

Item No. 5.	Classification: Open	Date: 7 April 2015	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Ibb's Bar Ltd, 6 Arnside Street, London SE17 2AP	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Ibb's Bar Ltd for a new premises licence under the Licensing Act 2003 in respect of the premises known as Ibb's Bar Ltd, 6 Arnside Street, London SE17 2AP.

Notes:

2. This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and from one other person, and is therefore referred to the sub-committee for determination. A copy of the full application is attached as Appendix A.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
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 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.

Premises operating history

8. The premises was previously known as Sierra Spot and the premises licence was granted to Ishmail S Koroma and Mrs Stella Pieh at licensing sub-committee on the 11 January 2010.
9. The initial application for the licence had been met with objections from local residents due to the manner in which the premises was being operated prior to the application being made and the anticipation of further nuisance. The application had therefore been determined by the licensing sub - committee which granted the licence with reduced hours and without permission for recorded music to be played as regulated entertainment.
10. Subsequent to the licence being granted there were complaints relating to noise nuisance and the operation of the premises beyond its permitted hours. This resulted in both of the premises licence holders being interviewed under caution and Southwark Council securing a successful prosecution against both premises licence holders.
11. The licensing team received an application to vary the premises licence on 18 November 2013 which, if granted, would have had the effect of increasing the operating hours of the premises licence. This application was later withdrawn.
12. 52 Complaints were received by the council's licensing team and noise team, these complaints were mainly concerned with the operation of the premises under the previous management and frequently were related to the use of the premises outside of the hours of operation on the previous premises licence. The complaints were concerned with noise from loud music from the premises, noise from patrons talking and shouting while congregating outside the rear of the premises and the front of the premises, patrons urinating outside at the rear of the premises.

Revocation

13. On the 14 February 2014 the Southwark Council licensing team, as a responsible authority sought the review of the premises licence on the grounds of the prevention of crime and disorder and the prevention of public nuisance. The licensing sub - committee took the decision to revoke the licence for the premises.
14. The review was submitted in response to complaints from local residents to the noise team and licensing unit with regard to noise nuisance and continued breaches of the premises licence conditions and operating beyond licensed trading hours. The notice of decision for this review application is detailed at Appendix H.

15. The decision was appealed by the premises licence holders and was allowed to continue to operate until the appeal was determined in the Magistrates Courts on 17 October 2014 where the decision to revoke the premises licence was upheld.

KEY ISSUES FOR CONSIDERATION

The premises licence application

16. On 29 December 2014 Ibb's Bar Ltd applied to this council for the grant of a new premises licence in respect of the premises known as Ibb's Bar Ltd, 6 Arnside Street, London, SE17 2AP.
17. Due to issues in regards to display of the blue site notice at the premises, amended plans and an error on the applicants behalf in relation to the prescribed fee for the new premises licence application, the consultation period for last date of objection to this application has had to be extended from the 26 January 2015 to the 09 March 2015.
18. The amended application operating hours is summarised as follows:
 - **Late night refreshment (Indoors)**
Monday to Thursday: 23.00 to 00.00
Friday and Saturday: 23.00 to 00.30
 - **Supply of alcohol (on the premises)**
Monday to Thursday: 12.00 to 23.30
Friday to Saturday: 12.00 to 00.00
Sunday: 12:00 to 22:00
 - **Opening hours**
Monday to Thursday: 12.00 to 23.30
Friday to Saturday: 12.00 to 00.00
Sunday: 12.00 to 22.30
19. The premises licence application form provides the applicant's operating schedule. Parts J, K, L and M set out the proposed operating hours and operational control measures in full, with reference to the four licensing objectives as defined 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 A.
20. The applicant has also submitted a staff handbook in support of the application. A copy of this supporting document is attached as appendix A1.

Designated Premises Supervisor

21. The proposed designated premises supervisor (DPS) is Kumba Gbondo who has a personal licence issued by the London Borough of Lewisham.

Representations from responsible authorities

22. Southwark Council environmental protection team (EPT) submitted a representation to this application based on public nuisance. The EPT state that the proposed

opening hours Monday to Thursday are too late to prevent patrons leaving the premises and causing public nuisance to sleeping residents both above, opposite and adjacent to the premises. The EPT state that the applicant has not addressed the licensing objective 'the prevention of public nuisance' in the application. Furthermore, the EPT state that although the application has not included licensed entertainment, the applicant may wish to use the provision of the Live Music Act 2012 to provide entertainment to patrons.

