

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 7 June 2010 10am.	<b>Meeting name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003 – D'Eclipse Bar & Restaurant, 57-59 Camberwell Road, London, SE5 0EZ	
<b>Ward(s) or groups affected:</b>		Faraday	
<b>From:</b>		Strategic Director of Environment and Housing	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by Ms Sarah Connelly for a review of the premises licence in respect of the premises known as D'Eclipse Bar & Restaurant, 57-59 Camberwell Road, London SE5 0EZ.
2. *Notes:*
  - a) *The grounds for the review are stated in paragraph 13 of this report. A copy of the full application is provided as appendix A;*
  - b) *The application is supported by the metropolitan police, the council's environmental protection team and nine (9) interested parties. Paragraphs 15 and 16 deal with the support representation received to the application. Copies of the representation are provided as appendices C & D; and*
  - c) *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

### The Licensing Act 2003

3. 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
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; and
  - 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; and
  - Relevant representations
7. The applications 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. 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.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The current licence in respect of the premises known D'Eclipse Bar and Restaurant, 57-59 Camberwell Road, London SE5 0EZ was granted to Dr Taiwo Olayinka Afolabi on 8 April 2010. The licence permits the following licensable activities.
- Films
  - Live music
  - Recorded music
  - Provision of facilities for making music and dancing
  - Performance of dance
  - Late night refreshment
  - Sale and supply of alcohol
10. Permitted hours for all licensable activities are from 10.00 to midnight Monday through to Thursday and from 10.00 on Friday and Saturday through to 02.00 the following day.
11. The general opening hours of the premises run for a further 30 minutes each day. A copy of the current premises licence is attached to the report as Appendix B.

### **Designated premises supervisor**

12. The designated premises supervisor is Opeyemi Soile, who holds a personal licence issued by Dartford Borough Council.

### **The application for a review of the premises licence**

13. On the 21st April 2010 an application for the review of the premises licence was received from a local resident and interested party. The grounds for the review relate to the following licensing objectives and are summarized as follows:-

- Prevention of crime and disorder - That the presence of the club has led to an increase of sporadic crime in the area, the most concerning of which being the shooting which occurred on a night in August 2008.
- Public nuisance – That local residents have been affected by the related noise and litter from the premises. Also the presence of the club has limited their ability to park outside their homes.
- Public safety – That the management of the premises have failed in their duty to comply with the conditions of the premises licence. By failing to comply with these conditions, they have failed to ensure that those attending the premises and living in the local area can do so in a safe and controlled environment.

14. A copy of the review application and supporting statement is attached the report as appendix A.

### **Representations from interested parties**

15. The Licensing unit has received seven (7) letters from nine interested parties supporting the review application. Copies of the correspondence are attached as Appendix C to the report. They relate to the licensing objectives of:

- Prevention of crime and disorder – Concerning the frequent aggressive atmosphere outside the premises; the increase in sporadic crime and fights; and a shooting in the vicinity of the Club.
- Public nuisance - The behaviour of customers, being out of control when leaving or smoking; noise from rowdy patrons of the club; and loud music from cars.
- Public safety - The management’s failure to ensure that those attending the premises and those living in the local vicinity of the premises can do so in a safe and controlled environment.

### **Representations from responsible authorities**

16. There are supporting representations from the metropolitan police and the council’s environmental protection team. Copies of the representations are attached the report as Appendix D.

### **Operating history to date**

17. An application was made to transfer the premises licence on 12 April 2008, the premises was then operating as Knightriders under a different management. On 23 April 2008, another application was made for a new grant of a premises licence with the request for the inclusion of regulated entertainment and also extended hours. The application was met by representations from Metropolitan Police, Environmental Protection Team and several interested parties under the grounds of crime and disorder and noise nuisance issues which were then being experienced under the previous management.

18. As such the application was determined by the Licensing Sub-Committee on 2 July 2008. The decision was to grant the licence with a reduction in hours requested and additional conditions. The licensable activities and the hours granted remain the same as listed in paragraph 9 of this report.

## Temporary Event Notices

19. Temporary events notices have been used on occasions extend the terminal hours of the premises licence. Below is a table of Tens given to date.

