

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 12 November 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003 – G1 Express– 87 Norwood Road, London, SE24 9AA	
<b>Ward(s) or groups affected:</b>		Dulwich Village Ward	
<b>From:</b>		Strategic Director of Environment	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Velauthampillai Sajeevan for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as G1 Express – 87 Norwood Road, London, SE24 9AA.
2. Notes:
  - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 12 of this report provides a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
  - c) Paragraphs 13 to 16 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted by the Responsible Authorities are attached to this report in Appendix B. A map showing the location of the premises is attached to this report as Appendix 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

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 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 persons 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 18 September 2020 Velauthampillai Sajeevan applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as G1 Express– 87 Norwood Road, London, SE24 9AA with no description of what the premises would be.
9. The hours in the application are summarised as follows:

The sale by retail of alcohol (off sales only)

- Monday to Sunday from 08:00 to 02:00

Opening hours

- Monday to Sunday from 08:00 to 02:00

10. However, the hours of the application have been amended through conciliation with the Responsible Authorities, to the following:

The sale by retail of alcohol (off sales only)

- Monday to Sunday from 08:00 to 23:00

Opening hours

- Monday to Sunday from 08:00 to 23:00

11. The Designated Premises Supervisor is to be Velauthampillai Sajeevan, the licence Applicant, who has a personal licence with London Borough of Croydon.

12. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application and premises plans are attached to this report in Appendix A.

### **Representations from responsible authorities**

13. A representation had been received from the Metropolitan Police (Licensing Division) which took issue with the hours and asked for additional conditions. The representation has now been withdrawn with an amendment to the opening hours and sales of alcohol (see Paragraph 10) and the following conditions have been agreed:

*1. All alcohol sales shall be sold in sealed containers for consumption away from the premises;*

*2. No beers / ciders in single cans, bottles or multi-packs with an ABV of above 6.5% will be displayed / sold or offered for sale from the premises;*

*3. That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises;*

*4. All CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council.*

*5. A member of staff should be on duty at all times the premises is open that is trained in the use of the CCTV and able to view and download images to a removable device on request of Police or council officer;*

*6. That all staff are trained in their responsibilities under the licensing act 2003 and training records to be kept and updated every 6 months and shall, upon request, be made immediately available to Officers of the Police and the Council;*

*7. No alcohol to be stored or displayed within 2 metres of the entrance/exit unless behind the staff counter.*

14. A representation had been submitted by the Licensing Department in their role as Responsible Authority which again took issue with hours and requested additional conditions. The representation has now been withdrawn with an amendment to the opening hours and sales of alcohol (see Paragraph 10) and the following conditions have been agreed:

*1. All 'off sales' of alcohol shall be provided in sealed containers and taken away from the premises;*

*2. That clear legible signage shall be prominently displayed where it can be easily seen and read, requesting that 'off sales' of alcohol are not be opened and consumed in the vicinity of the premises;*

*3. That a challenge 25 scheme shall be maintained at the stalls selling alcohol requiring that staff selling alcohol request that any customer who looks under 25 years old, and who is attempting to purchase alcohol, provides valid photographic identification proving that the customer is at least 18 years old. Valid photographic identification is composed of a driving licence, passport, UK armed services ID card and any Proof of Age Standards Scheme (PASS) accredited card such as the Proof of Age London (PAL) card;*

*4. That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons, and the challenge 25 scheme in operation at the stall. A record of such training shall be kept / be accessible at the stall at all times and be made immediately available for inspection at*

*the stall to council or police officers on request. The training record shall include the trainee's name (in block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received;*

5. *That clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating to the effect that a challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and stating what the acceptable forms of proof of age are. Such signage shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale. The signage shall be kept free from obstructions at all times;*
6. *That a register of refused sales of alcohol shall be maintained in order to demonstrate effective operation of the challenge 25 policy. The register shall be clearly and legibly marked on the front cover as a register of refused sales, with the address of the premises and with the name and address of the licence holder. The register shall be kept/ be accessible at the premises at all times. The register shall be made immediately available for inspection at the premises to council or police officers on request.*

The representations from Responsible Authorities and copies of their withdrawal are available in Appendix B.

