

Item No. 5.	Classification: Open	Date: 24 November 2016	Meeting Name: Licensing Sub-Committee
Report Title		BIMS African Food Store,102 Rye Lane, London SE15 4RZ	
Ward(s) of group(s) affected		The Lane	
From		Strategic Director of Environment	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by BIMS Africa Food Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as BIMS African Food Store, 102 Rye Lane, London SE15 4RZ.
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 18 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. A map showing the location 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 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 15 August 2016 BIMS Africa Food Limited applied to this council for the grant of a premises licence in respect of BIMS African Food Store, 102 Rye Lane, London SE15 4RZ. The application states that the premises are an African-themed food market shop and that the application is to allow the off sales of alcoholic drinks to complement the existing food offer.
9. The application and is summarised as follows:

The sale of alcohol

 - Monday to Sunday – between 08:30 and 00:00 (midnight)

Opening hours

 - Monday to Sunday – between 08:30 and 00:00.
10. The proposed designated premises supervisor of the premises is Mary Adejumo who has been granted a personal licence by London Borough of Lewisham.
11. The premises licence application form provides the applicant's operating schedule. Parts 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 is attached to this report in Appendix A.

Representations from responsible authorities

12. Representations have been submitted by this council's environmental protection team (EPT), public health department (PHD), trading standards service (TS) and licensing responsible authority (LRA). A representation was also submitted by the Metropolitan Police Service (MPS).
13. The EPT's representation objects to the application in respect of the prevention of public nuisance licensing objective. The representation notes that the premises are subject to the Peckham cumulative impact policy (CIP) but that "...no consideration has been given within this operating schedule to the cumulative impact of an additional off licensed premises on public nuisance caused by street drinking..." The representation suggests that if the licensing sub-committee is minded to grant a licence in respect of the application that a condition be imposed on the licence prohibiting beers, lager beers or ciders with an alcohol by volume (ABV) of more than 6.5% being sold at the premises.
14. The PHD'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 is concerned with the hours sought in the application in respect of alcohol sales and seeks a later start time in respect of alcohol sales contending that "...*early-morning alcohol purchasers are more likely to be alcohol misusers and may thereby contribute to antisocial behaviour such as street drinking...*" The representation suggests that if the licensing sub-committee is minded to grant a licence in respect of the application that a condition be imposed on the licence prohibiting beers, lager beers or ciders with an alcohol by volume (ABV) of more than 5% being sold at the premises.
15. The MPS' representation notes that the premises are subject to the Peckham CIP. The representation alleges that the proposed DPS, Mrs Mary Adejumo, who is also the sole director of the applicant company, assaulted a council officer during an inspection by the council officer of the premises on 28 January 2016. The MPS object to the granting of the application contending that if a premises licence is issued in respect of the premises, council officers may have to attend the premises and that this may lead to a confrontation with the applicant. Following a trial at Camberwell Green Magistrates court on Friday 4 November 2016, Mrs Mary Adjumo was acquitted of all charges against her in respect of the alleged assault referred by the police, trading standards and licensing responsible authority.
16. TS's representation has been submitted on the same grounds as the MPS' representation.
17. The LRA's representation notes that the premises are subject to the Peckham CIP and objects to the application and relates to the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation states that "...the operating schedule is inadequate and has not addressed the prevention of crime and disorder; the prevention of public nuisance or public safety licensing objectives..." and recommends refusal of the application unless the applicant can demonstrate that the premises will not contribute to crime and disorder and public nuisance within the policy area. The representation also refers to the alleged assault of a council officer at the premises on 28 January 2016.

18. Copies of the representations submitted by the responsible authorities and any related correspondence / documents are attached in Appendix B.

Postponement of hearing

19. A hearing to determine the application was originally scheduled for 6 October 2016. Representations objecting to the application referred a prosecution that was pending at the time that the representations were submitted and which was scheduled to be heard on due to on 4 November 2016. The responsible authorities wished to rely on a finding of fact and determination by the criminal courts. The applicant also requested an adjournment of the licensing sub-committee hearing until the prosecution had taken place. in the circumstances, it was agreed that it was necessary to extend the time limits in respect of the licensing sub-committee hearing in the interests of justice in accordance with regulation 11 of the Licensing Act 2003 (Hearings) Regulations 2005 and postpone the hearing until 24 November 2016, by which time the prosecution will have been determined. The defendant in regards to the prosecution was acquitted of the charges. At the time of the writing of this report no responsible authority, or the applicant, has provided any further representation in regards to the application. The responsible authorities and the applicant will update the committee accordingly at the hearing of 24 November 2016.

