

Item No. 5.	Classification: Open	Date: 17 March 2010	MEETING NAME Licensing Sub-Committee
Report title:		Licensing Act 2003 – Review Report The Ship York, 375 Rotherhithe Street, SE16	
Ward(s) or groups affected:		Surrey Docks	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Adam Heaysman and Kavita Sharma (two local residents) for a review of the premises licence granted under the Licensing Act 2003 in respect of the premises known as The Ship York, 375 Rotherhithe Street, London SE16 5LJ.

Notes

- a) *The grounds for the review are stated in paragraph 13 of this report.*
- b) *Five letters have been received in support of the premises licence and these are provided at appendix d to this report.*
- c) *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

2. The Licensing Act 2003 came into effect on 25 November 2005. The act's introduction provided a new licensing regime for the retail sale of alcohol; the provision of regulated entertainment; and the provision of late night refreshment.
3. Under the act a premises user wishing to provide any of the licensable activities listed in paragraph 2 of this report must secure a premises licence from the local licensing authority for the area in which the business concerned is located. Where the retail sale of alcohol is involved a designated premises supervisor holding a personal licence issued by the local authority for the area in which that individual lives must be named upon the premises licence.
4. 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.

MATTERS FOR CONSIDERATION

The premises licence and operating history

5. On 4 July 2005, during the transitional period of the implementation of the Act, an application was made under Schedule 8 by Mr Dussell and Mrs Lorraine Charalambous for the conversion of existing justices and public entertainments licences into a new premises licence, in respect of the premises known as The Ship York, 375 Rotherhithe

Street, London, SE16 1LJ. The application sought a straight conversion of the existing licence with no variation and the licence was duly granted in August 2005.

6. In October 2005, Mr & Mrs Charalambous made an application to vary the licence so as to extend the hours on a Sunday from 10.30pm to midnight. No representations were received. Mr & Mrs Charalambous now hold a premises licence which authorises the retail sale of alcohol for consumption on and off the premises, live music, recorded music, performance of dance, facilities for making music, facilities for dancing, and late night refreshment with the following hours:-
 - The sale of alcohol, live and recorded music, performance of dance, facilities for making music and dancing on Monday to Thursday from 09.00 to 00.00;
 - The sale of alcohol, live and recorded music, performance of dance, facilities for making music and dancing on Friday and Saturday from 09.00 to 01.00;
 - The sale of alcohol, live and recorded music, performance of dance, facilities for making music and dancing on Sundays from 09.00 to 00.00; and
 - The provision of Late Night Refreshment on Monday to Thursday to 00.30, Friday and Saturday to 01.30 and on Sundays to 00.00
7. A copy of the premises licence is attached as appendix b to this report.
8. The designated premises supervisor named on the licence at the time of this review is Mr Dussell Charalambous.
9. A complaint from Mr Heaysman to the licensing unit was first logged on 29th August 2008 regarding the customers drinking outside of the premises. Mr Heaysman was provided with details of the review procedures.
10. An inspection of the premises was conducted in September 2008. The premises were found to be operating in full compliance of their licence. At the same time a risk assessment of the premises was carried out and the premises were placed in a D category with a next inspection date of two years. Mr Charalmbous was also advised of the complaint and reminded to control his customers when they are drinking outside of the premises.
11. Mr Heaysman contacted the licensing unit again in August 2009 and requested a copy of the review procedures.
12. There have be no further complaints to the licensing unit regarding this premises.

The application for a review of the premises licence

13. On the 25 January 2010 an application for the review of the premises licence was received from Adam Heaysman and Kavita Sharma who are both local residents. A copy of the review application is attached as appendix a to this report. The grounds for the review relate to the following licensing objectives and is summarized as follows:-
 - the prevention of public nuisance – The noise caused by customers outside of the premises at a level where it can be heard in Mr Heaysman and Ms Sharma's property. Also that the leaf blower used by Mr Charalmbous in cleaning around the pub be restricted to certain times.

