

Item No. 6.	Classification: Open	Date: 22 October 2018	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Tropical, 186-188 Old Kent Road, London SE1 5TY	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Carlos Fernando Delgado Armijos to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Tropical, 186-188 Old Kent Road, London SE1 5TY.
2. Notes:
 - The application seeks to vary the premises licence held under current legislation in respect of the premises known as Tropical, 186-188 Old Kent Road, London SE1 5TY 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 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 D.
 - Paragraphs 15 to 19 of this report deal with the representations submitted in respect of the application from the responsible authorities and are attached in Appendix C.

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 was issued on 21 April 2016 following a vary DPS and allows the following licensable activities:
 - The sale of alcohol to be consumed on the premises:
 - Monday to Sunday from 11:00 to 00:00.

 - The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 00:00.

 - The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Sunday from 23:00 to 00:00.

 - The provision of regulated entertainment in the form of performances of dance and anything similar (indoors):
 - Monday to Sunday from 20:00 to 00:00.

 - Opening hours:
 - Monday to Sunday from 10:00 to 00:30.

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

The variation application

10. On 29 August 2018 Carlos Fernando Delgado Armijos 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 Tropical, 186-188 Old Kent Road, London SE1 5TY.

11. The application for variation is described as follows:

“...To extend all licensable activities on the premises licence to 02:00hrs Friday and Saturday. To extend the closing time of the premises licence to 02:30hrs on Friday and Saturday to allow for a 30 minute drinking up time and dispersal of customers...”

12. The following hours are being requested for variation:

- The sale of alcohol to be consumed on the premises:
 - Monday to Sunday from 12:00 to 02:00.
- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 02:00.
- The provision of regulated entertainment in the form of recorded music (indoors):
 - Friday and Saturday from 16:00 to 02:00.
- The provision of regulated entertainment in the form of performances of dance and anything similar (indoors):
 - Friday and Saturday from 16:00 to 02:00.
- Opening hours:
 - Monday to Sunday from 10:00 to 00:30.
- Additional non-standard hours
 - On new Year's Eve the premises shall be opened from the start of permitted hours on New Year's Eve to the end of permitted hours on New Year's Day.

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 Carlos Fernando Delgado Armijos, also the Applicant, holding a personal licence with the London Borough of Southwark.

Representations from responsible authorities

15. The Metropolitan Police Service have made a representation. They have raised concerns that the hours applied for are excessive, but ask that if an extension is given, that SIA staff are available.
16. Southwark public health have made a representation. The concerns are raised in relation to the extension of hours outside of the Southwark licensing policy and the potential for complaints resulting from excess noise.
17. Southwark's environmental protection team have made a representation in relation to the hours being outside of the hours recommended in the Southwark licensing policy and draw attention to the existing planning permissions, which the current licence already exceeds.
18. The licensing authority have made a representation 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 licensing policy and if granted, would be inappropriate for this area.
19. Copies of all the representations made by responsible authorities are available in Appendix C.

Representations from other persons

20. No representations have been received from other persons.

Conciliation

21. Copies of representations were provided to the Applicant's agent on 27 September 2018. At the point of publication of this report, the Applicant's agent had not responded the concerns of the responsible authorities.

Operating history

22. The first premises licence was issued on 12 March 2007 and has been through a number of DPS variations and transfers, up to the present licence which came to Carlos Fernando Delgado Armijos on 21 April 2016.
23. An application to vary the premises licence was previous made by Carlos Fernando Delgado Armijos in October 2016 to also extend the hours, but was withdrawn by the Applicant.
24. There is a long history of temporary events notices (TENs) issued to the premises. The following are all TENs issued over the last 24 months to the point the report was published:

Applicant	Activities	Dates	Counter Notice
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 29/10/2016 to 30/10/2016 23:00 - 03:00	No
Carlos	Sale by retail of alcohol to	From 16/12/2016	No

Applicant	Activities	Dates	Counter Notice
Fernando Delgado Armijos	be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	to 17/12/2016 00.00-03.00 both days	
Carlos Fernando Delgado Armijos	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment Provision of Late night Refreshment	From 10/02/2017 to 11/02/2017 00.00-03.00 both days	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	13/05/2017 to 00.00-03.00	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 17/06/2017 to 18/06/2017 23:00-03:00	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 29/07/2017 to 30/07/2017 23:00-03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 18/08/2017 to 19/08/2017 23:00-03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 01/09/2017 to 02/09/2017 23:00 - 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 15/09/2017 to 16/09/2017 23:00 - 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 29/09/2017 to 30/09/2017 23:00 - 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 13/10/2017 to 14/10/2017 11:30 - 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 24/11/2017 to 25/11/2017 23:00 - 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 16/12/2017 to 16/12/2017 00:00 - 03:30	No

