

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 4 August 2016	<b>Meeting Name:</b> Licensing sub-committee
<b>Report Title</b>		Chick Chicken, 117 Peckham High Street, London SE15 5SE	
<b>Ward(s) of group(s) affected</b>		Peckham	
<b>From</b>		Strategic Director of Environment	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Nadeem Muhammad for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Chick Chicken, 117 Peckham High Street, London SE15 5SE.
2. Notes:
  - a) This application forms a new application for a premises licence, submitted under section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
  - b) 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 A.
  - c) Paragraphs 11 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted by responsible authorities are attached to this report in Appendix B. Copies of the representations submitted by other persons are attached to this report in Appendix C. A map showing the location of the premises is attached to this report as Appendix 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 premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence application**

8. On 28 May 2016 Nadeem Muhammad applied to this council for the grant of a premises licence in respect of Chick Chicken, 117 Peckham High Street, London SE15 5SE.
9. The application and is summarised as follows:

The provision of late night refreshment

  - Monday to Thursday between 23:00 and 02:00 the following day
  - Friday to Sunday between 23:00 and 05:00 the following day.

Non standard timings:

- Christmas Eve, New Year's Eve, Carnivals between 23:00 and 05:00 the following day.

Opening hours

- Monday to Thursday between 11:00 and 02:00 the following day
- Friday to Sunday between 11:00 and 05:00 the following day.

10. The premises licence application form provides the applicant's operating schedule. Parts J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating 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 conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached to this report in Appendix A.

### **Representations from responsible authorities**

11. Representations have been submitted by this council's environmental protection team (EPT), licensing responsible authority (LRA), public health directorate (PHD) and also by the Metropolitan Police Service (MPS).
12. The EPT's representation did not object to the hours of operation sought in the application. The EPT's representation suggested a number of control measures that the EPT contend should become conditions on the premises licence should the application be granted. The applicant agreed to include the conditions suggested by the EPT into the application. The EPT subsequently withdrew their representation.
13. The LRA's representation refers to this council's statement of licensing policy 2016 – 2020 (SoLP) and relates to the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation notes that the opening hours applied for are not consistent with the SoLP. The representation objects to the hours applied for, and recommends that the closing hours are as per those stated in the SoLP for such premises.
14. The PHD's representation has been submitted in respect of all four licensing objectives. The representation states that:  
  
*"...this location has had issues with violence, public nuisance and anti-social behaviour. The premises is also located beneath residents. Research shows that late night food takeaway establishments cause people to congregate which is likely to contribute to the above issues, particularly late at night..."*
15. The representation states that the premises are located in the Peckham cumulative impact policy area and contends that the applicant has not adequately rebutted the presumption that the premises will add to the cumulative impact of late night establishments on the licensing objectives stated. The representation recommends that the closing time for the premises remains at 23:00 each day of the week.

16. The MPS' representation states that the premises are within the Peckham cumulative impact policy and states that:

*"The applicant has not addressed the four licensing objectives in the application..."*

17. The representation also notes that the hours of operation requested fall outside of the relevant hours of operation suggested in this council's statement of licensing policy. The representation states that the application has not addressed cumulative impact concerns. Further to the applicant amending the operating hours of the premises and proposing control measures that will become conditions on the premises licence should the application be granted the MPS withdrew their representation.
18. Copies of the representations submitted by the responsible authorities and related correspondence are attached in Appendix B.

### **Representations from other persons**

19. Two representations have been submitted by local ward councillors. One of the representations was also submitted on behalf of a third local ward councillor. The representations were submitted in respect of the prevention of crime and disorder licensing objective. The representations contend that the proposed operation of the premises is likely to exacerbate existing anti-social behaviour and crime and disorder problems in the locale. One of the representations also refers to the Peckham cumulative impact policy (CIP). Copies of the representations submitted by other persons are attached in Appendix C.
20. **N.B. Please note that although some of the representations above refer to the Peckham CIP, the premises are not subject to the Peckham CIP.**

In regards to the Peckham CIP paragraph 136 of the SoLP states that:

*"...The classes of premises to which the policy applies is defined as follows – night clubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores; and similar premises."*

21. The premises are a takeaway premises and it has not been found that takeaways have an effect on the cumulative impact of crime and disorder in the area. Therefore the 'rebuttal presumption' does not apply to this application but the presumption to grant does apply to this application (in line with any other guidance stated in the SoLP).
22. The responsible authorities and local ward councillors who submitted representations have been informed of the above.

