

Item No. 5.	Classification: Open	Date: 22 September 2016	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Review Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the licensing sub-committee considers an application made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area for a review of the premises licence in respect of the premises known as Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 19 to 26 of this report. A copy of the full application and certificate are provided as Appendix A.
 - b) The review application is supported by responsible authorities. Paragraphs 28 - 32 deal with the representations received for the application. Copies of the relevant representations are provided as Appendix C.
 - c) Paragraph 43 deals with licensed premises within a 100m radius of the premises. A map of the area is attached as Appendix F.
 - 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 new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder

- The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm
6. In carrying out its licensing functions, a licensing authority must also have regard to:
- The Act itself
 - The Guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own Statement of Licensing Policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations
7. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises in respect of the premises licence consists of a bar and restaurant on the ground floor of 280 Old Kent Road.
10. 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.
11. A new application was made by Douglas Otunyo, the application was subject to representations and was determined by the licensing sub committee on 20 June 2014. A premises licence was subsequently issued. The notice of decision is attached as part of Appendix E.
12. An application to vary the premises licence was made on 22 September 2014 to extend the hours. The application was opposed by EPT and a resident; the application was determined by the licensing sub committee on 6 November 2014 and granted as follows; live music (indoors) (Mon – Sun 12.00 to 23:00); recorded music (indoors) (Mon – Wed 12:00 to 23:30; Thurs 12:00 to 00:00; Fri & Sat 12:00 to 03:00; Sun 12:00 to 00:00); late-night refreshment (Mon – Wed 23:00 to 23:30; Thurs 23:00 to 00:00; Fri & Sat 23:00 to 03:00; Sun 23:00 to 00:00); supply of alcohol (on the premises) (Mon – Wed 12:00 to 23:30; Thurs 12:00 to 00:00; Fri &

Sat 12:00 to 03:00; Sun 12:00 to 00:00); opening hours (Mon- Wed 12:00 to 23:30; Thurs 12:00 to 00:00; Fri & Sat 12 :00 to 03:00; Sun 12:00 to 00:00). The notice of decision is attached as part of Appendix E.

13. A second application to vary the premise licence was made on 13 November 2015 to extend the hours further and adjust conditions including to extend the last entry time as follows; recorded music (indoors) (Fri & Sat from 03:00 to 04:00); late-night refreshments (Fri & Sat from 03:00 to 04:00); sale and supply of alcohol (on the premises) (Fri & Sat from 03:00 to 04:00); operating hours (Mon – Sun from 06:00 to 12:00) (to operate a coffee bar); Fri & Sat from 03:30 to 04:30).
14. The application sought to remove condition 370 of then existing premises licence and vary conditions with relation to door staff, start of the security times and to change the re entry time from 01:30 to 02:30.
15. The application was opposed by the following responsible authorities; the police, health & safety team, public health and licensing as a responsible authority and the application was determined at a hearing of the licensing sub-committee on 18 January 2016 and was partly granted and further conditions modified of which are detailed below in the current premises licence. The notice of decision is attached as part of Appendix E.
16. The details of the current premises licence that applies to both areas are:
 - Live music;
Mon to Sun 12:00 to 23:00
 - Recorded music
Mon to Wed 12:00 to 23:30
Thurs 12:00 to 00:00
Fri & Sat 12:00 to 03:30
Sun 12:00 to 00:30
 - Late-night refreshment
Mon to Wed 23:00 to 23:30
Thurs 23:00 to 00:00
Fri & Sat 23:00 to 03:30
Sun 23:00 to 00:30
 - Sale of alcohol (on the premises)
Mon to Wed 12:00 to 23:30
Thurs 12:00 to 00:00
Fri & Sat 12:00 to 03:30
Sun 12:00 to 00:30
 - Operating hours
Mon to Wed 06:00 to 00:00
Thurs 06:00 to 00:30
Fri & Sat 06:00 to 04:00
Sun 06:00 to 00:30
17. A copy of the current premises licence is attached as Appendix B.

