

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 24 November 2016	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF	
<b>Ward(s) or groups affected:</b>		Livesey Ward	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

That the licensing sub-committee considers representations made by the premises licence holder regarding the interim steps imposed at the hearing of 17 November 2016 and pending the determination of an application made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area for a summary review of the premises licence in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF.

### 1. Notes:

- a) Under section 53B(6) of the Licensing Act 2003, If the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.
- b) A copy of the representation is attached as Appendix A.

## BACKGROUND INFORMATION

### The Licensing Act 2003

#### 2. 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.

#### 3. Within Southwark, the licensing responsibility is wholly administered by this council.

#### 4. 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.

#### 5. 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.
6. The summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

7. The premises in respect of the premises licence consists of a bar and restaurant on the ground floor of 670 Old Kent Road.
8. The premises licence was granted on 23 September 2009 following a new application by Mr Richard Bennetts.
9. An application to vary the premises licence was made on 26 April 2014 to extend the hours, modify conditions and add entertainment. The application was opposed by the Police, the Environmental Protection Team and two residents, the application was part granted at a hearing of the Licensing Sub-Committee on 28 June 2010.
10. A minor variation application was made on 09 January 2012 to vary the condition relating to SIA door staff, this variation was granted.
11. The details of the premises licence prior to the review application dated 15 November 2016 were:
  - **Opening hours**

Sunday to Thursday from 12:00 to 00:00  
Friday and Saturday from 12:00 to 03:30
  - **Live music**

Sunday to Thursday from 12:00 to 00:00  
Friday and Saturday from 12:00 to 03:00
  - **Recorded music**

Sunday to Thursday from 12:00 to 00:00  
Friday and Saturday from 12:00 to 03:00

- **Late night refreshment**

Sunday to Thursday from 23:00 - 00:00  
Fri & Sat 23:00 - 03:00

- **Sale of alcohol for consumption on the premises**

Sun to Thurs 12:00 - 00:00  
Fri & Sat 12:00 - 03:00

12. A copy of the current premises licence is attached as Appendix B.

### **Designated premises supervisor**

13. The designated premises supervisor (DPS) is Mr Richard Bennetts in who has been the DPS since the grant of the premises licence, Me Bennetts holds a personal licence issued by Hertsmere Borough Council.

### **The review application and certificate**

14. On 15 November 2016 the Metropolitan Police applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF.

15. 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.

16. The application concerned a serious incident that took place on 12 November 2016 at approximately 01:50 hours when it was alleged that a patron smashed a brandy bottle and stabbed the head of a male patron causing injuries consistent with grievous bodily harm. A copy of the application and certificate are attached to this report as Appendix C.

17. The licensing sub-committee sat on 17 November 2016 to consider interim steps under section 53A(2) of the Act. Evidence from the Police and representations from the premises licence holder and DPS were heard.

18. The licensing sub-committee decided to impose the following steps to promote the licensing objectives pending the determination of the review application at the full hearing on 13 December 2016 as follows:

- 1) That the premises opening hours are Monday to Sunday 12:00 - 00:00.
- 2) That all licensable activities cease at 23:30.
- 3) That no spirits (alcohol containing more than 20% ABV) shall be sold by the bottle or by half bottle.
- 4) That all spirits (alcohol containing more than 20% ABV) shall be sold by the measure if 25ml or 35ml at a maximum of two measures per container/glass.
- 5) That condition 289 be amended to read: "That a CCTV system be installed at the premises and maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV

system must be capable of capturing a clear facial image of every person who enters the premises. It should cover all areas within the premises including the outside area to the front in all lighting conditions”.

- 6) That two members of staff should be on duty at all times the premises is open that are trained in the use of CCTV and able to view and download images to a removable device immediately on request of police or council officers and all images held for a minimum of 31 days.
  - 7) That all empty glassware to be cleared at a frequency of 30 minutes.
  - 8) That condition 345 be amended to read: “Alcohol only to be served to customers that are seated and eating a substantial table meal and ancillary to that meal”.
  - 9) That an incident record is maintained and signed by the designated premises supervisor (DPS) on a weekly basis and is made available to police and council officers upon request.
  - 10) That condition 424 be amended to read: “That a minimum of two SIA registered door supervisors shall be employed at all times after 22:00 hours and the terminal hour that the premises are in use under this licence and provided with hand held metal detection units in order to ensure that searches are carried out in respect of all admissions to the premises, whether members of the public or performers and their assistants and mechanical counting devices to ensure that the maximum accommodation limit of the premises is not exceeded”.
  - 11) That condition 315 be amended to read: “Customers shall use no outside area after 22:00 hours other than those who temporarily leave the premises to smoke a cigarette. There will be a maximum of 5 people smoking outside the premises at any one time. The outdoor smoking area will be a cordoned off area. Those who do temporarily leave for this reason shall be subjected to the requirement of a further search”.
  - 12) That a record book of banned individuals shall be held by the SIA registered door supervisors at the front door and will be made available
19. The conditions were sent via email on 17 November 2016 to Mr Bennetts and the Police.
  20. A copy of the notice of decision is attached to this report as Appendix D.

