

Item No. 8.	Classification: Open	Date: 30 January 2017	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Rock Island (formerly Thomas A Becket), 320-322 Old Kent Road, London SE1 5UE	
Ward(s) of group(s) affected		East Walworth	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Paul Anthony Scarborough for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Rock Island (formerly Thomas A Becket), 320-322 Old Kent Road, London SE1 5UE.
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 other persons 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 20 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted are attached to this report in Appendices B and C.
 - d) Paragraph 39 deals with licensed premises within a 100 metre radius of the premises.
 - 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 15 November 2016 Paul Anthony Scarborough applied to this council for the grant of a premises licence in respect of Rock Island, (Thomas A Becket), 320-322 Old Kent Road, SE1 5UE. The premises is described as a restaurant. The applicant is partnered up with the Rock Island Cyprus and intends to turn the venue into a premises like TGI Friday or Steak House without losing its heritage. The premises is situated at the corner of Old Kent Road and Albany Road. The plans submitted with the application indicate the use of the outside area marking six tables seating 24 persons.
9. The application is summarised as follows:
 - Late Night Refreshment (indoors)
Monday to Sunday from 23:00 to 00:30
 - The supply of alcohol (on the premises)
Monday to Sunday from 11:00 to 00:00
 - Operating hours
Monday to Sunday from 11:00 to 01:00
10. The proposed designated premises supervisor (DPS) of the premises is Mahir Kilic who holds a personal licence issued by Hackney. The proposed DPS, Mahir Kilic is a licensing consultant from Narts, who advised the applicant Paul Anthony

Scarborough in the September 2016 premises licence application (which was withdrawn).

11. The premises licence application form provides the applicant's operating schedule. Parts 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) and public health.
13. The representation from the Metropolitan Police Service states that the operating schedule indicates that this is for a restaurant premises. However, the premises is subject to a community order and designated an asset of community value and should remain a public house. Public houses are permitted to serve food but the schedule indicates that the venue would solely be for food and alcohol only served as ancillary to food. Unless the community order is removed and the planning permission changed then the operation as described would not be allowed under the order.
14. The representation also makes reference to this council's statement of licensing policy and noted that the proposed closing hours in respect of the premises fall outside of the closing hours suggested in the statement of licensing policy. The representation has suggested conditions that should be in place regardless of terminal hour and also conditions that should be in place if the terminal hour falls after midnight.
15. The EPT representation is made under the grounds of prevention of public nuisance and that the hours applied for fall beyond the recommended hours for a restaurant or public house within the Southwark statement of licensing policy of 23:00 for public houses. They EPT note that the premises is structurally connected to residential premises. The proposed conditions to prevent public nuisance are insufficient to address this concern and they ask for the recommended terminal hour of 23:00 to be imposed.
16. Licensing (as a responsible authority) has submitted a representation in respect of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm. The representation makes reference to the issues that led to the revocation of the previous premises licence and submits a copy of the notice of decision for that hearing. It also requests reassurance that the previous licensees or management would have no control over the premises and the licensable activities that may take place at the premises. They have asked if the applicant could provide a lease to show this at the committee hearing. The representation also recommends a closing time of 23:00 in line with the recommended closing times in the Southwark statement of licensing policy.
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. The representation requests an earlier end time in regards to the sale of alcohol of 23:00. Additionally, this application is for a premises located within a residential area. Southwark's statement of licensing policy recommends that the closing time for such a premises be 23:00 daily.

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

Representations from other persons

19. There have been five representations from other persons. They cite all four of the licensing objectives. They are mostly local residents who have suffered with noise, disturbances and anti-social behaviour in the past from the premises and its past patrons and also persons loitering in the immediate area whilst the premises was open.
20. Copies of the representations submitted by other persons are attached as Appendix C.

Conciliation

21. The representations were forwarded to the applicant. However, there has been no response to any of the representations at the time of the writing of this report.

Premises history

22. The premises has previously held a licence and operated as a nightclub. The previous licence was revoked by the licensing sub-committee on 10 March 2015 following an expedited review submitted by the Metropolitan Police Service under serious crime and disorder. There were further representations regarding persistent breaches of the premises licence and antisocial behaviour associated with the premises. The notice of decision is attached as appendix D.
23. The premises was listed as an asset of community value on 22 June 2015. A building or piece of land is deemed to be of community value if, in the opinion of the council:
 - An actual current main (non-ancillary)use of the building or land furthers the social interests or social wellbeing of the local community, and it is realistic to think that there can continue to be a main use of the building or land which will further the social interests or social wellbeing of the local community, although not necessarily in the same way, or
 - A main use of the building or land in the recent past furthered the social interests or social wellbeing of the local community and it is realistic to think that the building or land can be brought back into use in the future.
24. The licensee, as of April 2012 was Mohammed Abdul Kashim. The DPS of this licence was Mohammed Abdul Kashim.

