

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 20 December 2016	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: McDonalds, Unit 16 Butterfly Walk, Denmark Hill, London, SE5 8RW	
<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 Manor Restaurants (UK) Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: McDonalds, Unit 16 Butterfly Walk, Denmark Hill, London SE5 8RW.
2. Notes:
  - The application seeks to vary the premises licence in respect of the premises known as: McDonalds, Unit 16 Butterfly Walk, Denmark Hill, London, SE5 8RW under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the sub-committee for determination.
  - Paragraphs 10 to 12 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 B. A map showing the location of the premises is attached as Appendix F.
  - Paragraphs 14 to 17 of this report deal with the representations submitted in respect of the application. Copies of the relevant representation and related correspondence are attached in Appendix C and Appendix D.
  - Paragraph 27 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act 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, this council wholly administers the licensing responsibility.

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 interested parties 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 current premises licence

8. The current premises licence issued in respect of the premises known as McDonalds, Unit 16 Butterfly Walk, Denmark Hill, London, SE5 8RW was issued on 7 July 2016 and allows the following licensable activities:
  - **Late night refreshment:**

Monday to Wednesday	between 23:00 and 00:00
Thursday	between 23:00 and 05:00 the following day
Friday and Saturday	between 23:00 and 05:00 the following day
Sunday	between 23:00 and 00:00
  
  - **Opening hours:**

Monday to Wednesday	between 06:00 and 00:00
Thursday	between 06:00 and 05:00 the following day
Friday and Saturday	between 05:00 and 05:00 the following day
Sunday	between 05:00 and 00:00.
  
9. A copy of the existing premises licence is attached as Appendix A.

### The variation application

10. Manor Restaurants (UK) Limited have applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as McDonalds, Unit 16 Butterfly Walk, Denmark Hill, London, SE5 8RW.
  
11. The application is summarised as follows:

- To extend the provision of late night refreshment on Sundays to Wednesdays from 00:00 to 05:00.
  - To amend the opening hours of the restaurant to allow the premises to open 24 hour seven days per week.
12. The premises licence application form provides the applicant's operating schedule. Part M sets out the proposed operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. A copy of the application is attached to this report as Appendix B.

### **Designated premises supervisor**

13. No designated premises supervisor (DPS) is required.

### **Representations from responsible authorities**

14. This council's environmental protection team (EPT) have made comments for consideration by the licensing sub-committee. These comments have not been submitted as an objection to this application.
15. The Metropolitan Police Service (MPS) have submitted a representation in relation to the application.
16. The Metropolitan Police Service representation states the current closing times fall outside of the suggested closing times in the council's statement of licensing policy. The police state the application has given no reason to deviate from the policy. The police also state that the police crime and incident reporting system has been checked and in the last six months McDonald's restaurants in Southwark have 85 reports where an incident has been reported inside, outside or close to each venue. These reports may not be directly attributed to each restaurant but indicate that they are located in areas that have a crime and disorder problem.
17. The environmental protection team's comments state the requested hours of extension fall outside of the recommendation of the statement of licensing policy. EPT note that the licence holders are 'content to put measures in place to limit noise', shall be considered to include controls on deliveries, collections and waste disposal activities such that they occur during the hours of 08:00 to 20:00. EPT have no objection to the application but submit comments for clarity and for the consideration of the Licensing Committee.
18. Note: Takeaways are not subject to the Camberwell cumulative impact policy, and so the policy must not be taken into consideration when determining the application. Therefore there is a presumption to grant the application, pending consideration of any representations received.
19. Copies of the above representation and related correspondence are attached in Appendix C and Appendix D.

### **Representations from other persons**

20. No representations in regards to this application have been submitted by other persons.

## Conciliation

21. The applicant was sent one objection received from the police responsible authority. The applicant was advised to contact the police directly to facilitate conciliation of their objection. The police however maintain their objection that 'Every application should be treated on its own merits, however no exceptional circumstances have been shown with in the application to give reason to deviate from the policy'.

