

Meeting Name:	Licensing Sub-Committee
Date:	24 September 2024
Report title:	Licensing Act 2003: Arches 36, 37, 38 and 39 America Street, London SE1 0NJ
Ward(s) or groups affected:	Borough and Bankside
Classification:	Open
Reason for lateness (if applicable):	Not applicable
From:	Acting Strategic Director of Environment, Sustainability and Leisure

RECOMMENDATION

1. That the licensing sub-committee considers an application made by The Arch Company Properties Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Arches 36, 37, 38 and 39 America Street, London SE1 0NJ.
2. Notes:
 - a) These are four separate applications which require to be determined each on its own merits. However, they are almost identical with the same applicant, the same operating schedules and almost the same representations. The differences are mainly in the premises plans and one responsible authority who made representations on Arches 36, 37 and 39 but not on Arch 38.
 - b) 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.
 - c) Paragraphs 8 to 14 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.
 - d) Paragraphs 15 to 34 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 list of licensed premises in the vicinity of the proposed premises can be found attached this report as Appendix D. A map showing the location of the premises is attached to this report as Appendix E.

- 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 premises licence application

8. On 22 July 2024 The Arch Company Properties Limited applied for four premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Arch 36, 37, 38 and 39 America Street SE1 0NJ. The premises and purpose is described as follows:

“Background Purposes Only.

The Arch Company is the UK’s largest small business landlord, serving thousands of business owners who make a unique and vital contribution to the UK economy. With a property portfolio of approximately 5,200 railway arches, business estates, former station buildings and other properties, The Arch Company is proud to be the landlord to a diverse, passionate group of small business owners, entrepreneurs and community organisations across England and Wales.

The Arches at 36 – 39 America Street are newly refurbished commercial units in the heart of Southwark.

Southwark Policy.

The premises do sit within the Southwark Cumulative Impact Policy (CIP). However, these premises are small in size and the application seeks hours similar to the framework hours suggested within the policy. The locations are not residential and provide an opportunity to develop sites which are currently vacant.

Conditions have been offered within the application which we believe to be proportionate and adequate for the style and size of the operations. Due to the reasons listed above we believe the application promotes the Licensing Objectives.

Application.

The applicant is the landlord who will not operate the premises but will transfer to a suitable tenant when identified.

We are making the application because, in challenging economic times, it is more attractive to an independent operator to take a premises with a premises licence thus avoiding the time and costs involved in making the application.”

9. The hours for each of the application are summarised as follows:

- Recorded music - indoors:
 - Sunday to Thursday: 08:00 to 23:30
 - Friday and Saturday: 08:00 to 00:30
- Live music - indoors:
 - Monday to Saturday: 08:00 to 00:30
 - Sunday: 08:00 to 23:30
- Anything of a similar nature to recorded music and live music - indoors:
 - Sunday to Thursday: 08:00 to 23:30
 - Friday and Saturday: 08:00 to 00:30

- Late night refreshment – indoors and outdoors:
 - Monday to Thursday: 23:00 to 23:30
 - Friday and Saturday: 23:00 to 00:30
 - The sale by retail of alcohol - on and off the premises:
 - Sunday to Thursday: 08:00 to 23:30
 - Friday and Saturday: 08:00 to 00:30
 - Opening hours:
 - Sunday to Thursday: 08:00 to 00:00
 - Friday and Saturday: 08:00 to 01:00
 - Non-standard timings for all activities:
 - From the end of permitted hours on New Years Eve to the start of permitted hours on New Years Day.
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. The plans for the premises vary in that Arches 36 and 37 have included outside areas in America Street, whereas Arches 38 and 39 have no outside areas.
 12. A copy of the applications are attached to this report in Appendix A.

Designated premises supervisor(s)

13. There are no proposed designated premises supervisor(s) at this time.
14. Should the licences be granted, alcohol may not be sold until such time as the premises licence holder(s) submits an application for to vary the designated premises supervisor(s) and it is granted.

Representations from responsible authorities

15. There were four representations received from responsible authorities namely the Metropolitan Police Service, trading standards, environmental protection team and the licensing authority.
16. Please note that the environmental protection team did not submit an application for Arch 38.

