

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 30 January 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Lost Rivers (Land Adjacent to Artworks), Elephant Road, London SE17 1AY	
<b>Ward(s) of group(s) affected</b>		East Walworth	
<b>From</b>		Strategic Director of Environment	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Nicholas James Boland for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Lost Rivers (land adjacent to artworks), Elephant Road, London SE17 1AY.
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 19 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted and the related correspondence are attached to this report in Appendix B.
  - d) Paragraph 21 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix D.
  - e) 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 18 October 2016 Nicholas James Boland applied to this council for the grant of a premises licence in respect of Lost Rivers (land adjacent to Artworks), Elephant Road, London SE17 1AY. The premises is described as a box park style multi-use construction with main focuses on serving craft beers, offering high quality food and providing entertainment suitable for all ages main in a modern circus.
9. The application is summarised as follows: (as amended through conciliation)
  - Plays (indoors)  
Monday to Thursday from 10:00 to 00:00  
Friday and Saturday from 10:00 to 01:00  
Sunday from 10:00 to 23:00
  - Films (indoors)  
Monday to Thursday from 10:00 to 00:00  
Friday and Saturday from 10:00 to 01:00  
Sunday from 10:00 to 23:00
  - Recorded Music (indoors)  
Monday to Thursday from 10:00 to 00:00  
Friday and Saturday from 10:00 to 01:00  
Sunday from 10:00 to 23:00

- Performance of dance (indoors)  
Monday to Thursday from 10:00 to 00:00  
Friday and Saturday from 10:00 to 01:00  
Sun 10:00 to 23:00
  - Anything similar to the above (indoor)  
Monday to Thursday from 10:00 to 00:00  
Friday and Saturday from 10:00 to 01:00  
Sunday from 10:00 to 23:00
  - Late Night Refreshment (indoors and outdoors)  
Monday to Thursday from 23:00 to 00:00  
Friday and Saturday from 23:00 to 01:00
  - The supply of alcohol (on and off the premises)  
Monday to Thursday from 11:00 to 00:00  
Friday and Saturday from 01:00  
Sunday from 11:00 till 23:00
  - Operating hours  
Monday to Thursday from 10:00 to 00:30  
Friday and Saturday from 10:00 to 01:30  
Sunday from 10:00 to 23:30.
10. The proposed designated premises supervisor of the premises is Nicholas James Boland who holds a personal licence issued by Lambeth Council.
11. The premises licence application form provides the applicant's operating schedule. Parts A, B, E, F, G, H, I, 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 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 the Metropolitan Police Service, the environmental protection team (EPT), licensing (as a responsible authority), trading standards and public health.
13. The representation from the Metropolitan Police Service states that the operating schedule indicates that this is a multi-functional, multi-use space that will contain a variety of businesses, some of which will be selling alcohol and food for consumption on and off the premises and have offered conditions to be considered for the promotion of the four licensing objectives, in particular the prevention of crime and disorder. Some of the conditions have been offered as part of the operating schedule but the wording is crucial to negate ambiguity. The conditions have been agreed and as such the police representation has been withdrawn.
14. The EPT representation is made under the grounds of prevention of public nuisance. They state that there is inadequate detail in the application on how a public nuisance would be prevented. There is no detail of measures that would be used to prevent

public nuisance. The applicant has not conducted a risk assessment of the likelihood of their outdoor music activities causing public nuisance to nearby residents, and has therefore not followed Section 216 of the statement of licensing policy. The EPT have suggested conditions for amending the operating schedule if necessary

15. Licensing (as a responsible authority) has submitted representations in respect of the prevention of crime and disorder; the prevention of public nuisance, public safety and the protection of children from harm. This premises is situated within the Elephant and Castle major town centre area and under the Southwark statement of licensing policy 2016 - 2020 the appropriate closing times for public houses, wine bars or other drinking establishments from Sunday to Thursday is 23:00 and for Friday and Saturday 00:00. The representation seeks further information and has offered conditions and request the applicant amend the operating schedule.
16. Trading standards welcome the statements in the application about addressing sales of alcohol to children in order to promote the four licensing objectives but for completeness and clarity have suggested conditions which have been agreed upon by the applicant and will therefore form part of the licence conditions. Trading standards has therefore withdrawn the representation.
17. The public health 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 proposed hours for the sale of alcohol and states that that increased hours of alcohol sales are associated with increased alcohol consumption, alcohol related injuries and alcohol related harm. Research suggests that increased hours of alcohol sales are associated with increased alcohol consumption, increased alcohol-related injuries, and increased alcohol-related harm. Southwark's statement of licensing policy recommends a closing time for alcohol sales of 23:00 on Sundays to Thursdays and 00:00 on Fridays and Saturdays for an establishment in this location and therefore the public health authority recommend that the end time for alcohol sales be changed to 23:00 on Sundays to Thursdays and 00:00 on Fridays to Saturdays as per Southwark's statement of licensing policy.
16. Copies of the representations submitted by the responsible authorities and related trading standards and police withdrawal emails are attached in Appendix B.

#### **Representations from other persons**

17. There are no representation from other persons.

#### **Conciliation**

18. The representations were forwarded to the applicant and, through conciliation, conditions offered by both the police and trading standards have been agreed by the applicant and the operating schedule has been amended. However, other representations remain outstanding and the licensing sub committee will be updated of any developments on 30 January 2017. The conciliation statement is attached as Appendix C.

#### **Deregulation of entertainment**

19. On 6 April 2015 entertainment became deregulated and as a result:

- Live unamplified music is deregulated between 08.00 and 23.00 on any premises.
- Live and recorded amplified music is deregulated between 08.00 and 23.00 at on-licensed premises provided the audience does not exceed 500 people. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

### **Map of the local area**

20. 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 pink triangle. The following licensed premises are also shown on the map and have closing times as stated:

- Bola 8, 122 Elephant Road, London SE1 (Monday to Sunday till 06:00)
- Corsica Studios, Unit 4 & 5 Farrell Court, Elephant Road, London SE1 (Sunday to Wednesday till 03:00, Thursday till 04:00 and Friday 24 hours)
- Distrindina, Unit 6 Farrell Court, Elephant Road, London SE1 (Sunday to Thursday till 03:00, Friday and Saturday till 04:40)
- Long Wave Bar and Café, 1 The Artworks, Elephant Road, London SE1 (Monday to Sunday till 01:00)
- Naranjo Restaurant, 113 Elephant Road, London SE1 (Monday to Sunday till 23:00)
- Coronet, Railway Arch 3,4,5 & 6, Elephant Road, London SE1 (Monday to Sunday till 07:30)
- La Chatica, Unit 2, Farrell Court, Elephant Road, London SE1 (Monday to Saturday till 22:00 and Sunday till 20:00).

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

21. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. 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.
22. 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.
23. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Public houses, wine bars or other drinking establishments: Sunday to Thursday 23:00 and Friday and Saturday 00:00.

### **Resource implications**

24. A fee of £315.00 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.

### **Consultation**

25. 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**

26. 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**

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

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

29. 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.
30. 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.
31. 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**

32. 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.
33. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety

- The prevention of nuisance
  - The protection of children from harm.
34. 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.
35. 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.
36. 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**

37. 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**

38. 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.



39. 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**

40. 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.
41. 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.
42. 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.
43. 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.
44. 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.
45. 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.
46. 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.

47. 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

48. 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

49. 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 revised 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 and withdrawal emails
Appendix C	Conciliation statement
Appendix D	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
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<b>Dated</b>	18 January 2017	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
Date final report sent to Constitutional Team		18 January 2017