

Item No. 5.	Classification: Open	Date: 26 November 2020	Meeting Name: Licensing Sub-Committee
Report Title		Nola, Ground Floor, 224 Rye Lane, Peckham, London, SE15 4NL	
Ward(s) of group(s) affected		Rye Lane	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application submitted by Burrow Music Coffee Ltd for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Nola, Ground Floor, 224 Rye Lane, Peckham, London, SE15 4NL.
2. Notes:
 - a) The application is for a premises licence and was submitted under Section 17 of the Licensing Act 2003. The application is subject to representations and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 9 and 10 of this report provide 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 17 of this report deal with the representations submitted in respect of the application. Copies of representations submitted by responsible authorities are attached to this report in Appendix B. Copies of representations submitted by other persons are attached to this report in Appendix C. A map showing the location of the premises is attached as Appendix D.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to applications 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 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 4 September 2020 Burrow Music Coffee Ltd applied to this council for the grant of a premises licence in respect of Nola, Ground Floor, 224 Rye Lane, Peckham, London SE15 4N.
9. The application is summarised as follows:
 - **Late night refreshment**
 - Thursday to Saturday: 23:00 to 01:00
 - **Supply of alcohol for consumption on the premises**
 - Thursday and Friday: 17:00 to 01:00
 - Saturday: 13:00 to 01:00
 - Sunday: 13:00 to 23:00

- **Proposed opening hours of the premises**

- Tuesday and Wednesday: 07:30 to 16:00
- Thursday to Saturday: 07:30 to 01:00
- Sunday: 07:30 to 23:00

NB – After liaising with the council’s licensing responsible authority the application was amended as follows:

- Late night refreshment to be removed from the operating schedule on Thursday and on Friday and Saturday to cease at 00:00
- Supply of alcohol on Thursday and Sunday to cease at 22:30 hours and on Friday and Saturday to cease at 23:30 (this allows for half an hour ‘drinking up’ time).
- Opening times on Thursday to cease at 23:00 and on Friday and Saturday to cease at 00:00.
- The premises, and its intended style of operation, are described in the application as follows:

“We are opening a coffee shop on the south side of Peckham Rye, which would also double up as a cocktail bar to serve the surrounding restaurants which often have queues pouring onto the street. The space is single storey and we have recently fitted a disabled toilet so that the space is accessible to all guests. The main area fits up to 25 seated guests with ample space to move around inline with the current social distancing recommendations.”

10. The premises licence application form provides the applicant’s operating schedule. Parts 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 then 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.
11. A copy the application to which this report relates is attached as Appendix A.

Designated Premises Supervisor

12. The proposed designated premises supervisor of the premises is Mr Anthony West.

Representations submitted by responsible authorities

13. The Metropolitan Police Service submitted a representation suggesting control measures that should become conditions of any licence issued subsequent to the application. The conditions proposed relate to the

prevention of crime and disorder and the prevention of public nuisance. The applicant agreed to the conditions proposed by the Metropolitan Police Service and the Metropolitan Police Service subsequently withdrew their representation. Copies of the representation submitted by the Metropolitan Police Service, and related correspondence, are attached to this report as Appendix B.

14. The licensing responsible authority submitted a representation suggesting control measures that should become conditions of any licence issued subsequent to the application and also proposed amendments to the operating hours applied for. The conditions proposed relate to the prevention of crime and disorder and the prevention of public nuisance. The applicant agreed to the conditions, and amendments to the application, proposed by the licensing responsible authority and the licensing responsible authority subsequently withdrew their representation. Copies of the representation submitted by the licensing responsible authority, and related correspondence, are attached to this report as Appendix B.

Representations from other persons

15. Nine 'other persons' have submitted representations objecting to the application. The other persons are identified as parties 1 to 9. Parties 1 to 9 are all local residents residing in an apartment block opposite the premises.
16. The representations all contend that the operating hours (as originally applied for) finish too late and are likely to result in noise nuisance and / or disorder disturbing local residents. The representations also note that there are many bars in the locale that already contribute to significant noise nuisance and / or disorder in the locale and the addition of similar licensed premises in the locale will likely exacerbate the existing problems.
17. Copies of the representations submitted by the other persons, and related correspondence, are attached to this report as Appendix C.

Conciliation

18. The applicant liaised with the Metropolitan Police Service and agreed to the Metropolitan Police Service's suggested conditions being included in any licence issued subsequent to the application. The Metropolitan Police Service subsequently withdrew their representations.
19. The applicant liaised with the licensing responsible authority and agreed to the licensing responsible authority's suggested conditions being included in any licence issued subsequent to the application. The applicant also agreed to the proposed amendments to the operating hours as suggested by the licensing responsible authority. The licensing responsible authority subsequently withdrew their representations.
20. The applicant provided a response to the representations submitted by the other persons.

21. In reply to the applicant's response to the other persons' representations, Party 4 has withdrawn their representation.
22. The representations submitted by parties 1 to 3 and 5 to 9 remain outstanding and must be considered in the determination of this application. At the hearing to determine this application the licensing sub-committee will be updated as to any conciliation of parties 1 to 3 and 5 to 9.

Premises history

23. No authorisation under current or prior licensing legislation has been held in respect of the premises.

Deregulation of entertainment

24. 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 and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
 - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
25. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
26. The showing of films has not been de-regulated.

