

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 19 November 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Half Moon Food and Wine, 14 Half Moon Lane, London SE24 9HU	
<b>Ward(s) or groups affected:</b>		Dulwich Village Ward	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by this council's Trading Standards service under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Mr Ken Joseph Gangadeen in respect of the premises known as Half Moon Food and Wine, 14 Half Moon Lane, London SE24 9HU.
2. Notes:
  - a) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix A. A map of the area that the premises are located in is attached as Appendix E.
  - b) The grounds for the review are stated in paragraph 13 of this report. A copy of the premises licence review application is attached as Appendix B.
  - c) The review application is supported by representations submitted by responsible authorities. Copies of the representations are attached as Appendix C. Details of the representations are provided in paragraphs 16 to 21. Representations supporting the licence holder have also been forthcoming from members of the public and are attached as Appendix D and summarised in paragraphs 22 to 25.
  - d) 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 provides a 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
  - 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 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 persons 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 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The premises licence allows the provision of licensable activities as follows:
  - The sale of alcohol to be consumed off the premises:
    - Monday to Saturday from 08:00 to 23:00
    - Sunday from 10:00 to 22:30.
  - There are also no restrictions in respect of the premises' standard opening times (it can therefore be open 24hours-a-day).
10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the current premises licence is attached as Appendix A.

## **Designated premises supervisor (DPS)**

11. The current Designated Premises Supervisor (DPS) named on the licence is Mr Ken Joseph Gangadeen (the premises licence holder) since July 2007.

## **The review application**

12. On 17 September 2018, an application was submitted by this council's Trading Standards service under Section 51 of the Licensing Act 2003, for the review of the premises licence held by Ken Joseph Gangadeen in respect of the premises known as Half Moon Food and Wine – 14 Half Moon Lane, London SE24 9HU. The review application was submitted in respect of the prevention of crime and disorder and the protection of children from harm. Incidents referred to are :
  - 15 November 2017: Complaint of alcohol sold to children and that the premises are "well known to be selling to under-age customers".
  - 14 December 2017: Trading Standards alcohol test purchase – sale made to 17 year old volunteer by the owner/premises licence holder/DPS.
  - 19 December 2017: Owner/premises licence holder/DPS formally interviewed and signed a simple caution for the underage sale both by himself and the company.
  - 14 December 2017, 27 March, 30 June and 18 July 2018: Allegations of alcohol provided to children made by members of the public.
  - 19 December 2017, Mr Gagadeen, the premises licence holder, was formally interviewed under caution.
  - 18 March 2018: Complaint received from East Dulwich Safer Neighbourhood Team of several reports of sales of alcohol and cigarettes to underage youth.
  - 27 March 2018: Trading standards tobacco test purchase. Cigarettes sold by the owner/premises licence holder/DPS. Advice given regarding underage sales.
  - 2 April 2018: Trading standards send an advisory letter to the premises concerning underage sales.
  - 12 June 2018: Owner/premises licence holder/DPS formally interviewed and signed a simple caution for the sale of tobacco to a minor.
  - 30 June 2018: Allegation that a bottle of cider was "given" to a 16 year old local girl.
  - 18 July 2018: Sale of tobacco to 16 year old female by the owner of the business (who is also the premises licence holder and designated premises supervisor).
  - 29 August 2018: Complaint received to the police regarding the supply of alcohol and tobacco to a female child.

- 5 September 2018: Breach of condition 100 of premises licence (every supply of alcohol to be made or authorised by a person holding a personal licence) in breach of Section 136 Licensing Act 2003.
13. As a result of the incidents trading standards claim that the premises licence holder and DPS has undermined the licensing objectives and various offences have been committed:
- Delivery of alcohol to a minor by a member of staff working in the shop contrary to section 151(1) of the Licensing Act 2003.
  - Sale of hand rolling tobacco by the owner/premises licence holder/DPS contrary to s.7(1) Children and Young Persons Act 1933 as amended by the Children and Young Persons (Protection from Tobacco) Act 1991.
  - Breach of condition 101 of premises licence (that every supply of alcohol to be made or authorised by a person holding a personal licence) contrary to s.136 Licensing Act 2003.
  - Breach of condition 127 of premises licence (alcohol not to be sold/supplied for unless it is paid for) contrary to s.136 Licensing Act 2003.
  - Breach of condition 488 of the premises licence (challenge 25) contrary to Section 136 Licensing Act 2003.
14. The sub-committee is invited to consider all options available to them, including revocation of the premises licence.
15. Full details of the grounds for the review are provided within review the application. A copy of the review application is attached as Appendix B.

