

<b>Item No. 5</b>	<b>Classification: Open</b>	<b>Date: June 22 2009</b>	<b>MEETING NAME Licensing Sub-Committee</b>
<b>Report title:</b>		<b>LICENSING ACT 2003 – Ivory Arch Tandoori, 80 – 82 Walworth Road, London, SE1 6SW</b>	
<b>Ward(s) or groups affected:</b>		<b>Premises are within: Newington Ward</b>	
<b>From:</b>		<b>Director of Environment and Housing</b>	

## **RECOMMENDATION**

1. That the Licensing Sub-Committee considers an application made by Rubel Ahmed for a Premises Licence to be granted under the Licensing Act 2003 in respect of the premises known as Ivory Arch Tandoori, 80 – 82 Walworth Road, London SE1 6SW.

### **Notes:**

- a) *This application forms a new application for a Premises Licence, under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and interested parties and is therefore referred to the Sub-Committee for determination;*
- b) *Paragraphs 7 to 9 of this report provide a summary of the application the Premises Licence under consideration by the Sub-Committee (A copy of the full application is provided at Appendix A).*
- c) *Paragraphs 11 to 15 of this report deal with the representations received to the Premises Licence application. (Copies of the relevant representations are attached at Appendix B and C).*

## **BACKGROUND INFORMATION**

### **The Licensing Act 2003**

2. 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

Within Southwark, this Council wholly administers the licensing responsibility.

3. 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; and
  - d) The protection of children from harm.

4. 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
  
5. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing Justices Licenses, Public Entertainment Licenses and Night Café Licenses were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licenses into the relevant licenses under the new system. Licenses that were so converted were converted on existing terms, conditions and restrictions. The 6 August date having passed, operators must now apply for new licenses.
  
6. 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 interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

## **MATTERS FOR CONSIDERATION**

### **The Premises Licence Application**

7. On 14<sup>th</sup> April 2009, this Council received an application from Rubel Ahmed for the grant of a new Premises Licence in respect of the premises known as Ivory Arch Tandoori, 80 – 82 Walworth Road, London SE1 6SW.
  
8. The application, attached as Appendix A, is summarized as follows
  - The provision of late night refreshment from 23.00-02.00 Sundays to Wednesdays, and 23.00-03.00 Thursdays to Saturdays.
  - The sale of alcohol on and off the premises from 11.00-02.00 Sundays to Wednesdays, and 11.00-03.00 Thursdays to Saturdays.
  - Opening hours from 11.00 to 02.00 Sundays to Wednesdays, and 11.00-03.00 Thursdays to Saturdays.
  
9. The Premises Licence application form provides the applicant company's operating schedule. Parts L, M, N, O and P set out the proposed operating hours and operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003.

### **Designated Premises Supervisor**

10. The proposed designated premises supervisor under the licence is Izzazul Ahmed, who has been granted a personal licence by London Borough of Southwark.

### **Representations from Responsible Authorities**

11. The Metropolitan Police Service has submitted a representation on the grounds that the applicant has not sufficiently addressed the licensing objective "*The prevention of crime and*

*disorder*". Twenty six (26) conditions have been suggested for the applicant to adopt in order to promote that objective. The representation is attached as Appendix B.

12. The Council's Environmental Protection Team made a representation in relation to public nuisance and the issue of smokers. A condition has been suggested in order to meet this objective. The correspondence relating to this representation is attached as Appendix B.

13. No other Responsible Authorities have made representations, however the responses are attached as Appendix B.

#### **Representations from Interested Parties**

14. Brookfield Developments (UK) Limited (redeveloping the site adjacent Ivory Arch Tandoori) have submitted a representation relating to the licensing objectives "*The prevention of crime and disorder*" "*Public safety*" and "*The prevention of nuisance*". The representation states that there are concerns that a late night alcohol licence would not be able to promote these objectives. There are also concerns that the premises remains in the same ownership as the previous premises licence, which led to the licence being revoked. The representation is attached as Appendix C.

15. The Draper Tenants & Residents Association has lodged a representation. Their representation relates to the licensing objectives "*The prevention of crime and disorder*" "*Public safety*" and "*The prevention of nuisance*". They are concerned that the premises are run by the same management as with the previous licence, and therefore will not be able to promote these licensing objectives. The representation is attached as Appendix C.

#### **Letters of Support for this application**

16. There are no letters of support for this application.

#### **Planning**

17. There are no planning restrictions. See Appendix B for the response.

#### **Disability Discrimination Act**

18. The Southwark Disablement Association has no comments regarding this application.

#### **Conciliation Meeting**

19. A conciliation meeting has not been held as it was not deemed useful. A number of representations stated that conciliation would not placate them and that they were satisfied to attend the Sub-Committee hearing for the decision.

#### **Additional information on the past operating history of the premises.**

Under previous legislation the premises operated with a Justices "on licence", public entertainment licence, special hours certificate and supper hours certificate, and was converted and varied to a premises licence under the Licensing Act 2003 in October 2005. These licences were held by Mr Bahar Uddin.

