

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 26 August 2016	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE	
<b>Ward(s) or groups affected:</b>		East Walworth	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

That the licensing sub-committee considers whether it is necessary to take interim steps pending the determination of an application made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area for a summary review of the premises licences in respect of the premises known Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE.

### 1. Notes:

- a) Under section 53A(2) of the licensing act 2003 the licensing authority must consider interim steps following the submission of an application under Section 53A of the licensing act 2003.
- b) A copy of the full application and certificate is attached as Appendix A.

## BACKGROUND INFORMATION

### The Licensing Act 2003

#### 2. 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.

#### 3. Within Southwark, the licensing responsibility is wholly administered by this council.

#### 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 summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

7. The premises in respect of the premises licence consists of a bar and restaurant on the ground floor of 280 Old Kent Road.
8. The premises licence was carried over from the Justices and music and dancing licences in the 2005 transition, the premises was called Pardis during this period with a different premises licence holder and DPS. This premises licence was revoked by the licensing sub-committee on 17 December 2013 following an expedited review application by the Police for a serious assault.
9. A new application for a premises licence was submitted by the current premises licence holder, Douglas Otunyo in 07 April 2014 with Mr Otunyo as the DPS.
10. An application to vary the premises licence was made on 22/09/2014 to extend the hours. The application was opposed by EPT and a resident and was granted at a hearing of the Licensing Sub-Committee on 06/11/2014.
11. A second application to vary the premise licence to extend the hours further and adjust conditions including to extend the last entry time was made on 13 November 2015. The application was opposed by the following responsible authorities; the Police, health and safety team, public health and licensing as a responsible authority and the application was partly granted at a hearing of the licensing sub-committee on 18 January 2016 and further conditions modified.
12. The details of the current premises licence that applies to both areas are:
- **Opening Hours:**  
Monday to Wednesday from 06:00 to 00:00  
Thursday from 06:00 to 00:30  
Friday and Saturday from 06:00 to 04:00  
Sunday from 06:00 to 00:30
  - **Live music:**  
Monday to Sunday from 12:00 to 23:00
  - **Recorded music:**  
Monday to Wednesday from 12:00 to 23:30  
Thursday from 12:00 to 00:30  
Friday and Saturday from 12:00 to 03:30  
Sunday from 12:00 to 00:30

- **Late night refreshment:**  
Monday to Wednesday from 23:00 to 23:30  
Thursday from 23:00 to 00:30  
Friday and Saturday from 23:00 to 03:30  
Sunday from 23:00 to 00:30
- **Sale of alcohol for consumption on the premises:**  
Monday to Wednesday from 12:00 to 23:30  
Thursday from 12:00 to 00:30  
Friday and Saturday from 12:00 to 03:30  
Sunday from 12:00 to 00:30.

13. A copy of the current premises licence is attached as Appendix B.

**Designated premises supervisor**

14. The designated premises supervisor (DPS) is Douglas Otunyo who has been the DPS since 7 April 2014 and holds a personal licence issued by the London Borough of Lewisham.

**The review application and certificate**

15. On 24 August 2016 the Metropolitan Police applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE.

16. A senior member of the police force for the area has certified that in his opinion the premises are associated with serious crime or serious disorder or both.

17. The application is concerned with a serious incident that took place on 21 August 2016 at approximately 03:00 hours it is alleged that a patron push a female to the floor and then threw a bottle hitting the head of a male patron causing injuries constant with grievous bodily harm.

18. On arresting the suspect the police were confronted by a hostile crowd outside the venue trying to prevent police from making the arrest and addition Police support was requested, two assaults on the police occurred.

19. A number of conditions were found to be contravened, including allowing patrons to enter the premises after the last entry time and allowing patrons to enter the premises without ID.

20. The police request that following interim steps are taken to prevent further incidents from occurring;

- The licence is suspended until such time as the full hearing is determined

21. The licensing sub-committee is not restricted to just considering this step.

22. A copy of the application and certificate are attached to this report as Appendix A.

### **The review procedure**

23. The current hearing is for the purpose of considering if interim steps are needed as a result of the police review and information submitted pending the full review hearing that will be held on 22 September 2016.
24. The licensing sub-committee is not obliged to hear evidence from other parties at this stage of the procedure. However the premises licence holder has been invited to attend the hearing and members can hear any representation made regarding interim steps.
25. The review is currently being consulted on and is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full hearing of the licensing sub-committee.
26. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

### **Operating History**

27. Two full premises inspections were made under the Licensing Act 2003, the first conducted on 24 January 2015 at 23:37, the premises was found to be in breach of five conditions of the premises licence, including the incorrect use of the ID scanning machine. A warning letter was sent on 28 January 2015.
28. A revisit on 22 March 2015 at 00:09 found the premises to be compliant.
29. The second conducted on 10 January 2016 at 02:20, the premises was found to be in breach of one condition of the premises licence, the ID scan was not being used to scan customers in.
30. Further visits by council licensing officers working on the night-time economy have been made and details of these visits are provided in Appendix C.

### **The local area**

31. A map of the local area is attached at Appendix D.
32. This premises is not in a cumulative impact area.
33. This premises is in a residential area under the Southwark Statement of Licensing policy 2016 – 2020 section 7 Hours of Operation, the following closing times are recommended by the policy as appropriate within this area for these categories of premises:
  - Closing time for restaurants and cafes is 23:00 daily
  - Closing time for public houses, wine bars or other drinking establishments is 23:00
  - Closing time for night clubs (with sui generis planning classification) are not considered appropriate for this area.

### **Southwark statement of licensing policy 2016-20**

34. 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.
35. 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**

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

### **Consultation**

37. The premises licence holder has been informed of the application for review and of the details of the interim hearing, they have indicated that they will attend the hearing.
38. The premises licence holder's representative has submitted a 696 promotion event risk assessment form for the event submitted to the Police central licensing promoters desk, the event was classified as low risk by the Police in an email dated

27 October 2015. An after event assessment by the club is also submitted. Copies of these documents are in Appendix E.

### **Community impact statement**

39. 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**

40. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003.
41. The principles, which sub-committee members must apply, are set out below.

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

42. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where.
- The application is properly made in accordance with Section 53A of the Act.
  - The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.
43. 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.
44. 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 necessary 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 premises licence.
45. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
46. The authority may decide to take no action if it finds no interim steps are necessary to promote the licensing objectives.
47. 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 a necessary and proportionate response.

48. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

49. Where the authority takes interim steps on an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

50. 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
    - To 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.

51. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

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

52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
58. 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.

59. There is no right of appeal to a magistrates' court against the licensing authority's decision regarding the setting of interim steps at this stage.

### **Guidance**

60. 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.

### **REASONS FOR LATENESS**

61. The reasons for lateness are that when an application for an expedited summary review is received from the Police under section 53a of the Licensing Act 2003 the Council's licensing authority has a statutory duty hold a hearing within 48 hours from receipt of the application to consider interim steps that may be placed on the premises licence until such time as the application can be fully determined.

### **REASONS FOR URGENCY**

62. The council has a statutory duty under section 53a to hold an interim hearing within 48 hours of receipt of a summary review.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Licensing Act 2003 Home Office Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

### **APPENDICES**

<b>Name</b>	<b>Title</b>
Appendix A	Copy of review application and certificate
Appendix B	Copy of the existing premises licences
Appendix C	Council night time economy team visits
Appendix D	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	David Franklin, Team Leader Licensing	
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