Applicant	Activities	Dates	Counter Notice
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 16/02/2018 to 18/02/2018 11:30 - 03:30 16th - 17th 11:30 - 03:30 17th -18th	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 23/03/2018 - 25/03/2018 - 23:30 - 03:30. 24/03 -	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 15/06/20218 to 16/06/2018 23:30 to 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 29/06/2018 to 30/06/2018 23:30 – 03:30	Yes - rejected late TEN too late
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 13/07/2018 to 14/07/2018 23:30 – 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 03/08/2018 to 04/08/2018 23:30 to 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 17/08/2018 to 18/08/2018 23:30 to 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 30/08/2018 to 01/09/2018 23:00 to 03:00	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 14/09/2018 to 15/09/2018 23:00 to 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 28/09/2018 to 29/09/2018 23:00 to 03:30	No
Carlos Fernando Delgado Armijos	Provision of Late night Refreshment	From 12/10/2018 to 13/10/2018 23:30 to 03:30	Yes – number of late TENs exceeded

25. One complaint was received by the licensing authority and copied to the environmental protection team from a local resident on 4 April 2018. It stated that there was loud music from the premises at weekends. The dates in question did have temporary events notices granted. The premises were visited by night time economy team and licensing enforcement officers gave advice. No complaints have been received since.

Map

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

Le Joint Wine and Snacks Bar, 193 Old Kent Road, London SE1 5NA

- The sale of alcohol (both on and off sales):
 - Monday to Sunday 10:00 to 02:30.
- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 02:30.

Daniels Bar and Restaurant, 207 Old Kent Road, London SE1 5NA

- The sale of alcohol (on 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.

Costa Azul Mexican Bar and Grill, 190-1892 Old Kent Road, London SE1 5TY

- The sale of alcohol (on sales):
 - Monday to Wednesday from 11:00 to 00:00
 - Thursday from 11:00 to 01:00
 - Friday and Saturday from 10:00 to 03:00
 - Sunday from 10:00 to 01:00.
- The provision of late night refreshment (indoors):
 - Monday to Thursday from 11:00 to 01:00
 - Friday and Saturday from 10:00 to 02:00
 - Sunday from 10:00 to 01:00.

The provision of regulated entertainment in the form of live music (indoors):

- Monday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 03:30
 - Sunday from 11:00 to 02:00.
- The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 03:00
 - Sunday from 11:00 to 02:00.

- The provision of regulated entertainment in the form of performances of dance (indoors):
 - Monday to Thursday from 18:00 to 00:00
 - Friday and Saturday from 17:00 to 02:00
 - Sunday from 17:00 to 00:00.

New Wing Fu, 227 Old Kent Road, London SE1 5LU, licensed for:

- The sale of alcohol (off sales):
 - Monday to Sunday from 12:00 to 00:00 (midnight).
- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 00:00 (midnight).

Eurotraveller Hotel, 194-202 Old Kent Road, London SE1 5TY, licensed for:

- The sale of alcohol (on sales):
 - Monday to Sunday : 24 hours.
- The provision of regulated entertainment in the form of live and recorded music and performances of dance (indoors):
 - Monday to Saturday from 11:00 to 23:00
 - Sunday from 11:00 to 22:00.

Deregulation of entertainment

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

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

28. 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

29. Council Assembly approved Southwark's statement of licensing policy 2016 -2020 on 25 November 2015. The policy came into effect on 1 January 2016. 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.
30. 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.
31. Within Southwark’s statement of licensing policy, the premises are identified as being outside a cumulative impact area but within a residential area.
32. Under the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for these categories of premises:
- Restaurants and cafes:
 - Monday to Sunday : 23:00 daily.
 - Public houses, wine bars and other drinking establishments:
 - Monday to Sunday : 23:00 daily.
 - Night clubs:
 - Night clubs (with sui generis planning classification) are not considered appropriate for this area.

Resource implications

33. 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

34. 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 twice (there was an error on the initial advert; however, this was republished within the specified time period to the satisfaction of the Licensing Authority). A similar notice exhibited at the premises for a period of 28 consecutive days. This was inspected by a Licensing Officer during the consultation period and found to be compliant.

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

36. The sub-committee is asked to determine the variation 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 application, 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
 - 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 night café and take away aspect of the license 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 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
47. 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

48. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, 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 for a premises licence under section 17 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. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
57. 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.
58. 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

59. 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

60. 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 Revised 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:
Appendix D	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Andrew, Principal Licensing Officer	
Version	Final	
Dated	9 October 2018	
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
Date final report sent to Constitutional Team	9 October 2018	