

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 28 September 2015	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: The premises formerly known as Banana's Bar, (also know as Pazzia Restaurant & Bar) 374 Walworth Road, London SE17 2NF	
<b>Ward(s) or groups affected:</b>		Faraday	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee consider the proposed operating schedule and business plan submitted by the premises licence holder in view of a consent order made at the Magistrates Court on 10 June 2015. The matter was remitted back to the committee for reconsideration of its decisions to revoke the premises licence on 1 October 2013 and 25 September 2015 following the applications for reviews by the Metropolitan Police made under Section 51 and 53C of the Licensing Act 2003 in respect of the premises known as Banana's Bar, (also known as Pazzia Restaurant & Bar) 374 Walworth Road, London SE17 2NF.

Both decisions made were appealed by the premises licence holder.

2. Notes:
  - a) The proposed conditions and supporting documents was submitted on 5 August 2015. It is subject to representations from two responsible authorities.
  - b) Paragraphs 27-29 of this report provide a summary of the proposed operating schedule and business plan under consideration by the sub-committee. A copy of the full application is attached as Appendix C.
  - c) Paragraphs 31 to 42 of this report deals with the representations received. Copies of the representations from the responsible authorities are attached as Appendices D, E and F.
  - d) 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.

## INTRODUCTION TO THE MEETING

3. On the 2 August 2013 an application for the review of the premises licence was received from the Metropolitan Police. The grounds for the review related to the following licensing objectives and is summarised as follows:
  - **Prevention of crime and disorder:** That there have been an unacceptable level of crime and disorder which has often occurred when the premises has operated outside its hours of operation permitted by the licence.
  - **Public safety:** It has been noted that the main entrance exit point to the premises has been found locked and secure from the inside whilst large numbers of customers are still on the premises. this has also happened when the premises has operated outside the operating hours permitted by the licence.

4. The licensing team received representations from three other persons (local residents) supporting the review application. Representations were also received from the councils licensing authority, environmental protection team, health and safety team, safeguarding children team, and the anti-social behaviour team. They related to the licensing objective of prevention of public nuisance and public safety.
5. The licensing sub-committee met on 1 October 2013 to determine the application for a review of the premises licence of Banana's Bar, 374 Walworth Road, London SE17 2NF. A copy of the full report can be viewed on the Southwark Council website. [Meeting of Licensing Sub-Committee, Tuesday 1 October 2013 10.00 am \(Item 5.\)](#) A hard copy will be made available at the hearing.
6. After determining the application the decision was to revoke the premises licence. The notice of decision is attached to the report as part of Appendix A1.
7. An appeal was made to the Magistrates' Court and as the matter was pending awaiting determination by the court, the premises was allowed to continue to operate until the court determined the appeal.
8. A new premises licence application was made on 17 February 2014 by Adelino Garcia Lourenco, this application was opposed and the application was refused by the Licensing Sub-Committee on 14 April 2014.
9. Another new premises licence application was made on 28 May 2014 by Sergio Artur Da Silva Soares which proposed to change the name of the premises to Pazzia Bar & Restaurant. The application was opposed and was withdrawn by the applicant on the day of the hearing.
10. On 26 August 2014, the Metropolitan Police applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known Banana's Bar, 374 Walworth Road London SE17 2NF. The application was to deal with serious crime and disorder following a violent incident at the premises. A copy of the full report can be viewed on the Southwark Council web site. A hard copy will be made available at the hearing.
11. On 27 August 2014 the licensing sub-committee determined the application and a copy of the report can be view on the Southwark website. [Meeting of Licensing Sub-Committee, Wednesday 27 August 2014 1.30 pm \(Item 5.\)](#)
12. The Licensing sub- committee took the interim steps to suspend the licence pending the determination of the full review on 22 September 2014 under section 53B. A copy of the notice of decision is attached as part of Appendix A1.
13. The meeting of 22 September 2014 was adjourned to allow the representatives from Banana's Bar to submit further evidence and bring witnesses, which they advised they would rely on. The hearing was then scheduled to be reconvened on 25 September 2014.
14. On 25 September 2014 licensing sub-committee, having had regard to the application by Metropolitan Police for a review of the premises and having had regard also to all other relevant representations decided it necessary for the promotion of the licensing objectives to revoke the licence. A copy of the report can be view on the Southwark website. [Meeting of Reconvened Meeting, Licensing Sub-Committee, Thursday 25 September 2014 10.30 am \(Item 5.\)](#) A copy of the notice of decision is attached as part of Appendix A1.