#### **The representation regarding interim steps**

21. On 22 November 2016 at 13:56 hours a representation was received from the premises licence holder Mr Richard Bennetts.
22. The representation concerns four of the interim steps namely, conditions 6, 9, 10 & 12, as follows:

*“6. It's practically impossible to have two members of staff working at the same time 7 days a week who can operate the CCTV. This is because during the week from Monday to Friday, there are only three permanent members of staff at work from 12 when we open till 11 when we close. These people*

*are on shift basis and I don't work 7 days either. However am happy to make any recordings available within 48hrs of request from any relevant authorities. It's also not safe to hand out keys to the safe and office to temporary workers or every member of staff as they might make the effort counterproductive if they tamper with things for whatever reasons.*

9. *As I do not intend to utilise any form of entertainment, I don't see the need for this incident book recording for just an hour. I will simply operate without entertainment for the time being till the 13th when the full hearing comes up. In other words I'll just operate as a quiet restaurant until the hearing.*
10. *For this duration of my restrictions, I do not intend to employ the services of any entertainer or doormen or DJ whatsoever. We normally start entertainment from 11pm. It's therefore not worth employing those services for only half hour . The security companies have also indicated they would not be able to deploy their staff for just one hour of work on Fridays and Saturdays . Therefore I've opted to do without any entertainment whatsoever for this duration.*
12. *It's practically impossible to keep records of banned people as they'll neither cooperate to give their full names or allow any pictures to be taken. We simply denote them facially. This is also not necessary any longer at this point as we will not be deploying any form of entertainment for the duration till the 13th of December."*

23. A copy of the representation is included as Appendix A.

### **The hearing procedure**

24. The current hearing is for the purpose of considering the representation made by the premises licence holder to the interim steps imposed at the meeting on 17 November 2016.
25. Members can decide whether it is necessary to modify the interim steps are needed as a result of the representation and information submitted or not pending the full review hearing that is scheduled to be held on 13 December 2016.
26. In considering the representation made by the premises licence holder members must have regard to:
  - any representations made by the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated); and
  - any representations made by the holder of the premises licence.
27. The review is currently being consulted on and is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full hearing of the licensing sub-committee.
28. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

## **Operating history**

29. A full premises inspection was made under the Licensing Act 2003 on 19 July 2014 at 01:20 hours, the premises was found to be in breach of 2 conditions of the premises licence:
  - The counting device used by the door supervisors on duty was not working and the door supervisors were not searching all people that entered the premises. This is in breach of condition 242 on the current premises licence.
  - When one of the door supervisors was asked what time the last entry into the premises was he replied '02:15' hours. This is in breach of condition 808 on the current premises licence.
30. A warning letter was sent on 31 July 2014
31. A revisit on 31 July 2014 at 00:09 hours found the premises to be compliant.
32. Further visits by council licensing officers working on the night-time economy have been made in response to complaints regarding noise from patrons outside the premises, however these complaints were not substantiated.
33. On Friday 18 November 2016 at 23:30 hours a council licensing officer made a visit to the premises to check on compliance with the interim steps imposed by the licensing sub-committee.
34. The officer witnessed two patrons leave the premises and urinate in an alleyway
35. The officer also found that the premises were allowed to be open without the provision of SIA door supervisors. The premises licence holder stated to the officer that he was unable to employ SIA door supervisors for a period of 2 hours as it was not worth their while.
36. The Council's licensing service did not receive any prior consultation on the premises licence holder's decision to open the premises in breach of this condition.
37. This is a breach of interim step 10 and may be considered an offence under section 136 of the Licensing Act 2003.

## **The local area**

38. A map of the local area is attached at Appendix E.
39. This premises is not in a cumulative impact area.
40. This premises is 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 these categories of premises:
  - Closing time for restaurants and cafes is 23:00 hours daily
  - Closing time for public houses, wine bars or other drinking establishments is 23:00 hours daily

- Closing time for night clubs (with sui generis planning classification) are not considered appropriate for this area

### **Southwark statement of licensing policy 2016-20**

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.

### **Resource implications**

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

## **Consultation**

44. The premises licence holder has been informed of the meeting date and of the details of the hearing. They have indicated that they will attend the hearing.

## **Community impact statement**

45. 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**

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

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

48. Pursuant to section 53B(6) of the Licensing Act 2003, if the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.
49. 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.
50. 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 necessary 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
51. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
52. The authority may decide to take no action if it finds no interim steps are necessary to promote the licensing objectives.
53. 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 a necessary and proportionate response.

54. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

55. Where the authority takes interim steps on 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**

56. 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.

57. 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**

58. 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.
59. 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.
60. 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.
61. 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.
62. 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.
63. 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.
64. 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.

65. 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**

66. 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.

### **REASONS FOR LATENESS**

67. The reasons for lateness are that, pursuant to section 53B(6) of the Licensing Act 2003, if the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the relevant licensing authority, the authority must, within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.

### **REASONS FOR URGENCY**

68. The council has a statutory duty under section 53(b) to hold an interim hearing within 48 hours of receipt of the representation.

### **Strategic Director of Finance and Governance**

69. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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**

<b>Name</b>	<b>Title</b>
Appendix A	Copy of representation
Appendix B	Copy of the existing premises licences
Appendix C	Copy of review application and certificate
Appendix D	Notice of decision interim steps 17 Nov 2016
Appendix E	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	David Franklin, Team Leader Licensing	
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<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
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