

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 2 December 2015	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: The Coronet, 28 New Kent Road, London SE1 6TJ and The Coronet, Railway Arches 3,4, 5 and 6, Elephant Road, Elephant Mews, London SE17 1LB	
<b>Ward(s) or groups affected:</b>		East Walworth	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

1. That the licensing sub-committee considers an application made under Section 53C of the Licensing Act 2003 by the Chief of Police for the Metropolitan Police area for a review of the premises licence in respect of the premises known as The Coronet, 28 New Kent Road, London SE1 6TJ and The Coronet, Railway Arches 3,4 ,5 and 6, Elephant Road, Elephant Mews, London SE17 1LB.
2. Notes:
  - a) The grounds for the review are stated in paragraphs 14 to 19 of this report. A copy of the full application and certificate are provided as Appendix B.
  - b) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix A.
  - c) The review application is supported by a responsible authority. Paragraph 21 deals with the representation received for the application. A copy of the relevant representation is provided as Appendix G.
  - 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 new 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 persons 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 other person 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. There are currently two premises licences in respect of the premises known as The Coronet, for two different parts of the premises. The main part of the building is at 28 New Kent Road, London SE1 6TJ and the annex at Railway Arches 3,4 ,5 And 6, Elephant Road, Elephant Mews, London SE17 1LB. Both premises licences are held by Elephant Music Limited.
10. 28 New Kent Road (licence number 840278) has held a premises licence since the transition of licences in 2005 and the details of the current licence are:
  - Opening hours:  
Monday to Wednesday from 09.00 to 03.30  
Thursday to Sunday 09.00 to 07.30
  - Licensable activities: Plays, films, indoor sports, boxing or wrestling, live music, recorded music, performances of dance, anything similar to live/recorded music and sale of alcohol:  
Monday to Wednesday from 09.00 to 03.00  
Thursday to Sunday from 09.00 to 07.00

- Late night refreshment:  
Monday to Wednesday from 23.00 to 03.00  
Thursday to Sunday from 23.00 to 07.00.
11. Railway Arches 3-6 Elephant Road (licence number 840281) has held a premises licence since September 2011 and the details of this current licence are:
- Opening hours:  
Monday to Wednesday from 09.00 to 03.30  
Thursday to Sunday from 09.00 to 07.30
  - Licensable activities for Arches 3, 4, 5 & 6: Plays, films, indoor sports, boxing or wrestling, sale of alcohol:  
Monday to Wednesday from 09.00 to 03.30  
Thurs to Sunday 09:00 to 07:00
  - Late night refreshment:  
Monday to Wednesday from 23.00 to 03.00  
Thursday to Sunday from 23.00 to 07.00
  - Licensable activities for Arch 3 only: Live music, recorded music, performances of dance and anything similar to live/recorded music:  
Monday to Wednesday from 09.00 to 03.00  
Thursday to Sunday from 09.00 to 07.00.
12. A copy of both current premises licences are attached as Appendix A.

#### **Designated premises supervisor**

13. The designated premises supervisor is Samantha June Porter who holds a personal licence issued by the London Borough of Hackney.

#### **The review application and certificate**

14. On 10 November 2015 the Metropolitan Police applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as The Coronet, 28 New Kent Road, London SE1 6TJ and Railway Arches 3,4 ,5 And 6, Elephant Road, Elephant Mews, London SE17 1LB. A senior member of the police force for the area has certified that in his opinion the premises are associated with serious crime or serious disorder or both.
15. The review application states the premises licence numbers 840278, which relates to 28 New Kent Road, London SE1 6TJ, 840281 which relates to the annex at Railway Arch 3,4 ,5 And 6, Elephant Road, Elephant Mews, London SE17 1LB and 845674 which relate to a time limited premises licence which is now expired.
16. The police were contacted and have confirmed that the review is for both premises held by Elephant Music limited held for each of the addresses.
17. The application is concerned with serious incidents that took place on 8 November 2015. It is alleged that a fight broke out involving approximately 15 patrons, a noxious gas was discharged and a person was found with a stab wound and a gun

was seen all within the premises. Other crimes in or immediately outside the premises including three separate incidents of theft.

18. The certificate also states that although the premises has a good record of compliance and co-operation with the police and local authority including voluntary closure following serious incidents the police are concerned that the victim is not co-operating with the police and they are of the opinion that this may lead to retribution and reprisal attacks. They are also concerned that the premises is hosting a number of similar events in the next few months.
19. A copy of the application and certificate are attached to this report as Appendix B. Additional evidence submitted by the police is attached to this report as Appendices C & D. Any additional evidence submitted will be made available at the hearing.

#### **Representations from other persons**

20. There were no representations from other persons at the time of writing. Any representation received will be tabled at the hearing on 2 Dec 2015.

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

21. There is one representation submitted by the health and safety team who have made comments that there have been a number of violent incidents associated with this premises and the licensee needs to explain how they will deal with violence within the premises. They also need to carry out suitable and sufficient violence at work risk assessments and regularly review the risk assessments and security procedures for the premises. The representation is attached as Appendix G. Any further representations received will be tabled at the hearing on 2 Dec 2015.

#### **Time limited application**

22. A time limited premises licence was issued for an event that took place on Wednesday 23 Sept 2015 to extend the hours of the premises licence from 03.00 to 06.00.

#### **Complaints**

23. There have been a total of nine complaints this year recorded against the premises, the complaints have primarily been concerned with the venues entry queues, the failure to control noise from patrons leaving the venue and from noise from people in the immediate vicinity of the venue entrance. Some of the complaints however refer to the music being played outside the surrounding players from loud speakers.
24. There has also been councillor enquiries and complaints relating to noise and parking from The Coronet and neighbouring business which effect the Rockingham Estate. The local ward councillors, licensing unit and the management of the Coronet have been liaising to resolve the issues raised.

