

Item No. 5	Classification: Open	Date: December 14 2009	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 Sebastians Bar Restaurant 49/51 Norwood Road SE24.	
Ward(s) or groups affected:		Premises are within: Village	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Courtney Sebastian Millanaise and Colton George Folkes, for a variation of the premises licence granted under the Licensing Act 2003 in respect of the premises known as Sebastians Bar Restaurant, 49/51 Norwood Road, SE24.

Notes:

- *This application forms a variation application, under section 34 of the Licensing Act 2003. The application is subject to representations from responsible authorities and interested parties and is therefore referred to the sub-committee for determination;*
- *Paragraphs 7 to 9 of this report provide a summary of the application under consideration (a copy of the full application is provided at appendix A)*
- *Paragraphs 10 to 13 of this report deal with the representations received (copies of the relevant representations and replies are attached at appendices B and C).*

BACKGROUND INFORMATION

The Licensing Act 2003

2. 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
3. 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; and
 - the protection of children from harm.
4. 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
5. The Act established a transitional period between February 7 2005 and August 6 2005 under which holders of existing justice's licenses, public entertainment licenses and night café licenses were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licenses into the relevant licenses under the new system. Licenses that were so converted were converted on existing terms, conditions and restrictions. The August date having passed, operators must now apply for new licenses.
 6. 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 variation application

7. On the October 30th 2009, Courtney Millanaise and Colton Folkes made an application for a variation of the premises licence held in respect of the premises known as Sebastian's Bar Restaurant, 49/51 Norwood Road, London, SE24.
8. A copy of the application for the variation of the premises licence is attached to the report as appendix A.
9. The application is summarized as follows:
 - The removal of the restricting condition on the premises licence namely condition No 135, as follows: Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by persons as an ancillary to his meal

Representations from interested parties

10. There are six representations from interested parties, including three representations from local representative organisations. Copies of the representations are attached at Appendix B.

Representations from responsible authorities

11. There are three representations from responsible authorities: the police licensing service, the council's environmental protection team, and the council's planning enforcement team.
12. Copies of the representations from responsible authorities are attached to the report as appendix C. Comments from the London fire service are included but the service has not made a representation.

Conciliation

13. A conciliation meeting was held on 15 November 2009 at the premises. The meeting was attended by representatives from the police licensing office and the council's environmental protection team. The meeting did not result in the withdrawal of any

representation. Further information was supplied by the applicant following the meeting and a copy of this document is attached as appendix D.

Operating history

14. The premises currently known as Sebastians were previously known as Tsolo Restaurant up until 2007.
15. In 2008 the premises licence transferred to the current holders Courtney Milanaise and Colton Foulkes. The premises name changed to Sebastian's Bar Restaurant. Mr Millanaise became the designated premises supervisor. The premises licence provided for the
 - the retail sale of alcohol (on sales) from 13.00 through to 04.00 each day of the week;
 - the provision of regulated entertainment including live and recorded music and dancing from 18.00 to 04.00 each day of the week;
 - the provision of late night refreshment between the hours of 23.00 and 05.00 each day of the week; and
 - general opening hours of 13.00 through to 05.30 each day of the week.
16. The premises licence is made subject to a number of special conditions including the condition number 135 stating that "intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such person as an ancillary to his meal", which is now subject of the variation application. A copy of the full current premises licence is attached as appendix E.
17. In addition to the permissions provided under the premises licence the premises has also operated on occasions under a number of temporary event notices given under section 100 of the Licensing Act 2003.
18. On 4 September 2009 officers of the council visited the premises and noted that: alcohol was being sold to or supplied to persons for consumption on the premises who were not taking table meals. This is contrary to the licence condition 135.
19. On 14 September 2009 a warning letter was sent to the licensees in regard to this matter.
20. On the 18 and 19 September 2009, police licensing officers visited the premises and witnessed intoxicating liquor being sold and consumed on the premises in contravention to the licence conditions.
21. On 29 September 2009 both the licensees attended the council's licensing office in Thurlow Street, SE17, and were interviewed formally under the Police and Criminal Evidence Act 1984. The variation application followed immediately. Consideration is being given to appropriate action. In the meantime. the matter is reported to the sub-committee for information.

