

Committee : <b>Licensing Sub-Committee</b>	Date 5 <sup>th</sup> September 2017	Classification <b>Unclassified</b>
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Report of: <b>David Tolley</b> <b>Head of Environmental Health and Trading Standards</b>  Originating Officer: <b>Mohshin Ali</b> <b>Senior Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a variation of a premises licence for (Wood Mangal Restaurant), 329 Bethnal Green Road, London E2 6AH</b>  Ward affected: <b>St Peter's</b>
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## 1.0 Summary

Applicant:	<b>Gozlukuyu Ltd</b>
Name and	<b>Wood Mangal Restaurant</b>
Address of Premises:	<b>329 Bethnal Green Road London E2 6AH</b>
Licence sought:	<b>Licensing Act 2003 – variation of a premises licence</b> <ul style="list-style-type: none"> <li><b>Extending the times of the licensable activities</b></li> </ul>
Representations:	<b>Met Police</b> <b>Environmental Health Noise Residents</b>

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

### **LOCAL GOVERNMENT 2000 (Section 97)** **LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
<ul style="list-style-type: none"> <li>File</li> <li>Guidance Issued under Section 182 of the Licensing Act 2003</li> <li>Tower Hamlets Licensing Policy</li> </ul>		<b>Mohshin Ali</b> <b>020 7364 5498</b>

### 3.0 **Background**

- 3.1 This is an application for a variation of a premises licence for (Wood Mangal Restaurant), 329 Bethnal Green Road, London E2 6AH.
- 3.2 A copy of the existing licence (including site plan) is enclosed as **Appendix 1**.
- 3.3 The timings of the existing licence are detailed below for information only:-

#### **Sale of alcohol**

- Monday to Thursday from 06.00 hrs to 23.30 hrs
- Friday and Saturday from 06.00 hrs to 00.00 hrs
- Sunday from 06.00 hrs to 22.30 hrs

#### **Late night refreshment**

- Monday to Thursday from 23.00 hrs to 23.30 hrs
- Friday and Saturday from 23.00 hrs to 00.00 hrs

#### **The opening hours of the premises**

- Monday to Thursday from 06.00 hrs to 00:00 hrs
- Friday and Saturday from 06.00 hrs to 00.30 hrs
- Sunday from 06.00 hrs to 23.00 hrs

- 3.4 A copy of the variation application is enclosed as **Appendix 2**.
- 3.5 The applicant has described the nature of the variation as follows:  
*"We currently hold the frame work hours of opening and would like to extend the hours for sale of hot food only. This application does not require the extension of the current alcohol license".*
- 3.6 The times that have been applied for as follows:

#### **Sale by retail of alcohol**

- *No change*

#### **The provision of late night refreshment - Indoors**

- Sunday to Wednesday, from 23.00 hrs to 02.00 hrs the following day
- Thursday, from 23.00 hrs to 03.00 hrs the following day
- Friday and Saturday from 23.00 hrs to 04.00 hrs the following day

#### **The opening hours of the premises**

- Sunday to Wednesday, from 06.00 hrs to 02.00 hrs the following day
- Thursday, from 06.00 hrs to 03.00 hrs the following day
- Friday and Saturday from 06.00 hrs to 04.00 hrs the following day

*Members may wish to note that and late night refreshment is proposed to continue until the premises closes to the public. It is difficult to see how the licence holder will ensure that the licence conditions are met. The problem of course is that if sales continue until the last minute the premises cannot be emptied on time.*

*Members are advised to consider a break between the end of the licensable activities and the time the premises closes to the public.*

#### **4.0 Location and Nature of the premises**

- 4.1 Photographs of the venue and immediate vicinity will be provided at the hearing.
- 4.2 Maps showing the vicinity are included as **Appendix 3**.
- 4.3 Details of the nearest licensed venues are included as **Appendix 4**.

#### **5.0 Licensing Policy and Government Advice**

- 5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on the 1<sup>st</sup> November 2013.
- 5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). It was last revised in March 2015.
- 5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, than in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

#### **6.0 Representations**

- 6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing
- 6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely

means something that will probably happen, i.e. on balance more likely than not.

- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 5**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:

<b>Responsible Authority/Other persons</b>	<b>Appendix</b>
Nicola Cadzow ( <i>Environmental Health Noise</i> )	<b>6</b>
Alan Cruickshank ( <i>Police Licensing</i> )	<b>7</b>
Arthur Knight ( <i>resident</i> )	<b>8</b>
( <i>resident withdrawn</i> )	<b>9</b>
Lorna MacPherson ( <i>resident</i> )	<b>10</b>
Lucy Walker ( <i>resident</i> )	<b>11</b>
N C Hayles ( <i>resident</i> )	<b>12</b>
Thomas Belt ( <i>resident</i> )	<b>13</b>

- 6.9 Lorna MacPherson also submitted a video file as mentioned in her representation. However, Licensing were unable to view this video due to software compatibility issues and this information was communicated to Lorna MacPherson by email.
- 6.10 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
  - The Metropolitan Police
  - The LFEPA (the London Fire and Emergency Planning Authority).
  - Planning
  - Health and Safety
  - Environmental Health Noise
  - Trading Standards
  - Child Protection
  - Public Health
  - Home Secretary (Home Office Immigration Enforcement)

- 6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Due to a technical error by the applicant, the consultation period was extended to the 16<sup>th</sup> August 2017.
- 6.12 Only objections that relate to the following licensing objectives are relevant:
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm
- 6.13 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly the prevention of crime and disorder and the prevention of public nuisance.
- 6.14 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.
- 6.15 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.
- 7.0 Conditions consistent with Operating Schedule (These conditions are already contained in the existing licence)**
- 7.1 *There shall be no sales of alcohol for consumption off the premises.*
- 7.2 *No alcohol may be sold unless accompanied by the sale of a food to a person sitting down eating a meal and for consumption with that meal.*
- 7.3 *No alcohol shall be permitted to exit the interior of the premises at any time, including by those leaving for the purpose of smoking.*
- 7.4 *The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available and download immediately upon the request of police or an authorised officer throughout the preceding 31 day period. No alcohol shall be sold if the CCTV equipment is inoperative for any reason.*

- 7.5 *A log shall be kept detailing all refused sales of alcohol. The log is to include the date and time of the refusal of sale, the reason for refusal and the name of the member of staff who refused sale. The log shall be made available for inspection at the premises by the police or an authorised officer at all times whilst the premises is open.*
- 7.6 *An incident log shall be kept at the premises for at least 6 months, and made available on request to an authorised officer of the licensing authority of the Police, which must record the following:*
- a) all ejections of patrons;*
  - b) any complaints received;*
  - c) any incidents of crime or disorder;*
  - d) any faults in the CCTV system; and*
  - e) any visit by a relevant authority or emergency service.*
- 7.7 *A Challenge 25 Policy shall be enforced, where any person reasonably looking under the age of 25 shall be asked to prove their age when attempting to purchase alcohol. Signs to this effect must be displayed at the premises. The only acceptable forms of identity will be those photographic identification documents recognised by the Home Office guidance, including passports, photo-card driving licence or proof of age card bearing a PASS hologram.*
- 7.8 *Entry by children under the age of 18 years to the premises is prohibited between 23:00 hrs and closing time each trading day, unless accompanied by an adult over the age of 18.*
- 7.9 *A notice shall be displayed at the exit to the premises requesting customers to respect local residents and leave the premises quietly.*
- 7.10 *All windows and external doors must be kept closed between 22.00 hrs and closing time, or at any time when a licensable activity takes place, except for the immediate access and egress of people to and from the premises.*
- 7.11 *The Designated Premises Supervisor, the Premises Licence Holder or a manager who has written permission, which can be supplied to the police or other responsible authority, must be on the premises at all times when the premises are authorised to sell alcohol from 20.00 hrs each day.*

## **8.0 Conditions in consultation with the responsible authorities/other persons**

8.1 None

## **9.0 Licensing Officer Comments**

9.1 The following is intended simply to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the

Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

## 9.2 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is “provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.12)
- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
- ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
- ❖ Mandatory conditions must be imposed (10.25) and censorship avoided (10.17).
- ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure

that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.58) Also, “Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area.” (10.21)

- 9.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sells alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 9.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”
- 9.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 9.6 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)
- 9.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.8 In **Appendices 14 - 19** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters in the representations.

## 10.0 Legal Comments

- 10.1 The Council’s legal officer will give advice at the hearing.

## 11.0 Finance Comments

- 11.1 There are no financial implications in this report.



## 12.0 Appendices

<b>Appendix 1</b>	A copy of the existing licence
<b>Appendix 2</b>	A copy of the variation application
<b>Appendix 3</b>	Maps showing vicinity of venue
<b>Appendix 4</b>	Details of nearest licensed venues
<b>Appendix 5</b>	Home Office concerning relevant, vexatious and frivolous representations
<b>Appendix 6</b>	Representation of Nicola Cadzow (EH)
<b>Appendix 7</b>	Representation of Alan Cruickshank ( <i>Police Licensing</i> )
<b>Appendices 8 - 13</b>	Representation of residents
<b>Appendix 14</b>	Licensing Officer comments on noise whilst the premises is in use
<b>Appendix 15</b>	Licensing Officer comments on access and egress problems
<b>Appendix 16</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 17</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 18</b>	Planning
<b>Appendix 19</b>	Licensing Policy relating to hours of trading