15. The interim steps imposed on 27 August 2014 as detailed in Appendix A1 remain in place until the appeal is determined.
16. Candido Pereira Rodrigues and Abilio Pereira Rodrigues were prosecuted under Section 136(1)(a) Licensing Act 2003 and on 31 October 2014 were found guilty of 3 offences in 2013 and were each ordered to pay a total of £1,025, £500 for costs, £500 in fines and a further £25 victim surcharge. These convictions were appealed at Inner London Crown Court on 30 January 2015 where the appeal was dismissed and convictions were upheld. Costs of £734.70 were also awarded.
17. The appeals of the licensing sub-committee's decision were heard at Camberwell Green Magistrates' Court on 9 and 10 June 2015. During the course of giving evidence, Candido Pereira Rodrigues made full admissions, as to the failings of himself, his management, staff, family, friends and patrons. Mr Rodrigues accepted that late night bar with disco/DJ etc did not work and that premises should be Italian Food led-restaurant. Due to the strong likelihood that the District Judge would accept the proposal and amend the licence it was agreed to remit the reviews decisions back to the licensing sub-committee with provisions for consultation by the responsible authorities and the wider community to ensure that the balance of risk was averted and the decision was in the hands of the local authority.
18. On 10 June 2015 the Magistrate's Courts approved a consent order in respect of the revocation of the premises licence held by Candido and Abilio Rodrigues for the premises Banana's Bar (also known as Pazzia Restaurant & Bar), 374 Walworth Road SE17 2NF. A hand written offer was submitted by their representative in advance of this application detailing the concessions that would be made to maintain the premises licence. This is attached as Appendix A to the report.

## **BACKGROUND INFORMATION**

### **The Licensing Act 2003**

19. Act provides a licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment
20. Within Southwark, the licensing responsibility is wholly administered by this Council.
21. 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; and
  - The protection of children from harm.
22. 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
23. The applications 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. 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.
24. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

### **The current premises licence under suspension**

25. The original licence in respect of the premises known as Banana's Bar, 374 Walworth Road London SE17 2NF was issued to on 7 March 2010. The licence permits the following licensable activities:
- Live music:  
Friday & Saturday from 11.00 to 02.30  
Sunday from 11.00 to 00.00
  - Recorded Music:  
Sunday to Thursday from 11.00 to 00.30  
Friday and Saturday from 11.00 to 02.30
  - Performance of dance:  
Friday and Saturday from 11.00 to 02.30  
Sunday from 11.00 to 00.00
  - Facilities for making music:  
Friday and Saturday from 11.00 to 02.30  
Sunday from 11.00 to 00.00
  - Facilities for dancing:  
Sunday to Thursday from 11.00 to 00.30  
Friday and Saturday from 11.00 to 02.30
  - Late night refreshments:  
Monday to Thursday from 23.00 to 00.00  
Friday and Saturday from 23.00 to 02.30  
Sunday from 23.00 to 01.00
  - Sale and Supply of alcohol on and off the premises:  
Sunday to Thursday from 09.00 to 01.00  
Friday and Saturday from 09.00 to 02.30
  - Operating hours of premises:  
Sunday to Thursday from 09.00 to 01.30  
Friday and Saturday from 09.00 to 03.00.

