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| <b>Item No.</b><br>5.              | <b>Classification:</b><br>Open | <b>Date:</b><br>26 June 2015  | <b>Meeting Name:</b><br>Licensing Sub-Committee |
| <b>Report title:</b>               |                                | Licensing Act 2003: Express Supersave, 109 – 115 Blackfriars Road, London SE1 8HW |   |
| <b>Ward(s) or groups affected:</b> |                                | Cathedrals  |   |
| <b>From:</b>                       |                                | 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 the Southwark Council's trading standards service for a review of the premises licence issued in respect of the premises known as Express Supersave, 109-115 Blackfriars Road, London SE1 8HW.
2. Notes:
  - a) The grounds for the review are stated in paragraph 12 to 16 of this report. A copy of the full application is provided as Appendix A.
  - b) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B.
  - c) This report deals with the representation submitted in regards to the review application. There is no representation in support of this application.
  - d) 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 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 current licence issued in respect of the premises known as Express Supersave, 109-115 Blackfriars Road, London SE1 8HW was issued to Tusha Patel and Suresh Patel on 3 August 2011. The licence permits the following licensable activities during the hours shown:
  - The sale by retail of alcohol to be consumed off premises  
Monday to Sunday 00.00 – 00.00 (24 hour sales)
  - The opening hours of the premises are as follows:  
Monday to Sunday 00.00 – 00.00 (24 hour)
10. A copy of the current premises licence is attached to the report as Appendix B.

### **Designated premises supervisor**

11. The designated premises supervisor (DPS) is Suresh Patel who holds a personal licence issued by Croydon Council.

### **The application for a review of the premises licence**

12. On 5 May 2015 an application for the review of the premises licence was submitted by Southwark Council's trading standards service. The grounds for the review relate to the following licensing objectives:
  - The prevention of crime and disorder
  - The protection of children from harm.

13. An officer from this council's trading standards service (TS) visited the premises on 13 March 2015 with police officers and the UK Border Force. The visit was to ascertain if the conditions of the premises licence issued in respect of the premises were being adhered to.
14. At the time of the visit a person who was working at the premises claimed to be a customer, however on investigation he was identified as being on a student visa and not permitted to work, he was also being paid £40 for 10 hour shifts – the national minimum wage (him being 30 years) should be £6.50 per hour. TS states that as well as being illegal and unfair on the person working, paying below the "minimum wage" distorts the market place by giving an unfair commercial advantage over any competitor seeking to act in accordance with the law.
15. The TS officer noted breaches of licence conditions 4A1, 4AB that both the training records and refusal books were not maintained in accordance with the licence conditions. (Details of these conditions are shown in the copy of the premises licence attached as Appendix B).
16. In the event the licensing sub-committee does not revoke the licence, TS request it to review the conditions on the existing licence and for the additional conditions which include amendments to the existing conditions to be made. (Details of these conditions are listed in the review application which is attached as Appendix A).

#### **Representations from responsible authorities**

17. There are no representations submitted from responsible authorities.

#### **Representations from other persons in support of review application**

18. There are no representations submitted by other persons.

#### **Licensing operating history**

19. The initial premises licence was issued in respect of the premises on 17 November 2005 to Tushar Patel and Suresh Patel. Suresh Patel has been the DPS to date. The licence granted was for the sale and supply of alcohol on Monday to Sunday from 07.00 till 00.00.
20. On 26 June 2011 an application was submitted to vary the hours of the premises licence to 24 hours. This application was opposed by both the police and trading standards. Both representations were conciliated as the applicant had agreed to conditions proposed by both parties. The licence was therefore granted on 3 August 2011.
21. On 4 May 2013 a licensing officer inspected the premises. Breaches of the licence or the act were noted and so the premises were therefore not compliant. A warning letter dated 7 May 2013 was sent to the licence holder.
22. A revisit was conducted on 24 January 2014 by a licensing officer to ascertain compliance with the breaches noted in the previous visit. The premises were found to be being operating in compliance with the conditions of the premises licence. A compliance letter dated 24 January 2014 was then issued. These letters are attached as Appendix C.

## **The local area**

23. A map of the area is attached to this report as Appendix D. The premises is identified by a diamond 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 including terminal hours are also shown on the map:

### **Off licences**

- Jeff's Food & Wine, 43 Webber Street, SE1 (Monday to Saturday till 23.00; Sunday till 22.30)

### **Public and Restaurant**

- The Crown, 108 Blackfriars Road, SE1 (Sunday to Thursday till 00.30; Friday and Saturday till 01.30)
- The Laughing Gravy, 154-156 Blackfriars Road, SE1 (Monday to Sunday till 01.45).

## **Southwark council statement of licensing policy**

24. 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 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.

25. 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**

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

## **Consultations**

27. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was exhibited outside the premises for a period of 28 days.

## **Community impact statement**

28. 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**

29. 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 any 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.
30. The principles which sub-committee members must apply are set out below.

### **Principles for making the determination**

31. 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.
32. 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.
33. 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.
34. 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.
35. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
36. 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.
37. 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.
38. 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**

39. 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**

40. 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.

41. 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**

42. 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.
43. 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.
44. 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.
45. 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.

46. 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.
47. 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.
48. 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.
49. 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**

50. 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**

51. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

### **BACKGROUND DOCUMENTS**

| <b>Background papers</b>  | <b>Held At</b>   | <b>Contact</b>                               |
|---|--|--|
| Licensing Act 2003<br>DCMS Guidance to the Act<br>Secondary Regulations<br>Southwark Statement of Licensing Policy<br>Case file | Southwark Licensing,<br>C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH | Kirty Read<br>Phone number:<br>020 7525 5748 |

### **APPENDICES**

| <b>No.</b> | <b>Title</b>                                  |
|------------|---|
| Appendix A | Copy of the review application                |
| Appendix B | Copy of the premises licence                  |
| Appendix C | Copy of letters (both warning and compliance) |
| Appendix D | Map of area                                   |

**AUDIT TRAIL**

|   |  |                          |
|---|--|--------------------------|
| <b>Lead Officer</b>   | Deborah Collins, Strategic Director of Environment and Leisure |                          |
| <b>Report Author</b>  | Dorcas Mills, Principal Licensing Officer                      |                          |
| <b>Version</b>  | Final  |                          |
| <b>Dated</b>  | 12 June 2015   |                          |
| <b>Key Decision?</b>  | No   |                          |
| <b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b> |  |                          |
| <b>Officer Title</b>  | <b>Comments sought</b>   | <b>Comments included</b> |
| Director of Legal Services  | Yes  | Yes                      |
| Strategic Director of Finance and Corporate Services                    | Yes  | Yes                      |
| <b>Cabinet Member</b>   | No   | No                       |
| <b>Date final report sent to Constitutional Team</b>                    | 12 June 2015   |                          |