

Item No. 5.	Classification: Open	Date: 25 June 2020	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Peachy Goat, 16 Half Moon Lane, London SE24 9HU	
Ward(s) or groups affected:		Dulwich Village	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Oliver Sechi to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Peachy Goat, 16 Half Moon Lane, London SE24 9HU.
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Peachy Goat, 16 Half Moon Lane, London SE24 9HU, 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 outstanding representations submitted by Responsible Authorities and local residents and is therefore referred to the sub-committee for determination.
 - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
 - 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 B. A map showing the location of the premises is attached as Appendix E.
 - Paragraphs 15 to 22 of this report deal with the representations submitted in respect of the application. Copies of the representations for Responsible Authorities and local residents are attached in Appendices C and D.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
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 interested parties 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 issued in respect of the premises known as the Peachy Goat, 16 Half Moon Lane, London SE24 9HU was issued on 10 December 2019 and allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday: from 10:00 to 22:45
 - The provision of regulated entertainment in the form of recorded music (indoors):
 - Friday and Saturday: from 10:00 to 23:00
 - Opening hours:
 - Monday to Sunday from 07:00 to 23:00.
9. A copy of the existing premises licence is attached as Appendix A.

The variation application

10. On 30 August 2019 Oliver Sechi applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Peachy Goat, 16 Half Moon Lane, London SE24 9HU.
11. The application for variation is described as follows:
- 'Opening hours to be increased to include later trading. Our current licence doesn't enable us to compete with other businesses in the area (who have a

later licence) fairly with regards to alcohol sales. Current premises is a bar/restaurant with a garden'

12. The variation application seeks the extension of licensable activities as follows:

- The sale of alcohol to be consumed on the premises:
 - Sunday to Thursday from 10:00 to 00:00
 - Friday and Saturday from 10:00 to 01:00
- The provision of regulated entertainment in the form of recorded music (indoors and outdoors):
 - Sunday to Thursday from 10:00 to 00:00
 - Friday and Saturday from 10:00 to 23:00
- Opening hours:
 - Sunday to Thursday from 10:00 to 00:30.
 - Friday and Saturday from 10:00 to 01:30.

13. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

14. The designated premises supervisor (DPS) under the existing premises licence is Oliver Sechi (the licence holder), holding a personal licence with the London Borough of Wandsworth.

Representations from responsible authorities

15. Representations have been submitted by the Metropolitan Police Service (licensing division), this council's planning service, this council's environmental protection team, and this council's licensing responsible authority.
16. The representation from the Metropolitan Police Service refers to concerns regarding the new hours, the use of the premises as a bar and the late night usage of the outside area.
17. Southwark planning have made a representation in relation to the change of hours being inconsistent with the hours granted under planning permissions.
18. The Southwark environmental protection team (EPT) have made a representation and raise concerns in relation to the extended hours and the granted planning permissions.
19. The licensing authority have made representations under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. They advise that the application is inconsistent with the hours in relation to the Southwark statement of licensing policy. They state that it appears that the premises will be changing into a bar. A response has been forthcoming from the applicant, which is included in Appendix C.

20. Copies of all the representations made by responsible authorities are available in Appendix C.

Representations from other persons

21. Representations have been received from 26 local addresses. These are available in Appendix D.
22. There are concerns in relation to the extension of hours in what is deemed as a residential area and the potential for an increase of antisocial behavior.

Conciliation

23. Copies of representations were provided to the applicant. At the point of publication of this report, the applicant had responded to the licensing authority and raised concerns in relation to the hours stated in the representation from environmental protection.

Operating history

24. The premises previously operated under the name of Mimosa from October 2005.
25. The current licence was issued on 10 December 2019.
26. No temporary events notices (TENs) have been issued to the premises and there is no history of complaints. No inspections have been conducted since the premises licence was granted.

Map

27. A map of the area is attached to this report as Appendix E. There are many licensed premises in the immediate vicinity:

Half Moon Food and Wine, 14 Half Moon Lane, London SE24 9HU, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 08:00 to 23:00
 - 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 in the form of live and recorded music (indoors and outdoors):
 - Friday and Saturday from 23:00 to 00:00

- The provision of late night refreshment (both indoors and outdoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30

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

Hix & Buck, 18 Half Moon Lane, London SE24 9HU, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 10:00 to 22:30
 - Sunday from 12:00 to 23:30

Lombok Thai, 17 Half Moon Lane, London SE24 9JU, licensed for:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 12:00 to 23:30
- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 00:30
 - Sunday from 23:00 to 00:00
- The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Saturday from 11:00 to 00:30
 - Sunday from 12:00 to 00:00.

Southwark council statement of licensing policy

28. Council assembly approved Southwark's statement of licensing policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. 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 Southwark's statement of licensing policy, the premises are identified as being outside of the council's cumulative impact policy areas, but are 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:
- Closing time for restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00
 - Closing time for public houses, wine bars or other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00.

Resource implications

31. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band B has been paid by the applicant company in respect of this application.

Consultation

32. Consultation has been carried out in respect of 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 at the premises for a period of 28 consecutive days.

Community impact statement

33. 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

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

Principles for making the determination

36. 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.
37. 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.
38. 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.
39. 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

40. 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.
41. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
42. 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.

43. 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.
44. 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 came into force – age verification policy and smaller measures for alcoholic drinks.
45. 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

46. 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

47. 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

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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

55. 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

56. 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	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copies of representations from responsible authorities: <ul style="list-style-type: none">o Metropolitan Police Serviceo Southwark council planningo Southwark environmental protection teamo Southwark licensing responsible authority (and a response)
Appendix D	Copies of the representations submitted by local residents
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew, Principal Licensing Officer	
Version	Final	
Dated	10 June 2020	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
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