

Item No. 5.	Classification: Open	Date: 23 March 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Douglas Otunyo to vary the premises licence under the Licensing Act 2003 in respect of the premises known as Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE.
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation 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 and the current premises licence are attached as Appendices A and B.
 - c) Paragraphs 12 to 18 of this report deal with the representations received to the variation of premises licence application. Copies of the relevant representations are attached as Appendix C.
 - d) Paragraph 39 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.
 - 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. The current licence in respect of the premises was issued on 9 January 2017. It allows the following licensable activities:
- **Live Music - Indoors**
Monday to Sunday: 12:00 - 23:00
 - **Recorded Music - Indoors**
Sunday to Wednesday: 12:00 - 23:30
Thursday: 12:00 - 00:00
Friday and Saturday: 12:00 - 01:30
 - **Late Night Refreshment - Indoors**
Sunday to Wednesday: 23:00 - 23:30
Thursday: 23:00 - 00:00
Friday and Saturday: 23:00 - 01:30
 - **Sale by retail of alcohol to be consumed on premises**
Sunday to Wednesday 12:00 -23:30
Thursday 12:00 - 00:00
Friday and Saturday: 12:00 - 01:30
 - **Opening hours of the premises**
Sunday to Wednesday: 06:00 - 00:00
Thursday: 06:00 - 00:30
Friday and Saturday: 06:00 - 02:00.
9. A copy of the existing premises licence is attached as Appendix B.

The variation application (as amended)

10. On 26 January 2017 Douglas Otunyo applied to this council to vary the premises licence in respect of the premises known as Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE. The application sought to change the business to a restaurant and consisted of the following:
 - Variation for removal of I.D. scanner condition (condition 369)
 - Removal of regulated entertainment
 - Reduction of security from 3 to 1 (conditions 341 and 841 (842 as amended by email))
 - To add condition to serve food with drinks
 - To change the last entry on Friday and Saturday to 01:00 instead of 02:00 (condition 843)
 - To change the polycarbonate/plastic drinks container condition on Friday and Saturday from 22:00 (condition 844).
11. The premises licence application form provides the applicant operating schedule. Part M sets out the proposed operating hours and operating controls 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 part M of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix A.

Representations from responsible authorities

12. Representations were submitted by the Metropolitan Police Service, licensing (as a responsible authority), health and safety and public health.
13. The police representation is concerned that the applicant has not offered sufficient control measures as part of the operating schedule to promote the licensing objectives. Considering the licence was subject to a recent expedited review due to serious violence and disorder. The licence was initially granted as a restaurant licence and has subsequently had the hours extended and conditions added to move more towards a night club operation by previous variations. They would expect the applicant to offer a reduction in hours if the conditions on the licence are to be removed and for them to be in line with the Southwark council statement of licensing policy for the area the venue is situated.
14. They have further suggested a number of conditions to either replace or vary the conditions the applicant proposes to remove should the licensing sub-committee be minded to grant the application.
15. Licensing (as a responsible authority) are concerned that the premises is situated within a residential area and under the Southwark statement of licensing policy, the closing times appropriate for public houses, wine bars or other drinking establishments and restaurants and cafes is 23:00 hours daily. Night clubs (with sui generis planning classification) are not considered appropriate for this area. This premises already has generous hours for a restaurant/bar and has been subject to a recent licence review on 22 September 2016 whereby the licensing sub-committee (LSC) suspended the licence for three months, removed the DPS (who was Mr Douglas Otunyo at that time and the applicant to this application), reduced the operating hours and added further conditions. The applicant has asked to remove regulated entertainment from the premises licence it should be noted that this would not prevent live music and recorded music being played before 23:00.

16. The representation from health safety is concerned that there have been a number of violent incidents associated with this premises, they are also concerned with the management of the premises with regards to security.
17. Public health is concerned that these conditions were recently imposed upon this licence by Southwark's licensing sub-committee. Additionally, this premises has had a number of issues regarding its operational management for some time and given these issues have recommended a number of conditions.
18. Copies of the representations received are attached as Appendix C.

Representations from other persons

19. There are no representations received from other persons.

Conciliation

20. The representations were forwarded to the applicant and the licensing sub committee will be notified of any updates on 23 March 2017.

Premises history

21. The premises in respect of the premises licence consists of a bar and restaurant on the ground floor of 280 Old Kent Road.
22. The premises licence was carried over from the Justices and music and dancing licenses in the 2005 transition. The premises was called Pardis during this period with a different premises licence holder and designated premises supervisor (DPS). This premises licence was revoked by the licensing sub-committee on 17 December 2013 following an expedited review application by the Police for a serious assault.
23. A new application for a premises licence was submitted by the current premises licence holder, Douglas Otunyo on 7 April 2014 with Mr Otunyo as the DPS.
24. The licence was varied and later hours till 03:00 the following days on Friday and Saturday were granted by the licensing sub-committee 6 November 2014.
25. An application for an expedited review of the premises licence was submitted by the Metropolitan Police Service and at the hearing of 22 September 2016 the licence was suspended for a period of three months, the DPS (Mr Douglas Otunyo, applicant of this variation application) was removed from the licence, hours were reduced and conditions modified. A copy of the notice of decision is attached as Appendix D.
26. An application to change the DPS to Mr Folarin Olaopa was submitted on 9 January 2017.
27. A minor variation was submitted on 20 January 2017. This was refused because it was seeking to remove conditions imposed at the hearing of the expedited review on 22 September 2016. Representations were also received from responsible authorities. Due to the application being refused the applicant was advised to submit a full variation.

