

Item No. 6.	Classification: Open	Date: 26 June 2015	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: T & S Afro Cosmetics Food & Wine 213a Rye Lane, London SE15 4TP	
Ward(s) or groups affected:		The Lane	
From:		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 Southwark Council's trading standards service for a review of the premises licence issued in respect of the premises known as T & S Afro Cosmetics Food & Wine, 213a Rye Lane, London SE15 4TP.
2. Notes:
 - a) The grounds for the review are stated in paragraph 12 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) Paragraphs 17 and 18 of this report deal with the representations submitted in regards to the review application. Copies of the representations are attached as Appendices 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 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 T&S Afro Cosmetics Food & Wine, 213a Rye Lane, London SE15 4TP was issued to Thambapillai Sivagi and Thambapillai Thanabalasingham on 5 February 2015. The licence permitted the following licensable activities during the hours shown:
- **The opening hours**
Monday to Saturday from 06.00 to 05.00 and Sunday from 06.00 to 01.00
 - **Late Night Refreshment**
Monday to Saturday from 23.00 to 05.00 and Sunday from 23.00 to 01.00
 - **Sale by retail of alcohol to be consumed off the premises**
Monday to Saturday from 06.00 to 02:00 and Sunday from 06.00 to 01.00.
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 Thambapillai Thanabalasingham who holds a personal licence issued by London Borough of Lewisham.

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. The trading standards service visited the premises on 10 April 2015 to carry out a joint visit with the Metropolitan Police Service to enforce various fair trading laws and to ensure that the licence conditions were being complied with and the licensing objectives adhered to. On examining the alcohol offered for sale in the premises, the trading standards officers found non-duty paid alcohol totalling 41 litres of alcohol being displayed for sale.
14. Trading standards noted a breach of condition 488 of the premises licence, namely an age verification policy.
15. In addition to the licence breaches the trading standards officer also noted that food items for sale to the public were still on display on the shelves when the "best before date" or "use by date" has expired. The officer also noted food in the fridge which on sale to the public which was also beyond the safe consumption date.
16. A copy of the review application is attached to the report as appendix A.

Representations from responsible authorities

17. There is one representation from the public health authority. A copy of the representation is attached to the report as Appendix C.

Representations from other persons in support of the review application

18. There are two representations from other persons. They write in regard to the public nuisance caused by the premises and the customers that are attracted by the premises ease of entry to younger persons. A memory stick containing video footage has been enclosed with the representation and will be available to view at the hearing. Copies of the representations are attached to the report as Appendix D.

Licensing operating history

19. The records show that the premises have been licensed to Thambapillai Thanabalasingham and Thambapillai Sivagi since the 17 June 2005.
20. On the 12 February 2009 the licensing officer, visited the premises and witnessed the following breaches of the licence.
 - No licence summary on display
 - No premises licence available
 - No fire risk assessment.
21. These findings were followed up with a warning letter.
22. On 9 March 2009 a compliance letter was sent following the revisit of 12 February 2009 by a licensing officer.

23. On 17 October 2014 the current licensees made a variation application for the provision of late night refreshment, for the sale of hot dogs and coffee to be served via a service hatch between the hours of 23.00 and 05.00 in keeping with condition 340 of the licence conditions.
24. On 18 November 2014 the police filed a representation with certain conditions to be met by the applicant. These are as follows:
 - That a CCTV System be installed at the premises and be maintained in good working order to the satisfaction of the Metropolitan Police and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises.
 - That all CCTV footage shall be kept for a period of thirty one days and shall, upon request, be made immediately available to officers of the police and council.
25. The licenses complied with the police conditions and the premises licence was issued on the 5 February 2015.

The Local Area

26. A map of the area is attached to this report as Appendix E. 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:
 - **Rye Lane News and Off Licence, 164 Rye Lane, London SE15**
Licensed for the sale of alcohol on Monday to Saturday from 08.00 to 23:00 and Saturday from 10.00 to 22.30
 - **Netto Food Store Ltd, 231-235 Rye Lane, 174 Rye Lane, London SE15**
Licensed for the sale of alcohol Monday to Saturday from 08.00 to 23.0 and Sunday from 10.00 to 22.30
 - **Nags Head 231 – 235 Rye Lane, London SE15**
Licensed for the sale of alcohol, live music, recorded music, facilities for dancing, and late night refreshment.

Southwark council statement of licensing policy

27. 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.
28. 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

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

Consultations

30. 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

31. 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

32. 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.
33. The principles which sub-committee members must apply are set out below.

Principles for making the determination

34. 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.
35. 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.
36. 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.
37. 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.
38. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
39. 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.
40. 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.
41. 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

42. 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

43. 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.
44. 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

45. 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.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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

53. 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

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

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	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Copy of the premises licence
Appendix C	Representation from the public health authority
Appendix D	Representations from other persons
Appendix E	Map of area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	
Dated	12 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	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	12 June 2015	