

Item No. 5.	Classification: Open	Date: 27 January 2016	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: EV Restaurant, 97-99 Isabella Street, London SE1 8DA	
Ward(s) or groups affected:		Cathedrals	
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 environmental protection team (EPT) for a review of the premises licence issued in respect of the premises known as EV Restaurant, 97-99 Isabella Street, London SE1 8DA.
2. Notes:
 - a) The grounds for the review are stated in paragraph 12 to 15 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 16 – 24 of this report deals with the representations submitted in regards to the review application. Copies of the representations are attached as Appendices C & 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 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 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 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 EV Restaurant, 97-99 Isabella Street, London SE1 8DA was issued to Tas Restaurant Limited on 5 August 2014. The licence permits the following licensable activities during the hours shown:
 - Live music
Monday to Sunday 19:00 - 23:30
 - Recorded music
Monday to Sunday 11:00 - 00:30
 - Late Night Refreshment
Monday to Sunday 23:00 - 00:30
 - Sale of alcohol (on & off premises)
Monday to Sunday 11:00 - 00:30
 - Operating hours of the premises
Monday to Sunday 11.00 – 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 Zeynep Gokkaya who holds a personal licence issued by London Borough of Islington and has been the DPS since 5 August 2014.

The application for a review of the premises licence

12. On 7 December 2015 an application for the review of the premises licence was submitted by Southwark Council's environmental protection team. The grounds for the review relate to the following licensing objective:
 - The prevention of public nuisance
13. The grounds for the review are stated as to address the premises licence after numerous complaints have been made to Southwark Council regarding public nuisance and along with numerous visits by council officers who have witnessed public nuisance occurring.
14. The purpose of the review of the premises licence is to seek to address the existing conditions on the premises licence and to apply further conditions to prevent future public nuisances being created by this premises.
15. The review outlines the current conditions relating to the prevention of public nuisance, gives details of the visits made by council officers over the previous 18 months, the complaints received and engagement undertaken by the council with the premises management. Recommendations for new conditions are included in the review application, a copy of which is attached as Appendix A.

Representations from responsible authorities

16. There have been three representations made by responsible authorities as follows:
17. The council's health and safety team made a representation under the public safety objective and supports the review. It states that there are no risk assessments made at the premises under the Noise at Work Regulations 2005. Secondly that management need to explain and set capacity figures for the each area of the premises.
18. The council's licensing team submitted a representation in support of the review under the prevention of public nuisance and also under the prevention of crime and disorder and public safety. It asks that this review is looked not only on an individual basis, but collectively in conjunction with the reviews submitted for the adjacent premises Jack's Bar and Thai Silk as each is contributing to a cumulative public nuisance. The representation asks for the suspension of conditions relating to live and recorded music be lifted under section 177A(4) proposes a further condition to be imposed and adjustments to the conditions proposed by the environmental protection team review.
19. The public health representation supports the review application under the prevention of public nuisance and explains the health affects caused by noise pollution stating that noise pollution has been associated with a range of significant negative effects on health and wellbeing, including changes in mood, hypertension, and various heart troubles. In addition, it is probable that the noise pollution is leading to sleep deprivation for local residents, as the records of both the council teams' visits and the noise complaints reported loud noise at various times of night. Sleep deprivation has also been associated with a range of significant negative effects on health and wellbeing, including reduced cognitive ability, depression, obesity, heart disease, hypertension and diabetes.
20. The representations from the responsible authorities are attached as Appendix C.

Representations from other persons in support of review application

21. There are nine representations submitted by other persons, three from the ward councillors and six from local residents.
22. The ward councillors support the review and state that the premises has given rise to noise nuisance and anti-social behaviour from not adhering to licence conditions, allowing patrons to drink outside beyond the hour allowed and in areas outside the licensable area using the street as an extension of their premises. Also citing music noise escape from the premises by leaving the premises doors open.
23. The residents' representations cite public nuisance from the noise from crowds outside the premises with some patrons becoming intoxicated, over spilling into the public areas including the street from loud voices, shouting and screeching. Patrons are also blocking the safe passage for pedestrians who wish to walk down the street. Other issues include loud music from the premises with speakers placed near the entrances and the doors kept open; the noisy collection of refuse, including bottles in the early hours of the morning; litter, including broken glassware, left in the street for the council to clear up; vehicle noise from patrons leaving the premises including slamming car doors; patrons urinating in the street and patrons causing damage to residents vehicles.
24. The other persons' representations are attached as Appendix D.

Response to the review application

25. At the time of writing the premises licence holder has not submitted a response to the review application and representation, any submissions received prior to the hearing will be circulated.

Further information – deregulation of entertainment

26. Entertainment deregulation came into force on 6 April 2015.
27. Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
28. Live amplified music is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.
29. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Licensing operating history

30. The initial premises licence was issued in respect of the premises on 27 September 2007 to Tas Restaurant Limited. The licence activities and hours of operation have remained the same as in current licence.
31. On 5 August 2014 an application was submitted to vary the premises licence to include the current designated premises supervisor.
32. On 31 July 2015 at 21:05 a visit was made to the premises by a licensing officer working on the night time economy team. On approach they could hear loud music consisting of a heavy bass, from The Cut. They observed dozens of people drinking

outside on the Styles House side of the TfL ventilation shaft. Pint glasses were everywhere and not being collected. They observed that EV Restaurant was blasting music. All three premises had their doors and windows open.

33. On 28 August 2015 at 20:15 council officers visited the area and on arrival noticed crowds of people standing on the walkway outside EV's bar, Jack's Bar and Thai Silk drinking and chatting. EV's Bar had their front doors open and music was playing very loudly. All three venues were playing loud music and had their entire frontage open and people sitting opposite side of walkway and passageway in the gardens. Security SIA staff were observed in the outside area. There were approximately 100 plus people outside at the time of the visit. Music was being played at entertainment level amplified to a volume to cause significant local public nuisance.
34. Further visits were made during September and on 25 September 2015 at 21:00 officers who were monitoring outside Styles house on the Hatfield side and heard that noise was evident, especially at bass volume. The officers made their way to Isabella Street which was busy with patrons and observed that the front doors of all premises were open and that loud music was being played.

The local area

35. 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:
 - Thai Silk, Arches 94-95 Joan Street, London SE1(Monday to Sunday till 03:00)
 - Jacks Railway Arch 96, Joan Street, London SE1 (Sunday till 22:30, Monday to Wednesday till 23.30 and Thursday to Saturday till 00:30)

Southwark council statement of licensing policy

36. This application was received prior to 1 January 2015, therefore the licensing policy in force at the time of application should be used for the purpose of assisting with the determination of this review application.
37. 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.

38. 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

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

Consultation

40. 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

41. 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

42. 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.

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

Principles for making the determination

44. 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.

45. 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.
46. 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.
47. 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.
48. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
49. 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.
50. 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.
51. 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

52. 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

53. 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.
54. 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

55. 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, public health, childrens' services and the planning authority.
56. 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.

57. 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.
58. 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.
59. 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.
60. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
61. 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.
62. 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

63. 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

64. 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	Review application
Appendix B	Premises licence
Appendix C	Representations from responsible authorities
Appendix D	Representations from other persons
Appendix E	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	13 January 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		13 January 2016