Item No. 6.	Classification: Open	Date: 24 October 2023	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Galaxy Restaurant and Karaoke 211 Walworth Road, London SE17 1RL	
Ward(s) of group(s) affected		North Walworth	
From		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

That the licensing sub-committee considers an application made by VX Capital Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Galaxy Restaurant and Karaoke, 211 Walworth Road, London SE17 1RL.

1. Notes:

- a) The application seeks to vary the premises licence held in respect of the premises known as Galaxy Restaurant and Karaoke under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by one responsible authority.
- b) Paragraph 7 of this report provides a summary of the current premises licence issued in respect of the premises and a copy of this is attached to this report as Appendix A.
- c) Paragraphs 8 of this report provide a summary of the application and a copy of this is attached as Appendix B.
- d) Paragraphs 9 to 12 of this report deal with the representation submitted in respect of the application and a copy of this is attached as Appendix C. Appendix D also contains a copy of the original Decision Notice for the initial premises licence granted in this case on 30 January 2020. A map showing the location of the premises is attached to this report as Appendix E.
- e) 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 procedure, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

- 2. 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.
- 3. Within Southwark, the licensing responsibility is wholly administered by this council.
- 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:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
- 5. 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.
- 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. A premises licence was first issued in respect of the premises known as Galaxy Restaurant and Karaoke, 211 Walworth Road, London, SE17 1RL was first issued on 30 January 2020. Whilst this has been amended since then (see Paragraphs 14 to 19 below), the current premises licence dated 24 January 2022 allows for the following licensable activities:
 - Opening hours of the premises:

Sunday to Thursday: 11:30 to 02:30Friday and Saturday: 11:30 to 03:30

• Recorded music – indoors:

Sunday to Thursday: 23:00 to 02:00Friday and Saturday: 23:00 to 03:00

Entertainment similar to live/recorded music/dance – indoors:

Sunday to Thursday: 11:30 to 02:00Friday and Saturday: 11:30 to 03:00

Late night refreshment – indoors:

Sunday to Thursday: 23:00 to 02:00Friday and Saturday: 23:00 to 03:00

• Sale by retail of alcohol to be consumed (on and off the premises):

Sunday to Thursday: 11:30 to 02:00Friday and Saturday: 11:30 to 03:00.

A copy of the existing premises licence is attached as Appendix A.

The variation application

- 8. On 6 September 2023, VX Capital Limited applied to this council to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Galaxy Restaurant and Karaoke, 211 Walworth Road, London SE17 1RL. The premises purpose and nature of the variation, which also contains a change in address for the designated premises supervisor (DPS), is described within the application (Appendix B) as follows:
 - To change the opening hours of the premises:

Monday to Sunday: 11:30 to 03:30

To change the hours for recorded music – indoors:

Monday to Sunday: 11:30 to 03:00.

 To change the hours for entertainment similar to live/recorded music/dance – indoors:

Monday to Sunday: 11:30 to 03:00

- To remove the following conditions from the premises licence, which currently reads as follows:
 - 362 That if more than four of the karaoke rooms are in use after 20.00hrs, then an SIA registered door supervisor shall be employed at the premises until the premises is closed, the last customer has left and all customers have dispersed from the premises.
 - 364 That there shall be no admission to the Karaoke rooms other than to pre-booked groups, which must be booked before 17.00 on the date for which the booking is due or for bookings due between midnight and 03.30, by 17.00 on the day before the date for which the booking is due.

- To add the following conditions on the Premises Licence to help, according to the applicant, align with other similar premises they manage elsewhere:
 - 1. All karaoke session after 22:00 must either be booked in advance, or when customers arrive at the premises after 22:00 without a booking, they must provide the following details for the main guest in the group:
 - (a) Full name (backed up by a form of ID).
 - (b) Contact telephone number.
 - (c) E-mail address.
 - 2. That if more than four of the karaoke rooms are in use after 22.00, then an SIA registered door supervisor shall be employed at the premises until the premises is closed, the last customer has left and all customers have dispersed from the premises.

Representations from responsible authorities

- 9. A representation was received from Metropolitan Police Service.
- 10. The police representation raised issue with the premises not having a grace period before closure which, in their view, could lead to noise nuisance from patrons being ejected from the premises all at the same time. Concerns were also made about the removal of conditions 362 and 364 as these are, in their view, primarily meant to prevent anti-social behaviour and help protect staff.
- 11. The police epresentation can be found at Appendix C.

Conciliation

12. As of the time of writing this report, we have yet to receive notification that the police are withdrawing their representation, thus presenting the need for a subcommittee to consider the application.

