

Item No. 6.	Classification: Open	Date: 22 September 2016	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Tasti, Unit C, Montreal House, Surrey Quays Road, London SE16 7AQ	
Ward(s) of group(s) affected		Rotherhithe Ward	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Paul Graham for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Unit C, Montreal House, Surrey Quays Road, London, SE16 7AQ
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 12 to 16 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 Appendices B and 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 26 July 2016 Paul Graham applied to this council for the grant of a premises licence in respect of Unit C, Montreal House, Surrey Quays Road, London, SE16 7AQ.
9. The premises are described as being a restaurant and bar.
10. The application and is summarised as follows:

The provision of regulated entertainment (recorded music)

- Monday to Sunday – between 07:00 and 01:00

The supply of alcohol to be consumed On & Off the premises

- Monday to Sunday – between 07:00 and 01:00

Opening hours

- Monday to Sunday – between 07:00 and 01:00

The proposed designated premises supervisor of the premises is Ann-Marie Barwick who has been granted a personal licence by L.B. Lewisham.

N.B. The application was submitted online and did not detail where the designated premises supervisor had obtained her personal licence from. The consent form

additionally did not detail the personal licence holders personal licence number. Applications submitted online cannot be amended. These omissions have now been clarified by the applicant on email.

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 and the licensing as a responsible authority.
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 a start time of alcohol sales of 11:00 hours for all days of the week; the terminal hour for the sale of alcohol to be brought in line with Southwark Council statement of licensing policy.
14. Licensing as a responsible authority's representation 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 amending hours sought for licensable activities in line with the licensing policy for bars in this area, with terminal hours of Sunday to Thursday of 23:00 hours and Friday and Saturday to 23:30 hours.
15. Licensing as a responsible authority state should the applicant reconsider the application to include late night refreshment and a condition that alcohol shall be supplied as ancillary to substantial table meals then the later hour for a restaurant can be considered.
16. Copies of the representations submitted by the responsible authorities are attached in Appendix B.

Representations from other persons

17. Two local councillors have objected to the granting of this new premises licence application. The Councillor's state that the unit is situated in a residential block and residents have expressed concerns about the possibility of noise nuisance. The Councillor's states that the other two units in the block are estate agents and therefore only operate from 8:00 until 18:00 hours.

18. The councillors state that they do not object to the opening of a new restaurant in the area however the hours should be scaled back to 9:00 to 23:00 Sunday to Thursday and 9am until midnight on Friday and Saturday.
19. One local resident has made objection to this new premises licence application. stating that they are concerned by crime and disorder and the effects to the residents whose entrance door is located near the premises.
20. The resident states that they are a leaseholder who live and face the courtyard. The resident states that they are concerned by the noise and nuisance implications and that the hours sought for the sale of alcohol to be consumed on the premises from 7am to 1am is an unreasonable request. The local resident states that 'it would be more feasible for alcohol to be served between 12:00 and 21:30 and that there is no basis for the premises to be operating beyond 22:00 Monday to Sunday'.
21. The local resident also states that they live in close proximity to the premises. They state that the hours sought for the sale of alcohol from 7:00 to 01:00 hours is unreasonable. Further the applicant states that there is a children's playground just over 100 meters from this establishment and children playing outside until 7pm.
22. Copies of the representations submitted by the responsible authorities are attached in Appendix B.

Conciliation

23. 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

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.

Deregulation of entertainment

26. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08:00hrs – 23:00hrs 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

27. 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:

- **Canada Water Plaza, 21 Water Sports, Surrey Quays Road, SE16 7AR licensed for:**

Entertainment similar to live/recorded music – outdoors, Facilities for dancing – outdoors, Facilities for making music – outdoors, Films – outdoors, Live music – outdoors, Performance of dance – outdoors, Plays – outdoors, Provisions similar to making music and dancing – outdoors, Recorded music – outdoors

Monday to Saturday: 10:00 to 22:00

Sunday: 11:00 to 22:00

- **Canada Water Library, 21 Canada Water Library, Surrey Quays Road, SE16 7AR licensed for:**

Entertainment similar to live/recorded music – indoors, Films – indoors, Live music – indoors, Performance of dance – indoors, Plays – indoors, Recorded music – indoors, Sale by retail of alcohol

Monday to Sunday: 08:00 to 00:00

Late Night Refreshment – indoors & outdoors

Monday to Sunday: 23:00 to 00:00

- **Odeon Cinema, The Mast Leisure Park, Surrey Quays Road, SE16 1LL licensed for:**

Entertainment similar to live/recorded music – indoors, Films – indoors, Live music – indoors, Performance of dance – indoors, Plays – indoors, Recorded music – indoors

Monday to Sunday: 09:00 to 03:00

Sale by retail of alcohol to be consumed on premises

Monday to Sunday: 11:00 to 01:00

Late Night Refreshment – indoors

Monday to Sunday: 23:00 to 03:00

- **Sainsbury's, 30 & 32 Ontario Point Surrey Quays Road, SE16 7ED licensed for:**

The sale of alcohol

On Monday to Sunday: 06:00 to 00:00

Southwark council statement of licensing policy

28. 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.
29. 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.
30. 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 which 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 which 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 which 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 which 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 which provides general guidance on the promotion of the first licensing objective
 - Section 9 – Public Safety which provides general guidance on the promotion of the second licensing objective
 - Section 10 – The Prevention of Nuisance which provides general guidance on the promotion of the third licensing objective
 - Section 11 – The Protection of Children from Harm which provides general guidance on the promotion of the fourth licensing objective.
31. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

Resource implications

32. A fee of £315.00 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

Consultations

33. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

34. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

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

Principles for making the determination

37. 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.
38. 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
39. 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

40. 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.
41. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
42. 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.
43. 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.
44. 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

45. 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

46. 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.
47. 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

48. 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.
49. 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.
50. 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.
51. 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.

52. 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.

53. 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.
54. 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

55. 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.

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 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	Representations submitted by other persons
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Richard Kalu, Licensing Enforcement Officer	
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Dated	1 September 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	No	No
Cabinet Member	No	No
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