

Item No. 6.	Classification: Open	Date: 28 September 2015	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003 Mama Leah's 660 Old Kent Road, London SE15 1JF	
Ward(s) or groups affected:		Livesey Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Mr Tobi Raphael to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Mama Leah's 660 Old Kent Road London SE15 1JF
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Mama Leah under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from other persons and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 9 and 10 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
 - c) Paragraphs 12 to 14 of this report deal with the representations received to the variation of premises licence application. Copies of the relevant representations and associated correspondence are attached as Appendices C and E.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) The provision of late night refreshment

Within Southwark, this council wholly administers the licensing responsibility.

4. 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:
 - a) The prevention of crime and disorder
 - b) The promotion of public safety
 - c) The prevention of nuisance
 - 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
6. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current premises licence

7. The current licence in respect of the premises known as Mama Leah's, SE15 4DH was issued on 27 February 2013. It allows the following licensable activities:
 - Sale of alcohol (on the premises):
Sun to Thu 12.00 – 22.30
Fri to Sat 12.00 – 23.15
 - Operating hours of premises:
Sun to Thu 10.30 – 23.00
Fri to Sat 10.30 – 00.00
8. A copy of the existing premises licence is attached as Appendix B.

The variation application

9. On 15 July 2015, Mr Tobi Raphael applied to this council to vary the premises licence issued in respect of the premises known as Mama Leah's London SE15 1JF

The application has been changed by the applicant to conciliate with the responsible authorities and is now summarized as follows:

Opening Hours:

Thursday: now to remain as per the current licence (closing at 23.30)

Friday: 10.00 to 01.30

Saturday: 10.00 to 01.30

Sale of Alcohol:

Thursday: as per the current licence

Friday: 12.00 to 01.00

Saturday: 12.00 to 01.00

Entertainment (live and recorded music)

Thursday: as per the current licence

Friday: 23.00 to 01.00

Saturday: 23.00 to 01.00

Late night refreshment:

Thursday: now not applicable

Friday: 23.00 to 01.00

Saturday: 23.00 to 01.00

10. The variation to the premises licence application form provides the applicant operating schedule. Parts I J, K, L and M set out the operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix A.

Designated premises supervisor

11. The designated premises supervisor under the existing premises licence is Mr Tobi Raphael, who holds a personal licence from L.B Lewisham Council.

Representations from responsible authorities

12. Three representations were received from responsible authorities the Police, the Environmental Protection Team and the Licensing Authority.
13. The applicant engaged with the responsible authorities and agreed no adjustment to the operating hours on Thursdays and reduced additional hours on Friday and Saturday. Additional conditions were also agreed. All three responsible authorities considered the adjustments to the variation application and have withdrawn their representations.
14. A copy of the Responsible authority representations and the conciliation are attached as Appendix C

Representations from other persons

15. Three representations were received from other persons. The representations relate to noise from music and people, fumes from smokers, rubbish storage, urinating outside and smashed bottles. Copies of the representations are attached as Appendix D.

Conciliation

16. The representations have been forwarded to the applicant licensing agent. An update will be provided at the hearing.

Operating history

17. The current premises licence was granted to the premises on 22 March 2013.
18. There is no record of complaints against the premises.

Temporary Event Notices

19. There have been no temporary event notices submitted for this premises.

The local area

20. A map of the area is attached to this report as Appendix E. The premises is identified at the centre of the map. For purposes of scale-only the circle on the map has a 100 metre radius.

21. Details of similar premises in the vicinity:

Wazobia Restaurant
670 Old Kent Road SE15 1JF
Opening Hours
Sunday to Thursday 12.00 to 00.00
Friday & Saturday 12.00 to 03.30
Sale of alcohol, live and recorded music
Sunday to Thursday 12.00 to 00.00
Friday & Saturday 12.00 to 03.30

Prince of Wales
14 Ruby Street SE15 1LL
Opening Hours
Mon to Wed 09.00 to 01.30
Thur 09.00 to 02.30
Fri & Sat 09.00 to 05.00
Sun 12.00 to 04.00

Sale of alcohol
Mon to Wed 10.00 to 01.00
Thur 10.00 to 02.00
Fri & Sat 10.00 to 04.00
Sun 12.00 to 02.00

Live & recorded music
Mon to Wed 09.00 to 01.00
Thur 09.00 to 02.00
Fri & Sat 10.00 to 04.00
Sun 12.00 to 02.00

Late night refreshment
Mon to Wed 23.00 to 01.30
Thur to Sat 23.00 to 02.30
Sun 12.00 to 00.30

Further information – entertainment deregulation

22. On 6 April 2015 entertainment became deregulated and as a result.

20.1 Live unamplified music is deregulated between 08.00hrs to 23.00hrs on any premises provided the audience does not exceed 500 people.

20.2 Live amplified music and recorded music is deregulated between 08.00 and 23.00 provided the audience does not exceed 500 people on certain classes of premises including licensed premises.

23. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Southwark Council Statement of Licensing Policy

24. Council Assembly approved Southwark's Statement of Licensing Policy 2011-14 on 12 October 2011. 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 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; and
 - Section 10 provides general guidance on the protection of children from harm.
25. 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

26. A fee of £190 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

Consultations

27. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited outside of the premises for a period of 28 consecutive days and the application has been advertised on the council's online licensing register.
28. A visit to check the poster at the premises was made on 31 July 2015 and it was found that the poster was block from public view when the premises were closed and the shutters were down. The poster was repositioned and 28 days consultation period was restarted.

Community impact statement

29. 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

Strategic director of communities, law & governance

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

Principles for making the determination

32. 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.
33. 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.
34. 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.
35. 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

36. 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 appropriate to do so. Conditions must be appropriate 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.
37. 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.
38. 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.
39. Conditions will not be appropriate 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.

40. 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 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
41. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing procedures

43. 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
44. 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.

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

45. 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.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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

52. 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 documents

Background Papers	Held At	Cont
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Kirty Read Telephone No. 020 7525 5748

Appendices

Name	Title
Appendix A	Variation Application
Appendix B	Existing premises licence
Appendix C	Representations from Responsible authorities
Appendix D	Representations from other persons
Appendix E	Map of the area

Audit trail

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	
Dated	16 September 2015	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	23 September 2015	