

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 16 January 2019	<b>Meeting Name</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP	
<b>Ward(s) or groups affected:</b>		North Walworth	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

1. That the licensing sub-committee considers an application made under Section 53C of the Licensing Act 2003 by the chief of police for the metropolitan police for a summary review of the premises licences in respect of the premises known as Pasaje Primavera – Arch 146, Eagle Yard, Hampton Street, London SE1 6SP.
2. **Notes:**
  - a) A copy of the current premises licences issued in respect of the premises are attached to this report as Appendix A.
  - b) The grounds for the review are stated in paragraphs 15 to 22 of this report. A copy of the full application and certificate are provided as Appendix C.
  - c) A copy of the notice of decision from the previous hearing held on 21 December 2018 is in Appendix E (see closed agenda).
  - 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.

## 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 summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

8. The premises in respect of the premises licence consists of a restaurant on the ground floor of a railway arch called the Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP.
9. The premises licence was first issued on 1 August 2011 under the current premises licence holder name of Pasaje Primavera Limited.
10. On 14 September 2018 Pasaje Primavera Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence. This was heard at a licensing sub-committee hearing on 12 November 2018, at which point the variation was granted. A copy of the notice of decision for that hearing is attached for information only at Appendix C.
11. The premises licence has not been subject to a previous review and there is no history of temporary events notices or complaints.
12. The details of the premises licence agreed at the November Hearing are as follows:
- Opening hours:
    - Sunday to Thursday from 06:00 to 01:00
    - Friday and Saturday from 06:00 to 03:00.
  - The sale by retail of alcohol (on sales only):
    - Sunday to Thursday from 11:00 to 00:00
    - Thursday and Friday from 11:00 to 02:30
  - The provision of late night refreshment (indoors):
    - Sunday to Thursday from 23:00 to 00:00
    - Friday and Saturday from 23:00 to 02:30
  - Regulated entertainment in the form of live music and recorded music (indoors) and facilities for making music (indoors):
    - Monday to Sunday from 06:00 to 00:00
13. A copy of the current premises licence is attached as Appendix A. As the appeal period following the hearing on 12 November was complete and an appeal had not been received, the licence was due to be issued immediately; however, this has now been held back. A copy of the earlier premises licence is attached as Appendix B.

### **Designated premises supervisor**

14. The designated premises supervisor (DPS) is Segundo Vicente Gualavisi Carlosama who has been DPS since the licence was first issued in 2011 and holds a personal licence issued by the London Borough of Lambeth.

### **The review application and certificate**

15. On 20 December 2018 the Metropolitan Police Service applied to the licensing authority for a summary review of the premises licence issued in respect of the premises known as Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP.
16. The application refers to a serious incident witnessed by police officers at 20:00 on Friday 15 December 2018 and draws from further CCTV evidence acquired later. The matter involves a large fight with armed participants. One of the armed males was the son of the premises' owner whom was in charge of the premises that night.
17. Further to the review application, the police requested that following interim steps are taken to prevent further incidents from occurring:
  - The licence is suspended until such time as the full hearing is determined
18. The licensing sub-committee is not restricted to just considering this step.
19. A copy of the application and certificate are attached to this report as Appendix D (see closed agenda).
20. The premises licence was subsequently reviewed at a hearing held on 21 December 2018. A copy of the notice of decision is available in Appendix E (see closed agenda).
21. As a result, the licensing sub-committee put a number of measures in place, namely:
  - That Person A and Person B be excluded from the premises.
22. At the time that this report was published, the Metropolitan Police Service had not provided any additional supporting documentation.

### **Representations from responsible authorities**

23. At the time that this report was published, no supporting representations had been made by the responsible authorities.

### **Representations from other persons**

24. Representations have not been made by other persons.

### **Operating history**

25. No complaints have been received specifically about this premises, however, there are complaints from local residents of anti-social behaviour in the immediate vicinity caused by patrons of premises in the yard.
26. The premises has received one full licence inspection, as part of the variation application. It was visited at 19:43 on 5 October 2018. The premises was found to be fully compliant, with the exception of two notices which had fallen down. These were replaced and photographs were provided to the authority shortly afterwards. A compliance letter was issued to the premises. During this visit officers met Person A.

27. Further to the application made by the Metropolitan Police Service, the interim hearing was held at the council offices, the premises was again visited by a licensing enforcement officer on 24 December 2018 to hand-deliver the notice of decision, which was given to the DPS.

