

Item No. 5.	Classification: Open	Date: 5 September 2016	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Unit 2, 777 Old Kent Road, London SE15 1NZ	
Ward(s) of group(s) affected		Livesey	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by George Nwachukwu for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Unit 2, 777 Old Kent Road, London SE15 1NZ.
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 11 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 12 to 17 of this report deal with the representations submitted by responsible authorities in respect of the application. Copies of the representations submitted are attached to this report in Appendix B. A map showing the location of the premises is attached to this report as Appendix C.
 - 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 8 July 2016 George Nwachukwu applied to this council for the grant of a premises licence in respect of Unit 2, 777 Old Kent Road, London SE15 1NZ. The premises are described as being a restaurant and take away.
9. The application and is summarised as follows:
- **The provision of late night refreshment:**
 - Sunday to Thursday between 23:00 and 00:00 (midnight)
 - Friday and Saturday between 23:00 and 02:00 the following day
 - **The provision of regulated entertainment:**
 - Friday and Saturday between 11:00 and 02:00 the following day
 - **The supply of alcohol to be consumed on the premises:**
 - Monday to Friday between 11:00 and 23:30
 - Saturday between 00:00 and 01:30 and then between 11:00 and 01:30 the following day
 - Sunday between 11:00 and 00:00 (midnight)

N.B. The above would mean a half hour break between the end of alcohol sales on Friday at 23:30 and the beginning of alcohol sales on Saturday at 00:00. This is possibly a mistake and the hours intended for the sale of alcohol are actually:

- Monday to Thursday between 11:00 and 23:30

- Friday and Saturday between 11:00 and 01:30 the following day
- Sunday between 11:00 and 00:00 (midnight)

The applicant can confirm the above at the hearing to determine the application.

- **Non standard timings:**

- That on New Year's Eve, Christmas Eve and all days preceding bank holidays regulated entertainment, late night refreshment and opening hours in respect of the premises shall be permitted between 11:00 and 02:00
- That on New Year's Eve, Christmas Eve and all days preceding bank holidays the sale of alcohol shall be permitted between 11:00 and 01:30

- **Opening hours**

- Sunday to Thursday between 23:00 and 00:00 (midnight)
- Friday and Saturday between 23:00 and 02:00 the following day

Designated premises supervisor

10. The proposed designated premises supervisor of the premises is George Nwachukwu who has been granted a personal licence by L.B. Lewisham.

N.B. The application was submitted online. Applications submitted online cannot be amended. Mistakes were made in the online application submission. These mistakes were corrected by way of additional application pages being provided to the licensing authority and these additional pages have been included with the pages completed online.

11. The premises licence application form provides the applicant's operating schedule. Parts F, I, 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 and additional pages amending the application are attached to this report in appendix A.

Representations from responsible authorities

12. Representations have been submitted by this council's public health directorate, environmental protection team, licensing responsible authority and the planning service .
13. The public health directorate's representation has been submitted in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation notes that closing times sought in the application are outside those recommended in this council's statement of licensing policy. Public health recommend the following:

- Alcohol sales to cease at 23:00 daily

- Off-sales of alcohol to be sold ancillary to a take-away meal
 - That all off-sales of alcohol to be sold in sealed containers to be consumed away from the premises
14. The environmental protection team's representation has been submitted in respect of the prevention of public nuisance licensing objective and suggests that the applicant considers an earlier closing time on Saturday and Sunday. The representation further suggests that the applicant consider submitting more specific plans to prevent noise escape from the premises and to avoid the operation of the premises causing statutory nuisance to nearby residents.
 15. The representation from the licensing responsible authority refers to this council's statement of licensing policy 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 this council's licensing policy and requests that the applicant consider providing an accommodation limit and dispersal policy in regards to the premises. The representation recommends that the hours of operation be amended to reflect those in the licensing policy and further recommends control measures that should become conditions of any licence granted subsequent to the application.
 16. The planning service's representation objects to the application in respect of the prevention of public nuisance licensing objective and contends that the proposed operation of the premises may have a detrimental impact on the residential properties to the rear of the site through associated noise, disturbance through parking and congregation of people in the vicinity of the premises.
 17. Copies of the representations submitted by the responsible authorities are attached in Appendix B.

Representations from other persons

18. No representations in respect of the application have been submitted by other persons.

Conciliation

19. The applicant was sent the representations submitted and advised to address the concerns within the representations. At the time of the writing of this report all of the representations submitted remain outstanding and must therefore be considered by the sub-committee. The sub-committee will be updated, at the hearing to determine this application, should any of the representations be conciliated prior to the hearing.

Premises history

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

Temporary event notices (TENS)

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

Deregulation of entertainment

22. On 6 April 2015 entertainment became deregulated and as a result:
- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music is deregulated between 08.00 and 23.00 at on-licensed premises provided the audience does not exceed 500 people, 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').

Map

23. 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 diamond. The following licensed premises are also shown on the map:

- **805 Restaurant, 805-809 Old Kent Road, SE15 1NX** licensed for:
 - The provision of late night refreshment on Monday to Sunday between 23:00 and 00:30 the following day
 - The sale of alcohol provision of regulated entertainment on Monday to Sunday between 14:00 and 00:30 the following day
- **Champagne Bar & Lounge, 817 Old Kent Road, SE15 1NX** licensed for:
 - The provision of late night refreshment on Monday to Sunday between 23:00 and 00:30 the following day
 - The sale of alcohol on Sunday to Thursday between 10:00 and 00:00 and Friday and Saturday between 10:00 and 03:00
- **Iceland Foods LTD, 789-799 Old Kent Road, SE15 1NZ** licensed for:
 - The sale of alcohol on Monday to Saturday between 08:00 and 23:00 and Sunday between 10:00 and 22:30
- **Murco Costcutter Hopfields Service Station, 747-759 Old Kent Road, SE15 1NZ** licensed for:
 - The sale of alcohol on Monday to Sunday between 00:00 to 00:00 (24 hours sales)
 - The provision of late night refreshment on Friday and Saturday between 23:00 and 05:00

Southwark council statement of licensing policy

24. Council Assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016.
25. Within Southwark's statement of licensing policy, the premises is identified as being within a residential area with a recommended closing time appropriate within this area for this categories of premises, being a restaurant as 23:00 hours daily. Takeaways are not considered as appropriate for this area.

26. Further 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.
27. 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

28. 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.

Consultation

29. 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

30. 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

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

Principles for making the determination

33. 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.
34. 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
35. 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 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

36. 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.
37. The four licensing objectives are:

- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
38. 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.
39. 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.
40. 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

41. 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

42. 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.
43. 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

44. 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.
45. 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.
46. 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.
47. 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.
48. 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.

49. 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.

50. 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

51. 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

52. 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 & 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
Appendix C	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	18 August 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		19 August 2016