### **Representations from other persons**

15. Representations have been received from 21 other persons. There are concerns regarding the hours and the concentration of other licensed premises within the locality. All other person representations are available in Appendix C.

### **Conciliation**

16. All representations were sent to the Applicant's agent to which he has responded. All responsible Authorities have withdrawn, see Paragraphs 13 and 14. The other persons have been written to, in order to advise as to the amendments agreed with the Responsible Authorities. If objectors withdraw as a result of these amendments, these will be update to the Sub Committee at the hearing.

### **Premises history**

17. This is a new application, with no licensing history or complaints.

### **Map**

18. A map of the local area is attached as Appendix D. There are some licensed premises in the immediate vicinity (within 100m of the Southwark boarder), namely:

**Parks Edge Bar and Kitchen - 49-51 Norwood Road, London, SE24 9AA**

- Performance of Dance – Indoors  
Friday and Saturday from 12:00 to 01:30
- Recorded and Live Music - Indoors  
Friday and Saturday from 12:00 to 01:30
- Late Night Refreshment - Indoors  
Sunday to Thursday from 23:00 to 00:00  
Friday and Saturday from 23:00 to 01:30
- Sale by retail of alcohol to be consumed on and off the premises  
Sunday to Thursday from 09:00 to 00:00  
Friday and Saturday from 09:00 to 01:30

**No 2 Chinese Takeaway - 85 Norwood Road, London, SE24 9AA**

- Late Night Refreshment - Indoors  
Friday and Saturday from 23:00 to 02:00

**Canopy Beer Company – Arch 1127, 41 Norwood Road, London, SE24 9AJ**

- Sale by retail of alcohol to be consumed on and off the premises  
Monday to Saturday from 11:00 to 23:00  
Sunday from 12:00 to 22:00

**Policy implications**

**Southwark Council Statement of Licensing Policy**

19. Council Assembly approved Southwark’s Statement of Licensing Policy 2019 – 2021 on 27 March 2019.
20. Further 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 – Which 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 - Which 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 – Which 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 – Which provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification.
  - Section 8 – The Prevention of Crime and Disorder – Which provides general guidance on the promotion of the first licensing objective.
  - Section 9 – Public Safety – Which provides general guidance on the promotion of the second licensing objective.
  - Section 10 – The Prevention of Nuisance – Which provides general guidance on the promotion of the third licensing objective.
  - Section 11 – The Protection of Children from Harm – Which provides general guidance on the promotion of the fourth licensing objective.
21. 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.
22. Within Southwark’s Statement of Licensing Policy 2019 - 2021, the premises is situated outside of a CIP area and within the Herne Hill District Town Centre. Under the Southwark Statement of Licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- **Off licences:** Closing time for Off-Licences and alcohol sales in grocers and supermarkets is 00:00 hours daily;

### **Community impact statement**

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

### **Resource implications**

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

### **Legal implications**

25. See Paragraphs 28 to 48.

### **Financial implications**

26. See Paragraph 24.

### **Consultation**

27. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law & Democracy**

28. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
29. The principles which sub-committee members must apply are set out below.

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

30. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
31. Relevant representations are those which:
- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
  - Are made by an interested party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious
32. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:

- 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**

33. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
34. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm
35. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
36. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to 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.
37. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

## Reasons

38. 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

39. 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; and
  - 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.

40. 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**

41. 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.
42. 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.
43. 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.
44. 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.
45. 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.

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.

46. 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.
47. 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**

48. 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, 160 Tooley Street, London, SE1 2QH	Kirty Read Tel: 020 7525 5748

## APPENDICES

No.	Title
Appendix A	Application for a premises licence and associated plans
Appendix B	Representations submitted by Responsible Authorities
Appendix C	Representations submitted by Other Persons
Appendix D	Map of the locality

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
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<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	No	No
<b>Cabinet Member</b>	No	No
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