### **Representations from responsible authorities**

16. Representations supporting the review application have been received from The Metropolitan Police Service the council's licensing authority, the council's public health authority and the council's children's social care team.
17. The Metropolitan Police Service fully support the application by trading standards for the review of the premises licence having joint concerns for problem drinking in the area and therefore recommend that the licence is revoked.
18. The licensing responsible authority's representation is submitted in respect of both the prevention of crime and disorder and protection of children from harm objectives. The representation states that there is no faith in the current licence holder and supports trading standards and requests revocation.
19. The council's public health authority have also made a supporting representation to the review, under the protection of children from harm licensing objective. If members of the sub-committee are minded to retain the premises licence, additional conditions are requested.
20. A representation has been made by children's social care for Southwark as a responsible authority under the protection of children from harm licensing objective. Considering the timeline of offences, the revocation is supported.

21. Copies of the representations from responsible authorities are attached as Appendix C.

### **Representations from other persons**

22. Representations have been received by five other persons. Representations have been written to 'vouch' for the character of the premises licence holder and state that he provides a service to the local community.
23. Worryingly, Person 1 also refers to the premises offering credit, which would also be an offence, if the premises is not registered to provide consumer credit.
24. Person 3 is writing on behalf of the Herne Hill Forum and is critical of the application from trading standards and look to support the licence holder. Two further emails were received from members of the forum stating that they 'support' this representation. As neither made reference to the licensing objectives themselves, they are omitted from this report
25. Copies of representations from other persons are available in Appendix D.

### **Operating History**

26. A premises licence was issued in respect of the premises to Mr Ratnam Sri Murugathan and Mrs Ratna Devi Sri Murugathan on 22 August 2005. The DPS specified in respect of the licence was Mr Ratnam Sri Murugathan.
27. On 21 June 2007, the licence was transferred and had the DPS varied to the current premises licence holder, Mr Ken Joseph Gangadeen and has remained in that name since.
28. On 21 June 2018, an application was submitted by this council's trading standards service under Section 51 of the Licensing Act 2003
29. No temporary event notices (TENs) have been submitted in regards to the premises.
30. The only complaint in the last year to the Licensing Authority is the complaint of 29 August 2018 from an anonymous source, alleging the provision of illicit alcohol and tobacco to a teenage female.

### **The local area**

31. A map of the local area is attached as Appendix E. There are a number of licenced premises in the immediate vicinity as listed below:

#### **Mimosa, 16 Half Moon Lane, London SE24 9HU, licensed for:**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Sunday from 09:00 to 21:00.

**Vintage 1824, 18 Half Moon Lane, London SE24 9HU**, licensed for:

- The sale by retail of alcohol (both on and off sales):
  - Monday to Thursday from 10:00 to 23:00
  - Friday and Saturday from 10:00 to 00:00
  - Sunday from 10:00 to 22:30.

**Half Moon Public House, 10 Half Moon Lane, London SE24 9HU**, licensed for:

- The sale by retail of alcohol (both on and off sales):
  - Sunday to Thursday from 10:00 to 23:00
  - Friday and Saturday from 10:00 to 00:00.
- The provision of regulated entertainment (indoors and outdoors):
  - Sunday to Thursday from 23:00 to 23:30
  - Friday and Saturday from 23:00 to 00:30.
- The provision of regulated entertainment in the form of live and recorded music (both indoors):
  - Sunday to Thursday from 10:00 to 23:00
  - Friday and Saturday from 10:00 to 00:00.

**Wild and Lees, 2 Half Moon Lane, London SE24 9HU**, licensed for:

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday from 12:00 to 21:00
  - Sunday from 11:00 to 20:00.

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

32. Council assembly approved Southwark's Statement of Licensing Policy 2016 - 20 on 25 November 2015. The policy came into effect on 1 January 2016. 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.
33. 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.
34. Within Southwark’s Statement of Licensing Policy 2016 - 2020, the premises are identified as being outside of a cumulative impact policy (CIP) area, but within the Herne Hill district town centre. Relevant times recommended in the Statement of Licensing Policy for licensed premises in this area are as follows:
- Off licensed and alcohol sales in grocers: 00:00 daily.

### **Resource implications**

35. There is no fee associated with this type of application.

### **Consultation**

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

### **Community impact statement**

37. 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 Democracy**

38. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following 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 any other person 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.

39. The principles, which sub-committee members must apply, are set out below.

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

40. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
41. 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.
42. 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 appropriate 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.
43. 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 other person within the prescribed period
  - Have not been withdrawn
  - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
44. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
45. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
46. 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 an appropriate and proportionate response.
47. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.



## **Reasons**

48. 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**

49. 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.
50. This matter relates to the determination of an application for a premises licence under section 17 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**

51. 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.

52. 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.
53. 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.
54. 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.
55. 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.
56. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
57. 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.
58. 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**

59. 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

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

### BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Copy of the current premises licence
Appendix B	Copy of the review application
Appendix C	Copies of the representations submitted by a responsible authorities
Appendix D	Copies of valid representations submitted by other persons
Appendix E	Map of the local area

### AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
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