

Item No. 5.	Classification: Open	Date: 21 March 2011 at 10am.	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003 – Nese Restaurant (formerly Wabi Shebele), 189 – 191 New Kent Road, London, SE1 4AG	
Ward(s) or groups affected:		Chaucer	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by Ms Rosalynde Stone for a review of the premises licence in respect of the premises known as Nese Restaurant (formerly Wabi Shebele), 189 – 191 New Kent Road, London SE1 4AG.
2. The licensing sub-committee made a decision on the application for review on 20th December 2010, which is attached as appendix I. The licensee, Mustafa Arif, appealed the decision at Camberwell Green Magistrates' Court and the matter has been remitted back to the licensing sub-committee for determination as Mr Arif contends that there has been a factual change in the operation of the premises.
3. *Notes:*
 - a) *The grounds for the review are stated in paragraph 12 of this report. A copy of the full application is provided as appendix A;*
 - b) *The application is supported by the council's environmental protection team and seven (7) interested parties. Paragraphs 15 and 16 deal with the supporting representations received for the application. Copies of the relevant representations are provided as appendices C & D; and*
 - c) *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

4. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment
5. Within Southwark, the licensing responsibility is wholly administered by this Council.
6. 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; and
 - The protection of children from harm.
7. 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; and
 - Relevant representations
 8. 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 interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.
 9. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The review hearing, 20th December 2010, and subsequent appeal

10. The licensing sub-committee heard the application for a review of the premises licence on 20th December 2010. The decision is attached as Appendix I.
11. Mustafa Arif, licensee of 189 – 191 New Kent Rd, appealed against the licensing sub-committee's decision on 23 December 2010. A copy of his Notice of Appeal is attached as Appendix II.
12. At the hearing of the appeal on 21st January 2011 at Camberwell Green Magistrates' Court Mr Arif stated that since the review there had been a significant change in the way the premises were operated.
13. The Magistrates' Court remitted the matter back to the licensing sub-committee for consideration in the light of Mr Arif's contention that there had been a significant factual change in the operation of the premises.

The remitted review

14. All responsible authorities and interested parties involved in the sub-committee hearing on 20th December 2010 were written to inviting them to attend today's licensing sub-committee hearing.
15. The applicant, Rosalynde Stone, submitted a letter attached as appendix III.
16. The licensee, Mr Arif, also submitted a letter attached as appendix IV.
17. Licensing and Health & Safety officers visited the premises for a licensing inspection on 24th February 2011 at 20.05hrs. The premises was found to be mostly compliant

with the terms and conditions on the licence, however there were no notices asking customers to leave quietly, which was a breach of condition 311. The front fire exit was also found to be obstructed and was ordered to be cleared at the time of visit. Mr Arif explained that he was in the process of changing the name to Nese Restaurant on his premises licence. The warning letter is attached as appendix V.

18. The Environmental Protection Team will provide an update on their site visit at the licensing sub-committee hearing.

The premises licence

19. The current licence in respect of the premises known as Wabi Shebele Restaurant, 189 - 191 New Kent Road, London SE1 4AG was granted to Mustafa Arif in November 2005. The licence permits the following licensable activities:

- Regulated entertainment (live music, recorded music, performance of dance, entertainment similar to live/recorded music, facilities for making music, facilities for dancing, provisions similar to making music and dancing):
Monday – Thursday 09.00 – 01.00;
Friday & Saturday 09.00 – 02.00;
Sunday 09.00 – 23.00
- Late night refreshment:
Monday – Thursday 23.00 – 01.30;
Friday & Saturday 23.00 – 02.30;
Sunday 23.00 – 00.00
- Sale and supply of alcohol on premises:
Monday – Thursday 11.00 – 01.00;
Friday & Saturday 11.00 – 02.00;
Sunday 11.00 – 23.30

20. A copy of the current premises licence is attached to the report as Appendix B.

Designated premises supervisor

21. The designated premises supervisor is Mustafa Arif, who holds a personal licence issued by Southwark Council.

The application for a review of the premises licence

22. On the 7th October 2010 an application for the review of the premises licence was received from a local resident. The grounds for the review relate to the following licensing objectives and are summarized as follows:-

- Prevention of crime and disorder – That the premises frequently remains open beyond 2am, and the noise team police have been contacted.
- Public safety – Large groups of drunk men congregate on the street. Fights amongst customers which have been reported to the police.
- Prevention of public nuisance – Members of the household have been complaining to the council regarding noise nuisance since April 2001. Every weekend there is loud live and recorded music. Southwark Noise Team have served a statutory notice.

23. The application for the review of the premises licence had not been sent to the responsible authorities and therefore the consultation was extended to the 3rd December 2010.
24. A copy of the review application and supporting statement is attached the report as appendix A.

Representations from interested parties

25. The licensing service received letters from seven (7) interested parties supporting the original review application. Copies of the correspondence are attached as appendix C to the report. They relate to the licensing objectives of:
 - Prevention of crime and disorder – Concerning the frequent fights outside the premises, police have been called on occasion.
 - Prevention of public nuisance – Loud music most Fridays, Saturdays, and Sundays into Monday mornings often until 4am. The council's noise team have been involved for a number of years and have served a statutory notice.
 - Public safety - The management's failure to ensure that those attending the premises and those living in the local vicinity of the premises can do so in a safe and controlled environment.

