

Item No. 5	Classification: Open	Date: June 29 2009	MEETING NAME: Licensing Sub-Committee
Report title:		Licensing Act 2003 – Application for review of the premises licence in respect of Bacon’s College, Timber Pond Road, SE16 6AT	
Ward(s) or groups affected:		Surrey Docks	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the committee determines the application made under the Licensing Act 2003 by an interested party, Mr Namik Tumkan (a local resident) for a review of the premises licence held by Mr Anthony James Perry in respect of the premises known as Bacon’s College, Timber Pond Road, London SE16 6AT.
2. Note : The application for the review of the licence is supported by one other local resident and there is also a letter of support for the premises Bacon’s college from the ward Councillor.

BACKGROUND INFORMATION

3. The Licensing Act 2003 came into effect on 25 November 2005. The introduction of the Act provided a new licensing regime for the following licensable activities:
 - The retail sale of alcohol;
 - The provision of regulated entertainment; and
 - The provision of late night refreshment.
4. Under the Act a premises user wishing to provide any of the stated licensable activities must firstly secure a premises licence from the local licensing authority for the area in which the business concerned is located. Where the retail sale of alcohol is involved, the application must name a designated premises supervisor (DPS) who holds responsibility for authorising alcohol sales under the licence. The DPS must, in turn, hold a personal licence issued by the local authority for the area in which he / she lives.
5. A premises licence once issued remains valid for the life of the business unless it is surrendered or revoked. However, section 51(1) of the Act provides for 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. These relate to:
 - The prevention of crime and disorder;
 - Public safety;
 - The prevention of nuisance; and
 - The protection of children from harm.

KEY ISSUES FOR CONSIDERATION

The application under consideration

6. On 8th May 2009 an application was received from Mr Namik Tumkan, a local resident for a review of the premises licence in respect of the premises known as Bacon’s

College, Timber Pond Road, London, SE16 1AG. The review application relates to the licensing objectives regarding public safety and the prevention of public nuisance. The application for a review of the licence is supported by one other local resident.

7. A full copy of the review application is attached as appendix a to this report. The application requests that the alcohol sales are withdrawn from the licence, strict management of all user groups, the car park cleared by 11.00pm, all church user groups limited in size to contain parking and noise levels reduced. Attached to the review application was a six page petition, however the details of the grounds for petition were only completed on three of the pages and it is only those pages that are attached to the review application.
8. A copy of the supporting documents from the other local resident is attached as appendix b to this report.
9. A letter of support for the premises from a ward councillor is attached as appendix c to this report.

The premises licensing history

10. The premises previously held a public entertainments and liquor licence under the old licensing regime. An application was made in July 2005, which was during the transitional period under 'Grandfather rights' for a new premises licence. No variation was sought from what was previously held by Bacon's College.
11. The premises were granted a licence for plays, films, indoor sports, live and recorded music, performance of dance, facilities for making music and dancing, late night refreshment and the sale of alcohol to be consumed on the premises. The hours of operation were from 09.00am to 23.00pm on Sunday to Friday and to midnight on Sunday, and with alcohol sales from 10.00am on Monday to Saturday to 23.00pm, and on Sunday from 12.00 until 22.30pm.
12. On 25 May 2006 an application to vary the premises licence so as to extend the hours of licensable activity on Friday and Saturday to 01.00am on the day following and to increase the opening hours on Friday and Saturday to 01.30am on the day following. No representations were received and the licence was duly granted. A copy of the current premises licence is attached as appendix d to this report.
13. The premises were subjected to an inspection on 27th January 2009 and conducted by officers from the licensing team. The premises were found to be operating in compliance with terms, conditions and restrictions of the premises licence.
14. On 4th March 2009 a letter of complaint regarding Bacon's college was made to the licensing unit from the applicant for this review, Mr Tumkan. A copy of that complaint is attached to this report as appendix e. In the acknowledgement to Mr Tumkan he was informed of the review process and advised to keep a diary to log any further disturbances.
15. A copy of the complaint was forwarded to Bacon's College and they were also advised of the review process open to residents who are being disturbed. Mr Nisbeth the Director of Finance and Administration for Bacon's College responded to this complaint on 16th March 2009 and a copy of his response is attached as appendix f to this report.

16. The Environmental Protection Team have responded to the review application stating that they do not support the review as they have no evidence regarding the public nuisance objective. A copy of their response is attached as appendix g to this report.

The local vicinity

17. A copy of a map of the local area is attached as appendix h.

Southwark Statement of Licensing Policy

18. The Southwark Statement of Licensing Policy was originally approved by council assembly on 8 December 2004 with the latest revision receiving approval on 8 November 2008.
19. 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 4 which sets out the arrangements for the administration, exercise and delegation of functions, including the determination of licence reviews;
 - 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 which details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998;
 - Section 7 which provides general guidance on dealing with crime and disorder and licensing hours; and
 - Section 10 which provides general guidance on the protection of children from harm.
20. 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 committee when considering those applications. However, the 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.

Community Impact Statement

21. The power of licence review is one of the major new provisions contained within the 2003 Act intended to help secure the four licensing objectives. The promotion of the licensing objectives is key to ensuring that licensed premises are responsibly managed providing a basis for a successful business venture that makes a positive contribution to the local community in which it is based.
22. Each application, including applications for reviews of licences, are required to be considered upon their own merits with all relevant matters taken into account.

Resource Implications

23. No fee is payable in respect of licence review applications. The cost of administering the review process are borne by the service.

Consultation

24. The review application has been advertised in accordance with the 2003 Act and regulations by way of a public notice exhibited in the vicinity of the premises.

Equal Opportunities Implications

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

26. 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.

PRINCIPLES FOR MAKING THE DETERMINATION

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

The licensing authority must hold a hearing to consider an application for review of a premises licence where -

- (a) the application is properly made in accordance with Section 51 of the Act.
- (b) the applicant has given notice in accordance with Section 51(3) of the Act.
- (c) the advertising requirements provided for under Section 51(3) of the Act are satisfied.
- (d) the licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.
- (e) 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.

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.

For the purpose of determining a relevant representation under section 52 of the Act a "relevant representation" means representations which -

- (a) are relevant to one or more of the licensing objectives.
- (b) are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
- (c) have not been withdrawn
- (d) 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.

Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

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.

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.

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

28. Where the authority determines an application for review it must notify the determination and reasons for making it to –
- (a) the holder of the licence.
 - (b) the applicant
 - (c) any person who made relevant representations
 - (d) the chief officer of police for the area (or each police area) in which the premises are situated

HEARING PROCEDURE

29. 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.

30. This matter relates to the review of a 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.

THE COUNCILS MULTIPLE ROLES AND THE ROLE OF THE LICENSING SUB-COMMITTEE

31. 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.

32. 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.

33. 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.

34. 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, and working or engaged in normal activity in the area concerned.

35. 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.

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-to-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 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 the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

GUIDANCE

39. 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 Secondary regulations DCMS Guidance to the Act Case file HLS/Costcutter Express	Health Safety & Licensing Unit, C/O The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Review application submitted by Mr Namik Tumkan (local resident)
Appendix B	Supporting letter to the review from Ms Rhian Pamphilion (a local resident)
Appendix C	Letter from a ward Councillor supporting Bacon's College
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Strategic Director of Housing & Environment
Report Author	Rosanna Keogh, Principal Licensing Officer
Version	Final
Dated	16 th June 2009
Key Decision?	No

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER

Officer Title	Comments Sought	Comments included
Strategic Director for Legal and Democratic Services	Yes	Yes
Finance Director	No	No
List other officers here		
Executive Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team		May 1 st 2009