

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 6 August 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: The Barrel Project, 80 Druid Street, London SE1 2HQ	
<b>Ward(s) or groups affected:</b>		London Bridge & West Bermondsey	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by a local resident for a review of the premises licence issued in respect of the premises known as The Barrel Project, 80 Druid Street, London SE1 2HQ.
2. Notes:
  - a) The grounds for the review are stated in paragraphs 14 to 18 of this report. A copy of the full application is provided as Appendix A.
  - b) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B.
  - c) Paragraphs 19 to 26 of this report deals with the representations submitted in regards to the review application. Copies of the representations are attached as Appendices C and D.
  - d) 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 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. 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.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The premises is a railway arch which is used as a barrel ageing facility for beer and provides a bar/shop selling specialist beer and other alcoholic drinks.
10. The current licence issued in respect of the premises known as The Barrel Project, 80 Druid Street, London SE1 2HQ was issued to Simon Charles Cotton following a variation application to include the use of outside area with additional conditions and also to allow children on the premises with parental controls. The application was determined by the licensing sub-committee on 13 July 2018 and granted with conditions. The notice of decision is attached as part of Appendix B. The licence permits the following licensable activities during the hours shown:

### **The current premises licence**

11. The premises licence allows for the following activities:
- Sale of alcohol for consumption on premises
    - Monday to Sunday from 11:00 to 22:30
  - Sale of alcohol for consumption off premises:
    - Monday to Sunday from 11:00 to 23:00
  - Operating hours:
    - Monday to Sunday from 11:00 to 23:00

12. A copy of the current premises licence is attached to the report as Appendix B.

### **Designated premises supervisor**

13. The designated premises supervisor (DPS) is Simon Charles Cotton who has a personal licence issued by Hammersmith and Fulham Council.

## The application for a review of the premises licence

14. On 15 June 2019 an application for the review of the premises licence was submitted by a local resident. The grounds for the review relate to the following licensing objectives:
  - The prevention of crime and disorder
  - Public Safety
  - The prevention of public nuisance
  - The protection of children from harm
  
15. The application details that since the Barrel Project opened in September 2017, residents across the Arnold Estate, have been subject to severe anti-social behaviour and nuisance noise. A variety of interventions have been attempted by residents including; calling the bar (whom, it is alleged, do not answer their phone), lodging several complaints with noise and licensing teams, and raising the matter with ward councilors. However, the numerous breaches of licence continue. Below is a sample of the most frequently breached conditions.
  - 344 - Save for the designated outside drinking area. That after 21:00 customers shall not use any outside area other than those who temporarily leave the premises to smoke. Smokers shall use the demarcated area on Druid Street and no more than five people shall be permitted to do so at any one time.
  - 345 - Save for the designated outside drinking area. All external doors and windows shall be kept closed after 21:00 on any day, except for access and egress.
  - 347 - External waste handling, collections, deliveries and the cleaning of external areas shall only occur between the hours of 08:00 and 20:00
  - 349 - Noise from plant, patrons and activities at the premises shall be managed to ensure that public nuisance shall not be caused in the vicinity of the premises or intrude inside the nearest or most exposed noise sensitive premises.
  - 840 - No more than 25 customers are permitted within the designated outside drinking area at any one time (as hatched on the attached plan)
  - 841 - The designated outside drinking area must be clearly demarcated. If a physical barrier is to be used it must be approved in writing by Southwark Council's Highways Authority.
  - 842 - A door supervisor must be employed to supervise and control the outside area whenever it is being used by customers with drinks.
  - 843 - The premises shall provide and display a dedicated and manned telephone number of the management of the premises to local residents.
  - 849 - Children are not permitted in the outside area drinking area at any time.
  - In addition to this, they have stayed open on several occasions (without a TEN) until 01:30.
  
16. The applicant further adds that escaping the weekly anti-social behaviour is not an option and after two years of residents being unable to open their windows, read a book, watch a film without hearing drunks shouting, competing to be heard over each other, trains and traffic (in what is increasingly a main traffic route).

17. A table of complaints which makes references to video clips relating to incidents on various dates is submitted and form part of the application.
18. The review application in its entirety and the table of complaints are attached as Appendix A.

#### **Representation from responsible authorities**

19. A representation has been submitted by licensing (as a responsible authority).
20. The representation submitted by licensing supports the review application under the prevention of crime and disorder; the prevention of public nuisance and public safety licensing objectives and has regard to the Southwark Statement of Licensing Policy 2019 – 2021.
21. Following a complaint received on 5 December 2018 licensing officers visited the premises on Friday 7 December 2018 at 20:57 hours and carried out a licensing inspection. The premises was found to be in breach of the licensed conditions and a warning letter was sent to the licensee/DPS. A further visit was made to the premises on 11 March 2019 and the premises was found to be operating in full compliance with the premises licence conditions. Copies of the warning letter and compliance letter form part of the representation.
22. There have been further complaints to the licensing unit regarding noise and antisocial behaviour from the patrons of the premises and officers of the councils night time economy team and noise team have been monitoring the area.
23. The representation is attached as Appendix C.

#### **Representations from other persons in support of review application**

24. There are five further representations submitted by other persons (consisting of a local ward councillor and four local residents) in support of the review. The representations are based on all for licensing objectives. They are concerned about the impact the business is currently having on residents on the Arnold Estate and feel that the mental health and physical safety of residents are being compromised.
25. They are further concerned by public nuisance and noise from patrons using the actual street (Druid Street) to consume alcohol; patrons using the Arnold Estate to sit and consume alcohol; public urination by patrons on the estate in front of children; and patrons leaving/discarding bottles along the walls and leaving broken bottles/rubbish on the estate.
26. Their representations are attached as Appendix D.