Representations from responsible authorities

26. There was a supporting representation from the council's environmental protection team. The fire brigade and police replied advised that they would not support the review. Copies of the representations are attached to the report as appendix D.

Operating history to date

27. Mr Arif made an application for existing licences (justices licence, special hours certificate and entertainments licences) to be converted to a premises licence under the Licensing Act 2003. The premises licence was issued in November 2005.
28. A complaint was received by the licensing service in October 2007 stating that the licensing hours were being ignored. It was alleged that every Friday, Saturday and Sunday the premises were open playing music and serving alcohol until 4am. The complainant was advised to contact the Noise Team, as they could take action if they witnessed the nuisance. The complainant was told that licensing officers would visit the premises to ensure compliance with their licence.
29. A licensing inspection on 13th October 2007 at 01.35am found that the premises was generally operating within the terms and conditions of their licence, however they did not have the premises licence summary on display.
30. A licensing inspection on 20th February 2009 at 20.30pm found that there was no premises licence kept on the premises, and the fire exit was obstructed as it was being used as a storage area. These issues were rectified by the time of the revisit in July 2009.
31. An application was received in December 2009 to vary the premises licence. The proposed variation was to extend the hours for entertainment, late night refreshment and alcohol until 5am Monday to Saturday and 4.30am on Sundays. There were a number of representations received (6 interested parties, the police and environmental protection team), and the application was determined by councillors at licensing sub-committee. The application to vary the premises licence was refused.

Temporary Event Notices

32. Temporary events notices have been used on occasions extend the terminal hours of the premises licence. Below is a table of TENs given to date.

2010	
Date	Closing Time
22 May	4am
29 – 30 May	4am
20 June	4am
26 – 28 June	4am
4 July	4am
1 August	4am
8 August	4am
15 August	4.30am
22 August	4.30am
30 August	4am

Visits made to premises

33. Licensing and environmental protection team (EPT) officers visited the premises in October 2010 to discuss the noise issues. Mr Arif showed the officers the sound limiting device he had installed. The EPT officer outlines the visit in his submission in appendix D.

Details of the warning given to the licence holder/DPS

34. On 30 November 2010, following reports from the noise team of the premises operating beyond terminal hours, a warning letter was sent to Mustafa Arif. The warning letter is attached as appendix E.

The Local Area

35. A map of the local vicinity is attached appendix F. For the purposes of scale only the circle on the map has a 100-metre radius. The operating terminal hour of the following premises licensed for alcohol and late night refreshment are shown on the map.

- Lebanese Grill, 173 New Kent Road (Mon –Sat: 02.00; Sun: 01.00)
- New Kent Road General Store, 179 New Kent Road (Mon – Sun: 02.00)
- Lo-Cost Supermarket, 165 – 167 New Kent Road (Mon – Sun: 01.00)
- Al-Mustafa Spicy Chicken & Pizza, 161 New Kent Road (Sun – Thurs: 00.:00; Fri & Sat: 01.00)
- BP Newington, 197 – 211 New Kent Road (24hrs)

Southwark council statement of licensing policy

36. Council assembly approved the Southwark's statement of licensing policy on 4 November 2009. Sections of the statement that are considered to be of particular relevance to this application are.

- Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
- Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence

- Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998
 - Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
 - Section 8 provides general guidance on ensuring public safety including safe capacities
 - Section 9 provides general guidance on the prevention of nuisance
 - Section 10 provides general guidance on the protection of children from harm.
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.

RESOURCE IMPLICATIONS

38. No fee is payable in respect of an application for licence review.

CONSULTATIONS

39. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed at Southwark Town Hall and a similar notice exhibited outside of the premises.

COMMUNITY IMPACT STATEMENT

40. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

41. The Sub-Committee is asked to determine, under Section 52 of the Licensing Act 2003, 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 an interested party 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.
42. The principles, which Sub-Committee members must apply, are set out below.

Principles for making the determination

43. The licensing authority must hold a hearing to consider an application for review of a premises licence where.
- the application is properly made in accordance with Section 51 of the Act.
 - the applicant has given notice in accordance with Section 51(3) of the Act.
 - the advertising requirements provided for under Section 51(3) of the Act are satisfied.
 - the licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.

- the licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

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.

44. 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 necessary 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.
45. 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 an interested party within the prescribed period
 - have not been withdrawn
 - if made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
46. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
47. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.
48. 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 a necessary and proportionate response.
49. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

50. 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

51. 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.
52. 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

53. 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.
54. 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.
55. 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.

56. 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.
57. 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.
58. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
59. 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.
60. Interested parties, 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

61. Members are required to have regard to the DCMS 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.

Finance Director's Concurrent

62. 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 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix I	Copy of the licensing sub-committee decision 20.12.10
Appendix II	Copy of letter re : appeal from Mr Arif
Appendix III	Copy of letter from Ms Stone
Appendix IV	Copy of email from Mr Arif
Appendix V	Copy of warning letter
Appendix A	Copy of the review application
Appendix B	Copy of the premises licence
Appendix C	Copies of representations from interested parties
Appendix D	Copies of representations from Responsible Authorities
Appendix E	Copy of warning letter
Appendix F	Copy of the local area map
Appendix G	List of representations (On closed agenda)

Audit trail

Lead Officer	Gill Davies, Strategic Director of Environment and Housing	
Report Author	Kristie Ashenden, Principal Licensing Officer	
Version	Final	
Dated	8 March 2011	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	9 March 2011	