

Meeting Name:	Licensing Sub-Committee
Date:	10 October 2024
Report title:	Licensing Act 2003: City Wines (aka Dennis Wines), 141 Jamaica Road, London SE16 4SH
Ward(s) or groups affected:	North Bermondsey
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 submitted by the councils trading standards service under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Kavirach Nagarajah in respect of the premises known as City Wines (aka Dennis Wines), 141 Jamaica Road, London SE16 4SH.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 13 to 19 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The review application is supported by a representation submitted from one responsible authority and is attached to the report as Appendix C. Details of the representation are provided in paragraphs 20 to 24 of this report.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B. A map of the area that the premises are located in is attached 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 regulations, 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 applications 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. 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.
 8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any Responsible Authority or other person to apply to the local Licensing Authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence holder is Kavirach Nagarajah.
10. The premises licence allows the provision of licensable activities as follows:
 - The sale by retail of alcohol (off the premises):
 - Monday to Saturday from 08:00 to 23:00
 - Sunday from 10:00 to 22:30

- Opening hours:
 - Not stipulated.
11. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached to the report as Appendix B.

Designated premises supervisor (DPS)

12. The current designated premises supervisor (DPS) named on the licence is Kavirach Nagarajah, who holds a personal licence issued by the London Borough of Lewisham.

The review application

13. On 20 August 2024, an application was submitted by the councils trading standards Service under Section 51 of the Licensing Act 2003, for the review of the premises known as City Wines (aka Dennis Wines), 141 Jamaica Road, London SE16 4SH.
14. The applicant served the application on the licensee on 21 August 2024, therefore the 28 consultation period was started from that day.
15. The review application was submitted in respect of all the licensing objectives but most specifically under the prevention of crime and disorder and the protection of children from harm.
16. The grounds for the review concerns several pieces of legislation but are primarily concerned with the sale of alcohol to a minor. On Saturday 15 June 2024 officers with the London Borough of Southwark trading standards team were undertaking an underage sales exercise using a 15 year old male volunteer. A sale of a 500ml bottle of Fullers Bengal Lancer Ale 5.4% ABV was made to the 15 year old volunteer for £2.50.
17. The following offences were discovered at the time of the visit:
- Licensing Act 20023, Section 146(1) – sale of alcohol to a minor (15 year old male) Licensing Act 2003, Section 144 – keeping of smuggled goods on the 5 premises? (Alomo Bitters).
 - Consumer Protection from Unfair Trading Regulations 2008, regulation 12 and paragraph 9, schedule 1 – giving the impression that a product can legally be sold when it cannot? (Alomo Bitters).
 - Tobacco and Related Products Regulations 2016, regulation 36(3) and 46(d); - illegal vapes with excess tank capacity.
 - Food Safety and Hygiene (England) Regulations 2013 – failure to provide traceable invoices for a food product (alcohol-Alomo Bitters):

- Children and Young Persons (Protection from Tobacco) Act 1991, section 4 – not displaying A3 statutory notice.
 - Tobacco Advertising and Promotion Act 2002, Tobacco Advertising.
 - Promotion (Display) Regulations 2012, section 7A(1) - tobacco openly displayed to the public.
18. Trading standards ask that the licence be revoked but can supply a list of conditions should the licensing sub-committee choose to take a different route.
19. Full details of the grounds for the review are provided within the application. A copy of the review application is attached to the report at Appendix A.

Representations from responsible authorities

20. A representation supporting the application has been submitted by licensing as a responsible authority.
21. The representation from the licensing responsible authority is concerned with the prevention of crime and disorder and the protection of children from harm licensing objectives.
22. The licensing representation states that offences under the licensing act have taken place. In addition to this, offences under other legislation have been witnessed and/or are alleged and although there has only been one failed test purchase regarding the sale of alcohol (which relates to the Act and is therefore the primary concern to the licensing sub-committee) the other failed test purchases regarding age restricted products show an ongoing and persistent pattern of behaviour in that the licensee consistently sells high risk products to underage individuals even after being warned about such activities.
23. The licensing responsible authority officer contends that it is likely that alcohol sales to underage individuals will take place at the premises should the premises licence remain in place at the premises and therefore supports the trading standards service's recommendation that the premises licence be revoked
24. The representation from licensing as a responsible authority is attached to the report at Appendix C.

Representations from other persons

25. There are no representations received from other persons.

Operating History

26. On 6 August 2005 a premises licence was granted to Senay Donmez. The DPS named on the licence was also Senay Donmez.
27. Following a transfer application a premises licence was issued to Nihat Donmez on 25 April 2012. Simultaneously the DPS was varied to Nihat Donmez on 26 April 2012.

28. Following a transfer application a premises licence was issued to Kavirach Nagarajah on 13 November 2023.
29. Following a DPS variation on 4 December 2023, Kavirach Nagarajah was specified as the DPS on the premises licence.

Temporary event notices

30. No temporary event notices (TENs) have been submitted in respect of the premises.

Complaints

31. There are no complaint received to the licensing unit regarding the premises.

Compliance Visits

32. On 9 January 2024 at 14:05 a licensing enforcement officer carried out an inspection to determine whether the licensable activities at the premises were carried out in accordance with the premises licence.
33. At the time of the visit the premise was found to be operating in full compliance with terms and conditions of the premises licence.

The local area

34. A map showing the location of the premises and a list of licence premises shown on the map is attached to this report as Appendix D.

Southwark Council statement of licensing policy

35. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
36. 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.
37. 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.
38. 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)

39. The premises does not fall within a cumulative impact area (CIA).
40. The premises are situated in a residential area.
41. Under the Southwark’s statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within a residential area
- Off-licences and alcohol sales in grocers and supermarkets:
 - Monday to Sunday: 23:00.

Community, equalities (including socio-economic) and health impacts

Community impact statement

42. 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

43. 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.
44. 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.
45. 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>.

46. The equalities impact assessment is available at:

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

Health impact statement

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

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>

Resource implications

52. There is no fee associated with this type of application

Consultation

53. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was exhibited outside of the premises for a period of 28 consecutive days and the application was also advertised on the council's website.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive - Governance and Assurance

54. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

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

Principles for making the determination

56. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.

57. The four licensing objectives are:

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

58. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
- Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
59. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or another person within the prescribed period
 - Have not been withdrawn
 - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
60. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
61. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
62. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
63. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

64. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

65. 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.
66. This matter relates to the review of the premises licence under section 51 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

67. 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.

68. 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.
69. 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.
70. 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.
71. 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.
72. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
73. 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.
74. 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

75. 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 Resources

76. The head of community safety and enforcement has confirmed that the costs of this process 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 the review
Appendix B	The premises licence
Appendix C	Representation from licensing as a responsible authority
Appendix D	Map of the locality and list of licensed premises shown on map

AUDIT TRAIL

Lead Officer	Toni Ainge, Acting Strategic Director of Environment, Sustainability and Leisure	
Report Author	Jayne Tear, Principal Licensing Officer	
Version	Final	
Dated	20 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	23 September 2024	

