

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 21 October 2016	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: D'Connect Restaurant, 11 John Ruskin Street, London SE5 0NS	
<b>Ward(s) or groups affected:</b>		Camberwell Green	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by an other person under Section 51 of the Licensing Act 2003 (the Act) for a review of the premises licence held by Remi Shinaba Aderohunmu in respect of the premises known as D'Connect Restaurant, 11 John Ruskin Street, London SE5 0NS.
2. Notes:
  - a) The grounds for the review are stated in paragraph 13 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 in representations submitted by six responsible authorities and nine 'other persons'. Copies of the representations are attached as Appendix B. Details of the representations are provided in paragraphs 16 to 26 of this report.
  - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C.
  - 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 persons 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 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

## KEY ISSUES FOR CONSIDERATION

### The premises licence

9. The premises licence allows the provision of licensable activities as follows:
- **The sale of alcohol to be consumed on the premises on:**
    - Sunday from 10:00 to 01:00 the following day
    - Monday to Thursday from 10:00 to 01:00 the following day
    - Friday and Saturday from 10:00 to 02:30 the following day
  - **The provision of late night refreshment on:**
    - Sunday from 23:00 to 01:00 the following day
    - Monday to Wednesday from 23:00 to 01:30 the following day
    - Thursday from 23:00 to 02:00 the following day
    - Friday and Saturday from 23:00 to 02:30 the following day
  - **The provision of live music on:**
    - Friday from 22:00 to 02:00 the following day
    - Saturday from 17:00 to 21:30 the following day

- **The opening hours of the premises are as follows:**

Sunday to Thursday from 08:00 to 02:00 the following day  
Friday and Saturday from 08:00 to 03:00 the following day

10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is provided for as Appendix C.

### **Designated premises supervisor (DPS)**

11. The current designated premises supervisor (DPS) named on the licence is Adebowale Aderibigbe. Adebowale Aderibigbe holds a personal licence issued by the London Borough of Bexley.

### **The review application**

12. On 25 August 2016, an application was made on by an 'other person' under Section 51 of the Licensing Act 2003, for a review of the premises licence held by Remi Shinaba Aderohunmu in respect of the premises known as D'Connect Restaurant, 11 John Ruskin Street, London SE5 0NS.
13. The review application was submitted in respect of all four licensing objectives and can be summarised as follows:
  - Patrons of the premises fighting on John Ruskin Street
  - Suspected drug dealing related to the premises
  - Patrons drink driving
  - Patrons engaging in racism and intimidation of passers by
  - Patrons parking on double yellow lines making a dangerous passage for vehicles
  - Patrons congregating and drinking outside of the premises
  - Patrons shouting and talking loudly in the early hours of the morning outside of the premises and sounding their car horns
  - Patrons urinating profusely throughout the street and behaving aggressively and threateningly when confronted for such anti-social behaviour.
14. The applicant refers to various video clips and still images in the review application. The applicant has compiled all evidence referred to onto DVDs to be shown at the review hearing.
15. Full details of the grounds for the review are provided within review the application. The review application is provided in Appendix. A further representation from the applicant is attached as Appendix A1.

### **Representations from responsible authorities**

16. This council's health and safety team, environmental protection team, public health directorate, trading standards team and licensing responsible authority have submitted representations supporting the review. The Metropolitan Police Service have also submitted a representation in support of the review.

