

Item No. 5.	Classification: Open	Date: 8 July 2022	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003: The Luncheonette and Giuseppes Ristorante Italiano, 47-49 Borough High Street, London SE1 1NB - Expedited Review	
Ward(s) or groups affected:		London Bridge and West Bermondsey	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION:

1. That the licensing sub-committee considers whether it is appropriate to take interim steps pending the determination of an application for a summary review, made under Section 53A of the Licensing Act 2003 by the Chief of Police for the Metropolitan Police area, of the premises licences issued in respect of the premises known as The Luncheonette and Giuseppes Ristorante Italiano, 47-49 Borough High Street, London SE1 1NB .
2. Notes
 - a) Under section 53A(2) of the Licensing Act 2003 the licensing authority must consider interim steps within 48 hours following the submission of an application under Section 53A of the Licensing Act 2003.
 - b) A copy of the full application and certificate that premises is associated with serious crime and serious disorder Section 53(1)(b) of the Licensing Act 2003 is attached as Appendix A.

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 summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

KEY ISSUES FOR CONSIDERATION

The premises licence

8. The premises licence issued in respect of the ground floor premises known as The Luncheonette and Giuseppe's Ristorante Italiano, 47-49 Borough High Street, London, SE1 1NB.
9. The premises licence was first issued on 25 April 2006 to Mr Giuseppe Vincenzo Rossi for the basement. In March 2018 the licence holder applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence to add the ground floor
10. The current licence allows the following licensable activities as follows:
 - Opening hours - Basement:
 - Monday to Sunday from 09:00 to 04:30
 - Opening hours - Ground Floor:
 - Sunday to Thursday from 06:00 to 00:00
 - Friday and Saturday from 06:00 to 01:00
 - The sale by retail of alcohol (on sales) - Basement:
 - Monday to Saturday from 10:00 to 04:00
 - Sunday from 12:00 to 04:00
 - The sale by retail of alcohol (on sales) – Ground Floor:
 - Sunday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 01:00

- The sale by retail of alcohol (off sales) - Basement:
 - Monday to Saturday from 10:00 to 04:00
 - Sunday from 12:00 to 04:00
- The sale by retail of alcohol (off sales) – Ground Floor:
 - Sunday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 01:00
- The provision of late night refreshment (indoors) – Basement:
 - Monday to Sunday from 23:00 to 04:00
- The provision of late night refreshment (indoors) – Ground Floor:
 - Sunday to Thursday from 23:00 to 00:00
 - Friday and Saturday from 23:00 to 01:00
- Regulated entertainment in the form of live music, recorded music, performances of dance, anything similar, facilities for making music, facilities for dancing and anything similar (indoors)
 - Monday to Sunday from 09:00 to 04:00.

11. A copy of the current premises licence is attached as Appendix B.

Designated premises supervisor

12. The designated premises supervisor (DPS) of the premises is the licence holder, Mr Giuseppe Vincenzo Rossi who has been DPS since the licence was first issued and holds a personal licence issued by Broxbourne Council.

The review application and certificate

13. On 7 July 2022 the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises known as The Luncheonette and Giuseppes Ristorante Italiano, 47-49 Borough High Street, London SE1 1NB.

14. On 7 July 2022 a Superintendent for the Metropolitan Police Service certified that in the Superintendent's opinion the premises are associated with serious crime, serious disorder or both.

15. On 2 July at around 02:40, a bottle was thrown during a fight inside the premises, missing the intended victim but smashed next to the victim, cutting his arm, requiring hospital treatment. The victim approached staff at the premises and asked them to call the police as the suspect was still present. The staff refused to call emergency services and asked the victim to leave. The suspect was also allowed to leave the premises. The victim called the police from outside. At the same time the suspect returned and was arrested for grievous bodily harm (GBH) at the scene.

16. Police attended the premises to view and retrieve CCTV but staff were unable to operate it. This evidence is still outstanding. Licensing officers attended the venue later that evening and issued the premises operator with a notification of offences, as they were unable to operate the CCTV, a requirement of the premises licence.
17. On 3 July 04:15, Police were flagged down by the London Ambulance Service (LAS) attending to a male with serious head injuries outside The Luncheonette and Giuseppe's Ristorante Italiano, 47-49 Borough High Street, London SE1 1NB. The male and a group of his friends had been involved in a large fight inside the premises. The main victim then left the premises and was further attacked in the alleyway next to the premises. At the time of LAS attending the victim was bleeding from his ears and involuntary shaking, taken to Kings College Hospital with suspected fractured jaw and potential brain injury.
18. A witness recorded the victim laying on the floor bleeding whilst the security staff rushed to clear up outside and closed the premises before police arrived. As of 09:30 on 4 July 2022 police have still been unable to access the crime scene.
19. Hertfordshire Police contacted the owner of the premises at the request of the Metropolitan Police Service. The apparent owner contacted them back stating that he had attended the premises but was unable to get in as no one was there. At the time this call was made police had been outside the premises managing the crime scene
20. The police consider these two incidents to be very serious. It is believed that the actions of the staff at the premises delayed any investigation into the assaults. It is thought that the staff appear to have deliberately closed the premises in an attempt to cover up what might have occurred inside the premises.
21. The first incident required the attendance of at least six police officers in three vehicles, in addition to one police van to convey the suspect. This amounts to a large quantity of resources for an incident that was not initially reported to the police by the venue. Due to a lack of LAS resources the victim was taken to hospital by the police.
22. The second incident required nine police officers and one crew from the ambulance service, Police had to remain on scene for nearly eight hours as access to the premises could not be made.