Inspections/visits

28. On Saturday 12 November 2016 at 23:00 there was a private party taking place. There was no regulated activity taking place.
29. On Saturday 14 January 2017 at 22:25 there was a small private party taking place. There was no regulated activity taking place.

30. On Sunday 22nd January 2017 01.45 the premises was compliant when it was visited.
31. On Saturday 28th January 2017 at 21.47 the applicant Mr Otunyo showed some confusion over dates covered by the TEN and advice was given on how to ensure TENS are completed correctly was given.
32. The dates shown above are when access was gained and activity could be confirmed. Visits to the premises were carried out during the period of suspension showing the premises closed.
33. During a visit by the Metropolitan Police Service it was noted that the ID scanning system was not being used. A warning letter was sent by a council officer.
34. During a visit dated 24 January 2015 breaches of the licence were witnessed by officers of the council. The breaches related to the sound limiter, ID scanning system, staff training, evacuation procedure and dispersal policy. A warning letter was sent.
35. Following breaches of the licence found during inspections by officers of the council and the police, enforcement action is being taken. A case for prosecution is being put together. Breaches included ineffective use of the ID scanning system and the admittance of patrons beyond the permitted times.
36. Further details of the licensing visits are attached to this report as Appendix E.

Temporary Event Notice

37. Temporary event notices would allow the premise to circumvent the modified licence and essentially allow the premises to operate over a period with no control measures in place.
38. Below is the recent history of TENS for the last year in respect of the premises.

No.	Premises user	Date of event	Time of event and activities
1	Douglas Otunyo	26/8/16	00.00 – 04.30 Alcohol, LNR, and Regulated Entertainment Late TEN, Police rep, Counter notice
2	Douglas Otunyo	20-21/1/17	16:00 – 02:30 16:00 – 00:00 Alcohol and LNR Late TEN, Police rep, Counter notice
3	Douglas Otunyo	27-28/1/17	22:00 – 01:00 Late TEN Alcohol and LNR
4	Douglas Otunyo	3-4/2/17	22:00 – 01:00 Late 22:30 – 00:00 Alcohol and LNR TEN, Police & EPT rep, Counter notice
5	Douglas Otunyo	10-11/2/17	22:00 – 02:00

No.	Premises user	Date of event	Time of event and activities
			22:00 – 00:00 Alcohol and LNR

The local area

39. A map of the area is attached to this report as Appendix F. The premises is identified by a triangle at the centre of the map. For purposes of scale-only the circle on the map has a 100 metre radius. The following licensed premises terminal hours are also shown on the map:

Off Licence

- G & F Supermarket, 272-274 Old Kent Road, London SE1 5UE (Monday to Sunday, 24 hours)
- Nishas News, 246 Old Kent Road, London SE1 5UB (Monday to Sunday until 23:30)
- B & B Newsagent, 104-106 Dunton Road, London SE1 5UN (Monday to Sunday until 23:00)

Late Night Refreshment

- Super Pizza, 292 Old Kent Road, London SE1 5UE (Sunday to Thursday until 01:00 and Friday and Saturday until 02:00)
- Perfect Fried Chicken, 259 Old Kent Road, London SE1 5LU (Monday to Sunday until 00:00)
- Old Kent Fish Bar, 253 Old Kent Road, London SE1 5LU (Monday to Sunday until 01:00)
- Village Pizza, 230 Old Kent Road, London SE1 5UB (Sunday to Thursday until 03:00 and Friday and Saturday until 04:00)
- Halal Kebab House, 273 Old Kent Road, London SE1 5LU (Monday to Sunday until 03:00)
- El Turkistan Takeaway, 304 Old Kent Road, London SE1 5UE (Sunday to Thursday until 02:00 and Friday and Saturday until 03:00)

Restaurant

- New Wing Fu, 227 Old Kent Road, London, SE1 5LU (Monday - Sunday until 00:00).

Deregulation of entertainment

40. 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 amplified music is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.

41. 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').

Southwark council statement of licensing policy

42. 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.
43. 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.
44. 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

45. 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 A.

Consultation

46. 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 exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

47. 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 governance

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

Principles for making the determination

49. 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.
50. 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.
51. 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.
52. 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

53. 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.
54. The four licensing objectives are
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance

- The protection of children from harm.
55. 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.
56. 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.
57. 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 came into force; age verification policy and smaller measures for alcoholic drinks.
58. Members are also referred to the Home Office guidance on conditions.

Reasons

59. 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

60. 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

61. 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.

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

62. 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.
63. 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.
64. 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.
65. 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.
66. 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.
67. 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.
68. 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

69. Members are required to have regard to the Home Office 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

70. 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 & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application
Appendix B	Premises Licence
Appendix C	Representations from responsible authorities
Appendix D	Notice of decision from previous hearing
Appendix E	Night time economy team visits
Appendix F	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills Principal Licensing Officer	
Version	Final	
Dated	10 March 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	10 March 2016	