

Item No: 6	Classification: Open	Date: 17 March 2010	Meeting Name: Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – Review Report Hypnotik 75-79 Norwood Road SE24	
Ward(s) or groups affected:		Premises are within: Village	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the licensing sub-committee considers a licence review application made by the metropolitan police licensing service of the premises licence under section 51 Licensing Act 2003 in respect of the premises known as Hypnotik 75-79 Norwood Road, London SE24.
2. **Notes:**
 - a) *The grounds for the review are stated in paragraph 36 to 40 of this report;*
 - b) *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;*
 - c) *Correspondence has been received in support of the review from a local member of parliament; two local ward councillors; and two local representative bodies.*

BACKGROUND INFORMATION

3. 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.
4. Under the Act a premises user wishing to provide any of the licensable activities listed in paragraph 3 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.
5. 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

6. On 1 July 2005, during the transitional period of the implementation of the Act, an application was made under schedule 8 by Mr Lincoln Smith for the conversion of existing justices licence into a premises licence, in respect of the premises known then

as Brockwell's Wine Bar 77/79 Norwood Road, London SE24. The application sought a straight conversion of the existing licence - no variation of the existing licence was sought.

7. The application was duly granted on 5 October 2005. As a result Mr Lincoln Smith held at that stage a premises licence which authorised 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.
 - i. Monday-Saturday from 09.00 to 02.30
 - ii. Sundays from 09.00 to 00.30
 - iii. Good Friday from 12noon until 10:30pm
 - iv. Christmas Days from 12noon until 3:00pm and 7:00pm until 10:30pm.
8. The designated premises supervisor named on the licence at the time was Mr Satchell Thompson Smith.
9. On the 19 December 2005 an application to vary the premises licence, then known as Brockwells, was received at the licensing unit office. The application sought to vary the licensed hours as stated in the following:
 - a) Sunday to Wednesday from 10:00am until 02:30am, and
 - b) Thursday to Saturday from 10:00am until 04:30am.
10. The application received representations from the responsible authorities – noise & air quality team and representations from interested parties - stradella and springfield residents' association.
11. The variation application was granted by the licensing sub-committee on the 27 March 2005.
12. On Saturday 8 March 2008 the metropolitan police executed two search warrants under the Firearms Act 1968 & Misuse of Drugs Act 1971 as a direct result of intelligence which indicated that firearms and drugs were often used at the premises.
13. On the 11 March 2008 an application requesting an expedited review of the premises licence was received from superintendent Victor Olisa of the metropolitan police. The grounds for the review related to the following licensing objectives and are summarized as follows:-
 - a) Prevention of serious crime and disorder.
14. On the 12 March 2008 a licensing sub-committee hearing was held to hear the evidence from the expedited review application. The sub-committee determined that the premises licence was to be suspended until the 7 April 2008.
15. On the 18 March 2008 a representation against the expedited review decision was received from the applicant's solicitor which then triggered a further expedited review hearing on 20 March 2008. At that hearing the licensing sub-committee determined that the premises licence remain suspended until the review hearing of the 7 April 2008.
16. On the 7 April 2008 a third licensing sub-committee was held to hear the review that was triggered by the expedited review. The committee decided to modify the hours for licensable activities; place additional conditions on the premises licence; and remove the current designated premises supervisor with immediate effect. The modified hours were set as follows:- All licensable activities Monday to Saturday 10:00-01:00 and Sunday 10:00-23:00 hours. Late night refreshment Monday to Saturday 23:00-01:00 and Sunday

23:00-23:30 hours. Opening hours Monday to Saturday 10:00-01:30 and Sunday 10:00-00:00 hours.

17. On the 7 April 2008 an application was received to vary the premises licence to specify Mr Courtney Sebastian Millanaise as the designated premises supervisor.
18. On the 9 April 2009 the licensing police service made a representation against the application. The application was later withdrawn.
19. On the 18 June 2008 an application was received to vary the premises licence to specify Jacqueline Mersadie Thomas as the designated premises supervisor. The application received no representations.
20. Between the October 2008 and April 2009, 14 temporary event notices were submitted and events held at the premises without incident or complaint.
21. On the 21 January 2009 an application was received to vary the premises licence. The nature of the variation was to re-instate later trading hours and remove the standard and embedded conditions present in annex 2 of the operating schedule. In addition the application sought to remove the conditions in annex 3 established by the licensing sub-committee.
22. On the 25 March 2009 the licensing sub-committee partially refused the variation application dated the 21 January 2009. The trading hours for the sale of alcohol, late night refreshment, provision of regulated entertainment on Friday and Saturday were extended but only to 01:30 with the opening hours on Friday and Saturday were extended to 02:00 hours.
23. The decision was appealed by the licensee. On the 28 July 2009 the appeal was heard at Camberwell Green Magistrates Court. The judgement of the court overturned the decision of the licensing sub-committee.
24. Following the said appeal the premises licensed hours are as follows :
25. Opening hours are Monday to Wednesday 10:00-01:30, Thursday to Saturday 10:00-04:00 and on Sunday 10:00-00:30 hours. Regulated entertainment hours are Monday to Wednesday 10:00-01:00, Thursday to Saturday 10:00-03:30 and Sunday 10:00-00:00 hours.
26. A copy of the premises licence is attached the report as appendix B.

