

Item No. 6.	Classification: Open	Date: 29 June 2021	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Brunchies,1 Valmar Road, London SE5 9NG	
Ward(s) or groups affected:		Camberwell Green	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Hassan Hassan to fully vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Brunchies, 1 Valmar Road, London, SE5 9NG.
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Brunchies – 1 Valmar Road, London, SE5 9NG, under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting and the plans are not being updated. The variation application is subject to outstanding representations submitted by responsible authorities and is therefore referred to the sub-committee for determination.
 - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
 - Paragraphs 10 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 B. A map showing the location of the premises is attached as Appendix D.
 - Paragraphs 16 to 24 of this report deal with the representations submitted in respect of the application, all of which come from responsible authorities. Copies of the representations are attached in Appendix C.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
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 interested parties 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 current premises licence

8. The current premises licence issued in respect of the premises known as Brunchies, 1 Valmar Road, London, SE5 9NG was issued on 12 March 2019 and allows the following licensable activities:

- The sale by retail of alcohol (on sales):
 - Sunday to Thursday: from 10:00 to 21:30
 - Friday and Saturday: from 10:00 to 22:30
 - Opening hours:
 - Monday to Thursday: from 07:00 to 22:00
 - Friday: from 07:00 to 23:00
 - Saturday: from 08:00 to 23:00
 - Sunday: from 08:00 to 22:00
9. A copy of the existing premises licence and plans are attached as Appendix A.

The variation application

10. On 06 May 2021, the premises licence holder for Brunchies applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Brunchies – 1 Valmar Road, London, SE5 9NG.
11. The application for variation is described as follows:

“...We are applying to vary the premises licence for the following:

- 1) To remove condition 312 - No person shall use the outside area other than those that leave to smoke to which is limited to 4 people only and shall be monitored by the staff.
- 2) To extend the licensable area for the consumption of food and alcohol to include therear yard with an additional seating capacity of 50 people during the hours of 10:00 to 15:30 Monday to Sunday.
- 3) To extend the opening hours and sale of alcohol as below:
 - a) Annually on New Year's Eve and Halloween (last Saturday of every October) opening hours to be extended until 03:00 and sale of alcohol with food until 02:30.
 - b) Last Friday & Saturday of every month opening hours to be extended until 01:30 and sale of alcohol with food until 01:00.
- 4) Change of layout to include sale of alcohol in the yard area ...”

12. The application also seeks to amend the existing hours of alcohol activities and to add additional licensable activities:
 - The sale by retail of alcohol (on sales):
 - New Years' Eve: from 21:30 to 02:30
 - Last Saturday of every October: from 22:30 to 02:30
 - Last Friday & Saturday of every month: from 22:30 to 01:00
 - In the yard every day: from 10:00 to 15:30
 - Opening hours:
 - New Years' Eve: from 22:00 to 03:00
 - Last Saturday of every October: from 23:00 to 03:00
 - Last Friday & Saturday of every month: from 23:00 to 01:30
13. The application has originally contained an application for regulated entertainment in the form of recorded music, however, this has been withdrawn, effectively amending the application.
14. A copy of the application, plan and withdrawal of recorded music is attached to this report as Appendix B.

Designated Premises Supervisor

15. The current designated premises supervisor (DPS) under the existing premises licence is the licence holder Hassan Hassan who holds a personal licence with the London Borough of Bromley.

Representations from Responsible Authorities

16. Representations have been received from the council's environmental protection team, planning authority and licensing authority.
17. The environmental protection make representation with concerns that the grant would be in breach of current planning restrictions and that additional hours would increase the potential for public nuisance.
18. The licensing authority has objected to the application stating that the extended hours are excessive in relation to the hours recommended in the Southwark statement of licensing policy.
19. The planning authority have made a representation in relation to ongoing complaints in relation to the use of the rear garden, but have provided no detailed context.
20. Copies of the representations are available in Appendix C.

Representations from other persons

21. Representations have been received from 36 other persons, 35 of whom objected to the application. The 35 who objected to the application are comprised of local residents concerned that the granting of the application will lead to an increase in public nuisance and in some cases, raise concerns that the premises already causes anti-social behaviour.
22. Copies of representations from other persons are available in Appendix D.

Conciliation

23. Copies of representations were provided to the applicant's representative. The agent has corresponded with the environmental protection team. Copies of this exchange and a noise report are available in Appendix E.
24. A letter has been written to local residents and is available in Appendix F.

