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| Item No. 5 | Classification: Open | Date: January 25 2010 | MEETING NAME Licensing Sub-Committee |
| Report title: | | LICENSING ACT 2003 – The Swan, 21 New Globe Walk, London, SE1 9DT | |
| Ward(s) or groups affected: | | Premises are within: Cathedrals | |
| From: | | Strategic Director of Environment and Housing | |

RECOMMENDATION

1. That the licensing sub-committee considers an application made by The Swan at the Globe Limited, for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as The Swan, 21 New Globe Walk, London, SE1 9DT.

Notes:

- *This application forms a new application for a premises licence, under section 17 of the Licensing Act 2003. The application is subject to a representation from four (4) interested parties and two (2) responsible authorities and is therefore referred to the sub-committee for determination;*
- *Paragraphs 8 to 16 of this report provide a summary of the application for the premises licence under consideration by the sub-committee (a copy of the full application is provided at appendix A)*
- *Paragraphs 17 to 22 of this report deal with the representations received to the premises licence application. (Copies of the relevant representations and replies are attached at appendix B).*

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
4. 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.
5. 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
6. The Act established a transitional period between 7 February 2005 and 6 August 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 6 August date having passed, operators must now apply for new licenses.
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 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 premises licence application

8. On the November 4 2009 The Swan at the Globe Limited applied to this council for the grant of a new premises licence in respect of the premises known as The Swan, 21 New Globe Walk, London, SE1 9DT.
9. A copy of the application for the new premises licence is attached to the report as appendix A.
10. The premises licence application form provides the applicant company's operating schedule. Parts E, F, I, L, M, O and P set out the proposed operating hours and operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003
11. The application is summarized as follows:
- The provision of regulated entertainment indoors; being live music, recorded music and making music - Sundays to Thursdays 07.00hrs to 21.00hrs, and Fridays and Saturdays 07.00hrs to 22.00hrs.
 - The provision of late night refreshment both indoors and outdoors – Sundays to Thursdays 23:00hrs to 01:00hrs, and Fridays and Saturdays 23.00hrs – 02.00hrs.
 - The supply of alcohol both on and off the premises - Sundays to Thursdays 07:00hrs to 01:00hrs, and Fridays and Saturdays 07:00hrs – 02:00hrs.
 - Opening hours – 07:00hrs to 01:00hrs on Sundays through to Thursdays; 07:00hrs – 02:00hrs Fridays and Saturdays.

Operating history

12. Under the Licensing Act 2003 the Shakespeare's Globe complex (comprising of The Swan, the Globe Theatre and the Shakespeare Underglobe & Events Area) is covered by one licence, granted in 2005.
13. The current licence allows the following licensable activities:

- plays
- films
- live music
- performance of dance
- late night refreshment
- sale by retail of alcohol to be consumed on the premises
- sale by retail of alcohol to be consumed off the premises

and the opening hours are 08.00hrs to 01.00hrs, seven (7) days a week.

14. The licensing department received noise complaints relating to the Shakespeare's Globe complex in July 2009, and upon investigation it was discovered that the use of the premises had changed from what was originally intended. The licence no longer accurately reflects the activities taking place at the premises.
15. The licensing department held a number of meetings with the applicants and responsible authorities and explained that three (3) separate new premises licences should be applied for in order for each individual aspect of the business (The Swan, the Globe Theatre and the Shakespeare Underglobe & Events Area) to have a premises licence which reflects the specific nature of each area.

Designated premises supervisor

16. The proposed designated premises supervisor is Mr Peter Conwell who has been granted a personal licence by Tonbridge and Malling Borough Council.

Representations from interested parties

17. There are four (4) representations received from interested parties.

Representations from responsible authorities

18. There are two (2) representations from responsible authorities.
19. The environmental protection team submitted a representation relating to the licensing objective of prevention of public nuisance. A number of conditions have been suggested and are included in their submission.
20. The police submitted a representation stating that the applicant has failed to adequately address the four licensing objectives. A number of conditions have been suggested and are included in their submission.
21. The other responsible authorities did not reply to the consultation.
22. Copies of the representation from interested parties and responsible authorities are attached as appendix C.

Disability Discrimination Act

23. The Southwark Disablement Association have no comments regarding this application.

The local area

24. A map of the local area is attached at appendix C. The premises is marked by the triangle. The following licensed premises were identified within 100 metres of the premises and are labelled on the map:

- Pizza Express, Benbow House, New Globe Walk SE1 – licensed for late night refreshment and the supply of alcohol on and off the premises. Licensed hours: 10.00hrs to 00.00hrs Mondays to Saturdays, 10.00hrs to 23.30hrs on Sundays
- EAT!, Riverside House, Southwark Bridge Road SE1 – licensed for late night refreshment and the supply of alcohol on and off the premises. Licensed hours: 10.00hrs to 23.30hrs Mondays to Saturdays, 12.00hrs to 23.30hrs on Sundays
- The Real Greek, Riverside House, Southwark Bridge Road, SE1 – licensed for late night refreshment and the supply of alcohol on and off the premises. Licensed hours: 10.00hrs to 00.30hrs Mondays to Saturdays, 12.00hrs to 00.00hrs on Sundays
- Zakudia, Riverside House, Southwark Bridge Road, SE1 – licensed for live and recorded music, entertainment similar, making music, late night refreshment and supply of alcohol on and off the premises. Licensed hours: 09.00hrs to 01.00hrs Mondays to Wednesdays, 09.00hrs to 03.00hrs Thursdays to Sundays
- TAS Pide, New Globe Walk, SE1 – licensed for live and recorded music, late night refreshment and supply of alcohol on the premises. Licensed hours: 11.00hrs to 01.30hrs, 7 days a week.

Southwark council statement of licensing policy

25. 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
- Section 10 provides general guidance on the protection of children from harm.

26. 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

27. A fee of £635 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value band E.

Consultations

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 November 12 2009 edition of Southwark News and a similar notice exhibited outside of the premises. The application was not properly advertised, therefore the last date for representations was extended to December 11 2009.

Conciliation

29. A conciliation meeting has been arranged for the January 21 2010. An update on the conciliation will be provided at the sub-committee meeting.

Community impact statement

30. 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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law and Governance

31. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

32. The principles which sub-committee members must apply are set out below.

Principles for making the determination

33. 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.

34. 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.

35. 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
- 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

36. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant that is consistent with the operating schedule accompanying the application, 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.
37. The four licensing objectives are
- the prevention of crime and disorder;
 - Public safety;
 - the prevention of nuisance; and
 - the protection of children from harm.
38. 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.
39. 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.
40. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

41. 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

42. 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.

43. 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

44. 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.

45. 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.

46. 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.

47. 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, and working or engaged in normal activity in the area concerned.

48. 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.

49. 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.

50. 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.

51. 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

52. 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: Kirty Read Phone number: 020 7525 5748 |

APPENDICES

| No. | Title |
|------------|---|
| Appendix A | Premises licence application |
| Appendix B | Representations from interested parties and responsible authorities |
| Appendix C | Map of local vicinity |

AUDIT TRAIL

| | | |
|---|--|--------------------------|
| Lead Officer | Jonathon Toy, Head of Community Safety and Enforcement | |
| Report Author | Kristie Ashenden, Principal Licensing Officer | |
| Version | Final | |
| Dated | January 11 2010 | |
| 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/Community Council/Scrutiny Team | January 11 th 2010 | |