17. The health and safety representation states that the premises have no maximum capacity limit and has been observed to be overcrowded, that large groups of people have been observed congregating outside the premises, that customers have been observed urinating on the pavement next to residential flats and that the management of the premises do not appear to have any control of their patrons. The representation also outlines various health and safety measures that health and safety recommend are undertaken in respect of the premises. Health and safety support the revocation of the licence and fully support the review application.
18. The environmental protection team's representation states that the noise and nuisance team have received complaints since 2014 in respect of people congregating in the street outside the premises, talking loudly and drinking. Should the sub-committee not be minded to revoke the licence the representation states three conditions that the environmental protection team suggests should be imposed on the licence by the sub-committee.
19. The public health directorate's representation is concerned that local residents have been extensively disturbed by the premises placing them at considerable loss of amenity. The public health directorate has concerns regarding the operation and management of the premises and therefore fully supports the review.
20. The trading standard's representation contends that toilet facilities at the premises may be inadequate thus leading to patrons urinating in the surrounding streets. The representation states that people have been observed urinating outside of the premises on a regular basis which constitutes a public nuisance. Trading standards contend that such public urination presents a health risk and also puts children at risk of being victims of public indecency. Trading standards recommend that the licence be revoked.
21. Licensing as a responsible authority submitted a representation in regards to all of the licensing objectives and states that there have been numerous complaints to the council regarding noise nuisance and anti-social behaviour due to the behaviour of customers of the premises, that council officers have observed people congregating outside the premises and engaging in anti-social behaviour, that council officers have observed a patron of the premises urinating against a wall a few doors away and patrons sitting in their vehicle playing loud music from the vehicle. Licensing as a responsible authority have no confidence that the management of the premises are promoting any of the licensing objectives. They fully support the review application.
22. The Metropolitan Police Service representation states that the premises have been visited by police and council officers on a number of occasions and that groups of patrons have been seen stood outside of the premises smoking, drinking and talking. Police officers have made the management of the premises aware of licence conditions however the premises remain problematic. The representation further states that there have been five calls to the police regarding noise nuisance, two police statements detailing a number of activities that would 'add to the anti-social behaviour' and one warning letter issued to the premises. The Metropolitan Police Service support the review application.

### **Representations from other persons**

23. Nine representations have been submitted by other persons, those other persons all being local residents. The representations are relevant to all of the licensing

objectives and fully support the review application. In summary the representations state that the operation of the premises leads to:

- Broken sleep
- Suspected drug dealing
- Odour nuisance
- Intimidation of local residents and / or passers by
- Public urination and the associated health hazard
- Waste being deposited in the local streets (e.g. bottles, fast food packaging etc.) and associated health & nuisance hazards
- Patrons congregating and drinking outside of the premises
- Extreme levels of noise nuisance
- The premises operating past permitted hours
- Customers blocking the road and / or local pavements
- Patrons fighting
- Racism by customers
- Drink driving
- Local residents not feeling safe in their own area.

24. All of the representations strongly seek that the licence is revoked.
25. Copies of all representations and associated correspondence are attached to this report as appendix B. Representations from the nine local residents are identified as parties 1 to 9 in Appendix B.
26. One letter in support of the licensee has been submitted stating that it is vital that the licensee retains his licence to support his family and contending that the complaints in the review are exaggerations and largely false. The letter of support is attached as Appendix B1.

### **Operating History**

27. A premises licence was issued in respect of the premises to Remi Shinaba Aderohunmu on 24 November 2005. The designated premises (DPS) specified in respect of the licence was Remi Shinaba Aderohunmu.
28. On 27 February 2010 a licensing inspection of the premises was undertaken. One breach of licence conditions was noted in that the premises licence summary was not displayed and CCTV was not in operation. A re-inspection was undertaken on 23 April 2010 and the premises were found to be being operated compliantly.
29. On 4 June 2011 a licensing inspection of the premises was undertaken. Breaches of various licence conditions were noted. A warning letter was sent to the premises. A re-inspection was undertaken on 29 July 2011 and the premises were found to be being operated compliantly. A copy of the warning letter is attached in Appendix D.
30. On 25 October 2011 a complaint was made by a local resident pertaining to customers engaging in anti-social behaviour, urinating in the street and causing noise nuisance. A visit by council and police officers to the premises was undertaken on 29 October 2011 and the complaint was discussed with the licensee.

