

Item No. 7.	Classification: Open	Date: 10 June 2021	Meeting name: Licensing Sub-Committee
Report Title		Licensing Act 2003: St Georges Tavern, 14 Coleman Road, London SE5 7TG – Variation of Designated Premises Supervisor	
Ward(s) or groups affected:		St Giles Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by the licence holder Patrick Holland to vary the designated premises supervisor (DPS) under the Licensing Act 2003 in respect of the premises known as St Georges Tavern, 14 Coleman Road, London SE5 7TG.

BACKGROUND INFORMATION

2. This is an application to vary the DPS of the existing premises licence, submitted under Section 37 of the Licensing Act 2003. The application is subject to an objection notice from the Metropolitan Police Service and is therefore referred to the Sub-Committee for determination.
3. Paragraphs 12 to 14 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**.
4. Paragraphs 23 to 25 of this report deals with the police objection notice received to the vary DPS application. A copy of the relevant police objection notice is attached as **Appendix C**.
5. 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.

The Licensing Act 2003

6. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for:
 - The sale of and supply of alcohol

- The provision of regulated entertainment
 - The provision of late night refreshment.
7. Within Southwark, the licensing responsibility is wholly administered by this Council.
 8. 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.
 9. 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.
 10. The application to vary the DPS of a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
 11. The police may submit an objection notice to an application to vary the DPS of a premises licence when relevant to the promotion of the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

Premises Licence Vary DPS Application

12. A premises licence vary DPS application was received on 6 May 2021 to remove Eilish Kemal as the DPS of St Georges Tavern, 14 Coleman Road, London, SE5 7TG; and to specify Declan Richard Sweeney as the new DPS. On 6 May 2021 consent was also received. The proposed DPS has a personal licence with the London Borough of Southwark.

13. The effect of an application to vary a DPS on a premises licence is that it will have immediate interim effect unless an objection is received from the police.
14. A copy of this application and consent is attached as **Appendix A**.

Premises History

15. A premises licence was first issued to the premises on 2 October 2005 to Chris Forde.
16. In May 2007, the licence was varied. On 21 December 2010, the licence was transferred to Paul Conway and Michael O'Brien. On 16 December 2011 it was again transferred to only Michael O'Brien. On 25 April 2012 it was transferred to Patrick Williams. On 15 May 2013 it was transferred to John Devly. On 9 April 2014 it was transferred to Fiona Conway. On 16 March 2015 it was transferred to Patrick Holland and the DPS was also varied to Eilish Kemal. On 19 October 2017, the DPS was varied to Leonard Lucas but changed back to Eilish Kemal on 2 July 2019, giving the current licence holder and DPS. The current premises licence is available in **Appendix B**.
17. On 7 October 2020 Patrick Holland applied for a minor variation to remove condition 836, stating that a DPS should be on the premises at all times that alcohol is served. However, this was rejected as the conditions appears in Annex 3 of the premises licence, conditions attached following a hearing. It would be commonplace for such amendments to be referred back to the licensing sub-committee via a full variation.
18. On 15 April 2021, a review application was submitted by Southwark's Trading Standards under Section 51 of the Licensing Act 2003. The review application was submitted in respect of the prevention of crime and disorder licensing objective and in summary states that the following has been witnessed and / or taken place at the premises:
 - On Friday 2 October 2020 at 21:25hrs, Trading Standards visited the premises with the Police Night Time Economy Team. The front door was locked with a security gate across but it was busy inside. They went to the side entrance which was also not accessible but the person in charge at the time opened it and let them in. Patrons were seated, including a long line of patrons around the bar. Hand sanitiser and QR codes were available along with a book for those who hadn't got the contact tracing app on their phone. It appeared that the premises were having a lock in after 22:00hrs. No one could operate CCTV. It was made clear to staff and people living on the premises that they could not use the bar between 22:00hrs and 05:00hrs the following day. No

personal license holder was present as is required by the license. There were two rooms at the back being used to smoke in contrary to the Health Act.

