

Item No. 6.	Classification: Open	Date: 5 April 2013	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003 – Cafe Del Aziz, 5 Canvey Street, London SE0 0YY	
Ward(s) or groups affected:		Cathedrals	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Del Aziz Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Cafe Del Aziz, 5 Canvey Street, London SE0 0YY.
2. Notes:
 - The application seeks to vary existing licensable activities held under current legislation in respect of the premises known as: Cafe Del Aziz, 5 Canvey Street, London SE0 0YY 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 responsible authorities and / or other persons and is therefore referred to the sub-committee for determination;
 - Paragraphs 8 to 10 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 B).
 - Paragraphs 11 to 15 of this report deal with the representations submitted in respect of the application. (Copies of the relevant representations are attached as Appendices C to G).

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.

Within Southwark, this council wholly administers the licensing responsibility.
4. 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.
5. 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.
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.

KEY ISSUES FOR CONSIDERATION

The current premises licence

7. The current premises licence issued in respect of the premises known as Cafe Del Aziz, 5 Canvey Street, London SE0 0YY was issued on 27 November 2007 and allows the following licensable activities:
- The sale by retail of alcohol to be consumed on & off the premises on Monday to Sunday between 07.00 and 00.00 (midnight)
 - The provision of regulated entertainment (live music, performances of dance & facilities for making music) on Monday to Sunday between 12:00 (midday) & 00.00 and between 10.00 to 00.00 in respect of recorded music.
 - The provision of late night refreshment both indoors and outdoors on Monday to Sunday between 23.00 to 00.30.

The opening hours of the premises are between 07.00 to 00.30 on Monday to Sunday.

A copy of the existing premises licence is attached as Appendix A.

The variation application

8. On 4 February 2013 Del Aziz Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Cafe Del Aziz, 5 Canvey Street, London SE0 0YY
9. The application is summarised as follows:
- To extend the terminal hour in respect of the sale or supply of alcohol to be consumed on or off the premises on Monday to Sunday from 00.00 to 04.00

- To extend the terminal hour in respect of the provision of late night refreshment both indoors and outdoors on Monday to Sunday from 00.30 to 05.00
 - To allow for 24 hour opening of the premises (00:00 to 00:00)
10. The premises licence application form provides the applicant's operating schedule. Parts I, J, L and M set out the proposed operating hours and operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix B.

Representations from responsible authorities

11. This council's environmental protection team (EPT) has submitted a representation in regards to the prevention of public nuisance. The EPT notes that the premises are within the Borough and Bankside saturation area and are close to Bankside House student residential accommodation. The EPT note that the applicant has not submitted any additional prevention of public nuisance measures in support of the proposed extended hours of operation and is not satisfied that licensable activities permitted until the requested hours and / or areas of use would not to give rise to public nuisance. A copy of the representation submitted by the EPT is attached to this report as Appendix C.
12. The Southwark police licensing office (SPLO) submitted a representation suggesting amendments to the application and proposing control measures that SPLO recommend become conditions on any licence issued subsequent to the application. The applicant has agreed to amending the application as per SPLO's representation and SPLO has withdrawn their representations. SPLO's representation and related correspondence are attached to this report as Appendix D.

Representations from other persons

13. A local ward councillor has submitted a representation concerned with the prevention of crime and disorder and the prevention of public nuisance. The councillor notes that the premises are within the Borough and Bankside saturation area and is of the opinion that the proposed extended hours of operation of the premises will give rise to public nuisance. The councillor would like undisputable evidence that the proposed extended operational hours of the premises will not result in an increase in crime or anti-social behaviour in the Borough and Bankside area. The councillor's representation and related correspondence are attached to this report as Appendix E.
14. A representation has been submitted by a local resident (party 1). The representation is concerned that the proposed extended operational hours of the premises will give rise to significant noise nuisance and also to an increase in anti-social behaviour and crime in the Borough and Bankside area. Party 1's representation and related correspondence is attached to this report as Appendix F.
15. A representation has been submitted on behalf of the London School of Economics (LSE) by the warden (party 2) of LSE's Bankside House student accommodation. The warden also resides at Bankside House. The representation is concerned that the proposed extended operational hours of the premises will give rise to significant noise nuisance and also to an increase in anti-social behaviour and crime in the

Borough and Bankside area. Party 2's representation is attached to this report as Appendix G.

Equalities Act

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

Conciliation

17. The case officer advised the applicant to contact directly those responsible authorities who had submitted representations and the local ward councillor who submitted a representation. The applicant provided a response agreeing to amendments to the application and control measures to be included in the application that were proposed by SPLO. The applicant requested that the response be distributed to all parties who had submitted a representation. SPLO withdrew their representation subsequent to the agreement reached with the applicant. Confirmation of SPLO's withdrawal of their representation is provided in Appendix D.
18. At the time of the writing of this report the local councillor has provided further comments upholding the councillor's representation. Party 1 has provided further comments upholding party 1's representation. There have been no further comments from the EPT or Party 2. The further comments provided by the councillor and party 1 are included in Appendices E and F respectively. The representations submitted by the EPT, the local councillor, party 1 and party 2 remain outstanding and must be considered by the sub-committee as well as any further comments provided by The EPT, local councillor, party 1 and party 2.