## **Operating history**

25. It is accepted by all parties concerned that the premises have a good record of compliance and cooperation with the responsible authorities, including voluntarily closing following serious incidents and pre-emptively cancelling events based on police intelligence. It is further accepted by the parties that an incident did occur on 8 November 2015 and further investigation is required into the incident. The premises however dispute the extent of the short comings as identified by the police at this point.
26. The expedited review application was determined on 12 November 2015. The licensing sub-committee considered the application made by the Metropolitan Police Service who informed the sub-committee that they had applied to the licensing authority for a summary review of the premises licence on 10 November 2015. This concerned a serious incident that had taken place on 8 November 2015 when a fight broke out involving approximately 15 patrons, a noxious gas was allegedly discharged and a person was found with a puncture wound and an SIA staff member witnessed a hand gun on the premises.
27. The police representative presented additional material with the review certificate and also at the interim hearing which consisted of a statement of witness from other police officers and also the officer who attended the incident on the day. These submissions are attached as Appendices C & D.
28. The premises management also submitted a risk assessment form 696 form and emails as evidence that the police had scored the said event low risk. This is attached as Appendix E.
29. The licensing sub-committee, having considered the evidence in conjunction with the police application and certificate under Section 53 A (1) (b) Licensing Act 2003, did not believe that the licence should be suspended. They however took the view that the modification of the conditions (which are listed below) and a prohibition of such similar events was appropriate and necessary to address the licensing objectives pending the determination of the review application at the full hearing on 2 December 2015. A copy of the notice of decision is attached as Appendix F.

## **The local area**

30. A map of the area is attached to this report as Appendix H. 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:**

- Davish News, 30 New Kent Road, London SE1 (Monday to Sunday till 23.00)
- Kiosk 3, Kiosk 3, Shopping Centre Elephant and Castle London SE1 (Monday to Thursday till 02.00, Friday and Saturday till 03.00 and Sunday till 23.00)
- Iceland, 300-304 Elephant and Castle Centre, London SE1 (Monday to Saturday till 23.00 and Sunday till 22.30)

## Public Houses

- The Charlie Chaplin, 26 New Kent Road, London SE1 (Monday to Saturday till 01.30 and Sunday till 23.30)
- Crown & Anchor, 116 New Kent Road, London SE1 (Monday to Thursday till 01.30, Friday and Saturday till 02.30 and Sunday till 00.30)
- Moj Sklep, 233 Shopping Centre Elephant and Castle, London SE1 (Mon – Sun till 00.30)
- London Palace Bingo Club, First Floor, Shopping Centre Elephant and Castle, London SE1 (Monday to Sunday till 23.30)
- Palace Superbowl, Shopping Centre Elephant and Castle, London SE1 (Monday to Sunday till 00.00)

## Restaurant & Late Night refreshment and Café's

- Tai Tip Mein Noodle House, 15 Elephant and Castle, London SE1 (Monday to Saturday till 23.30 and Sunday till 22.30)
- Castle Brasserie, 203 Shopping Centre Elephant and Castle, London SE1 (Monday to Sunday till 00.00)
- La Bodeguita Restaurant, 222-223 Elephant and Castle Shopping Centre, London SE1 (Sunday to Thursday till 00.00, Friday till 03.00 and Saturday till 04.00)
- La Bodeguita Café Bar, 256-257 Elephant and Castle Shopping Centre, London SE1 (Monday to Saturday till 23.30 and Sunday till 22.30)
- Castle Tandoori, Unit 200, Shopping Centre Elephant and Castle, London SE1 (Monday to Sunday till 03.00)
- Little Orient, Unit 237 To 238, Elephant and Castle Shopping Centre, London SE1 (Monday to Saturday till 21.30 and Sunday till 19.30)
- Jenny's Burgers, 206 Shopping Centre Elephant and Castle, London SE1 (Monday to Sunday till 23.15)
- Five Star Fish Bar, 118 – 120 New Kent Road, London SE1 (Monday to Thursday till 01.00, Friday and Saturday till 03.00 and Sunday till 00.00).

## **Southwark Council statement of licensing policy**

31. 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.
32. 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**

33. There is no fee associated with this type of application.

### **Consultation**

34. 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 working days.

### **Community impact statement**

35. 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 Law and Democracy**

36. The sub-committee is asked to determine, under Section 53C of the Licensing Act 2003, an application, made under Section 53A 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.
37. The principles, which sub-committee members must apply, are set out below.

## **Principles for making the determination**

38. Under Section 53(A)(2) of the licensing authority must determine a review application within 28 days of receipt of the application and reach a determination on that review.
39. 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.
40. 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.
41. 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 other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
42. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
43. 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.
44. 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.
45. 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**



46. 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**

47. 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.
48. 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**

49. 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.

50. 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.
51. 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.
52. 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.
53. 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.
54. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
55. 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.
56. 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**

57. Members are required to have regard to the Department for Culture Media and Sport 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

58. 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 2QH	Kirty Read Phone number: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Premises licence
Appendix B	Review application and certificate
Appendix C	Additional evidence submitted by police
Appendix D	Statement submitted at interim hearing by police
Appendix E	Risk assessment submitted by licence holder
Appendix F	Notice of decision from expedited review on 12 November 2015
Appendix G	Health and Safety Representation
Appendix H	Map of area

### AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	20 November 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 Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	20 November 2015	