Representations from responsible authorities

14. The metropolitan police service, London fire and emergency planning authority and the council's environmental protection team have confirmed in writing that they have no comments to add to the review. A copy of their letters are attached at appendix c.

Representations from interested parties

15. The licensing unit has received three letters supporting the licence held Mr & Mrs Charalambous and they are attached as appendix d.

Representation from the licensee

16. Mr Charalambous has submitted a letter to the licensing unit in response to the complaints made about the premises. Also submitted were photographs of the outside of the premises; an article from Time Out; and the supporting letters. Copies are attached as appendix e.
17. Copies of all the documents have been served on Mr Heaysman and Ms Sharma.

Disability discrimination act

18. The Southwark disablement association have no comments regarding this application.

The local area

19. The nearest premises licensed under the Licensing Act 2003 to the Ship York Public House are:
 - The Aardvark, 351 Rotherhithe Street, licensed for the sale of alcohol on and off the premises, late night refreshment, films, indoor sports, live and recorded music and facilities for making music and dancing. The hours of operation are Sunday to Thursday from 10.00 to 23.30, and on Friday and Saturday from 10.00 to 01.30.
 - The Ship & Whale, 2 Gulliver Street, licensed for the sale of alcohol on and off the premises, late night refreshment, live and recorded music the performance and facilities for dancing. The hours of operation are Sunday to Thursday from 10.00 to 23.30 and on Friday and Saturday from 10.00 to 00.30.
20. A map of the area is attached to the report as appendix f.

Southwark council statement of licensing policy

21. 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.
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. No fee is payable for a review application made by an interested party. The cost of administering the review process are borne by the service.

CONSULTATIONS

24. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. Responses are detailed elsewhere in this report.

COMMUNITY IMPACT STATEMENT

25. 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

Strategic Director of Communities, Law and Governance

26. 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 an interested party 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.

Principles for Making the Determination

27. The principles, which Sub-Committee members must apply, are set out below.

The licensing authority must hold a hearing to consider an application for review of a premises licence where -

- (a) the application is properly made in accordance with Section 51 of the Act.
- (b) the applicant has given notice in accordance with Section 51(3) of the Act.
- (c) the advertising requirements provided for under Section 51(3) of the Act are satisfied.
- (d) the licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.
- (e) the licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

The four licensing objectives are -

- The prevention of crime and disorder.
- The protection of public safety.
- The prevention of nuisance.
- The protection of children from harm.

Each objective must be considered to be of equal importance

The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are to-

- modify the conditions of the licence by altering, omitting or adding any condition.
- exclude a licensable activity from the scope of the licence.
- remove the designated premises supervisor.

- suspend the licence for a period not exceeding three months.
- revoke the licence.

For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which -

- (a) are relevant to one or more of the licensing objectives.
- (b) are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
- (c) have not been withdrawn
- (d) if made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

The authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.

It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

28. Where the authority determines an application for review it must notify the determination and reasons for making it to –
- (a) the holder of the licence.
 - (b) the applicant
 - (c) any person who made relevant representations
 - (d) the chief officer of police for the area (or each police area) in which the premises are situated

Hearing Procedures

29. 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.
30. This matter relates to the review of a Premises Licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the Sub-Committee to make its determination at the conclusion of the hearing.

THE COUNCILS MULTIPLE ROLES AND THE ROLE OF THE LICENSING COMMITTEE

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.

37. 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.
38. 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

39. 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.

Finance Director's Concurrent

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

BACKGROUND DOCUMENTS

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

APPENDICES

No.	Title
Appendix A	The review application
Appendix B	The premises licence
Appendix C	Representations/replies from Responsible Authorities
Appendix D	Representations from interested parties in support of the licence
Appendix E	Reply and enclosures from Mr Charalambous
Appendix F	Map of the local area

AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement
Report Author	Rosanna Keogh, Principal Licensing Officer
Version	Final

Dated	2 March 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 Team		