Representations from other persons

13. Representations have not been received by any other persons in this case.

Premises licensing history

- 14. The original premises licence in respect of the premises was issued to VX Capital Ltd on 30 January 2020 (Appendix D) and allowed for the following:
 - The opening hours of the premises:

Sunday to Thursday: 16:00 to 02:30Friday and Saturday: 16:30 to 03:30

Recorded music – indoors:

Sunday to Thursday: 23:00 to 02:00Friday and Saturday: 23:00 to 03:00

Entertainment similar to live/recorded music/dance – indoors:

Sunday to Thursday: 11:30 to 02:00Friday and Saturday: 11:30 to 03:00

Late night refreshment – indoors:

Sunday to Thursday: 23:00 to 02:00Friday and Saturday: 23:00 to 03:00

• Sale by retail of alcohol to be consumed (on the premises):

Sunday to Thursday: 18:00 to 02:00Friday and Saturday: 18:30 to 03:00

Sale by retail of alcohol to be consumed (off the premises):

Sunday to Thursday: 18:00 to 22:00Friday and Saturday: 18:30 to 22:00.

- 15. On 3 December 2020, a minor variation was granted to permit the alteration of the premises to allow for alcohol and karaoke as ancillary to their main food offer.
- 16. On 6 January 2021, a minor variation was granted to facilitate changes to the kitchen and staff access areas of the premises.
- 17. On 15 October 2021, a DPS variation took place.
- 18. On 24 January 2022, a variation application was granted for the following:
 - A change in the opening hours of the premises to 11:30 Monday to Sunday.
 - The bringing forward of commencement of serving alcohol (both for consumption on and off the premises) to 11:30 Monday to Sunday.
 - To extend the sale by retail of alcohol (to be consumed off the premises) to 02:00 Sunday to Thursday and 03:00 Friday and Saturday.
 - A change in some of the existing conditions on, and (in the case of Conditions 362 and 364) some additional conditions to, the premises licence.
- 19. On 2 May 2022, an application to review the premises licence (on the grounds of excessive noise from inside and outside the premises, along with significant numbers of gathering patrons externally) was submitted. However, following questioning about whether the applicant (a local resident) had served the application on the premises licence holder and confirmation that no supporting representations had been received, the applicant withdrew their application on 31 May 2022.

Temporary event notices (TENs)

- 20. On 25 November 2021, a TEN was granted for the sale by retail of alcohol (on the premises) from 2 to 6 December 2021 from 12:00 to 22:30.
- 21. On 26 November 2021, TENs were granted for the following:

- Sale by retail of alcohol (on the premises) from 8 to 12 December 2021 from 12:00 to 22:30.
- Sale by retail of alcohol (on the premises) from 15 to 19 December 2021 from 12:00 to 22:30.
- Sale by retail of alcohol (on the premises) from 22 to 26 December 2021 from 12:00 to 22:30.

Complaints

22. Only one complaint has been received in respect of the premises, as follows:

Date	Complainant	Complaint	Outcome
24 August 2021	Local Resident	Concerns raised about loud noise emanating from the premises at 2am and people outside the rear of the premises also causing adverse noise to neighbouring residents.	premises licence holder was advised, during a physical visit by an enforcement officer, to refrain from using the ground floor karaoke room, thus allowing them to form of acoustic lobby or

Map

23. A map showing the location of the premises is attached to this report as Appendix E and the following premises are also within the immediate vicinity:

McDonald's Restaurants,198-200 Walworth Road, London SE17 1JJ:

Late night refreshment – indoors:

o Monday to Sunday: 23:00 to 05:00

Opening hours:

Monday to Sunday: 00:00 to 00:00

Memz Off Licence, 187 Walworth Road, London SE17 1RW:

- Sale by retail of alcohol (to be consumed off the premises):
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 09:00 to 22:30
- Opening hours:
 - Monday to Sunday: 07:00 to 23:00

Shop and Stop, 201 Walworth Road, London SE17 1RL:

- Sale by retail of alcohol (to be consumed off the premises):
 - o Monday to Saturday: 07:30 to 23:30.
 - o Sunday: 08:30 to 23:30.
- Opening hours:
 - Monday to Sunday: 07:00 to 23:30

Jerk Chicken, 209 Walworth Road, London SE17 1RL:

- Late night refreshment indoors:
 - Monday to Sunday: 23:00 to 05:00
- Opening hours:
 - Monday to Sunday: 07:00 to 05:00

Malata Supermarket, 213 Walworth Road, London SE17 1RL:

- Provisions similar to making music and dancing indoors:
 - o Monday to Thursday: 10:00 to 22:00.
 - o Friday and Saturday: 10:00 to 23:00.
 - Sunday: 10:00 to 21:00
- Sale by retail of alcohol (to be consumed on and off the premises):
 - Monday to Thursday: 10:00 to 22:00.
 - o Friday and Saturday: 10:00 to 23:00.
 - o Sunday: 10:00 to 21:00
- Opening hours:
 - Monday to Thursday: 10:00 to 22:00
 - Friday and Saturday: 10:00 to 23:00
 - Sunday: 10:00 to 21:00

