough and Bankside CIA of licensed premises in that area and this includes off licence premises.

19. Section 136 of the statement of licensing policy states:

- "The effect of publishing a cumulative impact assessment is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, following relevant representations. In such circumstances, it is for the applicant to demonstrate that the application will not, if granted, further contribute to the

negative local cumulative impact on any one or more of the licensing objectives.”

20. The representation also states that it is clear that there are already a large number of off-licensed premises to provide an offering to the local area. That the applicant has not demonstrated that the application will not further contribute to the negative local cumulative impact on any one or more of the licensing objectives and recommend that the application be refused.
21. The representations and a list of the agreed conditions can be found in Appendix B.

Representations from other persons

22. There are two representations from “other persons.”
23. The first representation is from a resident and is concerned with all four of the licensing objectives.
24. The representation states that they already have issues with drunk and disorderly behaviour, often ringing the doorbell into the early hours of the morning, disturbing the household’s peace, the volume of drunk patrons is high and even from 4 floors above the street. An additional shop selling alcohol in the early morning and late and night would increase the issues faced residents and businesses. The drunk people also regularly break the glass windows of shops along the street, antisocial behaviour is already a huge problem, and this will only make this issue worse. One person was stabbed outside their front door leaving blood all over the door and the pavement and this would increase the likelihood of further damage and injury.
25. More drunk people would increase the nuisance, and when patrons leave a drinking establishment drunk and then are able to buy more alcohol, noise, anti-social behaviour (ASB) and other issues such as litter, waste, vomit, etc will all be exacerbated. They already have 2 x 24h off licenses, a Tesco and a Sainsbury’s within approximately 50 metres of each other, and there is no reason for another off license selling the same products.
26. The safety of both local residents, employees of the surrounding businesses and anyone else on Borough High Street will be put at higher risk of injury due to the fact that a high number of drunken people exiting drinking establishments would then be able to continue drinking on the street, which would increase the risk to public safety.
27. They further state, that an additional off license would increase the risk to children. Children are already involved in knife crime and this provide another place for children to be exposed to alcohol and tobacco products. These are drugs, and although they are legal, the exposure to these substances can be damaging. Children will also be exposed to drunken adults to a higher degree and this also has the potential the cause harm to children.
28. The second representation is from a local business operator and is concerned with the licensing objectives for the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm.

29. The representation states that there is already crime happening, phones stolen and misbehaviour from alcohol induced acts. There are other off-licence premises on Borough High Street and this application will give more opportunities for crime to happen. There is no reason alcohol needs to be sold from 6.00am in the morning.
30. There is a concern of rubbish littering and the shop is just outside the bus stop which will cause people to congregate around the area disrupting the bus queue and people passing through. To allow people to buy alcohol till late at 12.00am will mean people will go there to buy alcohol and drink before they head into the pubs and just loiter around the area
31. They also state that children do not need to be exposed to more alcohol available and given opportunities to purchase it.
32. The representations can be found in Appendix C

Conciliation

33. There has been no conciliation and all representations remain in place.

Premises licensing history

34. There is no licensing related history regarding this premises.

Temporary event notices

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

Map

36. A map showing the location of the premises is attached to this report as Appendix D.
37. Similar licensed premises in the area are listed below:

Premises	Alcohol off sales
Londis 53 Borough High Street, London SE1 1NE	Monday to Sunday: 08:00 to 02:00
Borough Food & Wine, 107 Borough High Street, London SE1 1NL	Monday to Sunday: 24 hours
Tesco 127-143 Borough High Street SE1 1NP	Monday to Sunday: 08:00 to 23:00
Sainsbury's Local 116-126 Borough High Street, London SE1 1LB	Monday to Sunday: 06:00 to 00:00
Supersave Express 223-237 Unit 3 Borough High Street, London SE1 1JD	Monday to Sunday: 24 hours
Borough Supermarket 214-216 Basement And Ground Floor Borough High Street, London SE1 1JX	Monday to Sunday: 08:00 to 00:00

Southwark Council statement of licensing policy

38. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
39. 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.
40. 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.
41. 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)

42. The premises are situated in the Borough and Bankside cumulative impact area. The CIA applies to night-clubs, public houses and bars, restaurants and cafes, off licences, supermarkets and grocers.
43. 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.
44. 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:
 - Monday to Sunday: 00:00.

Climate change implications

45. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
46. 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.
47. 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.
48. 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

49. 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

50. 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.
51. 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.
52. 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>

53. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

55. 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

56. 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

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.

Principles for making the determination

59. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

60. The principles which sub-committee members must apply are set out below.

61. 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.

62. 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.

63. 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

64. 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.

65. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
66. 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.
67. 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.
68. 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

69. 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

70. 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.

71. 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

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.
79. 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

80. Members are required to have regard to the Home Office Revised 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

81. 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	Application for a premises licence
Appendix B	Representation from responsible authorities
Appendix C	Representations from responsible authorities
Appendix D	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 August 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		30 August 2023