Recent operating history

27. On the 14 March 2009 a programmed inspection was conducted at the premises. During the inspection it was found that premises licence summary was not displayed, the fire risk assessment was not available for inspection and the health and safety policy was not available for inspection.
28. On the 15 June 2009 a programmed inspection was conducted at the premises. On this occasion the premises were found to be operating in compliance the premises licence conditions.
29. On the 4 September 2009 at approximately 22:45 hours an inspection was carried out with regard the management of the premises and illegal BBQ's operating outside of the premises. No evidence of poor management was found on this occasion.

30. On the following day the 5 September 2009 at approximately 01:20 hours a visit was carried out to observe the customers queuing and staff management of the premises. No evidence of poor management found and no sign of illegal BBQ's.
31. On the 9 September 2009 licensing officers met with the licensee, Lincoln Smith to discuss a shooting that had taken place outside of the premises on 14 August of 2009 at approximately 02:55 hours. The victim had been on the premises and was aged 19 years old. The premises have a 21 and over policy.
32. On the 6 October 2009 a warning letter was sent to Lincoln Smith and Satchel Thompson-Smith, in regard to the licence condition number 842 concerning ClubScan equipment which was not functioning, and licence condition number 375 no re-admission of the public to the premises after 02:00 hours. By this stage it had become clear that the ClubScan equipment was not working.
33. Copies of the warning letters are attached to the report as Appendix F.
34. On the 24 October 2009 at approximately 22:00 hours a visit was made to Hypnotik where licensing officers spoke with Lincoln Smith with regard to the ClubScan which was still not in place. He stated that he had attempted to repair the equipment and that the company supplying the equipment had promised to repair and deliver the equipment which would be in place within the next month, November 2009.
35. On the 13 February 2010 an inspection was carried out at approximately 00:15 hours. No problems were found on this occasion. Particular attention was paid to the ClubScan equipment which had since been installed and operating on the premises. The officer checked the equipment by placing a driving licence in the scanner. The licence appeared on a screen and appeared to verify the information.

The application for a review of the premises licence.

36. On the 28 January 2010 an application for the review of the premises licence was received from PC Paul Compton of the metropolitan police. The grounds for the review relate to the following licensing objectives and are summarized as follows:-
 - a) the prevention of crime and disorder
 - b) public safety
 - c) the protection of children from harm
37. The police have collated evidence in regard to the use of controlled drugs by customers and staff.
38. The police have concerns in regard to the management of the premises and the implementation of the search procedures.
39. The police are investigating an alleged kidnapping of a 16 year female person from outside the premises.
40. A copy of the review application and supporting papers received within the consultation period is attached the report as Appendix A.

Representations from interested parties

41. Representations have been received from interested parties.
42. A copy of the representations are attached to the report as appendix C.

Representations from Responsible Authorities

43. No representations have been received from either trading standards, environmental protection team or the London fire and emergency planning authority.
44. A copy of the replies are attached the report as appendix D.

Disability discrimination act

45. The Southwark disablement association has no comments regarding this application.

Map of the area

46. A map of the area is attached the report as appendix E.

Other licensed premises

47. No2 Chinese Takeaway, 85 Norwood Road SE15, licensed for; late night refreshment. Opening hours; Monday to Thursday 12:00 to 23:00 hours, Friday to 12:00 to 02:00 hours and Sunday 12:00 to 23:00 hours.
48. Olleys Fish Experience, 65-69 Norwood Road SE24, licensed for late night refreshment, live music, recorded music, and sale and supply of alcohol. Opening hours 10:00 to 01:00 Monday to Sunday.
49. Sebastians 49-51 Norwood Road SE24, licensed for facilities for making music, performance of dance, provision of making music, recorded music, late night refreshment, and sale of alcohol on the premises. Opening hours, 13:00 to 05:30 hours Monday to Sunday.

Southwark council statement of licensing policy

50. 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.
51. 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

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

CONSULTATIONS

53. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. Notices were placed outside the premises and the town hall for a period of 28 days.

COMMUNITY IMPACT STATEMENT

54. 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

55. 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

56. 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 -

- are relevant to one or more of the licensing objectives.
- are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
- have not been withdrawn
- 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

57. Where the authority determines an application for review it must notify the determination and reasons 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

Lateness and urgency

58. While having due regard to the licensing act process, procedures and timescales the complex nature of the review application and its contents have on this occasion caused a delay which could not be resolved within the given timescales.

Hearing procedures

59. 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.

60. This matter relates to the review of the 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.

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

61. 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.
62. 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.
63. 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.

64. 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.
65. 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.
66. 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.
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. 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

69. 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

70. The head of community safety and enforcement has confirmed that the cost of this process is 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 application with supporting statements and letters
Appendix B	The premises licence
Appendix C	Representations from Interested Parties
Appendix D	Replies from Responsible Authorities
Appendix E	Map of the area
Appendix F	Warning letters – licensing unit

Audit trail

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	
Dated	17 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		15 March 2010