

Item No. 5.	Classification: Open	Date: 17 June 2021	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Maltby Restaurant, 40 Maltby Street, London SE1 3PA	
Ward(s) or groups affected:		London Bridge & West Bermondsey	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Gergovie Wines Ltd for a premises licence to vary the premises granted under the Licensing Act 2003 in respect of the premises known as Maltby Restaurant, 40 Maltby Street, London SE1 3PA.
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Maltby Restaurant, 40 Maltby Street, London, SE1 3PA 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 responsible authorities and other persons and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 10 to 12 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. A copy of the existing premises licence is attached as Appendix B.
 - c) Paragraphs 13 to 19 of this report deals with the representations received to the premises licence application and conciliation progress made. Copies of the relevant representations from the responsible authority(ies) is attached as Appendix C. Copies of the representations from other persons attached as Appendix D and a copy of the conciliation statement is attached as Appendix E.
 - d) Paragraph 27 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix F.
 - 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 regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a 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 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

8. The current premises licence was issued on 23 November 2018 to Gergovie Wines Ltd. The premises licence allows for the following activities and times:

- Late night refreshment:
 - Wednesday to Sunday: 23:00 to 01:00
- Sale by retail of alcohol to be consumed on/off premises:
 - Wednesday to Friday: 10:00 to 00:30
 - Saturday: 09:00 to 00:00
 - Sunday: 10:00 to 17:00
- Opening hours:
 - Wednesday to Friday: 10:00 to 01:00
 - Saturday: 09:00 to 01:00
 - Sunday: 10:00 to 17:30.

9. A copy of the premises licence is provided as Appendix B.

The variation application

10. On 13 April 2021, Gergovie Wines Ltd applied to this council to vary the premises licence issued in respect of the premises known as Maltby Restaurant, 40 Maltby Street, London SE1 3PA. The premises is described as railway arches. The application is summarised as follows (amended as per conciliation):

- Sale by retail of alcohol to be consumed on/off premises:
 - Monday and Tuesday: 10:00 to 23:00
- Opening hours:
 - Monday and Tuesday: 10:00 to 23:30.

11. The variation to the premises application form provides the applicant operating schedule. Parts I, J, K, L, M, N O and P set out the proposed operating hours and 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

12. The proposed designated premises supervisor is Raef Thomas Hodgson who has a personal licence issued by Hackney Council.

Representations from responsible authorities

13. A representation was submitted by the Metropolitan Police Service. The initial application was to extend the hours of business and late night refreshment to 01.00 on Monday and Tuesday and alcohol to 00.30. The police objected to this stating that the premises are situated next to a large residential block with a number of premises overlooking the outside of the venue.
14. The police advised that the increase in hours would take the venue to opening six days a week to 01:00. The additional hours would increase public nuisance and would harm children by preventing them from getting good quality sleep. The therefore sought a reduction in hours. The applicant responded by reducing the hours sought through the conciliation process. (see conciliation statement attached Appendix E).The police have now withdrawn their representation.
15. The representation and withdrawal email are attached as Appendix C.

Representation from other persons

16. There are four representations from other persons. The residents who live in close proximity to the premises are concerned the new hours sought would significantly compromise and disturb their lives and sleep. Visitors to bars and restaurants increasingly use the pavements as extensions of the premises they visit and create noise when they leave.
17. They advise that this is barely manageable with the current closing times in place and, if these are extended to 1am, this will create undue noise much later at night impacting both Bermondsey Central and The Arc. Some of them have contacted 40 Maltby Street multiple times about noisy customers leaving well after closing time and little to nothing has ever been done. In addition, this is out of keeping with the opening times of other similar premises in the area and sets a dangerous precedent
18. They further add that local children have already had an unsettling year and years of disturbed sleep due to anti-social behaviour (ASB). The granting of these variations will increase noise and ASB, along with the anxiety many children living here experience. Increasing the hours the premises can operate will increase harm to children living in the area
19. The representations are attached as Appendix D.

Conciliation

20. The representations were forwarded to the applicant. An attempt has been made to conciliate in the email attached as Appendix E. The conciliation progress has led to the applicant reducing the hours and the to the police withdrawing their representation. However, there are still outstanding representations. The licensing sub-committee will be updated of any developments at the meeting on 17 June 2021.

History of premises

21. The initial premises licence was granted on 12 October 2010 to Raef Thomas Hodgson, the designated premises supervisor. The licence was then transferred to Gergovie Wines Ltd on 23 November 2018.