The local vicinity

22. A map of the local vicinity is attached at appendix F. Other licensed premises identified within 100 metres of the premises are;
 - Bandidos, 21-13 Norwood Road SE24, opening hours: Monday to Saturday 10:00 to 01:30 hours, on Sunday 10:00 to 00:30 hours, licensable activities: dancing, films, late night refreshment, live and recorded music, sale of alcohol on / off the premises Monday to Saturday 10:00 to 01:00 hours and Sunday 00:00 hours;

- Chicken Village, 25 Norwood Road SE24, opening hours: Monday to Sunday 11:00 to 05:00 hours, licensable activities: late night refreshment Monday to Sunday 23:00 to 05:00 hours;
- Chinese Take-away, 85 Norwood Road, SE24, opening hours: Monday to Thursday 12:00 to 23:00 hours, Friday to Saturday 12:00 to 02:00 hours, and on Sunday 12:00 to 23:00 hours. Licensable activities: Late night refreshment Thursday to Friday 23:00 to 01:00 hours;
- Costcutters, 31-39 Norwood Road, SE24, opening hours: Monday to Sunday 24 hours. Licensable activities: sale of alcohol on and off the premises;
- Hypnotik, 75-79 Norwood Road SE24, opening hours: Monday to Wednesday 10:00 to 01:30 hours, Thursday to Saturday 10:00 to 03:30 hours and on Sunday 10:00 to 00:00 hours. Licensable activities for dancing, making music, live music, performance of dance, provisions similar to music and dancing, recorded music, sale of alcohol on and off the premises. Late night refreshment Monday to Wednesday 23:00 to 01:00 hours, Thursday to Saturday 23:00 to 03:30 hours and on Sunday 23:00 to 00:00; and
- Olleys Fish Experience, 65-69 Norwood Road SE24: Opening hours Monday to Sunday 10:00 to 01:30 hours. Licensable activities: Licensable activities, late night refreshment Monday to Sunday 23:00 to 01:00 hours. Live music, recorded music, and sale of alcohol Monday to Sunday 10:00 to 01:00 hours.

The Disability Discrimination Act

23. The Southwark disablement association has no comments regarding this application.

Southwark council statement of licensing policy

24. Council assembly approved the third revision of Southwark's statement of licensing policy on 5 November 2008. Sections of the statement that are considered to be of particular relevance to this application are

- Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives;
- Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence;
- Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998;
- Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours;
- Section 8 provides general guidance on ensuring public safety including safe capacities;
- Section 9 provides general guidance on the prevention of nuisance; and
- Section 10 provides general guidance on the protection of children from harm

25. 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.

Community Impact Statement

26. Through the licensing process it is intended to help provide successful, well managed licensed operations that complement and benefit the local community, while affording appropriate protections to that community. At the heart of the process are the four licensing objectives set out in section 3 of this report. Within the process, each licence application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

Resource implications

27. A fee of £190 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. The fee contributes toward the cost of processing the application.

Consultation

28. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in the 6th November 2009 edition of the South London Press and a similar notice exhibited outside of the premises.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

29. The sub-committee is asked to determine the application for a variation of the premises licence under section 34 of the Licensing Act 2003.
30. The principles which sub-committee members must apply are set out below.

Principles for making the determination

31. 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.
32. 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.
33. 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, and
 - any condition which must under section 19,20 or 21 be included in the licence 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

34. 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.
35. The four licensing objectives are
 - the prevention of crime and disorder;
 - public safety;
 - the prevention of nuisance; and
 - the protection of children from harm.
36. 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.
37. 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.
38. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

39. 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

40. 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.
41. This matter relates to the determination of an application for a variation of the 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.

Council's multiple roles and the role of the licensing sub-committee

42. 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.
43. 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.
44. 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.
45. 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.
46. 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.
47. 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.
48. 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.

49. Interested parties, 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

50. 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.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Variation application
Appendix B	Representations from Interested parties
Appendix C	Representations/replies from Responsible Authorities
Appendix D	Further information provided by applicant following conciliation
Appendix E	Current premises licence
Appendix F	Map of local vicinity

AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	
Dated	December 4 2009	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Executive Member	No	No
Date final report sent to Constitutional Team	December 4 2009	