### **Conciliation**

23. The applicant was sent the representations submitted and advised to address the concerns within the representations. After considering the representations the applicant amended the operating hours sought in the application, agreed to include various control measures suggested by the EPT into the application and also proposed other conditions that will become conditions on the premises licence should the application be granted. Subsequent to this the MPS and EPT

withdrew their applications. The email correspondence from the applicant stating the amendment to the application is attached in Appendix B as are emails from the MPS and the EPT withdrawing their representations. At the time of the writing of this report the representations submitted by the LRA, PHD and the local ward councillors remain outstanding and must therefore be considered by the sub-committee.

### **Premises history**

24. No premises licence, or equivalent licence under prior legislation, has previously been granted in respect of the premises.

### **Temporary event notices (TENS)**

25. No TENS have been submitted in respect of the premises.

### **Map**

26. A map showing the location of the premises is attached to this report as Appendix D. The premises are identified at the centre of the map by a black circle. The following licensed premises are also shown on the map:

- **Peckham Town Square, Peckham High Street, London SE15** licensed for:

The provision of regulated entertainment:

On Sunday to Thursday between 10:00 and 20:00

On Friday and Saturday between 10:00 and 21:00.

- **Peckham Space, 89 Peckham High Street, London SE15 5RS** licensed for:

The provision of regulated entertainment:

On Monday to Sunday between 10:00 and 23:00.

- **Payless, 121-125 Peckham High Street, London SE15 5SF** licensed for:

The sale of alcohol to be consumed off the premises:

On Monday to Sunday 24 hours a day.

- **The Greyhound, 109 Peckham High Street, London SE15 5SE** licensed for:

The sale of alcohol to be consumed on or off the premises and the provision of regulated entertainment:

On Monday to Sunday between 09:00 and 01:00 the following day.

The provision of late night refreshment:

On Monday to Saturday between 23:00 and 23:30 the following day

- **Katies Kebab, 130 Peckham Hill Street, London SE15 5JT** licensed for:

The provision of late night refreshment:

On Monday to Sunday between 23:00 and 02:00 the following day.

- **Katies, 165 Peckham Hill Street, London SE15 5JZ** licensed for:

The provision of late night refreshment:

On Monday to Sunday between 23:00 and 02:00 the following day.

### **Southwark council statement of licensing policy**

27. Council assembly approved Southwark's statement of licensing policy 2011 - 14 on 12 October 2011. 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. These set out the 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.

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. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

### **Consultations**

30. 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 similar notices were exhibited outside of the premises for a period of 28 consecutive 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 Law and Democracy**

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

### **Principles for making the determination**

34. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
35. 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 interested party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

36. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- to grant the licence subject to:
    - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
    - Any condition which must under section 19, 20 or 21 be included in the licence.
  - to exclude from the scope of the licence any of the licensable activities to which the application relates
  - to refuse to specify a person in the licence as the premises supervisor
  - to reject the application.

### **Conditions**

37. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be 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.
38. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
39. 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.
40. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
41. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

## **Reasons**

42. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

## **Hearing procedures**

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 determination of an application for a premises licence under section 17 of the Licensing Act 2003. Regulation 26(1)(a) requires the sub-committee to make its determination at the conclusion of the hearing.

## **Council's multiple roles and the role of the licensing sub-committee**

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.

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

50. 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.
51. 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**

52. 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.

53. 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 DCMS 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	Kirty Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Application for a premises licence and related documents
Appendix B	Representations submitted by responsible authorities and related correspondence
Appendix C	Representation submitted by other persons
Appendix D	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
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<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
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