

Item No. 7.	Classification: Open	30 March 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Distriandina, Unit 6 Farrell Court, Elephant Road, London SE17 1LB	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Distriandina UK Ltd to vary the premises licence under the Licensing Act 2003 in respect of the premises known as Distriandina, Unit 6 Farrell Court, Elephant Road, London SE17 1LB.
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Distriandina, Unit 6 Farrell Court, Elephant Road, London SE17 1LB 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 is therefore referred to the Sub-Committee for determination
 - b) Paragraphs 8 to 12 of this report provide a summary of the application under consideration by the sub committee. A copy of the full application, and the current premises licence and the previous notice of decision are attached as Appendices A, B & D.
 - c) Paragraphs 13 to 16 of this report deal with the representations received to the variation of premises licence application. Copies of the relevant representations are attached as Appendix C.
 - d) Paragraph 27 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix E.
 - e) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
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 premises licence application

8. The current licence in respect of the premises was issued on 11 August 2014. It allows the following licensable activities:
- **Films (indoors)**
Sunday to Thursday from 08:00 to 03:00
Friday and Saturday from 08:00 to 04:00
 - **Live Music (indoors)**
Sunday to Thursday from 08:00 to 03:00
Friday and Saturday from 08:00 to 04:00
 - **Recorded Music (indoors)**
Sunday to Thursday from 08:0 to 03:00
Friday and Saturday from 08:00 to 04:00
 - **Performance of Dance (indoors)**
Sunday to Thursday from 08:00 to 03:00
Friday and Saturday from 08:00 to 04:00
 - **Entertainment similar to live and recorded music (indoors)**
Sunday to Thursday from 08:00 to 03:00
Friday and Saturday from 08:00 to 04:00
 - **Late Night Refreshment (indoors)**
Sunday to Thursday from 23:00 to 03:00
Friday and Saturday from 23:00 to 04:00
 - **Sale by retail of alcohol to be consumed on premises**
Sunday to Thursday from 08:00 to 03:00

Friday and Saturday from 08:00 to 04:00

- **Opening hours of the premises**
Sunday to Thursday from 08:00 to 03:00
Friday and Saturday from 08:00 to 04:30

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

The variation application

10. On 3 February 2017, Distriandina UK Ltd applied to this Council to vary the premises licence in respect of the premises known as Distriandina, Unit 6 Farrell Court, Elephant Road, London SE17 1LB. The application seeks to modify conditions 791 and 847 on the current licence.

11. The conditions were implemented by the licensing sub-committee on 16 September 2013 at the full hearing following an expedited review to address and promote the licensing objectives. The proposed changes are as set out below:

- Condition 791 on the current premises licence be amended from:

“That a minimum of 5-SIA door supervisors shall be on duty at the premises at all times whilst it is open for business on Friday and Saturday, at least one of whom shall be a female. There shall be 3-SIA licensed door supervisors on duty Sunday to Thursday after 20:00 till the terminal hour, one of whom shall be female.

to:

“That a minimum of two SIA licensed door supervisors shall be on duty at the premises Monday to Sunday from 22:00 with a minimum of three SIA licensed door supervisors from 23:00 Monday to Thursday and a minimum of five SIA licensed door supervisors until the terminal hour Friday and Saturday and one of which must be female”.

- Condition 847 on the current premises licence be amended from:

“That an ID scanning system, to the reasonable satisfaction of the police, be installed and maintained. The system shall be capable of sharing information about banned customers with other venues, identify the hologram of an ID, read both passports and ID cards and identify fake or forged documents to a reasonable standard. The system will be in operation at all times the premises are in operation under the premises licence. All persons in the premises prior to 20:00 must be scanned at this time”

to

“That an ID scanning system, to the reasonable satisfaction of the police, be installed and maintained. The system shall be capable of sharing information about banned customers with other venues, identify the hologram of an ID, read both passports and ID cards and identify fake or forged documents to a reasonable standard. The system will be in operation from 22:00 until last entry 02:00. All persons entered prior to 22:00 that wish to remain in the premises must be scanned prior to 22:00”.

12. The premises licence application form provides the applicant operating schedule. Part M 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 M 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.

Representations from responsible authorities

13. Representations were submitted by the Metropolitan Police and licensing (as a responsible authority).
14. The police representation states that those conditions the applicant seeks to amend were conditions imposed by the licensing sub-committee following an expedited review hearing following a serious incident of crime and disorder. In principle they have no real concerns over the type of variation sought and can appreciate that the business model has changed and now modifications are required to assist with the smooth running of the operation. However, they have some concerns that there is evidence to suggest that in the months leading up to this application, a number of visits to the premises has shown non-compliance with the licence as an issue and have suggested alternative recommendations.
15. Licensing (as a responsible authority) are concerned that the proposed conditions to be varied are ones that were implemented by the licensing sub-committee and furthermore the police night time economy team have visited the premises recently and found the premises to be in breach of the conditions. They have also requested that the application provides suitable alternatives to the conditions.
16. Copies of the representations received are attached as Appendix C.

Representations from other persons

17. There are no representations received from other persons.

Conciliation

18. The representations were forwarded to the applicant and the licensing sub committee will be notified of any updates on 30 March 2017.