31. On 19 October 2012 an application was made to specific Adebowale Aderibigbe as the DPS of the premises. An amended (and current) licence was consequently issued on 22 October 2012.
32. On 27 October 2014 the police referred a noise complaint that they received to the licensing unit for informative purposes and to be logged on the licensing unit's database.
33. On 21 September 2015 a complaint was made by a local resident pertaining to noise nuisance. The complainant was advised of the council's noise and nuisance team service and the licensee was apprised of the complaint.
34. On 24 September 2015 the police referred a noise complaint that they received to the licensing unit for informative purposes and to be logged on the licensing unit's database. In respect of the complaint, visits to the premises were undertaken on 10 October 2015 and 17 October 2015. Please see Appendix D for details of the visits.
35. On 26 September 2015 a licensing inspection of the premises was undertaken. The premises were found to be being operated compliantly.
36. Between 20 June 2016 and 12 September 2016, eight complaints from local residents have been made regarding anti-social behaviour, noise nuisance, public urination and alleged breaches of licence conditions. In response to these complaints 17 visits to the premises have been made by licensing officers between 3 July 2016 and 2 October 2016. Please see Appendix D for details of the visits.
37. No temporary event notices have been submitted in regards to the premises.
38. A list of licensing evening and night time visits to the premises is attached as Appendix D.
39. On 25 August 2016, an application was made on by an 'other person' under Section 51 of the Licensing Act 2003, for a review of the premises licence held by Remi Shinaba Aderohunmu in respect of the premises known as D'Connect Restaurant, 11 John Ruskin Street, London SE5 0NS.

#### **The local area**

40. A map of the area is attached to this report as Appendix E. The premises are identified by a black diamond at the centre of the map. The following licensed premises are also shown on the map:
  - **Legacy Restaurant, 53 Camberwell Road SE5 0EZ:**

Sale of alcohol and late night refreshment: Monday to Thursday until 00:30 the following day and Friday to Sunday until 02:30 the following day
  - **Emukay Restaurant, 91 Camberwell Road, 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, 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 and Friday to Sunday until 04:30 the following day

- **Astra Newsagents, 22 Camberwell Road, SE5 0EN:**

Sale of alcohol: Monday to Sunday until 22:00

- **Dallas Chicken and Ribs, 30 Camberwell Road, SE5 0EN:**

Late night refreshment: Monday to Sunday until 01:00

- **Abokobi Ghanaian Restaurant, 33 Camberwell Road, SE5 0EZ:**

Sale of alcohol and late night refreshment: Monday to Sunday until 23:30

### **Southwark council statement of licensing policy**

41. 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.
42. 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.
43. Within Southwark’s statement of licensing policy 2016 - 2020, the premises are identified as being within the residential area. The closing times recommended in the statement of licensing policy in residential areas are as follows for the types of premises stated:
- Restaurants and cafes: 23:00
  - Public Houses / wine bars: 23:00
  - Nightclubs (with sui generis planning classification) are not recommended for residential areas. Note: the premises are not in a cumulative impact policy area.

#### **Resource implications**

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

#### **Consultation**

45. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

#### **Community impact statement**

46. 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**

47. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following 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.
48. The principles, which sub-committee members must apply, are set out below.

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

49. Under Section 52 of the Licensing Act, the licensing authority must hold a hearing to determine the review and any relevant representations.



50. 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.
51. 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.
52. 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.
53. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
54. 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.
55. 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.
56. 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**

57. 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**

58. 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.

59. 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**

60. 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.

61. 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.

62. 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.
63. 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.
64. 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.
65. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
66. 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.
67. 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**

68. 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**

69. 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 Home Office 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 A1	Additional representation from the applicant for the review
Appendix B	Representations and related correspondence submitted by responsible authorities and other persons
Appendix B1	Letter of support for the premises
Appendix C	The premises licence
Appendix D	List of licensing night time visits to the premises
Appendix E	Map of area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	6 October 2016	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		7 October 2016