

Item No. 5.	Classification: Open	Date: 27 September 2016	Meeting Name: Licensing Sub-Committee
Report Title		Peckham Levels, Levels -1 to 6, Peckham Multi Storey Car Park, 95A Rye Lane SE15 4ST	
Ward(s) of group(s) affected		The Lane	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Peckham Levels Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Levels -1 to 6, Peckham Multi Storey Car Park, 95A Rye Lane SE15 4ST.
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 19 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted by responsible authorities are attached to this report in Appendix B. Copies of representations submitted by other persons are attached as Appendix C. A map showing the location of the premises is attached to this report as Appendix D.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
 - The Act itself
 - The guidance to the act issued under section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence application

8. On 5 May 2016 Peckham Levels Ltd. applied to this council for the grant of a premises licence in respect of Levels -1 to 6, Peckham Multi Storey Car Park, 95A Rye Lane SE15 4ST.
9. The application and is summarised as follows:

To allow the provision of plays, films, indoor sporting events, live music, recorded music, performances of dance, the sale of alcohol (for consumption both on and off the premises) and to allow the provision of late night refreshment between 08:00 and 06:00 the following day on Monday to Sunday.

N.B. The provision of late night refreshment is only permitted between 23:00 and 05:00 the following day. As the applicant has stated in the application hours that are longer than between 23:00 and 05:00 the following day, it is assumed that the maximum hours permitted in regards to late night refreshment are sought in this application; however the sub-committee may wish to have the applicant confirm this at the hearing to determine the application.

Opening hours - between 08:00 and 06:00 the following day on Monday to Sunday.

10. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, 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. Copies of the application, the fire strategy report submitted with the application and the environmental noise survey and noise impact report submitted with the application are attached to this report in Appendix A.

Amendments to the application

11. On 30 June 2016 a hearing was held to consider the application and all relevant representations submitted in regards to the application. At the hearing the applicant requested an adjournment of the hearing as the applicant stated that subsequent to discussions with the responsible authorities and local residents, and pending a planning application decision, the applicant wished to make significant alterations to the application. After considering this request and submissions made by the responsible authorities and local residents who submitted representations, the chair of the licensing sub-committee decided to adjourn the hearing until 27 September 2016, by which time it is expected that the applicant would have the final proposals in respect of the application and their planning application determined.
12. The applicant has significantly amended the application as follows:

The proposed permitted hours for all licensable activities are:

Sunday to Wednesday, 10:00 to 00:00 (midnight)

Thursday to Saturday, 08:00am to 01:00 the following day

The licensable activities sought remain the same as outline in paragraph 9 above.

The sale of alcohol shall finish 20 minutes prior to the above times.

Level -1 is now no longer part of the licensable area. The application applies to levels 5/6 only.

The licensable area on level 5/6 is formed of two areas as follows:

- a. A 'food court' style offering proposed to house a café, 2 bars, 3 food kiosks and 1 restaurant. Capacity 600. The food court is to have a minimum of 400 fixed seats as per the floor plan titled in Appendix D titled 'Schedule C – seating plan'

- b. A multi-use event space to be used for all of the licensable activities applied for. A moveable (i.e. non-fixed) bar is to be provided in this area. Capacity 650.

A new operating schedule has been provided with amended proposed conditions and amended floor plans have been provided in respect of the application.

The new operating schedule and documents which the applicant has titled schedules A, B1, B2, C and D which all further outline the amendment to the application are attached in Appendix D of this report.

Designated premises supervisor

13. The proposed designated premises supervisor (DPS) is Philippe Castaing who holds a personal licence issued by the London Borough of Lambeth.

Representations from responsible authorities

14. Representations have been submitted by this council's public health directorate (PHD), this council's planning service, this council's environmental protection team (EPT), the Metropolitan Police Service (MPS) and this council's licensing service.
15. The PHD's representation is submitted in respect of the prevention of crime and disorder, prevention of public nuisance and protection of public safety licensing objectives. The representation states that "...*The application provides insufficient detail upon which to fully appraise the nature and type and of activity intended...*" The representation notes that the premises are within the Peckham cumulative impact policy (CIP) and that the hours sought for licensable activities are inconsistent with hours of operation suggested in this council current statement of licensing policy. The PHD seek that the application is rejected outright.
16. The planning service's representation objects to the application in respect to the prevention of public nuisance licensing objective in relation to the proposed hours of operation in regards to the premises.
17. The EPT's representation relates to the prevention of public nuisance licensing objective. The EPT representation is concerned that "...*the proposed licensable activities from 08:00 - 06:00 hours could give rise to noise disturbance to local residents given the proximity of residential premises at the rear particularly in the early hours of the morning...*" and also notes that the applicant has not submitted an acoustic report to the suitability of the premises to carry out the licensable activities applied for without noise breakout from the premises.
18. MPS' representation notes that the premises are within the Peckham CIP and states that the MPS "*do not believe that any conditions placed on the licence could negate the effects of a late night operation due to the large amounts of extra people that this operation that would attracted to the area and no conditions placed on the premises would negate this as the problems would be caused in the area as people arrive and leave rather than at the premises, as such we have offered no conditions as we do think any are suitable...*" The MPS contend that the application "*would have a negative impact on the licensing objectives with in the Peckham CIZ...*"
19. The licensing service's representation is submitted in respect of all four licensing objectives. The representation notes that the premises are in the Peckham CIP and

that when an application is subject to a CIP and representations are submitted in regards to such an application, there is a presumption to reject the application. The representations states that *"...In this application the applicant has not provided sufficient information to rebut the presumption that the operation of the premises will give rise crime and disorder within the policy area..."* and suggests that the application is refused. The representation suggests that if a licence subject to the application is granted by the sub-committee that the operating hours for licensed premises suggested in this council's current Statement of Licencing Policy should apply to the licence, however the representation further states *"...The applicant's description of the premises in the application does not provide sufficient information to classify the premises by premises type, the applicants may wish to expand on this, however the latest times for the operation of a nightclub in this area, which may be the closest classification to the proposed premises operation..."*

