

Item No: 5.	Classification: Open	Date: 08 August 2011	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Livebait, 41 – 45 The Cut, London, SE1 8LF	
Ward(s) or groups affected:		Cathedral	
From:		Strategic Director of Environment	

Recommendation

1. That the Licensing Sub-Committee considers an application made by Chez Gerard Restaurants Limited to vary the Premises Licence granted under the Licensing Act 2003 in respect of the premises known as: Livebait, 41 – 45 The Cut, London, SE1 8LF
2. Notes:
 - a) *The application seeks to vary existing licensable activities held under current legislation in respect of the premises known as: Livebait, 41 – 45 The Cut, London, SE1 8LF under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations submitted by interested parties and is therefore referred to the Sub-Committee for determination;*
 - b) *Paragraphs 11 to 15 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 17 to 19 of this report deals with the representations submitted in respect of the application. (Copies of the relevant representations are attached as appendix B)*

Background information

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for:
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) The provision of late night refreshment
4. Within Southwark, this Council wholly administers the licensing responsibility.
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;
 - a) The prevention of crime and disorder
 - b) The promotion of public safety
 - c) The prevention of nuisance
 - d) The protection of children from harm
6. In carrying out its licensing functions, a licensing authority must also have regard to;

- a. The Act itself
 - b. The Guidance to the act issued under Section 182 of the Act
 - c. Secondary regulations issued under the Act
 - d. The Licensing Authority's own Statement of Licensing Policy
 - e. The application including the operating schedule submitted as part of the application
 - f. Relevant representations
7. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing Justices Licences, Public Entertainment Licences and Night café Licences were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licences into the relevant licences under the new system. Licences that were so converted were converted on existing terms, conditions and restrictions. The 6 August having now passed operators are still able to apply to secure the new licences before the date upon which the new licensing regime comes into being – 24 November 2005 – but must now apply for new licences.
 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 under the Act. 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. Although applications submitted after 6 August 2005 no longer carry "grandfather" conversion rights, licensing authorities are directed that applicants do have an "added protection" under the law. Where an applicant seeks a Premises Licence intended to cover the retail sale of alcohol and that premises operation is currently covered by a Justices Licence, the licensing authority concerned cannot apply conditions restricting the hours at which alcohol is sold at present unless there has been a material change in the circumstances since the Justices Licence was granted, or the Police have made representations in connection with the prevention of crime.

Matters for consideration

The current premises licence

10. The current licence issued in respect of the premises known as Livebait, 41 – 45 The Cut, London, SE1 8LF was issued on 06 May 2011 and allows the following licensable activities:
 - The sale by retail of alcohol to be consumed on & off the premises on Monday to Saturday between 10.00hrs to 23.00hrs and on Sundays between 12.00hrs to 22.30hrs
 - The provision of late night refreshment on Monday to Saturday between 23.00hrs to 23.30hrs

The variation application

11. On 14 June 2011 Chez Gerard Restaurants Limited applied to this council to vary the Premises Licence issued in respect of the premises known as Livebait, 41 – 45 The Cut, London, SE1 8LF under section 34 of the Licensing Act 2003.
12. A copy of the application to vary the existing Premises Licence and a copy of the existing premises licence are attached to the report as appendix A.
13. The variation application is summarized as follows:

- To extend the hours permitted for the provision of late night refreshment until 00.00hrs (midnight) on Monday to Saturday. Please note that the application form refers to the provision of late night refreshment on Sundays until 22.30, however in The Act the hours applicable to late night refreshment are between 23.00 to 05.00 the following day only. Therefore the reference to the provision of late night refreshment on Sundays in the application form is to be ignored.
 - To extend the hours permitted for the supply of alcohol to be consumed on & off the premises until 00.00hrs (midnight) on Monday to Saturday and until 23.00hrs on Sundays
 - Please note that the application form refers to proposed hours for the provision of recorded music. The applicant has confirmed by way of email (please see appendix D) that recorded music was applied for erroneously and that only background music will be played at the premises. The provision of background music is not a licensable activity under The Act and therefore no application needs to be submitted in respect of The Act to provide background music. The applicants are not applying to allow the provision of recorded music.
14. The variation application form provides the applicant's operating schedule. Parts L, M and O set out the proposed operating hours in full.
15. Part P of the variation application provides any additional steps that are proposed by the applicant to promote the four licensing objectives as set out in the Licensing Act 2003. In the event that the Sub-Committee should approve the application any proposals stated here must become conditions on any subsequent premises licence issued.

Designated premises supervisor

16. The designated premises supervisor at the premises is Mr. Derek Casey. Mr. Casey holds a personal licence issued by the London Borough of Hillingdon.

Representations from interested parties

17. There are 7 representations lodged by interested parties. The representations are primarily concerned with the possibility of noise nuisance arising as a result of the proposed variation being granted.
18. Copies of the representations lodged by interested parties are attached as appendix B.

Representations from responsible authorities

19. No responsible authority submitted a representation in regards to the application.

Conciliation

20. The licensing unit contacted the applicant via email on 13 July 2011 offering to mediate a possible conciliation between the applicant and interested parties. A copy of the email is attached as appendix C.
21. The applicant's representative sent a conciliation statement to the licensing unit on 26 July 2011. A copy of the conciliation statement is attached as appendix D. Due to the late reception of the conciliation statement from the applicant it was not possible to distribute the statement to the interested parties by the time of the writing of this report or arrange a conciliation meeting prior to the writing of this report.