Designated premises supervisor

18. The designated premises supervisor (DPS) is Douglas Otunyo who has been the DPS since 07 April 2014 and holds a personal licence issued by the London Borough of Lewisham.

The review application and certificate

19. 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.
20. 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.
21. The grounds for the full review relate to the following licensing objectives and are summarized as follows:-
22. Prevention of crime and disorder – 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 pushed a female to the floor and then threw a bottle hitting the head of a male patron causing injuries constant with grievous bodily harm.
23. On arresting the suspect the Police were confronted by a hostile crowd outside the venue trying to prevent Police from making the arrest and additional police support was requested, 2 assaults on the police occurred.
24. 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.
25. A copy of the application and certificate are attached to this report as Appendix A.
26. Any additional evidence submitted will be made available at the hearing.

Representations from other persons

27. There are no representations from other persons at the time of writing this report.

Representations from responsible authorities

28. There are three representations from Environmental Protection Team (EPT), Health and Safety and Licensing (as a responsible authority).
29. The EPT support the review on the grounds of public nuisance and public safety and ask for the licence to be revoked. However in the event that members are minded not to revoke, they seek a reduction in hours and the removal of the DPS.
30. The health and safety team support the review application and state that there have been a number of violent incidents associated with this premises and request that the licensee explain how they will deal with violence within the premises and carry out suitable and sufficient violence at work risk assessments and regularly review the risk assessments for the premises.

31. The licensing team (as a responsible authority) state that they fully support the review application as there have been several occasions in the past whereby Mr Douglas the licensee and designated premises supervisor has failed to abide by the terms and conditions of the premises licence in spite of being warned about this. They lack faith in the management of the premises to abide by any conditions put upon the licence and to promote the prevention of crime and disorder and to protect the public and recommend that the licence is revoked.
32. The representations are attached as Appendix C.

Inspections/visits

33. Two full premises inspections were made under the Licensing Act 2003, the first conducted on 24 January 2015 at 23:37 hours, the premises was found to be in breach of 5 conditions of the premises licence, including the incorrect use of the ID scanning machine. A warning letter was sent on 28 January 2015.
34. A revisit on 22 March 2015 at 00:09 hours found the premises to be compliant.
35. The second conducted on 10 January 2016 at 02:20 hours, the premises was found to be in breach of 1 condition of the premises licence, the ID scan was not being used to scan customers in.
36. Further visits by Council licensing officers working on the night-time economy have been made and details of these visits are provided in Appendix D.

Temporary Event Notice

37. A late temporary event notice was applied for an event scheduled for 26 August 2016 but the EPT objected to the event taking place under the grounds of public nuisance due to a complaint made.

Operating History

38. The current premises licence was issued on 18 January 2016.
39. The expedited review application was determined on 26 August 2016. The licensing sub-committee considered the application made by the metropolitan police service who informed the sub-committee that on 21 August 2016 they received a call at approximately 03:00. A male patron pushed a female to the floor and then threw a glass bottle, hitting the head of another male patron, causing injuries consistent with grievous bodily harm. The police advised that the ID scanner at the premises was not being used in line with condition 369 of the licence. Furthermore, in inspecting the ID scan, it revealed that 15 people were admitted after 02.00 (with last entry shown as 02.57), which is a breach of condition 364 of the licence that there shall be no new entries after 02:00. The police provided further evidence showing a history of non-compliance of the ID scan condition. They referred to breaches of this condition on 31 January 2015, 25 April 2015 and 10 January 2016.
40. The premises licence holder also explained the events of 21 August 2016. He stated that following the assault on the male victim, he instructed the suspect not to leave the premises and then called the police and ambulance. In the meantime the female victim had called the police from outside the premises. The suspect apologised for the incident and the premises licence holder advised that the atmosphere had not

been hostile and that 90% of the patrons were his friends. Concerning the use of the ID scanner, this was carried out by SIA security staff and he could not explain why ID scanner had not been used correctly. He accepted that he had major problems with his SIA staff, who were not following his instructions, despite regularly training them.

