

Item No. 7.	Classification: Open	Date: 3 October 2016	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Red Sea, 85 Camberwell Road London SE5 0EZ	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

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 the review of the premises licence in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 11 to 14 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The application for review of the premises licence is supported by a representation submitted by one responsible authority. A copy of the representation is attached as Appendix C. Details of the representation are provided in paragraph 17 of this report.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B. A map of the local area is attached as Appendix G.
 - 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 summary review powers under sections 53A to 53C of the Act allow the police to trigger the review of a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both).

KEY ISSUES FOR CONSIDERATION

The premises licence

8. The premises licence issued in respect of the premises known as Red Sea Restaurant, 85 Camberwell Road, London SE5 0EZ allows licensable activities as follows:
- **The provision of regulated entertainment**
Friday & Saturday between 12:00 and 02:30 the following day
 - **The provision of late night refreshment**
Sunday to Thursday between 23:00 and 00:30 the following day
Friday & Saturday between 23:00 and 02:00 the following day
 - **The sale of alcohol**
Sunday to Thursday between 12:00 and 00:30 the following day
Friday & Saturday between 12:00 and 02:30 the following day
 - **Opening hours**
Sunday to Thursday between 08:00 and 01:00 the following day
Friday & Saturday between 08:00 and 02:30 the following day
9. A copy of the current premises licence is attached as Appendix B.

Designated premises supervisor

The designated premises supervisor is Ms Letteberhan Tafla.

The review application and certificate

10. On 7 September 2016 the Metropolitan Police Service applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ.

11. 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.
12. The application is concerned with an incident that took place at the premises on 4 September 2016 at 02:45. It is alleged that a serious assault occurred at the premises that resulted in the victim receiving injuries consistent with grievous bodily harm. The police were called to attend the premises. On arrival the police noted that several people attending the premises appeared to be 'worse for wear'. The police arrested two suspects. When the police attempted to liaise with the SIA staff employed at the premises, they were uncooperative, refused to provide witness formal statements to the police and were reluctant to provide their details to the police or aid in the police's enquiries.
13. In addition to the above, CCTV cameras at the premises were badly positioned, being partially obstructed, and were of no evidential use. The police also note that the premises should have been shut by 02:30 in accordance with the premises licence issued in respect of the premises.
14. The police have concerns with the management of the premises and the lack of control and proper management of the above incident. The police also note there have been previous breaches of the premises licence issued in respect of the premises on 10 July 2016 and 7 August 2016 and that they have served a closure order in regards to the premises under section 19 of the Criminal and Justice Police Act 2001 in regards to the breaches of licence observed on 10 July 2016.
15. A copy of the review application, review certificate and additional supporting evidence is attached as Appendix A. Other evidence may become available at the hearing. Please note that the crime report submitted with the review application omits pages 2, 3, 5, 8 and 9 deliberately as they are either not relevant or contain confidential information.
16. Any additional evidence submitted will be made available at the hearing.

Representations from responsible authorities

17. The council's environmental protection team (EPT) have submitted a representation in support of the review application in regards to the protection of public safety licensing objective. The representation suggests various conditions that the EPT recommend be imposed on the premises licence. A copy of the EPT's representation is attached as Appendix C.

Representations from other persons

18. No representations have been submitted by other persons.

Operating History

19. A premises licence was issued to Ms Zege Abraha and Ms Letteberhan Tafla on 16 January 2008. Ms Abraha was specified as the designated premises supervisor (DPS).
20. On 18 February 2010 a licensing inspection of the premises was undertaken. One breach of the Licensing Act 2003 was substantiated in that the premises licence

summary was not displayed at the premises. A re-inspection of the premises was undertaken on 12 March 2010 and the premises were found to be operating compliantly.