2008		2009		2010	
Date	Closing Time	Date	Closing Time	Date	Closing Time
23-Aug	5am	01-Jan	6am	01-Jan	5am
24-Aug	5am	12-Feb	4am	15-Feb	5am
25-Aug	4am	15-Feb	4am	04-Apr	5am
12-Sep	5am	16-Feb	5am		
13-Sep	5am	11-Apr	5am		
04-Oct	5am	13-Apr	5am		
05-Oct	5am	29-Aug	5am		
13-Dec	5am	31-Aug	5am		
14-Dec	5am	03-Oct	5am		
24-Dec	5am	10-Oct	5am		
25-Dec	5am	25-Dec	5am		
27-Dec	5am	27-Dec	5am		
28-Dec	5am				

## Visits made to premises

20. A number of visits were conducted at the premises by Licensing, Metropolitan Police and Environmental Protection Team/Enforcement Team officers to ensure compliance and set sound limiting devices. Meetings also took place between the management and local residents and Licensing officers to discuss problems identified at the premises and the need for improvement. Details of visits and meetings held at the premises are listed below;

- On 28 October 2008 an induction meeting was conducted with the then DPS (due to a variation application to change the DPS from the initial licence granted). An inspection and risk assessment was conducted.
- On 20 Jan 2009 both Police and Licensing officers met with management at the premises due to disturbances outside premises on the previous Saturday relating to a shooting. The management explained that Operation Trident had already requested and been given CCTV recording of that day, they also explained that a person known to them had been refused entry earlier into the night but had waited for one of the patrons to exit from the club at closing time and confronted them, this led to an altercation which resulted in the shooting at the Junction of John Ruskin Street.

It also transpired through discussions that the club scan was not working on the night of the incident and also on occasions the club was exceeding the terminal hours granted. The Police officer cautioned them and advised that he will be sending a warning letter.

- On 13 February 2009 a meeting was held between both Police and Council Officer, the management of the premises and also six (6) local residents. The residents had concerns with regards to recent shooting within the vicinity of the premises and also music being heard in the flats above the premises, the premises breaching

licensing conditions and to adhering to the terminal hours and also parking issues on Boundary Lane. The Police officer explained that it appeared one of the patrons of the club was actually a victim of the shooting which happened a few metres away from the club. He also explained Operation Trident was investigating and he could offer no further comments on the issue.

Other issues raised were regards to patrons queuing and blocking the Pavement and debris left outside. Officers explained that as there is a search policy there is bound to be queues, the issue should be if the queues are not being managed properly. Advice was given to call Environment Enforcement officers with regards to debris if it happened again.

Residents requested that the club should put notices at emergency and rear exits stating that CCTV surveillance was in progress, the management of the club agreed to do this.

The review process was explained to the residents and they were advised to keep a diary of said disturbances and breaches.

- On 6 August 2009 Officers from both Licensing and the Environmental Protection Team following notification of abatement notice served by Environmental Enforcement Team made a visit to the premises. Advice was given to management with regards to noise control.
- On 12 December 2009 following information received from the Licensing Police a visit was conducted to check that the club scan was operating according to licence conditions. The premises was found to be compliant.
- On 15 May 2010 officers conducted an induction meeting with Opeyemi Soile the new DPS also present was the licensee - Taiwo Afolabi. The purpose of the meeting was to discuss what is required by the DPS with regards to the licensing conditions.

21. Following notification of the noise abatement notice and also the visit of 06 August 2009. There have been two visits by the Environmental Protection Team to set the sound limiting device on the premises.

#### **Details of the warnings given to the licence holder**

22. Following the meeting held on 20 January 2009. PC Compton sent warning letters to Dr Afolabi and the DPS at the time Mr William Lule.
23. On 9 March 2009 following complaints of unlicensed activities beyond terminal hours, warning letters were sent to both the Dr Afolabi and the DPS Mr William Lule.
24. Also on 14 April 2010 warning letters were sent to both the licensee and current DPS Opeyemi Soile, that the Licensing office had been notified by way of a leaflet that the premises will be operating beyond its terminal hours Saturday 17 April 2010 till 4am.
25. Visits were made by both the Metropolitan Police and the Noise Enforcement team on the early hours of Sunday 18 April 2010 during terminal hours and their findings and all other warning letters mentioned are attached as appendix E to the report.

26. An apology letter was received from Taiwo Afolabi with regards to the letter dated 14 April 2010 citing that the time stated on the leaflet was an error made by the printers/designers of the flyers. The letter is attached as appendix f.

