

Item No. 5.	Classification: Open	Date: 20 November 2012	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003 - K & F Restaurant Ltd (ground and basement floors), 39-45 Camberwell Road, London SE5 0EZ	
Ward(s) or groups affected:		Faraday ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by Philipp Ulbrich and two other applicants, Kristine and Anthony Fox for a review of the premises licence in respect of the premises known as K & F Restaurant Ltd, 39-45 Camberwell Road, London SE5 0EZ.
2. Notes:
 - a) The grounds for the review are stated in paragraph 14 - 15 of this report. A copy of the full application is provided as Appendix A.
 - b) The review application is supported by two responsible authorities and seven other residents. Paragraph 16- 17 deals with the representations received for the application. Copies of the representation are provided as appendix C and C1.
 - 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

3. 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.
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 interested parties 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(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 premises licence

9. The most current licence in respect of the premises known as K & F Restaurant Ltd, (ground and basement floors) 39-45 Camberwell Road, London SE5 0EZ was granted to K & F UK Ltd in September 2012. The licence permits the following licensable activities:
 - Live music
Mon- Sun from 18.00 – 03.00
 - Recorded Music:
Mon- Sun from 18.00 – 03.00
 - Facilities for making music
Mon- Sun from 18.00 – 03.00
 - Facilities for dancing
Mon- Sun from 18.00 – 03.00
 - Late night refreshments
Mon- Sun from 23.00 – 03.30
 - Sale and Supply of alcohol on and of the premises
Mon- Sun from 11.00 – 03.00
 - Operating hours of premises
Mon- Sun from 10.00 – 04.00.

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

Designated premises supervisor

11. The designated premises supervisor is Kolawole Adeleye. He holds a personal licence issued by the London Borough of Lewisham.

Another premises licence held

12. A previous licence which only permits regulated activities on the ground floor still exists for the premises under the licence number 830831. A new application was made on 14 June 2012 which was to run concurrently with this licence until the new licence was granted and was to be surrendered. Although the new licence was granted in September 2012. The licence has not been surrendered and is therefore still live.
13. This licence permits the same activities as above, however the operating hours are from 11.00-03.30.

The application for a review of the premises licence

14. On the 28 September 2012 an application for the review of the premises licence was received from the local resident and also listed are 2 other applicants. The grounds for the review relate to the following licensing objectives and is summarized as follows:
 - Prevention of Crime and Disorder – improper use of the alleyway by patrons parking illegally and on prohibited zone limiting access of emergency services, occasionally fighting
 - Public Safety – patrons fighting outside the premises
 - Prevention of public nuisance – the volume of music emanating from the premises, patrons shouting when getting in and out of cars, the use of alleyway as a public toilet by patrons and the dumping of rubbish in the premises backyard.
15. A copy of the review application is attached to the report as Appendix A

Representations from other persons in support of review application

16. The licensing service received support letters from 8 other persons. The said letters are same and therefore only one attached. A copy of the correspondence received is attached as appendix C to the report. It relates to the licensing objectives of crime and disorder, public safety and prevention of public nuisance.

Responses from responsible authorities

17. The council's environmental protection team (EPT) and the licensing unit have made representations in support of the review. The representation from EPT relate to the number of complaints and the prohibitions notices issued due to statutory nuisance witnessed by noise officers and the contravention of such notice. The representation from Licensing request for a reduction in hours to midnight as majority of the complaints are received after midnight. Copies of the representations are attached to the report as Appendix C1.

Operating history

18. In January 2011 an application was made to transfer the premises licence to the Admiral Taverns, the freeholder of the public house, when the licence holder became insolvent.
19. On 6 June 2011 an application was made to transfer the premises licence to Kolawole Adeleye, who is also the current DPS.
20. On 28 November 2011 an induction meeting was conducted with Mr Adeleye and his manager to discuss the licence and noise issues. At this meeting it was made clear that the basement floor was not included in the licence and any operations held there would be considered as unlicensed. Advice was given to either vary the licence to include the basement or apply for a premises licence for both floors.
21. On 14 June 2012 an application was made for a new premises licence to include the basement of the premises and to request terminal hours of 4am. This application ran concurrently with the premises licence that was issued in 2011 and was granted in September 2012. The premises licence issued in 2011 was to be surrendered, however to date there has been no such surrender and as such the premises licence no 838031 is still live and active.

Complaints

22. There have been 34 complaints regarding noise nuisance from several local residents since December 2011.
23. A number of complaints were made directly to the licensing team. Following on from this, on 2 May 2012 officers from the police, licensing and environmental protection teams met with the management of the premises to discuss issues with regard to noise nuisance, public order and general management control of the premises. A record of this meeting in the form of a warning letter is attached as Appendix D.
24. The environmental protection team (EPT) informed the licensing unit that the sound limiting device had been checked and set on 1 June 2012.
25. On 16 August 2012 due to more complaints a visit was conducted by both EPT and licensing offices to ascertain whether the noise limiting device was being tampered with. The inspection found the device had not been tampered with.
26. Further complaints were received in September 2012 and a warning letter was sent on 19 September 2012. A copy of the letter is attached to the report in Appendix E.

The Local Area

27. 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 hours of the following premises licensed for regulated entertainment and late night refreshment and off licences are shown on the map:

Regulated entertainment:

- Nivla Restaurant, 51 Camberwell Road, SE5 (Mon to Thurs till 00.30; Fri & Sat till 01.30; Sun till 23.00)
- Legacy, 53 Camberwell Road, SE5 (Mon to Thurs till 01.00; Fri - Sun till 03.00)
- D'Eclipse Bar & Restaurant, 57 Camberwell Road, SE5 (Sun to Thurs till 00.30, Fri & Sat till 03.00)
- Deconnet, 11 John Ruskin Street, SE5 (Sun to Thurs till 02.00; Fri & Sat till 03.00)
- Deconnet, 13 John Ruskin Street, SE5 (Sun to Thurs till 00.00; Fri & Sat till 01.00)
- Emukay Restaurant 91 Camberwell Rd, SE5 (Mon to Sun till 02:30hrs)

Late night refreshment:

- Dallas Chicken, 30 Camberwell Road, SE5 (Mon to Sun till 01.00)
- Abokobi Ghanaian Restaurant, 33 Camberwell Road, SE5 (Mon to Sun till 00.00)
- Red Sea restaurant, 85 Camberwell Rd, SE5 (Mon to Sun till 01.00)

Off licence:

- Costcutter, 25 Camberwell Road, SE5 (24 Hours)
- Astra Newsagent, 22 Camberwell Road, SE5 (Mon to Sun till 22.00).

Southwark council statement of licensing policy

28. Council assembly approved Southwark's statement of licensing policy 2011-14 on 12 October 2011. 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.
29. 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

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

Consultations

31. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. Public notices were exhibited outside the premises for a period of 28 days.

Community impact statement

32. 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

Director of Legal Services

33. 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 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.
34. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

35. 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.
36. 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.

37. 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 other person 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.

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

39. 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.

40. 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.

41. 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

42. 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

43. 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.

44. 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

45. 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.
46. 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.
47. 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.

48. 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.
49. 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.
50. 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.
51. 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.
52. 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

53. 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.

Strategic Director of Finance and Corporate Services

54. 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 A	Copy of the review application
Appendix B	Copy of the premises licence
Appendix C	Copies of representations from other persons
Appendix C1	Copies of representations from responsible authorities
Appendix D	Copy of warning letter number 1
Appendix E	Copy of warning letter number 2
Appendix F	Copy of local area map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	9 November 2012	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	No	No
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