Fes Restaurant 210 Walworth Road, London SE17 1JE:

- Late night refreshment indoors and outdoors:
 - Monday to Sunday: 23:00 to 03:00
- Sale by retail of alcohol (to be consumed on and off the premises):
 - Monday to Sunday: 10:00 to 23:00
- Opening hours:
 - Monday to Sunday: 10:00 to 03:00

Zing Zing, 227 Walworth Road, London SE17 1RL:

- Sale by retail of alcohol (to be consumed on and off the premises):
 - Monday to Sunday: 12:00 to 23:00
- Opening hours:
 - Monday to Sunday: 12:00 to 23:00

Tesco, 224-226 Walworth Road, London SE17 1JE:

- Sale by retail of alcohol (to be consumed off the premises):
 - o Monday to Thursday: 06:00 to 23:00
- Opening hours:
 - Monday to Sunday: 06:00 to 23:00.

Southwark Council statement of licensing policy

- 24. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
- 25. 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.
- 26. 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.
- 27. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links are below:

Southwark Policy:

https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy

Section 182 Guidance:

https://www.gov.uk/government/publications/explanatory-memorandum-revised-quidance-issued-under-s-182-of-licensing-act-2003

Cumulative impact area (CIA)

- 28. The premises does not fall within a cumulative impact area (CIA). However, it is situated in the Elephant and Castle major town centre area.
- 29. Under the Southwark's statement of licensing policy 2021 2026 the following closing times are recommended as appropriate within this area:
 - Restaurants and cafes:

Sunday to Thursday: 00:00

Friday and Saturday: 01:00

Public houses, wine bars or other drinking establishments:

Sunday to Thursday: 23:00

- Friday and Saturday: 00:00 0
- Nightclubs:

Monday to Thursday: 01:00 Friday and Saturday: 03:00 0

Sunday: 00:00 0

- Off-licences:
 - Monday to Sunday: 00:00.
- Takeaways:

Sunday to Thursday: 00:00 0 Friday and Saturday: 01:00 0

Cinemas:

Monday to Sunday: 02:00

- Qualifying members clubs:
 - Monday to Sunday: 02:00.

Climate change implications

- 30. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
- 31. 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.
- 32. Examples of such 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.
- 33. The council's climate change strategy is available at:

https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-202<u>1-.pdf</u>

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

Community impact statement

34. 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

- 35. 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.
- 36. 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 who have 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.
- 37. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 2026 at:

https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy.

38. The equalities impact assessment is available at:

https://moderngov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf

Health impact statement

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

Resource implications

40. 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 ratable value B.

Consultation

41. 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 was exhibited outside of the premises for a period of 28 consecutive days.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

- 42. The sub-committee is asked to determine the application for a variation premises licence under Section 34 of the Licensing Act 2003.
- 43. The principles which sub-committee members must apply are set out below.

Principles for making the determination

- 44. 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.
- 45. 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.
- 46. 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 another party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
- 47. 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

- 48. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, 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.
- 49. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.

- 50. 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.
- 51. 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.
- 52. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

53. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application to vary a premises licence application, it must give reasons for its decision.

Hearing procedures

- 54. 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
 - o 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.

55. 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

- 56. 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.
- 57. 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.
- 58. 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.
- 59. 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.
- 60. 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.
- 61. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
- 62. 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.

63. 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

64. Members are required to have regard to the Home Office 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, Finance

65. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003	Southwark Licensing,	Mrs Kirty Read
	c/o	Tel: 020 7525 5748
Home Office Revised	Community Safety and	
Guidance to the Act	Enforcement, 160	
	Tooley Street,	
Secondary Regulations	London SE1 2QH	
Courthouse de statement of		
Southwark statement of		
licensing policy		
Case file		

APPENDICES

Name	Title	
Appendix A	Copy of the current premises licence issued in respect of the	
	premises	
Appendix B	Copy of the application	
Appendix C	Copy of police representation	
Appendix D	Sub-committee notice of decision from 30 January 2020	
Appendix E	Мар	

AUDIT TRAIL

Lead Officer	Caroline Bruce and Growth	e, Strategic Director E	nvironment, Neighbourhoods	
Report Author	Matt Tucker, Principal Licensing Officer			
Version	Final			
Dated	11 October 2023			
Key Decision?	No			
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET				
MEMBER				
Officer Title		Comments sought	Comments included	
Assistant Chief Executive –		Yes	Yes	
Governance and Assurance				
Strategic Director, Finance		Yes	Yes	
Cabinet Member		No	No	
Date final report sent to Constitutional Team			12 October 2023	