

<b>Item No.</b> 6	<b>Classification:</b> Open	<b>Date:</b> January 11 2010	<b>MEETING NAME</b> Licensing Sub-Committee
<b>Report title:</b>		<b>LICENSING ACT 2003 – SIERRA SPOT 6 ARNSIDE STREET, LONDON SE17 2AP</b>	
<b>Ward(s) or groups affected:</b>		<b>Premises are within: FARADAY</b>	
<b>From:</b>		<b>Strategic Director of Environment &amp; Housing</b>	

### **RECOMMENDATION**

1. That the Licensing Sub-Committee considers an application made by Stella Pieh and Ishmail Koromah for a grant of a Premises Licence under the Licensing Act 2003 in respect of the premises known as: SIERRA SPOT, 6 ARNSIDE STREET, LONDON SE17 2AP.
2. *Notes:*
  - a) *This application forms a new application for a Premises Licence, under Section 17 of the Licensing Act 2003. The application is subject to representations from a Responsible Authority and Interested Parties and is therefore referred to the Sub-Committee for determination;*
  - b) *Paragraphs 9 to 11 of this report provide a summary of the application the Premises Licence under consideration by the Sub-Committee (A copy of the full application and the amendments to it are provided as Appendix A & B)*
  - c) *Paragraphs 13 to 16 of this report deal with the representations received to the Premises Licence application. (A copy of each of the relevant representations are attached as Appendices C,D& E)*

### **BACKGROUND INFORMATION**

#### **The Licensing Act 2003**

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for
  - a) The sale of and supply of alcohol
  - b) The provision of regulated entertainment
  - c) 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
  - a) The prevention of crime and disorder;
  - b) The promotion of public safety
  - c) The prevention of nuisance; and
  - d) The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
  - a. The Act itself;

- b. The Guidance to the act issued under Section 182 of the Act;
  - c. Secondary regulations issued under the Act;
  - d. The Licensing Authority's own Statement of Licensing Policy
  - e. The application, including the operating schedule submitted as part of the application
  - f. Relevant representations
7. The applications 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.

## **MATTERS FOR CONSIDERATION**

### **The Application for a New Grant**

8. On 11 September 2009, an application was made by Stella Pieh and Ishmail Koromah for a grant of a Premises Licence in respect of the premises known as Sierra Spot, 6 Arnside Street, LONDON SE17 2AP under section 17 of the Licensing Act 2003. A copy of the application is attached to the report as appendix A.

### **Reduction in hours**

9. The applicant has made a request by letter for the application to be amended to reduce the hours from 03.00 to 01.00 Friday and Saturday, also to reduce the hours for each Bank holiday/Bank Holiday weekends and also Sierra Leone independent day (27 April) to 01.00. A copy of the letter to amend the application is attached as appendix B.
10. The application is therefore summarized as follows:

### **To permit the provision of regulated entertainment**

- *(recorded music, performances of dance, provision of facilities for dancing)*

- Monday to Thursday between 14.00 hrs to 00.00 hrs
- Friday & Saturday between 15.00 hrs to 01.00hrs on the following morning  
**(amended hours)**
- Sunday between 12.00 hrs to 22.00hrs

- **To permit the provision of late night refreshment**

- Friday & Saturday between 23.00 hrs to 01.00hrs on the following morning  
(amended hours)

- **To permit the sale and or supply of alcohol**

- Monday to Thursday between 12.00 hrs to 00.00 hrs
- Friday & Saturday between 12.00 hrs to 01.00hrs on the following morning  
**(amended hours)**
- Sunday between 12.00 hrs to 22.00hrs

- **The opening hours of the premises are**

- Monday to Thursday between 10.00 hrs to 00.30 hrs on the following morning
- Friday & Saturday between 10.00 hrs to 01.30hrs on the following morning
- Sunday between 10.00 hrs to 22.30hrs

• **Seasonal Variations**

- On each 27 April (Sierra Leone independent Day) till 01.00 on the following morning

• **Non Standard Times**

- On each Bank Holiday and Bank Holiday Weekends till 01.00 on the following morning.