## Operating history

22. The premises licence in respect of the premises was issued on 2 December 2009.
23. On 7 August 2013 a variation application was made to extend the opening hours and late night refreshment on Thursday, Friday and Saturday nights to 02:00 and Sunday nights to 00:00. Also to amend opening hours on Friday, Saturday and Sunday morning from an earlier times of 05:00, enabling the premises to remain open from 06:00 Thursdays until 00:00 on Sundays.
24. On 16 June 2016 a minor variation application was made to change the plans of the premises following a refurbishment of the restaurant.
25. Manor Restaurants (UK) Limited have applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as McDonalds, Unit 16 Butterfly Walk, Denmark Hill, London, SE5 8RW.
26. A list of all night time visits to the premises by licensing officers is attached in Appendix E.

## Map

27. A map of the area is attached to this report as Appendix E. The premises is identified at the centre of the map. For purposes of scale-only the circle on the map has a 100 metre radius. There are several licensed premises within this 100 metre radius.
  - **Co-op, 28 - 32 Denmark Hill, London SE5 8RZ** licensed for:
    - The sale of alcohol to be consumed off the premises on Monday to Sunday between 07:00 and 23:00
  - **The Tiger, 18 Camberwell Green, London SE5 7AA** licensed for:
    - The sale of alcohol to be consumed on and off the premises on Monday to Thursday between 09:00 and 01:30, on Friday and Saturday between 09:00 and 03:30 and on Sunday 09:00 and 00:30
    - The provision of films on Monday to Sunday between 12:00 and 00:00
    - The provision of live music on Monday to Thursday between 09:00 and 02:00, Friday and Saturday between 09:00 and 04:00 and on Sunday 09:00 and 01:00
    - The provision of recorded music on Monday to Sunday between 09:00 and 02:00, Friday and Saturday between 09:00 and 04:00 and on Sunday 09:00 and 01:00

- The provision of late night refreshment on Monday to Thursday between 09:00 and 01:30, Friday and Saturday between 09:00 and 02:30 and on Sunday between 09:00 and 00:30
- **Morrisons, Butterfly Walk, Denmark Hill, London SE5 8RW** licensed for:
  - The sale of alcohol to be consumed off the premises on Monday to Sunday between 06:00 and 23:00.

### **Southwark council saturation policy for Camberwell**

28. Council assembly approved the introduction of a special policy for Camberwell on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in November 2015 when full council assembly approved the 2015-2020 Statement of Licensing Policy.
29. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
30. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
31. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

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

32. 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.
33. 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.
34. Within Southwark’s statement of licensing policy, the premises are identified as being within the Camberwell District Town Centre Area. The premises are described as an outlet for food and non-alcoholic drink. The closing times recommended in the statement of licensing policy for a take-away in Camberwell district town centre are as follows:
- Sunday to Thursday: 00:00
  - Friday and Saturday: 01:00.
35. Takeaways are not subject to the Camberwell cumulative impact policy.

**Resource implications**

36. A fee of £315.00 being the statutory fee payable for premises within non-domestic rateable value band A has been paid by the applicant company in respect of this application.

**Consultation**

37. 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 a similar notice exhibited at the premises for a period of 28 consecutive days.

**Community impact statement**

38. 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**

39. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
40. The principles which sub-committee members must apply are set out below.

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

41. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
42. The general principle is that applications for variation 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.
43. 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 other party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
44. 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:
  - Add to, omit, and/or alter the conditions of the licence or,
  - Reject the whole or part of the application for variation.

### **Conditions**

45. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
46. The four licensing objectives are
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
47. 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.

48. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
49. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions will come into force: age verification policy and smaller measures for alcoholic drinks.
50. Members are also referred to the Home Office revised guidance on conditions.

### **Reasons**

51. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

### **Hearing procedures**

52. 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



53. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

#### **The council's multiple roles and the role of the licensing sub-committee**

54. 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.
55. 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.
56. 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.
57. 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.
58. 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.
59. 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.
60. 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

61. Members are required to have regard to the Home Office revised 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

62. 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	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Copy of existing premises licence
Appendix B	Copy of the application
Appendix C	Police representation
Appendix D	Environmental protection team comments
Appendix E	List of night time visits to the premises by licensing officers
Appendix F	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Natasha O'Donoghue, Licensing Officer	
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<b>Dated</b>	7 December 2016	
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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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