41. He also admitted that the premises was being run as a nightclub and that it was a struggle for him to manage it. He proposed several modifications that could be applied to the licence as interim steps including; change of security team, a specific named person operating the ID scanner system and no glassware to be used in the premises.
42. After determining the application the licensing sub-committee's decision was for the premises licence to be suspended as an interim step to promote the licensing objectives pending the determination of the review application at the full hearing on 22 September 2016. A copy of the notice of decision is attached as part of Appendix E.

The local area

43. A map of the area is attached to this report as Appendix F. The premises is identified by a triangle at the centre of the map. For purposes of scale-only the circle on the map has a 100-metre radius. The following licensed premises terminal hours are also shown on the map

Off Licence

- G & F Supermarket, 272-274 Old Kent Road, SE1 5UE (Monday - Sunday 24hrs)
- Nishas News, 246 Old Kent Road, SE1 5UB (Monday - Sunday until 23:30)
- B & B Newsagent, 104-106 Dunton Road, London, SE1 5UN (Monday - Sunday until 23:00)

Late Night Refreshment

- Super Pizza, 292 Old Kent Road, SE1 5UE (Sunday - Thursday until 01:00 and Friday -Saturday until 02:00)
- Perfect Fried Chicken, 259 Old Kent Road, SE1 5LU (Monday - Sunday until 00:00)
- Old Kent Fish Bar, 253 Old Kent Road, SE1 5LU (Monday – Sunday until 01:00)
- Village Pizza, 230 Old Kent Road, SE1 5UB (Sunday - Thursday until 03:00 and Friday -Saturday until 04:00)
- Halal Kebab House, 273 Old Kent Road, SE1 5LU (Monday - Sunday until 03:00)
- El Turkistan Takeaway, 304 Old Kent Road, SE1 5UE (Sunday - Thursday until 02:00 and Friday -Saturday until 03:00)

Restaurant

- New Wing Fu, 227 Old Kent Road, London, SE1 5LU (Monday - Sunday until 00:00)

44. This premises is not in a cumulative impact area.
45. 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 hours daily
- Closing time for public houses, wine bars or other drinking establishments is 23:00 hours
- Closing time for night clubs (with sui generis planning classification) are not considered appropriate for this area

Southwark Council statement of licensing policy

46. Council assembly approved Southwark's statement of licensing policy 2011-14 on 12 October 2011. Sections of the statement that are considered to be of particular relevance to this application are:

- Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
- Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
- Section 6 which details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998
- Section 7 which provides general guidance on dealing with crime and disorder and deals with licensing hours
- Section 8 which provides general guidance on ensuring public safety including safe capacities
- Section 9 which provides general guidance on the prevention of nuisance and
- Section 10 which provides general guidance on the protection of children from harm.

47. 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

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

Consultations

49. The premises licence holder has been informed of the application for review and of the decision of the interim hearing.

50. 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

51. 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

52. The sub-committee is asked to determine, under Section 52 of the Licensing Act 2003, an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
53. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

54. The licensing authority must hold a hearing to consider an application for review of a premises licence where:
- The application is properly made in accordance with Section 51 of the Act
 - The applicant has given notice in accordance with Section 51(3) of the Act
 - The advertising requirements provided for under Section 51(3) of the Act are satisfied
 - The licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious
 - The licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.
55. 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.
56. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
- Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
57. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:

- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
58. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
59. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
60. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
61. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

62. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

63. 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.
64. This matter relates to the review of the premises licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

65. 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.
66. 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.
67. 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.
68. 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.

69. 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.
70. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
71. 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.
72. 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

73. 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

74. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Review application
Appendix B	Premises licence
Appendix C	Responsible authorities representations
Appendix D	Visits to premises
Appendix E	Notices of decisions made by licensing sub-committee
Appendix F	Map of area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	9 September 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	9 September 2016	