- Conditions breached: 789, 836 and 840.
- On 24 October 2020 at 22:20hrs, Trading Standards returned, accompanied by Night Time Economy Police. Karaoke had been reported to be taking place earlier in the day. Blackout boards had been put across the windows but patrons could be heard inside. The police banged on the door to open up and they were let in. The premises was full of patrons, with and no social distancing at the bar, beyond the 22:00hrs curfew. Staff were not wearing masks and there was no table service. Patrons were smoking at the bar. Management were issued a prohibition notice to close the premises and that it was not to re-open until such time as they were operating in a COVID secure way.
- On 21 February 2021 Night Time Economy Police visited and could hear people inside. No one would open the door and they had to break down door, finding patrons hiding in the kitchen.
- On 18 March 2021 Trading Standards visited the premises and issued a £1000 Fixed Penalty Notice. On no occasion has the premises license holder or designated premises supervisor been present.

19. Prevention of Crime and Disorder:

- 2 October 2020: Licensing Act 2003, Section 136 – breach of license Conditions 836 and 840 as well as breaches of smoke free legislation. Also possible breaches of COVID legislation in respect of seated table service – groups of 6 etc.;
- 24 October 2020: Similar Licensing Act 2003 offences and smoke free legislation + breach of Regulation 15 (1) of the Health Protection (Coronavirus, COVID-19 Alert Level) (High) (England) Regulations 2020 in respect of allowing the premises to be open between 22:00hrs and 05:00hrs;
- 21 February 2021: Patrons drinking on the premises when premises was required to be closed under the provisions of the Public Health (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020;
- 18 March 2021: £1000 fixed penalty notice issued to Patrick Holland. Paid 13 April 2021.

20. The review application has received supporting representations from the Police and Licensing Authority and will be heard by the Southwark licensing sub-committee on 10 June 2021.
21. On 6 May 2021, this vary DPS application was received, to change the name to Declan Sweeney and has also been objected to by the Metropolitan Police.
22. On 7 May 2021, a transfer application was received, to transfer the premises licence to Mr Charles Cleary. This also received representations from the Metropolitan Police and will be heard by the Licensing Sub Committee on 10 June 2021.

The Police Objection

23. The police, upon receipt of the application to vary the DPS, submitted an objection notice to the premises licence on 12 May 2021. A copy of the representation is available in **Appendix C**.
24. The representation notes that there is a current review application for the current premises licence. The proposed DPS has been found working at the premises at the times that breaches that led to the review have occurred.
25. It is for this reason that the police are of the opinion that there are exceptional circumstances on this occasion to object to varying the DPS of this premises licence.

Consideration by the Sub-Committee

26. It has not been possible to reach a negotiated outcome of this matter and the sub-committee is asked to consider whether the police objection notice is upheld under the necessity to promote the licensing objective of crime and disorder and refuse the application to vary the DPS.

The local area

27. A map of the local area is attached as **Appendix D**. There are no other licensed premises in the immediate vicinity (100m radius), though there are more licensed premises towards Southampton Row.

Community Impact Statement

28. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the pursuit of the crime and disorder objective.

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

Southwark Council Statement of Licensing Policy

30. Council Assembly approved Southwark's Statement of Licensing Policy 2021 – 2026 on 25 November 2020.. The policy came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 which sets out the purpose and scope of the policy and reinforces 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.

31. 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

32. A fee of £23.00 has been paid by the applicant in respect of this application being the statutory fee payable for a vary DPS application.

Consultations

33. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

34. The sub-committee is asked to determine the application for the vary DPS of a premises licence under Section 37 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 general principle is that applications for the vary DPS of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.
37. An application to vary DPS a premises licence under section 37 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.
38. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

Reasons

39. If the sub-committee determines that it is necessary to refuse the application to vary the DPS the premises licence, it must give reasons for its decision.

Hearing procedures

40. Subject to the licensing hearing regulations, the licensing sub-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.
41. This matter relates to the determination of an application for a premises licence under section 42 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

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.
46. The sub-committee can only consider matters within the application that have been raised through the objection notice submitted by the police. This will be decided on a case to case basis.
47. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making objection 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.
48. All interested parties 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

49. 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

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

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Copy of the variation of designated premises supervisor application and consent form
Appendix B	Premises licence
Appendix C	Police representation
Appendix D	Map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	20 May 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		21 May 2021