

Item No. 5	Classification: Open	Date: 19 August 2009	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – REVIEW REPORT. RnB Club, 12a Station Way SE15 5RX	
Ward(s) or groups affected:		The Lane	
From:		Director of Environment & Housing Department	

RECOMMENDATION

1. That the Sub-Committee consider the application made under Section 53(a) of the Licensing Act 2003 by the metropolitan police for a full summary review of the premises licence issued to Fredrick Gayle and Valentine Ohagwa in respect of the premises known as the RnB Club at 12a Station Way, SE15 5RX
2. Notes
 - *The grounds for the review are stated in paragraph 12 – 20 of this report.*
 - *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 prior to the meeting.*

BACKGROUND INFORMATION

3. Section 53(a) of the Licensing Act 2003 provides facility
 - For the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime and / or serious disorder; and
 - The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.
4. In summary, the process is:
 - A local chief officer of police may apply to the licensing authority for an expedited review of a premises licence where a senior police officer has issued a certificate stating that in his / her opinion the premises are associated with serious crime or disorder (or both);
 - On receipt of the application and certificate the licensing authority must within 48 hours consider whether it is necessary to take interim steps pending determination of the review of the premises licence – the authority must in any event undertake a review within 28 days of receipt of the application;
5. The range of options open to the licensing authority at the interim steps stage are
 - Modification of the conditions of the premises licence;
 - The exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - Removal of the designated premises supervisor from the licence; and
 - Suspension of the licence.

6. Following the full licence review the licensing authority may

- Take any of the above option or
- Revoke the licence.

KEY ISSUES FOR CONSIDERATION

The premises licence

7. On 05 August 2005, during the transitional period of the implementation of the Act, an application was made under Schedule 8 by Mr Frederick A Gayle and Valentine Ohagwa for the conversion of existing Justices Licence and entertainment licence into a Premises Licence, in respect of the premises known as RnB Club at 12a Station Way, SE15 5RX. The application sought a conversion and the variation of the existing licence.
8. The application was initially opposed by the Police and the Council's Noise Team, the applicant agreed to further conditions and the representations were withdrawn and the licence granted on 04 October 2005
9. The premises is currently licensed under the Licensing Act 2003 for:
 - The retail sale of alcohol;
 - The provision of a range of regulated entertainments; and
 - The provision of late night refreshments
10. The premises licence is held jointly by Frederick Gayle and Valentine Ohagwa. Mr Gayle is also as being the designated premises supervisor for the premises.
11. A copy of the premises licence is attached to this report as appendix A. The licence document provides the full range of licensed activities; days and times of operation and licence conditions.

The application

12. On 29 July 2009 the licensing service received a certificate under section 53a(1)(b) of the 2003 Licensing Act, signed by a senior officer of the metropolitan police service, stating that he is of the opinion that the premises known as the RnB Club at 12a Station Way, SE15, are associated with serious crime and serious disorder and requesting that the licensing authority suspend the relevant premises licence, with immediate effect, pending a full review of the licence. The certificate was accompanied by an application for a review of the premises licence under section 53a and other background information. A copy of the full set of documents is attached to this report at appendix B.
13. On receipt of the application and the certificate the licensing authority must within 48 hours consider whether it is necessary to take interim steps pending determination of the review of the premises licence. On 31 July 2009 the application was brought to the sub-committee for consideration as to whether it is necessary to take any interim steps in advance of the full review hearing scheduled for 19 August 2009.
14. This meeting was not a formal hearing and the licence holders did not need to be present at this stage of the consideration. However, one of the licensees Mr Gale did attend and was given the opportunity to address the Sub-Committee but chose not to.

It was decided to initiate the interim step to suspend the premises licence until the full review hearing, scheduled for 19 August 2009, has been determined, a copy of that decision is attached as appendix C

Representations from Responsible authorities

15. No other relevant representations have been received.
16. The Planning Authority have commented on the planning enforcement notice and appeal contained in the Police evidence to summarise the current planning situation as follows:
 - The current use of the premises as a night club is unauthorised. An Enforcement Notice was served on the premises requiring the cessation of the use of the premises as a night club. This notice was subsequently appealed by Mr Gayle. The Planning Inspectorate dismissed Mr Gayle's appeal and upheld the Enforcement Notice. As determined by the Planning Inspectorate, Mr Gayle is required to carry out the following actions before the 9th September 2009:
 - Cease the use of 12A Station Way, London, SE15 4RX as a night club and remove from the site all fixtures, fittings, equipment and machines that primarily relate to the use of the premises as a nightclub.
 - The Planning Enforcement section will be carrying out a site visit after 9th September 2009 to assess whether the requirements of the Enforcement Notice have been complied with.

Interested parties

17. There have been no representations received by interested parties.

The local vicinity

18. A map of the local vicinity is attached as appendix D.

Southwark statement of licensing policy

19. The Southwark Statement of Licensing Policy 2008-2011 revision was approved by council assembly in November 2008. 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;
 - 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; and
 - Section 10 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 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

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

CONSULTATIONS

22. Consultation undertaken upon this application has been carried out in accordance with the provisions of the Licensing Act 2003. The application was advertised for seven consecutive days near to the premises and the posters were checked and in place at the end of the period. The application was also advertised on the Council's website. Responses are detailed elsewhere in this report.

Equal opportunities implications

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

SUPPLEMENTAL ADVICE FROM OTHER OFFICERS

Concurrent Report by the Strategic Director of Communities, Law & Governance

24. The licensing authority must hold a hearing to consider the application for the review under section 53A of the Licensing Act 2003 and any relevant representations.

25. The Sub-Committee is asked to determine the review under section 53A(2)(b) in accordance with Section 53C of the Act. The Sub-Committee must take steps it considers to be necessary for the promotion of the licensing objectives. The four licensing objectives are:

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

26. The Sub-Committee must consider what steps (if any) should be taken to secure the promotion of the licensing objectives. The steps that may be taken by the Sub-Committee are:

- Modification of the conditions of the premises licence;
- Exclusion of a licensable activity from the licence;
- Removal of the designated premises supervisor;
- Suspension of the licence for a maximum period of three months; or
- Revocation of the licence.

27. Members should note that the modification of conditions and exclusions of licensable activities may be imposed on either a permanent basis, or for a temporary specified period which must not exceed 3 months.

28. Where the authority determines an application for review it must notify the determination and reasons for making it to –
- the holder of the premises licence;
 - any person who made relevant representations; and
 - the chief officer of police for the area (or each police area) in which the premises are situated.
29. The Chief Officer of Police, the premises licence holder and any other person who made relevant representations 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
30. The Sub-Committee's decision will not have effect until either the end of the 21 day period given for appealing against the decision, or if the decision is appealed against, the time the appeal is disposed of.
31. Members should note that the interim steps taken shall remain in force until such time as either the appeal period has expired or the appeal has been disposed of.

Hearing procedure

32. 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.

Council's multiple roles and the role of the Licensing Sub-Committee

33. 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.

34. 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.
35. The Sub-Committee can only consider matters during the hearing 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.
36. 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.

Guidance

37. 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 information

Background Papers	Held At	Contact
Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) 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

Audit trail

Lead Officer	Gill Davies, Strategic Director	
Report Author	David Franklin Team Leader	
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Dated	05 August 2009	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	10 August 2009	