Operating history

25. The original premises licence was issued on 4 March 2019 but was granted without a DPS in place.
26. Following the reopening following COVID-19 restrictions, the premises had started using the rear garden for customers. A complaint was received by the licensing authority and an inspection visit was carried out. There is a conditions on the licence stating:
 - **312** *No persons shall use the outside area other than those that leave to smoke to which is limited to 4 people only and shall be monitored by staff.*
27. Advice was given by the licensing authority to cease using the garden for licensable activities and apply for temporary events Notices for its use. A minor variation was also applied for to remove this conditions, however, advice was giving that if the application were objected to, a full variation would be required.
28. The minor variation application was made on 29 April 2021, representation was made by a local resident on 4 May 2021. The current full variation was made on 6 May 2021. The applicant then sought to make further changes as the licence was therefore liable to the full consultation procedure.
29. A list of Temporary Events Notices are below:

Applicant	Date/Time	Activities	Refused?
Hassan Hassan	13/05/2021 to 16/05/2021 from 10:00 to 15:30	Sale by retail of alcohol on sales	No
Hassan Hassan	19/05/2021 to 23/05/2021 from 10:00 to 15:30	Sale by retail of alcohol on sales	No

Applicant	Date/Time	Activities	Refused?
Hassan Hassan	26/05/2021 to 31/05/2021 from 10:00 to 15:30	Sale by retail of alcohol on sales	No
Hassan Hassan	02/06/2021 to 07/06/2021 from 10:00 to 15:30	Sale by retail of alcohol on sales	No

30. A list of complaints to the Licensing Department are as follows:

Complainant	Date	Complaint	Actions
Local Resident 1	17/04/2021	Complaint to Noise Team – complaint of noise from use of outside space	Noise Team (no info)
Local Resident 1	19/04/2021	Complaint to Licensing of use of rear garden contrary to licence.	Enforcement Officer visited 23/04/2021, advice given – TENs and minor variation.
Local Resident 2	23/04/2021	Complaint of use of rear garden.	As above.
Local Resident 2	29/04/2021	Continuation of complaint as above and further complaint that no public notification of licence application	Advice given regarding the licensing process.
Local Resident 3	08/05/2021	Complaint to Noise Team of noise in rear garden	Noise Team visited – no public nuisance witnessed.
Local Resident 3	25/05/2021	Objection to the TENs process and planning complaint.	Advice given that TENs are permissible. Complaint passed to planning.

Map

31. A map of the area is attached to this report as Appendix G. There are some licensed premises in the immediate vicinity (100m radius):

More Flour to the People Ltd, 16a Coldharbour Lane, London SE5 9PR

- Late Night Refreshment – Indoors:
 - Monday to Saturday: 23:00 to 23:30
- Sale by retail of alcohol to be consumed on premises:
 - Monday to Saturday: 10:00 to 23:00

Adams News, 6 Coldharbour Lane, London SE5 9PR

- Sale by retail of alcohol to be consumed off premises:
 - Monday to Sunday: 06:00 to 00:00

Latin House - 4 Coldharbour Lane, SE5 9PR

- Live Music – Indoors:
 - Friday: 23:00 to 01:00
 - Saturday: 23:00 to 01:00
- Recorded Music – Indoors:
 - Friday: 23:00 to 01:00
 - Saturday: 23:00 to 01:00
- Late Night Refreshment – Indoors:
 - Monday to Thursday: 23:00 to 00:30
 - Friday and Saturday: 23:00 to 01:00
 - Sunday: 23:00 to 00:00
- Sale by retail of alcohol to be consumed on premises:
 - Sunday to Thursday: 11:00 to 00:00
 - Friday and Saturday: 11:00 to 00:30
 - Sunday: 11:00 to 00:00
- Sale by retail of alcohol to be consumed off premises:
 - Monday to Thursday: 11:00 to 00:00
 - Friday and Saturday: 11:00 to 00:30
 - Sunday: 11:00 to 00:00.

Southwark council statement of licensing policy

32. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
33. 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.
 - 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.
34. 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.

Cumulative impact area

35. The premises is not situated in a cumulative impact area but is situated within a residential area.
36. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for these categories of premises:
- Restaurants and cafes: 23:00 daily

Resource implications

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

Consultation

38. Consultation has been carried out in respect of this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper twice (there was an error on the initial advert. However, this was republished within the specified time period to the satisfaction of the licensing authority). A similar notice exhibited at the premises for a period of 28 consecutive days. This was inspected by a licensing officer during the consultation period and found to be compliant.

Community impact statement

39. 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 Governance

40. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
41. The principles which sub-committee members must apply are set out below.

Principles for making the determination

42. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
43. The general principle is that applications for variation 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.
44. 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 other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
45. 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:
 - Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation.

Conditions

46. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
47. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
48. 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.
49. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
50. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
51. 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

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

Hearing procedures

53. 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.
- This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

54. 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.
55. 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.

56. 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.
57. 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.
58. 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.
59. 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.
60. 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

61. Members are required to have regard to the Home Office revised 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

62. 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 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 existing premises licence and plan
Appendix B	Copy of the application
Appendix C	Copies of representations from responsible authorities
Appendix D	Representations from other persons
Appendix E	Correspondence between the applicant and environmental protection team (EPT)
Appendix F	Copy of letter to other persons objecting
Appendix G	Map of the local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	16 June 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	16 June 2021	