23. The EPT have proposed reduced operating hours of the premises and conditions to address concerns in relation to public nuisance. The EPT objection is attached as Appendix C.
24. A representation has been submitted from the health and safety team on the grounds of public safety. A number of concerns have been raised in regards to the application and the operation of the premises which currently remain outstanding. A copy of the representation is detailed at Appendix D.
25. The planning department have submitted a representation to the application on the grounds of public nuisance. Planning state that the site of this premises does not have planning permission for use as either a bar, restaurant or entertainment venue. This is currently outstanding. A copy of this representation is attached as Appendix E.
26. Licensing as a responsible authority have submitted a representation to this application on the basis of concerns on all four licensing objectives. Licensing as a responsible authority state 'the operating schedule does not put in place any control measures to adequately address any of the licensing objectives. A copy of this representation is attached as Appendix F

Representations from other persons

27. Six local residents have given permission for a seventh local resident to speak on this matter on their behalf and submit a joint representation to this application.
28. The local residents' representation is concerned with noise from the premises keeping children living in the area awake, urination in driveways, the use of the rear of the premises by patrons causing noise disturbance, patrons congregating outside the premises and blocking the footpath and intimidation of women passing the patrons, noise and violent behaviour and fighting at closing time.
29. The residents put forward a number of suggested conditions to mitigate their concerns. A copy of this representation is attached as Appendix G.

Equalities Act

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

Conciliation

31. On the 11 March 2015, following discussions between the applicant and the Metropolitan Police Service the applicant advised the Southwark Council licensing authority that a conciliation agreement has been reached with the Metropolitan Police Service.

32. The Metropolitan Police Service have confirmed that agreement has been reached with the applicant and they wish to withdraw their representation to this application.
33. The applicant has now confirmed that they have amended their operating schedule to reflect proposed conditions of the Metropolitan Police and to amend the opening hours of the premises. A copy of the metropolitan police representation and conciliation statements is attached as Appendix B.

The local area

34. A map of the area is attached to this report as Appendix I. The premises is 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 terminal hours are also shown on the map:

Off licences

- **D B Off Licence**, 16 Westmoreland Road, London SE17 (Monday to Saturday until 23.00 and Sunday until 22.30)
- **Costcutter Supermarket**, 25 Camberwell Road, London SE5 (Monday to Sunday, 24 hours)
- **Umashiv News**, 23 Westmoreland Road, London SE17 (Monday to Saturday until 23:00 and Sunday until 22.30)

Public houses with entertainment

- **Red Lion**, 407 Walworth Road, London SE17 (Sunday to Thursday until 00.30 and Friday and Saturday until 01.30)

Late night refreshment

- **Walworth Kebab & Burger Bar**, 360 Walworth Road, London SE17 (Sunday to Thursday until 02.00 and Friday and Saturday until 04.00)
- **La Luna**, 380 Walworth Road, London SE17 (Monday to Saturday until 00.30, Sunday until 00.00)
- **Winner**, 3 Westmoreland Road, London SE17 (Monday to Thursday until 00.00, Friday and Saturday until 00.30 and Sunday until 23.30)

Southwark Council statement of licensing policy

35. 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.
36. 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

37. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band B has been paid by the applicant company in respect of this application.

Consultation

38. 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 outside of the premises for a period of 28 consecutive days.

Community impact statement

39. 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

40. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
41. The principles which sub-committee members must apply are set out below.

Principles for making the determination

42. 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.

43. 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.
44. 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:
- 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
 - 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

45. 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.
46. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
47. 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.
48. 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.

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

Reasons

50. 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

51. 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
52. 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

53. 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.

54. 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.
55. 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.
56. 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.
57. 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.
58. 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.
59. 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.
60. 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

61. 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 3 rd Floor 160 Tooley Street SE1 2TZ	Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Premises licence application
Appendix A1	Applicant's supporting document (staff handbook)
Appendix B	Police representation and confirmation of conciliation
Appendix C	Environmental protection team objection
Appendix D	Health and safety team objection
Appendix E	Planning objection
Appendix F	Licensing as a responsible authority objection
Appendix G	Letter from six local resident's confirming that they elect one local resident to represent them
Appendix H	Notice of decision from the licensing sub-committee hearing on 14 February 2014
Appendix I	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Richard Kalu, Licensing Officer	
Version	Final	
Dated	16 March 2015	
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	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	18 March 2015	