25. On the 28 September 2012, the licence was then transferred to Thomas A Becket Leisure Investments Ltd, 1st Floor, 86 Whitechapel High Street, London, E1 7QX. Mohammed Abdul Kashim remained as the DPS.
26. As of 1 September 2016, Abdul Kashim was listed as an owner of the property, according to the Land Registry.
27. On 4 December 2014, two temporary event notices (TENs) were served by Mr Mohammed Abdul Kashim (the DPS at the premises) in respect of events intended to be held at the Thomas A Becket, 320-322 Old Kent Road, London SE1 5U3.
28. Both TENs received objections from the Metropolitan Police Service and were determined at a hearing of the licensing sub-committee
29. The TENs are summarised as follows:
 - TEN – 846929 giving notice of intended ‘private parties’ to include the retail sale of alcohol and the provision of regulated entertainment on
 - Wednesday 24 December from 05:30 to 10:00
 - Thursday 25 December from 05:30 to 10:00
 - Friday 26 December from 05:30 to 07:00
 - Saturday 27 December from 05:30 to 07:00
 - Sunday 28 December from 02:30 to 10:00
 - Monday 29 December 2014 from 05:30 to 10:00.
30. The maximum number of people expected at any one time at the premises is 499. Licensable activities are to take place on the premises only.
31. The decision was made to serve a counter notice to prevent the use of the premises under the TEN 846929.
 - TEN – 846930 giving notice of intended ‘private parties’ to include the retail sale of alcohol and the provision of regulated entertainment on
 - Wednesday 31 December 2014 from 05:30 to 10:00
 - Thursday 1 January 2015 from 05:30 to 10:00.
32. The maximum number of people expected at any one time at the premises is 499. Licensable activities are to take place on the premises only.
33. The TEN for New Years Eve/Day was permitted with conditions taken from the premises licence imposed. The notice of decision regarding this TEN is attached as Appendix E.
34. On 5 August 2016 Paul Anthony Scarborough applied for a new premises licence in respect of this premises. The hours applied for were 11:00 until 02:00 the following day each day of the week and for late night refreshment until 02:00 the following day each day of the week.
35. This application was met with representations from responsible authorities and other persons. The application was withdrawn after discrepancies between the hours applied for and the hours advertised was noted.

36. On 13 September 2016 another application was made and met with similar objection, this application was also withdrawn as the plans submitted did not comply with permissions sought.
37. Some of the other persons have indicated that their original representations stand in regards to the new application.

Deregulation of entertainment

38. 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

39. A Due to software issues it has not been possible to provide a map of the local area in this report however it can be confirmed that the licensed premises within 100 metres of the premises are:

Off licences

- Tesco, 107 Dunton Road, London SE1 (Monday to Saturday till 00.00 and Sunday till 17:00)

Late night refreshment

- El Turkistan, 304 Old Kent Road 49-51, London SE1 (Sunday to Thursday till 02.00 and Friday and Saturday till 03.00)
- Super Pizza, 292 Old Kent Road, London SE1 (Sunday to Thursday till 01.00 and Friday and Saturday till 02.00).

Southwark council statement of licensing policy

40. 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.
41. 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.
42. Within Southwark's statement of licensing policy, the premises are identified as being within a residential area. Relevant closing times recommended in the statement of licensing policy for licensed premises in residential areas are as follows:
- Restaurants, pubs and wine bars
Monday - Sunday to 23:00
 - Night clubs (with Sui Generis planning classification) are not considered appropriate for residential areas.

Resource implications

43. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

Consultation

44. 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

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

Principles for making the determination

48. 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.
49. 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.
50. 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

51. 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.

52. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
53. 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.
54. 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.
55. 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

56. 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

57. 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.
58. 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

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

65. 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.
66. 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

67. 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.

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
Appendix C	Representations submitted by other persons
Appendix D	Notice of Decision for licence review on 15 March 2015
Appendix E	Notice of Decision for temporary event notice hearing on 12 December 2014

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
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Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
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