20. The representations submitted by responsible authorities are attached as Appendix B.

Representations from other persons

21. Two representations have been submitted by local residents. Both of the representations have been submitted in respect of the prevention of public nuisance licensing objective and are concerned that the proposed hours of operation in respect of the premises will give rise to noise nuisance to local residents. Reduced hours of operation are sought in one of the representations and assurance that adequate facilities and security are in place to minimise public nuisance is sought in the other representation. Both of the representations are attached to this report as Appendix C.

Conciliation

22. The applicant has met with the responsible authorities at a conciliation meeting which took place on 31 August 2016. The applicant has informed the licensing authority that the applicant has been liaising with the local residents who submitted objections to the application. Subsequent to the conciliation meeting with the responsible authorities, and discussions with the local residents who submitted representations, the applicant amended the application as outlined in the documents attached in Appendix D. Notwithstanding this, 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, taking into account the amendments to the application.

Premises history

23. No premises licence, or other licensing authorisation permitted under prior licensing legislation, has been held or is currently held in respect of the premises.

Temporary Event Notices (TENs)

24. No TENs have been submitted in respect of the premises.

Deregulation of entertainment

25. 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 provided the audience does not exceed 500 people.
26. 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 E. The premises are identified at the centre of the map by a black circle. The following licensed premises are also shown on the map and provides licensable activities as stated below:

- **PECKHAMPLEX, 95A Rye Lane SE15 4ST** licensed for:

The provision of films on Sunday to Thursday between 09:00 and 00:00, and on Friday and Saturday between 09:00 and 02:00.

Sale of alcohol to be consumed on the premises on Monday to Thursday between 14:00 and 22:00 and on Friday to Sunday between 12:00 and 23:00.

- **Frank's Café, Levels 9 & 10, Peckham Multi Story Car Park, 95A Rye Lane, London SE15 4ST** licensed for:

Sale of alcohol to be consumed on the premises on Monday to Sunday between 11:00 and 23:00.

- **The CLF Art Café, Units A1, A2, & A3, AG1 & Basement, The Bussey Building, Copeland Park 133 Copeland Road, London SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises and the provision of: plays, films, live music, recorded music, performances of dance, entertainment similar to live music, recorded music and performances of dance on Monday to Wednesday between 09:00 and 23:00, on Thursday between 09:00 and 02:30 the following day, on Friday and Saturday between 09:00 and 06:00 the following day and on Sunday between 09:00 and 23:00.

The provision of late night refreshment on Monday to Wednesday between 23:00 and 23:00, on Thursday between 23:00 and 02:30 the following day and on Friday and Saturday between 23:00 and 06:00 the following day.

- **Roof B (Bussey Building), 133 Copeland Road SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises on Monday to Friday between 17:00 and 22:30 and on Saturday between 12:00 and 22:30.

The provision of films on Monday to Sunday between 12:00 and 00:00 (midnight).

The provision of live music on Monday to Sunday between 12:00 and 22:00.

The provision of plays on Monday to Sunday between 12:00 and 23:00.

- **Forza Win Ltd, Unit 4.1, Copeland Industrial Park, 133 Copeland Road SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises on Wednesday to Saturday between 12:00 and 23:30 and on Saturday between 12:00 and 22:30.

- **The Last Refuge Arts, 133 Unit, 9a Copeland Road SE15 3SN** licensed for:

The provision of films on Monday to Friday between 18:00 and 00:00 and on Saturday and Sunday between 12:00 and 00:00 (midnight).

The sale of alcohol and the provision of live music and recorded music on Monday to Friday between 17:30 and 00:00 and on Saturday and Sunday between 14:30 and 00:00 (midnight).

The provision of plays on Monday to Friday between 19:30 and 22:30 and on Saturday and Sunday between 14:30 and 22:30 (midnight).

Southwark council saturation policy for Peckham

28. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in November 2015 when full council assembly approved the 2016 - 2020 statement of licensing policy.
29. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late-night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
30. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
31. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

Southwark council statement of licensing policy

32. Council assembly approved Southwark's statement of licensing policy 2011 - 14 on 12 October 2011. Council assembly approved Southwark's statement of licensing

- **Nightclubs** Monday to Thursday 01:00 With 'sui generis'
Friday and Saturday 03:00 planning
Sunday 00:00 classification

Resource implications

35. A fee of £315 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

Consultations

36. 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

37. 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

38. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

The principles which sub-committee members must apply are set out below.

Principles for making the determination

39. 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.

40. 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.

41. 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

42. 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.
43. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
44. 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.
45. 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.
46. 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

47. 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

48. 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.
49. 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

50. 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.

51. 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.
52. 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.
53. 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.
54. 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.

55. 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.
56. 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

57. 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

58. 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 and Enforcement 160 Tooley Street London SE1 2QH	Kirty Read 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	Documents pertaining to the amendment of the application
Appendix E	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	14 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	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	14 September 2016	