#### **Licensing operating history**

27. The licensing service has received a considerable number of complaints regarding this premises, made on a very regular basis over a period of time. Often these have been accompanied by very short video clips intended to emphasise the points made. These have primarily dealt with allegations of nuisance and disturbance caused by customers of The Barrel Project drinking immediately outside of the premises and upon occasions spreading into and across the road.
28. Given the frequency of complaints, this premises has been the subject of regular visits by officers on the partnership night time economy team. These are detailed in full in Appendix E.

## Temporary event notices (TENs)

29. Below is the recent history of TENs applied for in respect of the premises in 2018-2019

No.	Date of event	Time of event and activities
1	6 to 7 Jan 2018	19:00 to 01:00 - Alcohol
2	20 to 21 Jan 2018	19:00 to 01:00- Alcohol
3	26 to 27 Jan 2018	19:00 to 01:00 - Alcohol
4	3 to 4 Feb 2018	19:00 to 01:00 - Alcohol
5	10 to 11 Feb 2018	19:00 to 01:00 - Alcohol
6	17 to 18 Feb 2018	19:00 to 01:00 - Alcohol
7	23 to 24 Feb 2018	19:00 to 02:00 -Alcohol
8	28 to 29 April 2018	23:00 to 01:00 - Alcohol
9	2 March 2019	22:00 to 00:00 - Alcohol

## The local area

30. A map of the area is attached to this report as Appendix F. The premises is identified by a diamond 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 including terminal hours are also shown on the map:

### Public houses/restaurant/brewery

- Marquis of Wellington Public House, 21 Druid Street, London SE1 (Monday to Wednesday until 23.00, Thursday until 00.00, Friday and Saturday until 01.00 and Sunday until 00.00) - granted 1 October 2005
- Elmadero, Railway Arch 840, 30 Druid Street, London SE1 (Monday to Sunday until 23.00) granted 18 October 2011
- Southwark Brewing Company Limited, 46 Druid Street, London SE1 (Monday to Sunday until 23.00) - granted 29 July 2014
- Doodle Bar, 60 Druid Street, London SE1 (Sunday to Thursday until 00:00 and Friday and Saturday until 01:00) - granted 29 September 2016

- St John Bakery Company Ltd, 72 Druid Street, London SE1 (Monday to Sunday until 23.00) - granted 9 August 2011
- Bea's of Bloomsbury Railway Arch, 76 Druid Street, London SE1 (Monday to Sunday until 22.00) - granted 9 June 2012
- Speckmobile Railway Arch, 76 Druid Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 22:30) - granted 31 October 2017
- Lassco, Ropewalk and Arches 46 and 48 to 53, London SE1 (Wednesday to Sunday until 17:30) - granted 24 May 2012
- Lassco, 37 Maltby Street, London SE1 (Monday to Sunday until 23:00) - granted 17 August 2017
- Maltby Restaurant, 40 Maltby Street, London SE1 (Wednesday to Saturday until 01:00 and Sunday until 17:30) - granted 12 June 2012
- Comptoir Gourmand, 98 Druid Street, London SE1 (Monday to Sunday until 23:00) - granted 1 January 2016
- Anspach & Hobday, 116 - 118 Druid Street, London SE1 (Monday to Sunday until 23:00) - granted 17 January 2014
- Rinneroon, 130 Druid Street, London SE1 (Monday to Saturday until 23:00 and Sunday until 18:00) - granted 3 August 2018
- Bottles, 128 Druid Street, London SE1 (Monday to Sunday until 23.00) - granted 16 April 2014
- Lemporio, 134 Druid Street, London SE1 (Sunday to Wednesday until 22.00 and Thursday to Saturday until 23:00) - granted 15 September 2016
- Thames Takeaway, 140 Tanner Street, London SE1 (Sunday to Thursday until 00:00 and Sunday until 00:30) - granted 17 January 2006
- Ronnies Supermarket, 116-118 Tanners Street, London SE1 (Monday to Saturday until 23:00 and Sunday until 22:30) - granted 5 August 2005.
- Hawkes, 90 Druid Street, London SE1 (Monday to Sunday until 23:00) - granted 19/3/2019

### **Deregulation of entertainment**

31. 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.

32. 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**

33. Council assembly approved Southwark's statement of licensing policy 2019-21 on 27 March 2019. 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. To be read in conjunction with Appendix B to the policy.
  - 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.
34. 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.
35. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Closing time for restaurant, cafés, public houses, wine bars or other drinking establishments: 23:00 daily

### **Resource implications**

36. No fee is payable in respect of an application for licence review.

### **Consultation**

37. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was exhibited outside the premises for a period of 28 days.

## **Community impact statement**

38. 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**

39. The sub-committee is asked to determine, under Section 52 of the Licensing Act 2003, an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
40. The principles which sub-committee members must apply are set out below.

### **Principles for making the determination**

41. The licensing authority must hold a hearing to consider an application for review of a premises licence where:
- The application is properly made in accordance with Section 51 of the Act
  - The applicant has given notice in accordance with Section 51(3) of the Act
  - The advertising requirements provided for under Section 51(3) of the Act are satisfied
  - The licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious
  - The licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

### **Reasons**

42. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
  - The applicant
  - Any person who made relevant representations
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

43. 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.
44. 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**

45. 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.
46. 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.
47. 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.
48. 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.
49. 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.

50. 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.
51. 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.
52. 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

53. 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.

### Strategic Director of Finance and Governance

54. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

### 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 Phone number: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Review application
Appendix B	Premises licence
Appendix C	Responsible authority representation
Appendix D	Representations in support of the review application
Appendix E	Visits logged by the night time economy team
Appendix F	Map of local area

**AUDIT TRAIL**

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
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<b>Dated</b>	25 July 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	26 July 2019	