

Item No. 5.	Classification: Open	Date: 4 August 2016	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: B.D. Wines, 1 Braganza Street, London SE17	
Ward(s) or groups affected:		Newington	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Bahader Mahil to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: B.D. Wines, 1 Braganza Street, London SE17 3RD.
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: B.D. Wines, 1 Braganza Street, London SE17 3RD under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and/or other persons and is therefore referred to the sub-committee for determination.
 - Paragraphs 8 to 10 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 B. A map showing the location of the premises is attached as Appendix E.
 - Paragraphs 12 to 17 of this report deal with the representations submitted in respect of the application. (Copies of the relevant representations and related correspondence are attached in Appendices C and D).

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.

Within Southwark, this council wholly administers the licensing responsibility.

4. 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.
5. 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.
6. 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 interested parties 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 current premises licence

7. The current premises licence issued in respect of the premises known as B.D. Wines, 1 Braganza Street, London SE17 3RD was issued on 25 February 2010 and allows the following licensable activities:
 - The sale by retail of alcohol to be consumed off of the premises: Monday to Saturday between 10:00 and 23:00 and on Sunday between 12:00 and 22:30
 - There are no standard opening hours in respect of the premises.

A copy of the existing premises licence is attached as Appendix A.

The variation application

8. On 10 June 2016 Bahader Mahil applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as B.D. Wines, 1 Braganza Street, London SE17 3RD.
9. The application is summarised as follows:
 - To allow the sale of alcohol at the premises on Monday to Sunday 24 hours a day
 - The proposed opening hours of the premises are Monday to Sunday 24 hours a day.
10. The premises licence application form provides the applicant's operating schedule. Parts J, K, L and M set out the proposed operating hours and operational control 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 additional conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

11. The designated premises supervisor (DPS) under the existing premises licence is Bahader Mahil. Bahader Mahil holds a personal licence issued by Redbridge Borough Council.

Representations from responsible authorities

12. This council's trading standards service (TS) submitted a representation in respect of all four licensing objectives. They have strong reservations as to the extension of hours of the supply of alcohol and request that the hours reflect Southwark's licensing policy. The representation also suggests various control measures which TS seek to become licence conditions should the variation be granted.
13. This council's public health directorate (PHD) submitted a representation in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation states that:

"...Research suggests that increased hours of alcohol sales are associated with increased alcohol consumption, increased alcohol-related injuries, and increased alcohol-related harm. Moreover, the current licensed hours are in line with Southwark's Statement of Licensing Policy..."

The representation recommends that the application be rejected.

14. This council's licensing responsible authority (LRA) submitted a representation in respect of the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation states that:

"The current premises licence has very few conditions within the operating schedule and this application to vary the licence offers no further control measures to address the licensing objectives should the premises be providing alcohol sales 24hrs..."

The representation further notes that the closing time suggested in this council's statement of licensing policy in respect of the premises is 23:00 daily. It also observes that the premises are located in a residential area and based on this observation and the above factors that the application should be refused.

15. Copies of the representations submitted by responsible authorities and any related correspondences are attached in Appendix C.

Representations from other persons

16. A local ward councillor submitted a representation rejecting the proposed variation and stated that:

"There have been reports of antisocial behaviour in Braganza Street in the last 2 years, and this could potentially exacerbate this...Braganza Street is actually a quiet residential street, as are the streets directly feeding off it. Furthermore, close by premises on the Walworth Rd that already have a 24hr licences are linked with antisocial behaviour in the area. I don't think that issuing another one would be beneficial to the local community..."

17. A copy of the local councillor's representation is attached to this report as Appendix D.

Conciliation

18. The applicant was sent copies of all of the representations. The applicant was advised to contact the responsible authorities to facilitate conciliation. Subsequent to considering the representations the applicant proposed amending the application so that only an earlier start time of 08:00 hours in regards to the sale of alcohol is sought in the application and that the end time in regards to the sale of alcohol will remain unchanged. The email correspondence confirming the proposed amendment to the application is attached in Appendix C. Although it is addressed solely to the local ward councillor who had submitted a representation, it is confirmed that a similar email outlining the proposed amendment to the application was also sent to the responsible authorities who submitted representations.
19. TS maintain their representation objecting to the application. TS contend that in the amendment to the application proposed by the applicant, the conditions suggested by TS in their representation have not been referred to.
20. The PHD replied to the suggested amendment stating that PHD recommends a start time of 11:00 hours in regards to the sale of alcohol. As the existing start time in regards to the sale of alcohol is 10:00 hours, PHD's reply is not applicable to this application, and the reply can be considered as a continued objection to the application despite the amendment to the application proposed by the applicant.
21. At the time of the writing of this report all representations remain outstanding and so must be considered by the licensing sub-committee. If applicable of any conciliation of the representations.