Representations from other persons

20. No representations in respect of the application have been submitted by other persons.

Conciliation

21. 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

22. No premises licence, or equivalent licence under prior legislation, has previously been granted in respect of the premises.

Temporary event notices (TENs)

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

Map

24. 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:

- **Il Giardino Restaurant, 7 Blenheim Grove SE15 4QS** licensed for:

The provision of late night refreshment –

On Monday to Saturday between 23:00 and 00:30 the following day
On Sunday between 23:00 and 00:00 (midnight)

The sale of alcohol –

On Monday to Saturday to Thursday between 11:00 and 00:00
On Sunday between 12:00 and 23:30.

James Alexander Fisher, Unit 5, 12-16 Blenheim Grove, SE15 4QL licensed for:

The sale of alcohol –

On Monday to Thursday between 07:00 and 23:30
On Friday between 07:00 and 00:30 the following day
On Saturday between 09:00 and 00:30 the following day
On Sunday between 09:00 and 17:30.

The provision of regulated entertainment –

On Monday to Friday between 06:00 and 00:30 the following day
On Saturday and Sunday between 08:00 and 00:30 the following day.

- **Peckham Refreshment Rooms, Units 3 & 4, 12-16 Blenheim Grove, SE15 4QL** licensed for:

The sale of alcohol –

On Monday to Friday between 07:00 and 23:30
On Saturday between 09:00 and 23:30
On Sunday between 09:00 and 16:30

- **Honest Burgers, Units 1 & 2, 12 – 16 Blenheim Grove, SE15 4QL** licensed for:

The sale of alcohol and the provision of regulated entertainment –

On Sunday to Thursday between 10:00 and 23:00
On Friday and Saturday between 10:00 and 00:00.

The provision of late night refreshment –

On Friday and Saturday between 23:00 and 00:00.

- **Little Bird Gin Nights & Weekends, Unit 1, Dovedale Business Centre, 22a Blenheim Grove SE15 4QN** licensed for:

The sale of alcohol –

On Monday to Sunday between 10:00 and 19:00.

- **Iceland Frozen Foods, 74 Rye Lane, SE15 5DQ** licensed for:

The sale of alcohol –

On Monday to Saturday between 08:00 and 23:00

On Sunday between 10:00 and 22:30.

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

The sale of alcohol and the provision of regulated entertainment -

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

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

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.

- **Rye Express, 137-139 Unit 1 Rye Lane SE15 4ST** licensed for:

The sale of alcohol to be consumed off the premises Monday to Sunday 08:00 to 00:00.

- **John The Unicorn, 157-159 Rye Lane, SE15 4TL** licensed for:

The sale of alcohol to be consumed on the premises Sunday to Thursday 11:00 to 00:00 and Friday to Saturday 11:00 to 01:00

The provision of late night refreshment Sunday to Thursday 23:00 to 00:00 and Friday to Saturday 23:00 to 01:00.

- **Family Carnation Supermarket, 151A Rye Lane, SE15 4TL** licensed for:

The sale of alcohol to be consumed off the premises on Monday to Saturday between 08:00 and 22:00 and on Sunday between 12:00 and 22:30.

Southwark council statement of licensing policy

25. 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. 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.
26. 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.
27. Within Southwark's Statement of Licensing Policy, the premises are identified as being within Peckham major town centre area. The recommended closing time appropriate within this area for this category of premises is 00:00 (midnight) daily.

Resource implications

28. A fee of £190.00 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

29. 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

30. 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

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

Principles for making the determination

33. 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.
34. 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.
35. 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

36. 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.

37. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
38. 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.
39. 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.
40. 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

41. 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

42. 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.
43. 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

44. 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. 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.

50. 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.
51. 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

52. 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

53. 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 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
Appendix B	Representations submitted by responsible authorities
Appendix C	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	8 November 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		8 November 2016