

Item No. 7	Classification: Open	Date: 29 September 2005 – 7pm	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – The Bickleigh PH,- 74 Vestry Road London SE5 8NX	
Ward(s) or groups affected:		BRUNSWICK PARK	
From:		Director of Environment and Leisure	

RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by Campo Lindo Company Ltd to vary the Premises Licence granted under the Licensing Act 2003 in respect of the premises known as The Bickleigh, 74 Vestry Road, London SE5 8NX.
2. *Notes*
 - a) *This application forms the second part (part B) of a two-part application. Part A of the application, which is an application to convert a range of existing licences held under current legislation by the applicant company in respect of the premises known as over into a new Premises Licence under the new 2003 Act is not subject of representations and is not under consideration at this meeting. Part B of the application is subject to representations from Responsible Authorities and interested parties, and is therefore referred to the Sub-Committee for determination;*
 - b) *Paragraphs 6 through to 18 of this report set out in full the range of licensed consents currently held by or on behalf of the applicant company; the conditions attached to these consents; and how these consents convert into a Premises Licence;*
 - c) *Paragraphs 19 to 24 of this report provide a summary of the application to vary the licence under consideration by the Sub-Committee (A copy of the full application is provided at Appendix A)*
 - d) *Paragraphs 25 to 28 deal with the representations received to the variation application. (A copy of each of the relevant representations are attached at Appendix B for Responsible Authorities and Appendix for Interested Parties)*

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 alcohol; the provision of regulated entertainment; and the provision of late night refreshment. Between 7 February 2005 and 6 August 2005 it is open to any person who holds existing Justices, public entertainment or night café licences to apply to the local licensing authority (in Southwark this Council) to convert these existing licensed consents into the new system before these consents become invalid. Except for circumstances where the police raise crime and disorder issues applicants will retain those existing rights. At the time of making conversion applications it is also open to applicants to apply to the licensing authority to simultaneously vary those existing licensed consents. Variation applications are subject to broader considerations. Such applications are subject of consultation allowing representations to be made by a range of responsible bodies or interested parties. Where representations are made and negotiated agreements may not be reached the Licensing Authority determines the matter.
4. The Licensing Act 2003 requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives, which are
 - a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.
5. In carrying out its licensing functions, a licensing authority must also have regard to
 - a) The Act itself;
 - b) The Guidance to the act issued under Section 182 of the Act;
 - c) Secondary regulations issued under the Act;
 - d) The Licensing Authority's own Statement of Licensing Policy
 - e) The application, including the operating schedule submitted as part of the application
 - f) Relevant representations

Conversion of a Justices On Licence into a Premises Licence

6. On 3 August 2005, Campo Lindo Company Ltd made application to this Council for conversion of the following licence and consents relating to the premises known as The Bickleigh, 74 Vestry Road, London SE5 8NX, into a Premises Licence under the Licensing Act 2003.
 - a) A Justices On Licence issued by the Licensing Justices at Camberwell Magistrates Court under the Licensing Act 1964;
7. The conversion and variation applications are made under parts A and B respectively of the same application form. A copy of the full application is attached as Appendix A of this report.

The Premises Current Justices Licence

8. The first of the existing licensed consents is the Justices On Licence. On 01 March 2005 the Licensing Justices for the Petty Sessional Division of Lambeth and Southwark granted a Justices On licence, in respect of the premises known as The Bickleigh, 74 Vestry Road, London SE5 8NX. The premises is a community public house, situated near a shop parade on a fairly busy road. The Justices Licence was granted in the names of Juan Campos and John Lineham.
9. The Justices On Licence authorises the sale by retail of intoxicating liquor of all descriptions for consumption either on or off the premises.
10. The Justices On Licence is not subject to any specific conditions.
11. The Justices On Licence also carries a number of “embedded restrictions”. Although these “embedded restrictions” are not set out on the licence document they exist in law and effectively form extra conditions attached to the licence. They are
 - a) That alcohol shall not be sold or supplied except during the permitted hours set out below
 - i) On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10.00 to 23.00
 - ii) On Sundays, other than Christmas Day or New Year's Eve, 12.00 to 22.30
 - iii) On Good Friday, 12.00 to 22.30
 - iv) On Christmas Day, 12.00 to 15.00 and 19.00 to 22.30
 - v) On New Year's Eve, except on a Sunday, 11.00 to 23.00
 - vi) On New Year's Eve on a Sunday, 12.00 to 22.30
 - vii) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).
 - b) The above restrictions do not prohibit
 - i) During the first twenty minutes after the above hours the consumption of alcohol on the premises
 - ii) During the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel
 - iii) During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals
 - iv) Consumption of the alcohol on the premises or the taking or sale or supply of alcohol to any person residing in the licensed premises
 - v) The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered
 - vi) The sale of alcohol to a trader or club for the purposes of the trade or club
 - vii) The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of her Majesty's naval, military or air forces
 - viii) The taking of alcohol from the premises by a person residing there or

- ix) The supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied or
 - x) The supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of alcohol so supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises
- c) Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is supplied, except alcohol sold or supplied
- i) With and for consumption at a meal supplied at the same time, consumed with the meal and paid for together with the meal
 - ii) For consumption by a person residing in the premises or his guest and paid for together with his accommodation
 - iii) To a canteen or mess
- d) No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies
- i) He is the child of the holder of the premises licence
 - ii) He resides in the premises, but is not employed there
 - iii) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress
 - iv) The bar is in a railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary

12. The Justices On licence also allows

- a) (Under an exemption provided by Section 182 of the Licensing Act 1964) the provision of public entertainment by the reproduction of wireless (including television) broadcasts or of programmes included in any programme service (within the meaning of the Broadcasting Act 1990) other than by sound or television broadcasting service, or of public entertainment by way of music and singing only which is provided solely by the reproduction of recorded sound
- b) (In conjunction with an exemption provided within the Private Places of Entertainment Act 1967) the provision of private music and dancing entertainment that is promoted for private gain

Other Licences

- c) The premise does not hold a Public Entertainment Licence.
- d) The premise does not hold a Night Café Licence.