26. A copy of the current suspended premises licence is attached to the report as Appendix B.

## **KEY ISSUES FOR CONSIDERATION**

### **The proposed conditions submitted for the premises licence**

27. On 5 August 2015, further to the consent order dated 10 June 2015 a revised operating schedule along with supporting materials were submitted by the applicant's solicitors issued in respect of the premises known Banana's Bar, also known as Pazzia Restaurant and Bar, 374 Walworth Road London SE17 2NF. The operating hours is summarised as follows:
- The terminal hour for all licensable activities shall be 23:30 hours Monday to Thursday, 00:00 hours on Friday and Saturday and 23:00 hours on Sunday.
  - The premises closing time shall be thirty minutes after the terminal hour for licensable activities.
  - Live music:  
Monday to Thursday from 12.00 to 23.30  
Friday and Saturday from 12.00 to 00.00  
Sunday from 12.00 to 23.00
  - Recorded Music:  
Monday to Thursday from 12.00 to 23.30  
Friday and Saturday from 12.00 to 00.00  
Sunday from 12.00 to 23.00
  - Performance of dance:  
Monday to Thursday from 12.00 to 23.30  
Friday and Saturday from 12.00 to 00.00  
Sunday from 12.00 to 23.00
  - Facilities for making music:  
Monday to Thursday from 12.00 to 23.30  
Friday and Saturday from 12.00 to 00.00  
Sunday from 12.00 to 23.00
  - Facilities for dancing:  
Monday to Thursday from 12.00 to 23.30  
Friday and Saturday from 12.00 to 00.00  
Sunday from 12.00 to 23.00
  - Late night refreshments:  
Friday and Saturday from 23.00 to 00.00
  - Sale and Supply of alcohol on and off the premises:  
Monday to Thursday from 12.00 to 23.30  
Friday and Saturday from 12.00 to 00.00  
Sunday from 12.00 to 23.00
  - Operating hours of premises  
Monday to Thursday from 09.00 to 00.00  
Friday and Saturday from 09.00 to 00.30

Sunday from 09.00 to 23.30

28. The proposed designated premises supervisor is Jose Eduardo De Silva Concalves who has personal licence issued by Lambeth Council.
29. The proposed conditions and all supporting documents are attached to the report as Appendix C. A further document of a personal nature included will be tabled at the hearing due to data protection.

#### **Representations from other persons**

30. There were no representations received from other persons.

#### **Representations from responsible authorities**

31. There were two representations received from the Metropolitan Police Service and licensing as a responsible authority. Comments were received from the planning department.
32. The representation from the police indicates that the police still consider that Messrs Rodrigues are not suitable persons to hold a premises licence in Southwark. The issues identified throughout the review process indicate that the problem was with the management of the premises and their disregard for the promotion of the licensing objectives.
33. During the appeal hearing there were admissions made by Mr Candido Rodrigues that there were failings made by management and staff at the premises, and that he wished to change the entire operation to a restaurant based business.
34. It is their opinion that there is sufficient evidence to support the revocation of the premises licence and are minded to ask the licensing sub committee to refuse the proposals made by Messrs Rodrigues on the grounds that they have no faith in them as premises licence holders, and no faith that they would operate the premises within the conditions or hours they have proposed. The proposal would also appear to be in breach of the current lease for the premises.
35. The representation from the licensing authority states that the new proposal to predominantly serve food and alcohol with food would change the use of the premises with regards to their planning consent from a bar/pub to a restaurant and have been informed that the freeholders, Enterprise Inns, would also need to give their consent for an application for a change of use. To modify the licence with the proposed conditions would mean that the premises would operate in breach of the leasehold agreement.
36. Since the decision of the council to revoke the premises licence and during the subsequent period that this decision was appealed by the premises licence holder the interim steps to suspend the premises licence have remained in place since 27 August 2014. Therefore the premises has not been able to sell alcohol or to provide licensable entertainment or late night refreshment since that date.
37. The licensing authority's representation also relies on the Licensing Act 2003 convictions in addition to a conviction on 19 May 2015 under the Management of

Houses in Multiple Occupation (England) Regulations 2006 when Candido Pereira Rodrigues and Abilio Pereira Rodrigues pleaded guilty mid-trial and were fined £2,800 and ordered to pay a contribution to prosecution costs in the sum of £280. The London Borough of Southwark's private sector housing team are satisfied Mr Candido Rodrigues in particular is not to be a fit and proper to run a house in multiple occupation. Further prosecutions under the Housing Act 2004 are due to be heard at the Magistrates' Court on 2 October 2015.