### **The local area**

28. A map of the local area is attached at Appendix F. There are a number of other licensed premises in the locality, namely:

#### **Ivory Arch, 80-82 Walworth Road, London SE1 6SW:**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Sunday from 11:00 to 00:00 (midnight)
- The provision of late night refreshment (both indoors and outdoors):
  - Monday to Sunday from 23:00 to 00:00 (midnight).
- The provision of regulated entertainment in the form of live music, recorded music, films and plays:
  - Monday to Sunday from 11:00 to 00:00 (midnight).

#### **Mamuska, 16 Elephant and Castle, London SE1 6TH**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday from 10:00 to 02:00 (the following day)
  - Sunday from 12:00 (midday) to 23:00.
- The provision of late night refreshment (both indoors and outdoors):
  - Monday to Saturday from 23:00 to 02:30 (the following day)
  - Sunday from 23:00 to 23:30.
- The provision of regulated entertainment in the form of live music, recorded music, and performances of dance:
  - Monday to Saturday from 09:00 to 02:00 (the following day)
  - Sunday from 09:00 to 23:00.

#### **Chatkhara Restaurant, 84 Walworth Road, London SE1 6SQ**

- The provision of late night refreshment (indoors):
  - Monday to Sunday from 23:00 to 02:00 (the following day).

#### **Corporation Ponce, Arch 144, Eagle Yard, Hampton Street, London SE1 6SP**

- The sale by retail of alcohol (on sales):
  - Sunday to Monday from 14:00 to 22:30
  - Friday and Saturday from 14:00 to 23:30.

- The provision of late night refreshment (indoors):
  - Friday and Saturday from 23:00 to 23:30.
- The provision of regulated entertainment in the form of live music and recorded music:
  - Friday to Saturday from 14:00 to 23:30
  - Sunday from 14:00 to 22:30.

**La Barra (Downstairs), Arch 147, Eagle Yard, Hampton Street, London SE1 6SP**

- The sale by retail of alcohol (on sales):
  - Sunday to Thursday from 10:00 to 23:30
  - Saturday and Sunday from 10:00 to 00:00.
- The provision of late night refreshment (indoors):
  - Sunday to Thursday from 23:00 to 23:30
  - Saturday and Sunday from 23:00 to 00:00.

**Rincon Tropical (Upstairs), Arch 147, Eagle Yard, Hampton Street, London SE1 6SP**

- The sale by retail of alcohol (on sales):
  - Sunday to Thursday from 10:00 to 23:30
  - Saturday and Sunday from 10:00 to 00:00.
- The provision of late night refreshment (indoors):
  - Sunday to Thursday from 23:00 to 23:30
  - Saturday and Sunday from 23:00 to 00:00.

**Southwark Council statement of licensing policy**

29. Council assembly approved Southwark's statement of licensing policy 2016 to 20 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 of a cumulative impact zone but situated in the Elephant and Castle Major Town Centre area. Relevant closing times recommended in the Statement of Licensing Policy for licensed premises in residential areas are as follows:
- Closing time for Restaurants and Cafes:
    - Sunday to Monday to 00:00 (midnight)
    - Friday and Saturday to 01:00 (the following day).
  - Closing time for Public Houses Wine bars or other drinking establishments:
    - Sunday to Monday to 23:00
    - Friday and Saturday to 00:00 (midnight).
  - Closing time for Night Clubs (with sui generis planning classification):
    - Monday to Thursday to 01:00 (the following day).

### **Resource implications**

32. There is no fee associated with this type of application.

### **Consultation**

33. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

### **Community impact statement**

34. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

35. The sub-committee is asked to determine, under Section 53C of the Licensing Act 2003, an application, made under Section 53A of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any

other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

36. The principles, which sub-committee members must apply, are set out below.

### **Principles for making the determination**

37. Under s.53 (A)(2) The licensing authority must determine a review application within 28 days of receipt of the application and reach a determination on that review.

38. 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.

39. 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.

40. 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 other person within the prescribed period
- Have not been withdrawn
- If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

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

42. 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.

43. 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.

44. 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**

45. Where the authority takes interim steps an application for review it must notify the determination and reasons why for making it to:

- The holder of the licence
- The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

46. 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
    - 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.
47. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

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

48. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
49. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.

50. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.
51. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
52. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
53. 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.
54. 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.
55. There is no right of appeal to a Magistrates' Court against the licensing authority's decision regarding the setting of interim steps at this stage.

### **Guidance**

56. 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**

57. 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 Home Office Revised Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

## APPENDICES

Name	Title
Appendix A	Current premises licence
Appendix B	Earlier premises licence
Appendix C	Notice of Decision from 12 November 2018
Appendix D	Copy of the review application and certificate (see closed agenda)
Appendix E	Notice of Decision from 21 December 2018 (see closed agenda)
Appendix F	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Ian Smith, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	2 January 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	4 January 2019	