Operating history

22. On 10 May 2005 a premises licence in respect of the premises was issued to Bahader Mahil. Bahader Mahil was specified as the DPS of the premises.

23. On 10 December 2008 a licensing inspection of the premises was undertaken. One breach of licensing legislation was observed by the inspecting officer in that the premises licence summary was not on displayed at the premises. The premises were re-inspected on 8 January 2009 and were found to be operating compliantly.
24. On 28 May 2009 a review of the premises licence issued in respect of the premises was submitted by the Metropolitan Police Service. The review related to an amount of controlled drugs (cannabis) being found at the premises by the MPS on 15 May 2009 and also the sale of alcohol to a 15 year old during a test purchase undertaken jointly by the MPS and this council's TS service on 28 February 2009. At a licensing sub-committee hearing on 15 July 2009 to consider the review application, the sub-committee suspended the premises licence for 3 months and imposed conditions 788, 793, 834 and 836 on the premises licence (please see Annex 3 of the current premises licence attached to this report as Appendix A for details of the conditions).
25. On 20 August 2010 a licensing inspection of the premises was undertaken. The premises were found to be operating compliantly.
26. On 10 June 2016 Bahader Mahil applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as B.D. Wines, 1 Braganza Street, London SE17 3RD.
27. No complaints have been received in respect of the operation of the premises.
28. No temporary event notices have been submitted in respect of the premises.

Map

29. A map showing the location of the premises is attached as Appendix E. The location of the premises is indicated by a black diamond at the centre of the map. The following licensed premises are also shown on the map:

The Royal British Legion, 34 - 40 Braganza Street SE17 3RJ licensed for:

Sale of alcohol: Monday to Saturday 11:00 to 02:00 the following day and on Sunday 12:00 to 01:00 the following day.

Regulated entertainment: Monday to Saturday 11:00 to 01:45 the following day and on Sunday 12:00 to 00:45 the following day.

Spar, 1C Braganza Street SE17 3RD licensed for:

Sale of alcohol: Monday to Sunday 24 hours a day

Southwark council statement of licensing policy

30. Council assembly approved Southwark's statement of licensing policy 2016 - 20 on 25 November 2015. The policy came into effect on 1 January 2016. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
 - Section 5 – determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 – local cumulative impact policies. This sets out this authority’s approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
 - Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
 - Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
 - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
31. 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

32. A fee of £100.00 being the statutory fee payable for premises within non-domestic rateable value band A has been paid by the applicant company in respect of this application.

Consultation

33. 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 exhibited at the premises for a period of 28 consecutive days.

Community impact statement

34. 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

35. The sub-committee is asked to determine the application to vary the premises licence under section 34 of the Licensing Act 2003.
36. The principles which sub-committee members must apply are set out below.

Principles for making the determination

37. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
38. The general principle is that applications for variation 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.
39. 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 an other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
40. 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:
 - Add to, omit, and/or alter the conditions of the licence or
 - Reject the whole or part of the application for variation.

Conditions

41. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary 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.
42. The four licensing objectives are:
 - a) The prevention of crime and disorder
 - b) Public safety

- c) The prevention of nuisance
 - d) The protection of children from harm.
43. 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.
44. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
45. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
46. Members are also referred to the Home Office guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

47. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, 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 to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1)(a) requires the sub-committee to make its determination at the conclusion of the hearing.

The 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. 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 Home Office 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 Governance

58. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Guidance to the Act Secondary Regulations Southwark statement of licensing policy case file	Southwark Licensing c/o Community Safety and Enforcement 160 Tooley Street London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of existing premises licence
Appendix B	Copy of the application
Appendix C	Copies of representations submitted by responsible authorities and related correspondence
Appendix D	Copy of the representation submitted by an other person
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	20 July 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
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