

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 13 December 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	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 53C 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 Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF
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 representation submitted by two responsible authorities. Copies of the representations are attached as Appendix C. Details of the representations are provided in paragraphs 21 and 22 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 E.
  - 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 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 to 00:00  
Friday and Saturday from 23:00 to 03:00
  - **Sale of alcohol for consumption on the premises**  
Sunday to Thursday from 12:00 to 00:00  
Friday and Saturday from 12:00 - 03:00
9. A copy of the current premises licence is attached as Appendix B.

## **Designated premises supervisor**

The designated premises supervisor is Mr Richard Bennetts.

## **The review application and certificate**

10. 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 Lush Bar & Restaurant, Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF.
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 a serious incident that took place on 12 November 2016 at approximately 01:50 it is alleged that a patron smashed a brandy bottle and stabbed the head of a male patron causing injuries constant with grievous bodily harm.
13. On investigating the incident it was found that the venue management failed to report the incident to the police.
14. A number of conditions were found to be contravened, including allowing patrons to enter the premises and leave the premises with alcohol.
15. The police have stated that they have no faith in the current management of the premises and seek the suspension of the premises licence or a reduction in the operating hours of the premises hours so that the operating hours of the premises are in line with the operating hours suggested for restaurants in this council's statement of licensing policy. The police also suggest conditions requiring that drinks at the premises are not served in glass receptacles, but only served in polycarbonate receptacles and that alcohol only to be served to customers seated and eating a substantial table meal. Lastly the police suggest the suspension of regulated entertainment from the licence.
16. The licensing sub-committee is not restricted to just considering the above steps (see paragraph 48 below).
17. Copies of the review application and review certificate are attached as Appendix A. Other evidence may become available at the hearing.
18. An expedited review hearing was held on 17 November 2016 to decide whether to implement interim steps suggested by the police. The licensing sub-committee decided to implement the following interim steps until the full review hearing on 13 December 2016:
  - 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. On 22 November 2016 at 13:56 hours a representation concerning conditions 6, 9, 10 and 12 above was received from the premises licence holder, Mr Richard Bennetts. A hearing to consider the representation submitted by Mr Bennetts was held on 24 November 2016 and the licensing sub-committee decided to amend conditions 6, 9 and 10.
20. Copies of the notices of decision pertaining to the expedited review hearing of 17 November 2016, and the hearing to consider Mr Bennett's representations in regards to the interim steps imposed by the licensing sub-committee, are attached as Appendix D. Any additional evidence submitted will be made available at the hearing.

## **Representations from responsible authorities**

21. The council's environmental protection team have submitted a representation in regards to the prevention of public nuisance and the promotion of public safety licensing objectives, and also in support of the police representation submitted on the grounds of prevention of crime and disorder. The representation supports the police's request to suspend regulated entertainment from the licence, to reduce the operating hours of the premises hours, and to implement a no glass policy after midnight at the premises. The environmental protection team also recommend the imposition of a condition to prohibit drinks and drink containers from being taken outside of the premises; that the sub committee satisfy themselves that the door supervision arrangements have been improved to ensure full compliance with BS 7960:2005 Code of Practice in Door Supervision; and that the sub committee consider the Southwark Women's Safety Charter, and paragraphs 211 to 213 of it's parent committee's statement of licensing policy.
22. The council's licensing responsible authority has submitted a representation concerned with the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation notes that the premises are situated in a 'residential area' and the closing times recommended in the Southwark statement of licensing policy for restaurants; cafes, public houses, wine bars or other drinking establishments in residential areas is 23:00 daily. Night clubs (with sui generis planning classification) are not considered appropriate for this area. The licensing responsible authority fully support the review application and state that "*...if the licensing sub-committee are not of a mind not to revoke the premises licence...*" that the licensing responsible authority "*...would suggest bringing the opening hours in line with that which is recommended in the Southwark statement of licensing policy for a 'residential area'.*"
23. Copies of the above representations are attached to this report as Appendix C.

## **Representations from other persons**

24. No representations have been submitted by other persons.

## **Operating History**

25. A full premises inspection was made under the Licensing Act 2003 on 19 July 2014 at 01:20, the premises was found to be in breach of two 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'. This is in breach of condition 808 on the current premises licence.
26. A warning letter was sent on 31 July 2014
27. A revisit on 31 July 2014 at 00:09 found the premises to be compliant.

28. 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.
29. On Friday 18 November 2016 at 23:45 a council licensing officer made a visit to the premises to check on compliance with the interim steps imposed by the licensing sub-committee.
30. The officer witnessed two patrons leave the premises and urinate in an alleyway.
31. 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 two hours as he couldn't find any door supervisors willing to work for such a short duration as it would not be worth their while.
32. 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.
33. This is a breach of interim step 10 and may be considered an offence under section 136 of the Licensing Act 2003.
34. On Saturday 26 November 2016 at 00:41 a council licensing officer made a visit to the premises to check on compliance with the interim steps imposed by the licensing sub-committee. The premises were shut at the time of the visit.

#### **The local area**

35. A map of the local area is attached at Appendix E. The premises are at the centre of the map.
36. The premises are not in a cumulative impact area.
37. 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**

38. 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.
39. 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**

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

### **Consultation**

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

### **Community impact statement**

43. 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**

44. 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.
45. The principles, which sub-committee members must apply, are set out below.

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

46. 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.
47. 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.
48. 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.
49. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
50. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
51. 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.
52. 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**

53. 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**

54. 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.
55. 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**

56. 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.

57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.
63. 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**

64. Members are required to have regard to the DCMS 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

65. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	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 licences
Appendix C	Copies of the representations submitted by the environmental protection team and the licensing responsible authority
Appendix D	Copies of the notices of decision pertaining to the expedited review hearing of 17 November 2016 and the hearing of 24 November 2016 to consider representations submitted in respect of the interim steps
Appendix E	Map of local area

### AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Wesley McArthur, Principal Enforcement Officer	
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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	No	No
<b>Cabinet Member</b>	No	No
Date final report sent to Constitutional Team	1 December 2016	