

Item No. 7.	Classification: Open	Date: 26 June 2015	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Bermondsey Express, 212 Jamaica Road, London SE16 4BD	
Ward(s) or groups affected:		Surrey Docks	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Mr Jahanzaib Safdar for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Bermondsey Express, 212 Jamaica Road, London SE16 4BD.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to a representation and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 11 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 A.
 - c) Paragraphs 12 to 15 of this report deal with the representations submitted in respect of the application. A copy of each of the relevant representations submitted is attached at appendices B, C and D.
 - 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 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 persons 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 premises licence application

8. On 29 April 2015 Jahanzaib Safdar applied to this council for the grant of a new premises licence in respect of the premises known as Bermondsey Express, 212 Jamaica Road, SE16 4BD.
9. The application is summarised as follows:
 - **The sale of alcohol:**
Sunday to Thursday from 07.00 to 23.00
Friday and Saturday from 07.00 to 00:00
 - **Opening hours:**
Sunday to Thursday from 07.00 to 23.00
Friday and Saturday from 07.00 to 00:00
10. A copy of the application is attached for information at Appendix A. The premises application includes the applicant's operating schedule. Parts J, L and M set out the proposed operating hours and operational controls 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.

Designated premises supervisor

11. The proposed designated premises supervisor is Jahanzaib Safdar.

Representations from responsible authorities

12. There is one representation to consider in respect of this application submitted from the Southwark Police Licensing Office (SPLO). The representation notes that “this premises has been the subject of extensive enforcement work, eventually leading to the revocation of the premises licence. Throughout the entire process the premises remained in the overall control of Mr Iftikhar Ahmed as the lease holder to the premises. Having had the licence to sell alcohol revoked the premises still remains in the control of Mr Ahmed. During the review process a number of new applications were received and were subject to representations from the police and trading standards units. These representations were upheld in favour of the responsible authorities and were rejected in full. Police are of the opinion that this is another attempt by Mr Ahmed to regain a licence to sell alcohol for a premises that is under his control.
13. A copy of the representation submitted by the police is attached as Appendix B

Representations from other persons

14. One relevant representation against the application has been submitted by a local ward councillor. This relates both to the previous operation of this premises and local concerns over alcohol related anti-social behaviour. A copy of the representation is attached as Appendix C.
15. Two submissions have been made from other persons in support of the application. These are attached at Appendix D.

Conciliation

16. No conciliation has taken place in the course of this application.
17. On 8 June 2015 Mr Safdar provided email correspondence, attached at Appendix E which states that he has “established a new entity and business will be operating under the management of Thothal Ltd. It has been brought to my attention that you (the police) have raised an objection for the off licence and are of the opinion that the business is still in control of Mr Iftikhar Ahmed. I would like to assure you that I have nothing to do with the above gentlemen and am not related to him in any way whatsoever. I acquired the business because I see potential in it and can turn it around. I have already requested the lease to be transferred to my name and this can be checked with Southwark property association. I would be grateful if you remove the objection made to the licence as (the) off licence is very important for this shop.”
18. The representation from the police remains.
19. Enquiries have been made with property services about the stated intention to transfer the premises lease into the name of Mr Safdar. It is understood that this process has not commenced and that the current recorded tenant is Haribhai Patel / Payless Supermarkets Ltd. The current lease of the premises to Payless Supermarkets commenced in June 2009 and runs for 10 years through to June 2019. Payless are understood to have a management agreement with Mr Waqas Choudhary.
20. Records lodged with Companies House show that Mr Iftikhar Ahmed is the sole director of Payless Group Ltd, appointed in 1998.

Operating history

21. A premises licence was first granted in respect of this premises in April 2005, when an existing justices' off licence issued by Camberwell Green Magistrates Court was converted into a premises licence under the 'grandfather rights' provisions of the Licensing Act 2003.
22. On 26 June 2006 an application was submitted to transfer the licence to Payless Supermarkets Ltd. An amended licence was subsequently issued on 3 July 2006. Payless Supermarkets Ltd remained the licensee company until October 2008 when the licence was transferred to Mr Waqas Choudhary.
23. Mr Choudhary held the licence through to September 2012 and position of Designated Premises Supervisor also until January 2013.
24. On 24 February 2014 this council's trading standards service submitted an application to review the premises licence on the grounds of the protection of children from harm and the prevention of crime and disorder based on alleged offences witnessed by TS officers in February 2014. At that time a Mr Nauman Malik held the premises licence.
25. Three attempts were made to transfer the licence, including back into the name of Mr Waqas Choudhary, before the review application was finally determined. All were opposed by the police licensing office. The council's licensing sub-committee eventually met on 30 June 2014 and refused the one outstanding transfer application to Mr Waqas Choudhary and then revoked the premises licence (which had reverted back to Mr Malik following the refusal of the transfer).
26. Both matters were appealed to the magistrates' court.
27. Further attempt to transfer the premises licence to Mr Waqas Choudhary and a Ms Sedra Khan was made before the appeals were determined. This was opposed and refused by the licensing sub-committee in October 2014.
28. The respective appeals lodged by Waqas Choudhary and Nauman Malik against the decisions of the sub-committee to refuse the transfer application and revoke the premises licence were dismissed in the courts on 2 March 2015.
29. The premises is currently unlicensed.
30. On 29 April 2015 Jahanzaib Safdar made the application subject of this report.

The local area

31. A map of the area is attached to this report as Appendix E. The premises are identified by a diamond at the centre of the map. The following licensed premises are also shown on the map and are licensed as stated:
 - **The Boatman PH, 234 Jamaica Road, London SE16 4BD**
 - The sale of alcohol to be consumed on / off premises: Monday to Thursday 11.00 to 00.00, Friday to Saturday 11.00 to 02.00 and Sunday 12.00 to 23.00

- Live music, recorded music, anything similar to live or recorded music, performances of dance: Tuesday to Thursday 11.00 to 00.00, Friday and Saturday 11.00 to 02.00 and Sunday 12.00 to 23.00
- **Kotecha Stores, 208 Jamaica Road, London SE16 4RT**
 - The sale of alcohol to be consumed off premises: Monday to Saturday 08.00 to 23.00 and Sunday 10.00 to 22.30
- **Happy Families Grocery, 8 West Lane, London SE16 4NY**
 - The sale of alcohol to be consumed off premises: Monday to Sunday 09.00 to 00.00

Southwark council statement of licensing policy

32. 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.
33. 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

34. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

Consultation

35. 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 has been exhibited at the premises for a period of 28 consecutive days.

Community impact statement

36. 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

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

Principles for making the determination

39. 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.
40. 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 other persons or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
41. 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:
 - 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.
 - To exclude from the scope of the licence any of the licensable activities to which the application relates.
 - To refuse to specify a person in the licence as the premises supervisor.
 - To reject the application.

Conditions

42. 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 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.
43. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
44. 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.
45. Conditions will not be necessary 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.
46. Members are also referred to the DCMS guidance on conditions, specifically section 10, and Annex D.

Reasons

47. 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

48. 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.
49. 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

50. 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.
51. 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.
52. 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.
53. 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.
54. 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.

55. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
56. 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.
57. Other persons, 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

58. 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, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application
Appendix B	Representation submitted by responsible authority
Appendix C	Representations submitted by other persons
Appendix D	Submissions made in support of the application
Appendix E	Email from the applicant addressing the representation
Appendix F	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Licensing Enforcement Officer	
Version	Final	
Dated	11 June 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		12 June 2015