Premises history

19. The initial licence in respect of the premises was issued to Distriandina UK Ltd on 4 June 2007. The licence permitted licensable activities from 08:00 on Monday to Thursday till 02:30 and Friday and Saturday till 05:30 and Sunday till 23:30 with an additional half hour each day for operating hours.
20. On 19 August 2013 the Metropolitan Police Service submitted an application for an expedited review under section 53A of the Licensing Act 2003 for serious disorder. The full review hearing application was determined on 16 September 2013. The decision was to modify the conditions and also reduce the operating hours. The notice of decision is attached as Appendix D.
21. There have been two designated premises supervisor (DPS) variations since the review – one in May 2014 and one in August of 2014.

Inspections/visits

22. On 28 January 2017 at 01:55 a visit was conducted by both licensing and police officers. Whilst at the premises officers observed that there were about 12 people stood in the smoking area, the SIA staff were requested to show how they operated the ID Scanner and how this is recorded as the police wished to see the correct operation which should be to record a still photo and a copy of the identification on the system. The SIA Staff were able to show the still photos of the persons that had entered the premises however

they were not able to show the identification that had been produced to gain entry and therefore were not able to identify individuals, this was in breach of licence condition 847. Police served a Section 19 notice as the premises found to be non-compliant in regards to club scan.

23. Another visit was conducted at 20:40 on 28 January 2017. At the time there was one SIA doorwoman outside the front door, she confirmed she does not commence work till 21:00. The DPS admitted that the customers who had come into the premises before 20:00, and were still there at 20:00 had not been scanned onto the ID system. Another Section 19 notice was issued to the DPS.
24. The venue was visited at 22:30pm on Saturday, 4 February 2017. There were five SIA door staff, including one woman on duty as required by the licence.
25. The venue was visited on 10 February 2017 at 21:00. At the time of the visit the premises was non-operational however the head of security was positioned at the main entrance.
26. The venue visited again at 01:15 and a full inspection was conducted. There was a full head count of SIA staff and premises was found to be compliant.

Temporary Event Notices

27. Below is the recent history of TENs for the last year in respect of the premises.

	Date of event	Time of event and activities
1	5/11/16	01.00 – 06:30 Alcohol, LNR, and Regulated Entertainment
2	30/10/16	01:00 – 07:00 Alcohol, LNR, and Regulated Entertainment
3	27-28/8/16	01:00 – 06:30 Alcohol, LNR, and Regulated Entertainment
4	2 - 4/7/16	04:00 – 06:00 Alcohol, LNR, and Regulated Entertainment
5	7- 8/5/16	22:00 – 06:00 Alcohol, LNR, and Regulated Entertainment
6	9 -10/4/16	05:00 – 06:00 Alcohol, LNR, and Regulated Entertainment
7	2-4/4/16	04:00 – 06:00 Alcohol, LNR, and Regulated Entertainment

	Date of event	Time of event and activities
8	25 -27/3/16	04:00 – 06:00 Alcohol, LNR, and Regulated Entertainment
9	5-7/3/16	22:00 – 06:00 Alcohol, LNR, and Regulated Entertainment

The local area

28. A map of the area is attached to this report as Appendix E. 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.

- Bola 8, 122 Elephant Road, London SE1 (Monday to Sunday till 06:00)
- Corsica Studios, Unit 4 & 5 Farrell Court, Elephant Road, London SE1 (Sunday to Wednesday till 03:00, Thursday till 04:00 and Friday 24 hours)
- Long Wave Bar and Café, 1 The Artworks, Elephant Road, London SE1 (Monday to Sunday till 01:00)
- Naranjo Restaurant, 113 Elephant Road, London SE1 (Monday to Sunday till 23:00)
- Coronet, Railway Arch 3,4,5 & 6, Elephant Road, London SE1 (Monday to Sunday till 07:30)
- La Chatica, Unit 2, Farrell Court, Elephant Road, London SE1 (Monday to Saturday till 22:00 and Sunday till 20:00).

Deregulation of entertainment

29. On 6 April 2015 entertainment became deregulated and as a result:

- Live unamplified music is deregulated between 08:00hrs – 23:00hrs on any premises.
- Live amplified music is deregulated between 08.00 and 23.00 provided the audience does not exceed 500 people.

30. 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').

Southwark council statement of licensing policy

31. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. 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.
32. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Public houses, wine bars or other drinking establishments: Sunday to Thursday 23:00 and Friday and Saturday 00:00.

Resource implications

33. 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 A.

Consultation

34. 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 similar notices exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

35. 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

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

Principles for making the determination

38. 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.
39. 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.
40. 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.
41. 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

42. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
43. The four licensing objectives are
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance; and
 - The protection of children from harm.
44. 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.
45. 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.
46. 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.
47. Members are also referred to the Home Office guidance on conditions.

Reasons

48. 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

49. 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
50. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

51. 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.
52. 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.

53. 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.
54. 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.
55. 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.
56. 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.
57. 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

58. Members are required to have regard to the Home Office Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

59. 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	Application
Appendix B	Premises Licence
Appendix C	Representations from responsible authorities
Appendix D	Notice of decision from previous hearing
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure		
Report Author	Dorcas Mills Principal Licensing Officer		
Version	Final		
Dated	17 March 2016		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Law & Democracy	Yes	Yes	
Strategic Director of Finance and Governance	No	No	
Cabinet Member	No	No	
Date final report sent to Constitutional Team		17 March 2016	