The Converted Premises Licence

17. Under the Licensing Act 2003, the conversion application must, in the absence of any police objection, be granted. In this case, although the police have made representations concerning the variation application, the representations do not apply to the conversion application. A single licence dealing with the conversion of the existing licences and certificate and any variations granted by the Sub-Committee, will be issued by the Director of Environment and Leisure following the hearing.
18. A summary of the converted Premises Licence is as follows
- a) The licensable activities permitted are
 - i) The retail sale of alcohol of all descriptions for consumption either on or off the premises
 - b) The permitted hours in respect of each of the licensable activities permitted are
 - i) For the retail sale of alcohol as established by the Justices On-Licence and set out in paragraph 11 of this report
 - c) The conditions in respect of each of the licensable activities are
 - i) In respect of the retail sale of alcohol, those established by the Justices On-Licence.

MATTERS FOR CONSIDERATION

The Application for Variation of the Premises Licence

19. A copy of the application to vary the Premises Licence, made in accordance with paragraph 7 of Schedule 8 to the Licensing Act 2003 is attached as Appendix A to this report. Part B of the application form deals with the variation.
20. The application is summarised by the applicant company as follows
- To permit regulated entertainment and late night refreshment and extend hours for the sale of alcohol to operate on:-
- a) Monday through to Sunday 07.00 till 01.00
 - b) Christmas Eve to 01.00
 - c) Boxing Day to 01.00
 - d) New years Eve to 02.00
 - e) Friday, Saturday and Sunday preceding Bank Holiday Monday to 01.00
 - f) Bank Holidays to 01.00
 - g) To enable the premises to remain for one hour (1hr) after the retail sale of alcohol ceases

21. Part B2 of the variation application form provides the applicant company's operating schedule. Parts A, B, C, E, F, G, H, I, J, L, M and O set out the proposed operating hours in full.
22. Part P of the variation application seeks to remove any restrictions which are to be placed on the licence by virtue of schedule 8, Para 6(8) of the Licensing Act 2003, and that the restrictions regarding drinking up times are also to be replaced with one hour (1 hr) as marked in Part O.
23. Part Q of the variation application provides the additional steps proposed by the applicant company to promote the licensing objectives. In the event that the application should be approved by the Sub-Committee these proposals shall become licence conditions.
24. The proposed designated premises supervisor under the licence is Juan Campos.

Representations From Responsible Authorities

25. Representations concerning the application for variation of the premises licence from the Noise and Air Quality would be supplied at the hearing.

Representations From Interested Parties

28. There are five representations lodged by interested parties. Copies are attached as appendix B

Additional information on the past public entertainment licensed operating history of the premises

29. The applicant has never held a public entertainment licence.

Southwark Council Statement of Licensing Policy

30. The Southwark Statement of Licensing Policy was approved by Council Assembly on 8 December 2004. Sections of the Statement that are considered to be of particular relevance to this application are
 - a) Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
 - b) 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
 - c) Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
 - d) Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
 - e) Section 8 provides general guidance on ensuring public safety including safe capacities
 - f) Section 9 provides general guidance on the prevention of nuisance

- g) 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 £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for a premises within non-domestic rateable value A.
33. An additional £60 has been paid by the applicant in respect of the variation application for a premises within non-domestic rateable value A.

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 a local newspaper????? of a local news paper and a similar notice exhibited outside of the premises and inspected on 11 August 2005

EQUAL OPPORTUNITIES IMPLICATIONS

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

CONCURRENT REPORT BY THE BOROUGH SOLICITOR – LEGAL ISSUES

36. The Sub-Committee is asked to determine the application for a variation of a converted premises licence. The converted licence was itself granted automatically under the new Licensing Act 2003, without need for a hearing, as no relevant objections were received from the Police, on crime and disorder grounds, to the conversion.
37. It is important to distinguish the application for variation of a converted licence under the Licensing Act 2003 from the type of applications previously heard by the Sub-Committee, where a licence was renewed or an applicant sought to vary. The principles which apply are significantly different in many respects (although the requirement to give all parties a fair, unbiased hearing remains).
38. It is important that the sub-committee bear in mind, if considering imposing conditions, either with or without the consent of the applicant, that the sub-committee would be ultra vires if it imposed a condition which undermined the converted premises licence - eg if a proposed condition imposed a restriction on the operation of the converted premises license in any way.
39. The principles which Sub-Committee members must apply are set out below.

Principles for making the determination

40. 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.
41. 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.
42. 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 (in this case, the initial objections from the Fire Service have been withdrawn).
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
43. 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

44. 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.
45. The four licensing objectives are
 - a. The prevention of crime and disorder;
 - b. Public safety;
 - c. The prevention of nuisance; and
 - d. The protection of children from harm.
46. 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.
47. 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.
48. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.

49. Members are also referred to the DCMS guidance on conditions, specifically section 7, and to the Annexes to the guidance D, E, F and G.

Reasons

50. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for variation, it must give reasons for its decision.

Hearing Procedures

51. 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.

52. As this matter relates to the determination of an application to vary under section 35 of the Licensing Act 2003, which is made at the same time as an application for conversion of an existing license, 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

53. 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.

54. 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.

55. 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.
56. 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.
57. 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.

Guidance

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

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748
Lead Officer	Gill Davies, Director of Environment & Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	

Dated	20 September 2005	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	20 September 2005	