Complaints

22. There have been no complaints specifically related to the premises received by the licensing team within the last 12 months.

Deregulation of entertainment

23. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
 - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
24. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
25. The showing of films has not been de-regulated.

Business and Planning Act

26. The provisions in the Act temporarily modify the Licensing Act 2003 to provide an automatic extension to the terms of most premises licences which only permit the sale of alcohol for consumption on the premises to allow the sale of alcohol for consumption off the premises. This will make it easier for licensed premises to sell alcohol to customers for consumption off the premises in England and Wales, which will allow businesses to trade and maintain social distancing.

The local area

27. A map of the area is attached to this report as Appendix F. The premises is identified by a triangle at the centre of the map. For purposes of scale only the circle on the map has a 100 metre radius. The following licensed premises terminal hours are also shown on the map:

Lassco, Ropewalk and Arches 46 & 48 to 53, Maltby Street, London SE1

- Monday to Saturday until 22.30 and Sunday until 17:30

Marquis of Wellington PH, 21 Druid Street, London SE1

- Monday to Wednesday until 23.00, Thursday until 00.00, Friday and Saturday until 01.00 and Sunday until 00.00

Elmadero, Railway Arch 840, 30 Druid Street, London SE1

- Monday to Sunday until 23.00

Southwark Brewing Company Limited, 46 Druid Street, London SE1

- Monday to Sunday until 23.00

Doodle Bar, 60 Druid Street, London SE1

- Sunday to Thursday until 00:00 and Friday and Saturday until 01:00

St John Bakery Company Ltd, 72 Druid Street, London SE1

- Monday to Sunday until 23.00

Bea's of Bloomsbury Railway Arch, 76 Druid Street, London SE1

- Monday to Sunday until 22.00

Speckmobile Railway Arch, 76 Druid Street, London SE1

- Monday to Saturday until 23.00 and Sunday until 22:30

Maltby Restaurant, 40 Maltby Street, London SE1

- Wednesday to Saturday until 01:00 and Sunday until 17:30

Hawkes, 92 Druid Street, London SE1

- Monday to Sunday until 23:00

Anspach & Hobday, 116 - 118 Druid Street, London SE1

- Monday to Sunday until 23:00

Lemporio, 134 Druid Street, London SE1

- Sunday to Wed until 22.00 and Thursday to Saturday until 23:00

Thames Takeaway, 140 Tanner Street, London SE1

- Sunday to Thursday until 00:00 and Sunday until 00:30

Ronnies Supermarket, 116-118 Tanners Street, London SE1

- Monday to Saturday from 23:00 and Sunday until 22:30

The Barrel Project, 80 Druid Street, London SE1

- Monday to Sunday until 23:00

Comptoir Gourmand, 98 Druid Street, London SE1

- Monday to Sunday until 23:00

Igloo Flowers, 100 Druid Street London SE1

- Monday to Saturday until 23.00 and Sunday until 22:00

Hiver Beer, Railway Arch 56, Stanworth Street, London SE1

- Monday to Friday until 22:30, Saturday until 23:30 and Sunday until 20:30

El Pastor, 106 Druid Street, London SE1

- Monday to Sunday until 23:30

Oops, 108 Druid Street, London SE1

- Monday to Sunday until 23:00

Southwark council statement of licensing policy

28. Council assembly approved Southwark's statement of licensing policy 2021 - 2026 on 25 November 2020. The policy came into effect on 1 January 2021. 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.
29. 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.
30. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Closing time for restaurant, cafés, public houses, wine bars or other drinking establishments: 23:00 daily

Cumulative impact area

31. This premises is not situated in a cumulative impact area.

Resource implications

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

Consultation

33. 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.

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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

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

Principles for making the determination

37. 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.
38. 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.
39. 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.

40. 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

41. 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.
42. The four licensing objectives are
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. 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.
44. Conditions will not be necessary 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.
45. 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 three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
46. 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

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

Hearing procedures

48. 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
- 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.

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

49. 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.

50. 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.
51. 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.
52. 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.
53. 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.
54. 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.
55. 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

56. 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

57. 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 Home Office 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	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Variation application
Appendix B	Current licence
Appendix C	Representations from the Metropolitan Police Service
Appendix D	Representation from other persons
Appendix E	Conciliation statement
Appendix F	Map of the local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	7 June 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	7 June 2021	