The local vicinity

22. A map of the local vicinity is attached as appendix E. The premises is identified at the centre of the map with a black diamond. A circle with a 100m radius is shown on the map; it is shown for the purpose of scale only. The following licensed premises are shown on the map

- **Mason Don Felipe, 53 The Cut, SE1 8LF:** (licensed for the sale of alcohol between 11.00hrs to 00.00hrs on Monday to Saturday and between 12.00hrs to 23.30 hrs on Sundays & late night refreshment between 23.00hrs to 00.30hrs on Monday to Saturday and between 23.00hrs to 00.00 hrs on Sundays).
- **Southbank Tandoori, 39 The Cut, SE1 8LF:** (licensed for the sale of alcohol between 10.00hrs to 00.00hrs on Monday to Saturday and between 12.00hrs to 23.30hrs on Sundays, late night refreshment between 23.00hrs to 00.00hrs on Monday to Saturday and between 23.00hrs to 23.30 hrs on Sundays)
- **Tas Restaurant, 33 The Cut, SE1 8LF:** (licensed for the sale of alcohol between 11.00hrs to 01.00hrs on Monday to Sunday, late night refreshment between 23.00hrs to 01.00hrs on Monday to Sundays & regulated entertainment [*live & recorded music*] between 11.00hrs to 01.00hrs on Monday to Sunday).
- **Calder Books, 51 The Cut SE1 8LF:** (licensed for the provision of regulated entertainment [*plays, recorded music*] between 19.00hrs to 20.15hrs on Monday to Sunday).
- **Costcutter, 3 – 11 The Cut, SE1 8JZ:** (licensed for the sale of alcohol between 00.00hrs to 00.00hrs [*24 hours*] on Monday to Sunday).
- **The Young Vic, 66 The Cut SE1 8LZ (L.B.Lambeth)**
- **The Anchor & Hope Pub, 36 The Cut, SE1 8LP (L.B. Lambeth)**

Southwark council saturation policy for Borough and Bankside

23. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises (saturation policy) on 05 November 2008.

24. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.

25. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

26. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

Recent Operation of the premises

27. Temporary event notices (TEN) have been submitted in respect of the premises to extend the hours permitted for the supply of alcohol and the provision of late night refreshment until 00.00hrs (midnight) on the following dates:

- 24 to 25 June 2011 (the TEN was rejected as it was served late)
- 29 June to 02 July 2011
- 06 to 09 July 2011

28. On the 14 June 2011 Chez Gerard Restaurants Limited applied to this council to vary the premises licence issued in respect of the premises known as Livebait, 41 – 45 The Cut, London, SE1 8LF under section 34 of the Licensing Act 2003.

Southwark council statement of licensing policy

29. Council Assembly approved the Southwark Statement of Licensing Policy on 8 December 2004. Sections of the Statement that are considered to be of particular relevance to this application are

- a. Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
- b. 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
- c. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
- d. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
- e. Section 8 provides general guidance on ensuring public safety including safe capacities
- f. Section 9 provides general guidance on the prevention of nuisance
- g. Section 10 provides general guidance on the protection of children from harm

30. 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

31. A fee of £190.00 has been paid by the applicant in respect of this application this being the statutory fee payable for premises within non-domestic rateable value Band B.

Consultations

32. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in the South London Press newspaper on 30 June 2011 and a similar notice was exhibited outside of the premises.

Equal opportunities implications

33. 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

34. The Sub-Committee is asked to determine the application for a variation of a converted premises licence. The converted licence was itself granted automatically under the new Licensing Act 2003, without need for a hearing, as no relevant objections were received from the Police, on crime and disorder grounds, to the conversion.
35. It is important to distinguish the application for variation of a converted licence under the Licensing Act 2003 from the type of applications previously heard by the Sub-Committee, where a licence was renewed or an applicant sought to vary. The principles that apply are significantly different in many respects (although the requirement to give all parties a fair, unbiased hearing remains).
36. 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-by-case basis.
37. 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 and crime and disorder in the Borough.
38. 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 day on which the applicant was notified by the licensing authority of the decision to be appealed against.
39. The principles that Sub-Committee members must apply are set out below.

Principles for making the determination

40. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
41. The general principle is that applications for variation 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.
42. 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 (in this case, the initial objections from the Fire Service have been withdrawn).
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
43. 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
 - Add to, omit, and/or alter the conditions of the licence
 - Reject the whole or part of the application for variation

Conditions

44. The Sub-Committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
45. The four licensing objectives are;
 - a. The prevention of crime and disorder
 - b. Public safety
 - c. The prevention of nuisance
 - d. The protection of children from harm
46. 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.
47. 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.
48. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.
49. Members are also referred to the DCMS guidance on conditions, specifically section 10, and Annexes D.

Reasons

50. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for variation, it must give reasons for its decision.

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
 - 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. As this matter relates to the determination of an application to vary under section 34 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 that 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.

Guidance

58. 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.

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre Thurlow Street SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

Appendices

No.	Title
Appendix A	Copy of the application
Appendix B	Copy of the representations submitted by interested parties
Appendix C	Copy of offer of conciliation from the licensing unit
Appendix D	Copy of the applicant's conciliation statement
Appendix E	Map of the local vicinity of the premises
Appendix F (restricted)	Interested parties details

Audit trail

Lead Officer	Gill Davies, Director of Environment	
Report Author	Wesley McArthur, Licensing Enforcement Officer	
Version	Final	
Dated	27 July 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
Cabinet Member	No	No
Date final report sent to Constitutional Support Services	27 July 2011	