Business and Planning Act

27. The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

Map

28. A map showing the location of the premises is attached to this report as Appendix D. The following licensed premises are also shown on the map and provide licensable activities as stated:

The White Horse, 20 Peckham Rye, London SE15 4JR licensed for:

- Regulated entertainment and the sale of alcohol to be consumed on and off the premises:
 - Monday to Thursday: 08:00 to 00:00
 - Friday and Saturday: 08:00 to 01:00
 - Sunday: 12:00 to 23:30
- Late night refreshment:
 - Monday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00
 - Sunday between: 23:00 to 23:30

Alpha Off Licence, 24 Peckham Rye, London SE15 4JR licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 06:00 to 23:00

Rye News, 34 Peckham Rye, London SE15 4JR licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30

Guerrilla, 38 Peckham Rye, London SE15 4JR licensed for:

- Recorded music and the sale of alcohol to be consumed on and off the premises :
 - Sunday to Thursday: 11:00 to 23:30
 - Friday and Saturday: 11:00 to 01:30
- Late night refreshment:
 - Sunday to Thursday: 23:00 to 23:30
 - Friday and Saturday: 23:00 to 01:30

Funkidory, 42 Peckham Rye, London SE15 4JR licensed for:

- Sale of alcohol to be consumed on and off the premises and recorded music:
 - Sunday to Thursday: 09:00 to 23:00
 - Friday and Saturday: 09:00 to 00:00

- Late night refreshment and recorded music:
 - Friday and Saturday: 23:00 to 00:00

Banh Banh, 46 Peckham Rye, London SE15 4JR licensed for:

- Sale of alcohol to be consumed on the premises:
 - Tuesday to Saturday: 11:00 to 23:00
 - Sunday: 11:00 to 22:30

Batch, 56 Peckham Rye, London SE15 4JR licensed for:

- Sale of alcohol to be consumed on and off the premises, live music and recorded music:
 - Monday to Thursday: 17:00 to 23:00
 - Friday: 17:00 to 01:00
 - Saturday: 12:00 to 01:00
 - Sunday: 12:00 to 23:00

Pedler Peckham Rye, 58 Peckham Rye, London SE15 4JR licensed for:

- Recorded music and the sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday: 09:00 to 01:00
- Late night refreshment:
 - Monday to Sunday: 23:00 to 01:00

Canavan's Peckham Pool Club, 188 Rye Lane, London SE15 4NF licensed for:

- Sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 10:00 to 03:30
- Late night refreshment:
 - Monday to Sunday: 23:00 to 03:30
- Live music, recorded music, anything similar to live or recorded music and performances of dance:
 - Monday to Sunday: 10:00 to 04:00
- Films:
 - Monday to Sunday: 17:00 to 04:00

Two Hundred Rye Lane, 200 Rye Lane, London SE15 4NF licensed for:

- Sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 10:00 to 00:00

Tupi, 206 Rye Lane, London SE15 5NL licensed for:

- Sale of alcohol to be consumed on and off the premises:
 - Monday to Sunday: 12:00 to 23:00
- Recorded music:
 - Monday to Sunday: 08:00 to 23:00

Full Garden, 230 Rye Lane, London SE15 4NL licensed for:

- Late night refreshment:
 - Monday to Saturday: 23:00 to 00:00

The Nag's Head, 231 - 235 Rye Lane, London SE15 4TP licensed for:

- Sale of alcohol to be consumed on and off the premises and recorded music:
 - Monday to Sunday: 09:00 to 01:00
- Late night refreshment:
 - Monday to Saturday: 23:00 to 23:30
- Live music:
 - Friday to Sunday: 20:00 to 00:00

Tesco Express, Unit 1, 265 Rye Lane, London SE15 4UR licensed for:

- Sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 06:00 to 23:00

Yilmaz Kebab, 277 Rye Lane, London SE15 4UA licensed for:

- Provision of late night refreshment:
 - Monday to Sunday: 23:00 to 05:00

- Sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 11:00 to 23:00

Voodoo Ray's, Ground Floor, 285-287 Rye Lane, London SE15 4UA licensed for:

- Sale of alcohol to be consumed on and off the premises:
 - Sunday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 00:00
- Late night refreshment:
 - Friday and Saturday: 23:00 to 00:00
- Recorded music, anything similar to live or recorded music:
 - Sunday to Thursday: 10:00 to 23:00
 - Friday and Saturday: 10:00 to 00:00

Cheung's, 289 Rye Lane, London SE15 4UA licensed for:

- Late night refreshment:
 - Monday to Sunday: 23:00 to 00:00

Mr Bao, 293 Rye Lane, London SE15 4UA licensed for:

- Sale of alcohol to be consumed on the premises:
 - Monday to Sunday: 10:00 to 23:00.

Southwark council statement of licensing policy

29. Council assembly approved Southwark's statement of licensing policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 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.
30. 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.
27. According to this council's statement of licensing policy the premises are located in a Peckham major town centre area. Closing times as stated below are suggested in the statement of licensing policy for the following types of licensed premises located in Peckham major town centre area:
- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday to Saturday: 01:00
 - Public houses, wine bars, or other drinking establishments and bars in other types of premises:
 - Sunday to Thursday: 23:00
 - Friday to Saturday: 00:00.

Resource implications

31. 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 band B.

Consultation

32. 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.

Community impact statement

33. 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

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

Principles for making the determination

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

Principles for making the determination

38. 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.
39. 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.
40. 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
- 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

41. 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.
42. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. 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.
44. 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.
45. 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

46. 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

47. 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.

48. 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

49. 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.
50. 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.

51. 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.
52. 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.
53. 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.
54. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
55. 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.
56. 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

57. Members are required to have regard to the Home Office 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

58. The head of regulatory services has confirmed that the costs of this process over and above the application fee 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 and Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the application
Appendix B	Copies of the representation submitted by the Metropolitan Police Service and licensing responsible authority, and related correspondence
Appendix C	Copies of the representation submitted by other persons and related correspondence
Appendix D	Map showing the location of the premises

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	13 November 2020	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		16 November 2020