17. The representations submitted by the Metropolitan Police Service are concerned that the premises are situated in the Borough and Bankside cumulative impact area. They state that the latest opening times for premises in this location as per the Southwark Licensing Policy is 01:00 for restaurant style operations. However, the applications do not offer a condition to restrict the use of the premises as restaurants. Furthermore, the applications state that they are small premises, but there is no accommodation limit suggested by the applicant to support this.
18. The police do say that if accommodation limits and style of operation can be confirmed along with suitable conditions for each premises there could be an opportunity for conciliation with the police.
19. The trading standards representations are concerned with all the licensing objectives, but primarily the protection of children from harm.
20. They say that, while the application does mention conditions relating to protection of children from harm, trading standards would like to see further conditions around these matters and asks for four additional conditions to promote this licensing objective.
21. The environmental protection team made representations in relation to Arches 36, 37 and 39 and is concerned that the premises are within the cumulative impact area.
22. The representation asks that the hours of operation be brought in line with the recent planning permission granted, with a closing time of 23:00. The representation also asks for the outside areas to be closed at 22:00 in line with the Southwark statement of licensing policy and ask for a number of amendments to the proposed conditions and two new conditions.
23. The representation concludes by stating that if the amended hours are agreed to, and conditions are drafted to reflect the above, then the environmental protection team would be in a position to conciliate the representation.
24. The licensing authority representations states that the premises fall within the Borough and Bankside cumulative impact area (CIA) and the Borough and Bankside major town centre with the following recommended closing times:
 - Restaurants and cafes:
 - Sunday to Thursday: 00:00 (midnight)
 - Friday and Saturday: 01:00
 - Public houses, wine bars or other drinking establishments and bars in other types of premises:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00

- Event premises / spaces where sale of alcohol is included in, and ancillary to, range of activities including meals:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00.
25. The representation states that the application can be refused on the sole basis that it is subject to a cumulative impact area and that they disagree with the applicant's statement that the "locations are not in a residential" as there are residents living close by.
 26. Licensing makes the point that the applicant is applying for four premises licences for premises adjacent to each other and that the addition of four new licensed premises, whether within framework hours or not, pose a high risk of increasing the negative cumulative impact of licensed premises within the cumulative impact area.
 27. The representation offers 28 additional conditions and ask for a reduction in hours. Licensing say even if the applicant agree to the conditions they will maintain their representation as the premises resides in the cumulative impact area.
 28. The representations can be found in Appendix B.

Representations from other persons

29. There are 14 representations from "other persons" including a ward councillor and individual residents.
30. The representations are concerned with the cumulative impact of four additional licensed premises in the area under all four of the licensing objectives.
31. Some of the representations include "public health" and it is noted that public health is not a licensing objective in England and cannot be taken into consideration.
32. The main concerns are the proximity of the premises to the residents' homes, with some living directly opposite the premises across a narrow street. They contend that there will be noise from the premises itself and noise and anti-social behaviour from patrons outside the premises late at night. Patrons arriving and leaving the premises noisily to transport hubs and associated noise from taxis.
33. Representations also mention cumulative impact as a concern say that there are already a significant number of licensed premises in the area with associated noise and crime and disorder and these applications, if granted, will add to this.
34. The representations can be found in Appendix C

Conciliation

35. None of the representations from the responsible authorities have been conciliated and remain in place.
36. The representations by the "other person" also remain in place.

Premises licensing history

37. There is no licensing related history regarding these premises.

Temporary event notices

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

Map

39. A list of similar licensed premises in the vicinity of the proposed premises, with sale of alcohol and opening times, can be found in Appendix D.

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

Southwark Council statement of licensing policy

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

42. 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.
43. 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.
44. 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)

45. The premises are not situated in the Borough and Bankside Cumulative Impact Area.
46. The premises are situated in the Borough and Bankside Major Town Centre.
47. 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 (midnight)
 - Friday and Saturday: 01:00
 - Public houses, wine bars or other drinking establishments and bars in other types of premises:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00
 - Event premises / spaces where sale of alcohol is included in, and ancillary to, range of activities including meals:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00.

Climate change implications

48. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
49. 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.
50. 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.
51. 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

52. 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

53. 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.
54. 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.
55. 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>

56. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

58. A fee of £100.00 has been paid by the applicant in respect of each of the 4 applications, being the statutory fee payable for premises within non-domestic rateable value A.

Consultation

59. 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

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

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

Principles for making the determination

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

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

64. 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.

65. 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.

66. 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

67. 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.

68. The four licensing objectives are:

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

69. 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.

70. 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.

71. 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

72. 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

73. 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.
74. 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

75. 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.
76. 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.

77. 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.
78. 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.
79. 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.
80. 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.
81. 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.
82. 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

83. 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 of Resources

84. 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	Applications for premises licences
Appendix B	Representation from responsible authorities
Appendix C	Representations from other persons
Appendix D	Licensed premises in the area
Appendix E	Map

AUDIT TRAIL

Lead Officer	Toni Ainge, Acting Strategic Director of Environment, Sustainability and Leisure	
Report Author	David Franklin, Principal Licensing Officer	
Version	Final	
Dated	9 September 2024	
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 Resources	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		12 September 2024