38. The licensing authority have also been informed by Southwark's finance and revenues department that Candido Pereira Rodrigues and Abilio Pereira Rodrigues have £56,238.39 in outstanding business rates relating to the premises known as Banana's Bar (also known as Pazzia Restaurant & Bar), 374 Walworth Road SE17 2NF.
39. The licensing authority is of the opinion that the premises cannot operate in the way proposed because of restrictions currently in place under the lease agreement that prevent the premises from operating as anything other than a public house and that the freeholders of the premises will not allow the proposed change to occur as they are a pub company and have no intention to have restaurants within their portfolio. This proposal has been put forward without the premises licence holders seeking any prior consent from the freeholders as to the change of use and as such could not have any intention of running the premises as a restaurant.
40. They have no confidence that the premises licence holders would be able or willing to run the premises in accordance with the terms and conditions of any premises licence granted or in accordance with other consents required and believe that the current premises licence holders will remain the controlling factor in the running of the premises, that they are not fit persons to be able to run a licensed premises in Southwark and that licensing objectives will be undermined if the licence is granted.
41. The planning department have made observational comments with regards to the proposed conditions.
42. The representations and supporting documents in their entirety are attached as Appendices D, E and F.

#### **Deregulation of entertainment**

43. Entertainment deregulation came into force on 6th April 2015.
44. Live unamplified music is deregulated between 08.00 to 23.00 on any premises.
45. Live amplified music and recorded music is deregulated between 08.00 and 23.00 provided the audience does not exceed 500 people on certain classes of premises including those that hold a premises licence or club premises certificate.
46. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

#### **The local area**

A map of the local area is attached at Appendix G.

## **Southwark council statement of licensing policy**

47. Council assembly approved Southwark's statement of licensing policy 2011-14 on 12 October 2011. Sections of the statement that are considered to be of particular relevance to this application are:
- Section 3 sets out the purpose and scope of the policy and reinforces the four licensing objectives.
  - Section 5 sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence.
  - Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998.
  - Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours.
  - Section 8 provides general guidance on ensuring public safety including safe capacities.
  - Section 9 provides general guidance on the prevention of nuisance.
  - Section 10 provides general guidance on the protection of children from harm.
48. 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.

### **Resource implications**

49. No fee is payable in respect of an application for licence review.

### **Community impact statement**

50. 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 Legal Services**

51. The sub-committee is asked to determine, under Section 52 of the Licensing Act 2003, an application, made under Section 51 of the same act, to review the decision of the licensing sub-committee dated 24 July 2012. The sub-committee's decision is currently subject to an appeal before the Magistrates' Court. However, since there is a new licensee it is considered appropriate and proportionate for the matter to be referred back to the committee for reconsideration of its decision to revoke the premises licence
52. The principles which sub-committee members must apply are set out below.



## Principles for making the determination

53. The licensing authority must hold a hearing to consider an application for review of a premises licence where:

- The application is properly made in accordance with Section 51 of the Act.
- The applicant has given notice in accordance with Section 51(3) of the Act.
- The advertising requirements provided for under Section 51(3) of the Act are satisfied.
- The licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.
- The licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

The four licensing objectives are:

- The prevention of crime and disorder
- The protection of public safety
- The prevention of nuisance
- The protection of children from harm.

54. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Modify the conditions of the licence by altering, omitting or adding any condition.
- Exclude a licensable activity from the scope of the licence.
- Remove the designated premises supervisor.
- Suspend the licence for a period not exceeding three months.
- Revoke the licence.

55. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:

- Are relevant to one or more of the licensing objectives
- Are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
- Have not been withdrawn
- If made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

56. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

57. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.

58. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
59. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

60. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
  - The holder of the licence.
  - The applicant
  - Any person who made relevant representations
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

61. 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
    - To the licensing objectives.
  - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
  - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

62. This matter relates to the review of the premises licence under section 51 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**

63. 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.
64. 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.
65. 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.
66. 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.
67. 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.
68. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
69. 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.

70. 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

71. Members are required to have regard to the Department for Culture, Media and Sport 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 Corporate Services

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

### BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 DCMS 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	Name: Kirty Read Phone number: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Handwritten offer from the representatives of the premises
Appendix A1	Previous notices of decisions of the licensing sub-committee
Appendix B	Current suspended premises licence
Appendix C	Proposed conditions and supporting documents
Appendix D	Police representation and supporting documents
Appendix D1	Police investigation
Appendix E	Licensing representations and supporting documents
Appendix F	Planning department comments
Appendix G	Copy of the local area map

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Dorcas Mills, Principal Licensing Officer	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	16 September 2015	