11. The application form provides the applicant's operating schedule. Parts F, G, J, L, M and O and the letter amending the application (as mentioned in para 9) are set out the proposed operating hours in full.

12. Part P of the application provides any additional steps that are proposed by the applicant to promote the four licensing objectives as set out in the Licensing Act 2003. In the event that the Sub-Committee should approve the application any proposals stated here must become conditions on any subsequent Premises Licence issued.

**Designated Premises Supervisor**

13. The proposed designated premises supervisor Licence is Ismail Koromah. **Note** (however, Mr Koromah is in the process of qualifying and obtaining a personal licence):

Consultation and re-consultation

14. Consultation was carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in a local newspaper and a similar notice exhibited outside of the premises. However after the initial period of 28 days, it came to our attention that the shutters covered the notice during certain periods when the premises was closed. So the notices was displayed again both on the premises and on the shutters for a period of another 28 days.

**Representations From Interested Parties**

15. There are 3 representations by interested parties and a petition signed by 28 local residents. The representations are primarily concerned with noise nuisance, and anti social behaviour already being experienced and the fear of these escalating as a result of the proposed grant. The representations point out that there has been a history of noise nuisance anti social behaviour and crime and disorder arising from the operation of the premises in the past.

16. Copies of the representations lodged by interested parties are attached as appendices C to the report.

**Representations From Responsible Authorities**

17. There are two representation lodged by the Metropolitan Police and the Council's Environmental Protection Team (EPT). Both representations outline control measures that should be undertaken to reduce the risk of crime and disorder and noise nuisance if the licence is granted.

18. Copies of the representations are attached as appendix D & E to the report.

### **Conciliation**

19. Conciliation was offered as part of the application process, but failed to resolve issues raised. As such the application is being submitted for determination by the Licensing Sub-Committee.

### **The Local Vicinity**

20. A map of the local vicinity is attached. The operating terminal hour of the following premises licensed for regulated entertainment, sale and supply of alcohol and late night refreshment are shown on the map:

#### **Off Licences**

- **D B OFF LICENCE**, 16 Westmoreland Road, SE17 (Mon - Sat until 23:00 and Sun 22.30)
- **COSTCUTTER SUPERMARKET**, 25 Camberwell Road, SE5 (Mon – Sun 24hrs.)
- **UMASHIV NEWS**, 23 Westmoreland Road, SE17 (Mon- Sat 23:00; Sun till 22.30)

#### **Public Houses with entertainment**

- **RED LION**, 407 Walworth Road, SE17 (Sun – Thurs till 00:30; Fri & Sat till 01.30)
- **Banana's Bar**, The Rock, 374 Walworth Road, SE17 (Mon - Sun till 01:30)

#### **Late Night Refreshment**

- **WALWORTH KEBAB & BURGER BAR**, 360 Walworth Road, SE17 (Sun – Thurs till 02.00; Friday & Saturday till 04:00)
- **LA LUNA**, 380 Walworth Road, SE17 (Mon – Sat 00:30; Sun till 00.00)
- **Winner**, 3 Westmoreland Road, SE17 (Mon - Thurs till 00:00; Fri & Sat till 00.30; Sun till 23.30)

### **SOUTHWARK COUNCIL STATEMENT OF LICENSING POLICY**

21. Council Assembly approved the Southwark Statement of Licensing Policy on 2 April 2008. Sections of the Statement that are considered to be of particular relevance to this application are

- a. Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives
- b. 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
- c. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
- d. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours

- e. Section 8 provides general guidance on ensuring public safety including safe capacities
- f. Section 9 provides general guidance on the prevention of nuisance
- g. Section 10 provides general guidance on the protection of children from harm.

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.