Previous operating history and compliance

23. On 4 September 2021: GBH stabbing at premises, premises crime scene locked, staff later unable to operate CCTV, issued with a notification of offences.
24. 12 December 2021: Victim hit with a bottle outside premises, staff refused him entry to collect belongings no CCTV available.
25. 30 December 2021: Victim assaulted with a bottle, staff unable to operate CCTV.
26. 6 February 2022: Large fight inside premises 15 persons involved.
27. 1 May 2022: Victim called police stating she and a friend had been assaulted by door staff.

28. The police state in their application that the premises appears to be operating as a night club venue rather than the restaurant the licence was intended for, although not restricted as such by the conditions on the existing premises licence.
29. The Metropolitan Police Service are of the opinion that this was a deliberate act from those at the premises to cover up a serious crime on their licensed premises; and ask the licensing sub-committee to consider immediate interim steps to promote the prevention of crime and disorder licensing objective with an option to suspend the premises licence, pending a full review hearing.
30. A copy of the review application and certificate that premises is associated with serious crime and serious disorder Section 53(1)(b) of the Licensing Act 2003 is attached to this report as Appendix A.

The review procedure

31. The current hearing is for the purpose of considering if interim steps are needed as a result of the summary review application submitted by the police, prior to the pending full review hearing that will be held on 02 August 2022.
32. The licensing sub-committee is not obliged to hear evidence from other parties at this stage of the procedure.
33. The review is currently being consulted on and a public notice is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full Licensing Sub-Committee hearing regarding this matter.
34. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

Operating history

35. Paragraphs 8 to 10 give the recent history of the premises.
36. There is no history of temporary event notices (TENS) and no complaints have been received specifically about this premises to the Licensing Department.

The local area

37. A map of the local area is attached at Appendix C.

Southwark Council statement of licensing policy

38. Council assembly approved Southwark's statement of licensing policy 2021 - 2026 on 25 November 2020. The policy came into effect on 1 January 2021.
39. 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.
40. 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.
41. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. Links are below:
- Southwark Policy:
<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>
 - Section 182 Guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

Cumulative impact area (CIA)

42. The premises is situated within the Borough and Bankside CIA area.
43. Closing times under the Southwark statement of licensing policy 2021 - 2026 the Local CIP applies to the following premises:
 - Closing time for restaurants: Sunday to Thursday: 00:00 and Friday and Saturday 01:00
 - Closing time for public houses, wine bars or other drinking establishments: Sunday to Thursday 23:00 and Friday and Saturday 00:00
 - Night clubs (with 'sui generis' planning classification): Monday to Thursday 01:00, Friday and Saturday 03:00 and Sunday 00:00.

Climate change implications

44. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
45. Climate change is not a legal factor in the consideration of a grant of a premises license under the current licensing objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by the operation of the premises.
46. Examples of such an agreements may be:
 - Not use single use plastics, such as disposable plastic glasses, when selling alcohol at the premises.
 - Encourage patrons not to drive to venues by providing details of public transport on their webpages/tickets.
47. The council's climate change strategy is available at:

<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

49. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the Council to consider all individuals when carrying out its functions.

50. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.
51. The equalities impact statement for licensing decisions is contained within the Southwark Statement of Licensing Policy 2021 – 2026 is available at:
- <https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

Health impact statement

52. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

Resource implications

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

Consultation

54. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

55. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003.
56. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

57. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where:
- The application is properly made in accordance with Section 53A of the Act.
 - The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.
58. 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.

59. 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 premises licence.
60. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
61. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
62. 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.
63. 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

64. Where the authority takes interim steps an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

65. 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
 - To 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.

66. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

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

67. 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.
68. 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.
69. 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.

70. 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.
71. 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.
72. 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.
73. 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.
74. There is no right of appeal to a Magistrates' Court against the licensing authority's decision regarding the setting of interim steps at this stage.

Guidance

75. 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

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

REASONS FOR LATENESS

77. When an application for an expedited summary review is received from the police under section 53a of the Licensing Act 2003 the council's licensing authority has a statutory duty hold a hearing within 48 hours from receipt of the application to consider interim steps that may be placed on the premises licence until such time as the application can be fully determined.

REASONS FOR URGENCY

78. The council has a statutory duty under section 53a to hold an interim hearing within 48 hours of receipt of a summary review.

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	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

APPENDICES

Name	Title
Appendix A	Copy of the review application
Appendix B	Copy of current premises licence
Appendix C	Map showing the location of the premises

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	7 July 2022	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		7 July 2022