- In December 2003 the Police successfully applied for revocation of the Justices “on licence” under the Licensing Act 1964 that was held by Mr Bahar Uddin of the Ivory Arch. As a consequence, Mr Uddin was prohibited from obtaining a personal licence under the Licensing Act 2003 for a period of 5 years. He employed Mr Abdul Sahebzada as his DPS at Ivory Arch.
- The licensable activities authorised under the previous premises licence were live and recorded music, performance of dance, entertainment similar to live and recorded music, making music, dancing, entertainment similar to making music and dancing, late night refreshment and sale of alcohol on and off the premises. The opening hours were 10.00 to 04.00 Sunday to Wednesday, 10.00 to 05.00 Thursday to Saturday
- On 19<sup>th</sup> October 2006 a closure order applied for by Police was issued by Camberwell Green Magistrates Court. The Court was satisfied that closure was necessary in the interests of public safety.
- On 20<sup>th</sup> October 2006 an application for the review of the premises licence was received from PC Compton of the Metropolitan Police. The review was called as Police were investigating the attempted murder of two persons, one of whom was shot in the buttocks and the second in the rear of the head by a suspect who discharged between 5 & 6 rounds in the street outside the premises. Police had recorded numerous incidents reporting either the use of, or presence of, firearms being taken into the premises. The club had been associated with rival gangs using the premises.
- On 3<sup>rd</sup> November 2006 the Licensing Sub-Committee revoked the licence with immediate effect.
- Mr Bahar Uddin was the premises licence holder at the time of the revocation.
- Mr Bahar Uddin currently owns the freehold to the premises.

### The Local Vicinity

20. A map of the vicinity is attached at Appendix D. The premises are identified by a triangle at the centre of the map. For purposes of scale-only the circle on the map has a 100-metre radius. The following licensed premises are within the vicinity of the premises.

- **The Beijing:** 4 Hampton St, London, SE1 6SN  
Open 7 days a week: 13.30 – 00:20hrs

Licensable activities: late night refreshment.

- **Chatkhara Restaurant:** 84 Walworth Rd, London SE1 6SW  
Open 7 days a week: 12.00 – 02.00hrs

Licensable activities: late night refreshment.

- **Bar South Central:** 16 Elephant & Castle, London SE1 6TH  
Open Monday to Saturday 09.00 – 02.00, Sunday 09.00 – 23.30

Licensable activities: Recorded music, live music, performance of dance, entertainment similar to live/recorded music, facilities for making music, facilities for dancing, entertainment similar to making music/dancing, late night refreshment, sale of alcohol on and off the premises.

- **Distriandina:** Unit 6, Farrell Court, Elephant Rd, London SE17 1LB  
Open Monday to Thursday: 08.00am to 03.00am, Friday & Saturday 08.00 – 06.00, Sunday 08.00 – 00.00.

Licensable activities: Films, 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, late night refreshment, Sale of alcohol on and off the premises.

### **Southwark Council Statement of Licensing Policy**

21. 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
- g. Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
  - h. 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
  - i. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
  - j. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
  - k. Section 8 provides general guidance on ensuring public safety including safe capacities
  - l. Section 9 provides general guidance on the prevention of nuisance
  - m. Section 10 provides general guidance on the protection of children from harm.
22. 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**

23. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value Band A.

### **CONSULTATIONS**

24. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in Southwark News (April 16, 2009 edition) and a similar notice exhibited outside of the premises.

### **EQUAL OPPORTUNITIES IMPLICATIONS**

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

### **CONCURRENT REPORT BY THE STRATEGIC DIRECTOR OF COMMUNITIES, LAW & GOVERNANCE – LEGAL ISSUES**

26. The Sub-Committee is asked to determine the application for a Premises Licence under Section 17 of the Licensing Act 2003.

27. The principles which Sub-Committee members must apply are set out below.

### **Principles for making the determination**

28. 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.

29. 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.

30. 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

- (a) to grant the licence subject to-
  - (i) 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, and
  - (ii) Any condition which must under section 19,20 or 21 be included in the licence
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the premises supervisor;
- (d) to reject the application.

### **Conditions**

31. 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.

32. The four licensing objectives are

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

33. 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.

34. 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.
35. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

## **Reasons**

36. 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**

37. 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.
38. 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**

39. 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.

40. 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.
41. 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.
42. 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.
43. 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.
44. 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.
45. 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.
46. 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

47. 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 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: Mrs Kirty Read Phone number: 020 7525 5748

## APPENDICES

No.	Title
Appendix A	Application form
Appendix B	Response from Responsible Authorities
Appendix C	Representations from Interested Parties
Appendix D	Map of local vicinity

## AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement	
Report Author	Kristie Ashenden, Principal Licensing Officer	
Version	Final	
Dated	5 <sup>th</sup> June 2009	
Key Decision	No	
Consultation with other Officers / Directorates		
Officer Title	Comments sought	Comments included
Strategic Director of COMMUNITIES, LAW & GOVERNANCE	Yes	Yes