### **RESOURCE IMPLICATIONS**

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

### **COMMUNITY IMPACT STATEMENT**

24. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

### **SUPPLEMENTARY SDVICE FROM OTHER OFFICERS**

#### **Strategic Director of Communities, Law and Governance**

25. The Sub-Committee is asked to determine the application for a grant of a premises licence.

26. 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-by-case basis.

27. 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 and crime and disorder in the Borough.

28. 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 day on which the applicant was notified by the licensing authority of the decision to be appealed against.

29. The principles that Sub-Committee members must apply are set out below.

### **PRINCIPLES FOR MAKING THE DETERMINATION**

30. 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.

31. 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 (in this case, the initial objections from the Fire Service have been withdrawn).
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

32. 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

### **Conditions**

33. 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.

34. The four licensing objectives are

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of nuisance; and
- d. The protection of children from harm.

35. 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.

36. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment 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.

37. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.

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, 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. As this matter relates to the determination of an application for a grant 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**

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 that 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.

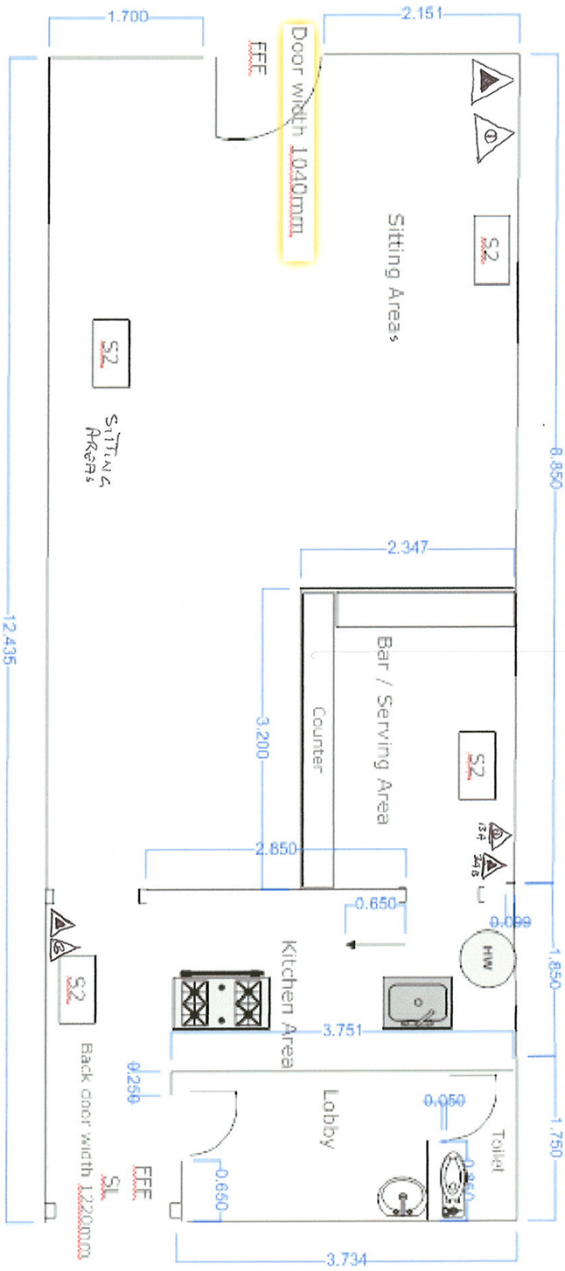
### **Guidance**

47. 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.





ARNSIDE STREET



Sierra Spot  
 6 Arnside Street  
 London  
 SE17 2AP  
**Please Note: All dimensions are in meters unless otherwise stated**

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

#### APPENDICES

No.	Title
Appendix A	Copy of the application
Appendix B	Letter amending application
Appendix C	Copies of the representation from interested parties
Appendix D	Copies of representation from Police
Appendix E	Copies of representation from Environmental Protection
Appendix F	Map of local vicinity

#### AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	23 December 2009	
Key Decision?	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law and Governance	Yes	Yes
Finance Director	No	No
Executive Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	23 December 2009	