Operating history

19. On 27 November 2007 a premises licence was issued to the applicant as per paragraph 7 above.
20. There is no history of complaints or enquiries made in respect of the premises in this council's licensing records.
21. No temporary event notices have been served in respect of the premises.
22. The last licensing inspection of the premises was undertaken on 24 February 2011. At the time of the inspection the premises licence summary was not displayed at the premises which is an offence under the Licensing Act 2003 (LA 2003). The premises were otherwise fully compliant. A warning letter was sent to the applicant in regards to the offence. On 20 April 2011 a licensing re-inspection of the premises was undertaken. The premises were found to be operating in full compliance with the Licensing Act 2003.
23. On 4 February 2013 Del Aziz Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises and the application is the subject of this report.

The local area

24. A map of the area that the premises are located in is attached to this report as Appendix H. The following licensed premises are also shown on the map:

Tsuru Ltd, 4 Canvey Street, SE1 9AN licensed for:

Sale of alcohol & provision of recorded music: Mon & Sat 11:00 to 23:00, Sun 11:00 to 22:30

Amano Cafe, 20 Sumner Street, SE1 9JZ Licensed for:

Sale of alcohol: Mon to Sat 08:00 to 01:00, Sun 08:00 to 00:00

The provision recorded music: Mon to Sat 07:00 to 01:00, Sun 07:00 to 00:00

The provision of late night refreshment Mon to Sat 23:00 to 01:00, Sun 23:00 to 00:00

Tortilla, 106 Unit 11A Southwark Street SE1 0XX licensed for:

Sale of alcohol: Sun to Wed 11:00 to 00:00, Thu to Sat 11:00 to 01:30

Late night refreshment: Sun to Wed 23:00 to 00:00, Thu to Sat 23:00 to 02:00

The provision of recorded music: Sun to Wed 08:00 to 00:00, Thu to Sat 08:00 to 02:00

The Refinery, 110 Blue Fin Building Southwark Street, SE1 0SU licensed for:

Sale of alcohol: Mon to Sat 08:00 to 03:00, Sun 08:00 to 00:00

Late night refreshment: Mon to Sat 23:00 to 03:00, Sun 23:00 to 00:00

The provision of live & recorded music: Mon to Sat 12:00 to 03:00, Sun 12:00 to 00:00

Films: Mon to Sun 09:00 to 03:00

Leon Restaurants, 110 Unit R7, Blue Fin Building Southwark Street, SE1 0SU licensed for:

Sale of alcohol: Mon to Sun 09:00 to 01:00

Late night refreshment: Mon to Sun 23:00 to 01:00

Royal Bank of Scotland, 90 - 100 Southwark Street, SE1 0SW licensed for:

Sale of alcohol: Mon to Sun 07:00 to 00:00

The provision of live & recorded music and anything similar to live or recorded music, facilities for making music, performances of dance: Mon to Sun 07:00 to 00:00

Tate Modern, 53 Bankside, SE1 9TG licensed for:

Sale of alcohol, the provision of live & recorded music and anything similar to live or recorded music, facilities for making music & dancing, performances of dance, films and plays: Mon to Sun 08:00 to 00:00

Mercure Hotel Bankside, 75-79 Southwark Street, SE1 0JA licensed for:

Sale of alcohol: Mon to Sat 10:00 to 00:00, Sun 12:00 to 23:30

Late night refreshment: Mon to Sat 23:00 to 03:00, Sun 23:00 to 00:00

Southwark council saturation policy for Borough and Bankside

25. 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 5 November 2008, and extended the area in April 2011. This application falls within the policy area.
26. 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.
27. 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.
28. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

Southwark Council statement of licensing policy

29. Council assembly approved the third revision of Southwark's statement of licensing policy 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 reinforces 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.
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 £450.00 being the statutory fee payable for premises within non-domestic rateable value band D has been paid by the applicant company in respect of this application.

Consultation

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 a local newspaper and a similar notice exhibited at the premises for a period of 28 consecutive days.

Community impact statement

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

Director of Legal Services

34. The sub-committee is asked to determine the application for a premises licence under Section 34 of the Licensing Act 2003.
35. The principles which sub-committee members must apply are set out below.

Principles for making the determination

36. 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.
37. 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.
38. 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 a responsible authority or other party
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
39. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is appropriate for the promotion of the licensing objectives to:
 - (a) to grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers appropriate for the promotion of the licensing objectives

- 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

40. 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 appropriate to do so. Conditions must be appropriate 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.
41. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
42. 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.
43. Conditions will not be appropriate 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.
44. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

45. If the sub-committee determines that it is appropriate to modify the conditions, or to refuse the application to vary the premises licence, it must give reasons for its decision.

Hearing Procedures

46. 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:
 1. Address the authority
 2. If given permission by the committee, question any other party.
 3. 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.
47. 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

48. 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.
49. 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 an administrative 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.
50. As an administrative 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.
51. 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.

52. 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 an administrative body, members are required to avoid both actual bias, and the appearance of bias.
53. 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.
54. 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.
55. Responsible authorities, other persons 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

56. 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 Hub 2 3rd Floor 160 Tooley Street SE1 2TZ	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	The current premises licence
Appendix B	The variation application
Appendix C	Environmental protection team representation
Appendix D	Southwark police licensing office representation and related correspondence
Appendix E	Ward councillor representation and related correspondence
Appendix F	Party 1 representation and related correspondence
Appendix G	Party 2 representation
Appendix H	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins - Director of Environment and Leisure	
Report Author	Wesley McArthur, Licensing Enforcement Officer	
Version	Final	
Dated	22 March 2013	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Strategic Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team		22 March 2013