21. On 5 November 2010 an application, to have immediate effect, was submitted to transfer the licence to Ms Letteberhan Tafla solely. On the same date an application, to have immediate effect, was submitted to specify to have immediate effect, as the DPS of the premises. An amended licence, pursuant to the above, was issued on 5 November 2010.
22. On 20 December 2010 an application to vary the licence was submitted. The application sought to extend the hours in respect of the licensable activities permitted by the licence and also to add further licensable activities to the licence. The application was refused by the licensing sub-committee on 7 February 2011.
23. On 14 July 2011 an application to vary the licence was submitted. The application sought to extend the hours in respect of the licensable activities permitted by the licence and also to add further licensable activities to the licence. The application was granted and an amend licence was issued on 9 September 2011. The application issued on 9 September 2011 is the current licence.
24. On 10 July 2016 police officers visited the premises. The premises were operating outside of permitted operating hours and the following breaches of the premises licence were noted; (i) there was no personal licence holder working at the premises (breach of condition 336), (ii) there were no SIA registered door supervisors working at the premises (breach of condition 290) and (iii) CCTV footage could not be made immediately available to police officers (breach of condition 289). A closure order was served under section 19 Criminal and Justice Police Act 2001 in regards to the above.
25. Following the breaches of licence witnessed on 10 July 2016 a licensing officer attended the premises on 22 July 2016 and undertook an induction with the licensee. During the induction the terms and conditions of the licence were fully explained, and the possible consequences of breaching licence conditions, or committing offences under the Licensing Act 2003, was explained to the licensee.
26. On 3 August 2016 an application to vary the licence was submitted. The application sought to extend the hours in respect of the licensable activities permitted by the licence. The application was withdrawn on 6 September 2016.
27. On 7 August 2016 the premises were inspected by a licensing officer and a police officer as part of the night time economy team (NTET) duties on that date. The following breaches of the premises licence were noted; (i) there were no SIA registered door supervisors working at the premises (breach of condition 290), (ii) the CCTV system was not operational and CCTV footage could not be made immediately available to police officers (breach of conditions 288 & 289) and (iii) there were no staff training records as required by condition 4AB. The licensing officer explained the licence breaches and explained the conditions and the consequences should further breaches of the licence be substantiated.
28. On 12 August 2016 a full licensing inspection of the premises was undertaken as part of the NTET duties on that date. The premises were found to be operating compliantly.

29. On 4 September 2016 a serious assault took place at the premises that resulted in the victim receiving injuries consistent with grievous bodily harm and two suspects being arrested.
30. On 7 September 2016 the Metropolitan Police Service applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Red Sea, 85 Camberwell Road, London SE5 0EZ.
31. An expedited review hearing was held on 9 September 2016 to decide whether to implement the interim steps suggested by the police. The licensing sub-committee decided to implement the interim steps suggested by the police and suspended the premises licence until the full review hearing is held on 3 October 2016. A copy of the notice of decision pertaining to the expedited review is attached as Appendix D.
32. No complaints have been received by the licensing unit in regards to the premises.
33. A table of all temporary event notices (TEN) submitted in respect of the premises is attached as Appendix E.
34. A table of all NTET visits to the premises is attached as Appendix F. **NB:** The time of visit in the NTET notes in Appendix F written by a licensing officer in respect of 7 August 2016 was different to the time of visit stated by P.C. O'Mahoney in a witness statement in the review documents submitted by the police in Appendix A in relation to the same visit. P.C. O' Mahoney has clarified this discrepancy by providing an addendum to the witness statement. The addendum to the witness statement is also in Appendix F.

The local area

35. A map of the local area is attached at Appendix G. The premises are identified at the centre of the map by a black diamond.
36. The following licenced premises are also show on the map and are licensed to provide the licensable activities stated until the times stated:
 - **Legacy Restaurant, 53 Camberwell Road London SE5 0EZ:**

Sale of alcohol, late night refreshment and the sale of alcohol
Monday to Thursday until 00:30 the following day
Friday to Sunday until 02:30 the following day
 - **Emukay Restaurant, 91 Camberwell Road, London SE5 0EZ:**

Sale of alcohol Monday to Sunday until 02:00 the following day
Late night refreshment Monday to Sunday until 03:00 the following day
Regulated entertainment Monday to Sunday until 02:30 the following day
 - **Southbank nightclub, 57-59 Camberwell Road, London SE5 0EZ:**

Sale of alcohol, late night refreshment and the sale of alcohol
Monday to Wednesday until 00:00 (midnight)
Thursday until 02:30 the following day
Friday to Sunday until 04:30 the following day

37. The premises are not in a cumulative impact area.
38. The premises are classified as being located 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 the categories of premises stated:
 - The suggested closing time for restaurants and cafes is 23:00 daily
 - The suggested closing time for public houses / wine bars or other drinking establishments is 23:00 daily
 - Night Clubs (with sui generis planning classification) are not considered appropriate for this area.

Southwark Council statement of licensing policy

39. 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.
40. 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

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

Consultation

42. There is no public consultation for an interim hearing.
43. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

Community impact statement

44. 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

45. 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.
46. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

47. 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.
48. 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.
49. 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 premises licence.
50. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
51. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
52. 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.
53. 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

54. Where the authority takes interim steps 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

55. 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
 - 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.
56. 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

57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.

63. 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.
64. 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

65. 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 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

Name	Title
Appendix A	Copy of review application and certificate and supporting documentation
Appendix B	Copy of the existing premises licence
Appendix C	Copy of representation submitted by the environmental protection team
Appendix D	Notice of decision pertaining to the expedited review hearing of 9 September 2016
Appendix E	List of temporary event notices submitted in respect of the premises
Appendix F	Details of licensing night visits to the premises and addendum to a police witness statement
Appendix G	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Enforcement Officer	
Version	Final	
Dated	20 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
Date final report sent to Constitutional Team		21 September 2016