### **Prosecution by the Environmental Enforcement Team**

27. Following a statutory noise nuisance witnessed on 8 July 2009 a noise abatement notice was served under the Environmental Protection Act 1990 on Taiwo Afolabi, the licence holder, and Femi Adeko, the DPS at the time.
28. Further statutory noise nuisances were witnessed on 28 August 2009 contravening the abatement notice served in on 8 July 2009. This was following by the seizure of the music equipment from the premises on 15 August 2009
29. On 12 December 2009 Taiwo Afolabi and Femi Adeko were found guilty on three counts in relation to noise and statutory nuisance after being successfully prosecuted by the Councils Environment Enforcement Team.

### **The Local Area**

30. A map of the local vicinity is attached appendix g. For the purposes of scale only the circle on the map has a 100-metre radius. The operating terminal hour of the following premises licensed for regulated entertainment and late night refreshment are shown on the map.

- T – Bar, 39 - 45 Camberwell Road (Mon -Sun – 03.30)
- Alabarma, 11 John Ruskin Street (Sun – Thurs -02.00; Fri & Sat until 03.00)
- Alabarma, 13 John Ruskin Street (Sun – Thurs -00.00; Fri & Sat until 01.00)
- Emukay Restaurant 91 Camberwell Rd (Mon – Sun: until 02:30hrs)

#### Late night refreshment

- Red Sea restaurant, 85 Camberwell Rd (Mon – Sun until 01.00 hrs)

#### New application submitted

- Nivla Restaurant, 51 Camberwell Rd SE5, proposed hours requested (Mon – Sun: until 04.00hrs)

### **Southwark council statement of licensing policy**

31. Council assembly approved the Southwark's statement of licensing policy on 4 November 2009. Sections of the statement that are considered to be of particular relevance to this application are.
- Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
  - Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
  - Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998
  - Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
  - Section 8 provides general guidance on ensuring public safety including safe capacities
  - Section 9 provides general guidance on the prevention of nuisance
  - Section 10 provides general guidance on the protection of children from harm.

32. 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**

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

### **CONSULTATIONS**

34. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in the January 2009 edition of the Southwark London Press and a similar notice exhibited outside of the premises.

### **COMMUNITY IMPACT STATEMENT**

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

### **SUPPLEMENTARY ADVICE FROM THE STRATEGIC DIRECTOR OF COMMUNITIES, LAW & GOVERNANCE**

36. The Sub-Committee is asked to determine, under Section 52 of the Licensing Act 2003, an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or an interested party may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
37. The principles, which Sub-Committee members must apply, are set out below.

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

38. The licensing authority must hold a hearing to consider an application for review of a premises licence where.
- the application is properly made in accordance with Section 51 of the Act.
  - the applicant has given notice in accordance with Section 51(3) of the Act.
  - the advertising requirements provided for under Section 51(3) of the Act are satisfied.
  - the licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.
  - the licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

The four licensing objectives are -

- The prevention of crime and disorder.
- The protection of public safety.
- The prevention of nuisance.
- The protection of children from harm.

39. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are to-
- modify the conditions of the licence by altering, omitting or adding any condition.
  - exclude a licensable activity from the scope of the licence.
  - remove the designated premises supervisor.
  - suspend the licence for a period not exceeding three months.
  - revoke the licence.
40. For the purpose of determining a relevant representation under section 52 of the Act a "relevant representation" means representations which –
- are relevant to one or more of the licensing objectives.
  - are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
  - have not been withdrawn
  - if made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
41. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
42. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.
43. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.
44. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

45. Where the authority determines an application for review it must notify the determination and reasons why for making it to-
- the holder of the licence.
  - the applicant
  - any person who made relevant representations
  - the chief officer of police for the area (or each police area) in which the premises are situated

### **Hearing procedures**

46. 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.

47. This matter relates to the review of the premises licence under section 51 of the Licensing Act 2003. Regulation 26(1)(a) requires the sub-committee to make its determination at the conclusion of the hearing.

### **Council's multiple roles and the role of the Licensing Sub-Committee**

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.

53. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
54. 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.
55. Interested parties, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

### Guidance

56. Members are required to have regard to the DCMS guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

### Finance Director's Concurrent

57. 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 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirty Read Phone number: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Copy of the permises licence
Appendix C	Copies of representations from interested parties
Appendix D	Copies of representations from Responsible Authorities
Appendix E	Copies of warning letters
Appendix F	Copy of letter from D'Eclipse
Appendix G	Copy of the local area map
Appendix H	List of representations (On closed agenda)

**Audit trail**

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	25 May 2010	
Key Decision?	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	25 May 2010	