

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 31 October 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Corporation Ponce, Arch 144, Eagle Yard, Hampton Street, London SE1 6SP	
<b>Ward(s) or groups affected:</b>		Newington	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Sabor De Mi Tierra Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Corporation Ponce, Arch 144, Eagle Yard, Hampton Street, London SE1 6SP.
2. Notes:
  - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Corporation Ponce – Arch 144, Eagle Yard, Hampton Street, London, SE1 6SP, 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 7 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
  - Paragraphs 8 to 10 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 E.
  - Paragraphs 12 to 19 of this report deal with the representations submitted in respect of the application (copies of the representations for Responsible Authorities and local residents are attached in Appendices C and D).

## 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.

Within Southwark, this council wholly administers the licensing responsibility.

4. 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.
5. 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.
6. 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**

7. The current premises licence issued in respect of the premises known as the Corporation Ponce – Arch 144, Eagle Yard, Hampton Street, London, SE1 6SP was issued on 30 July 2018 and allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
    - Sunday to Thursday 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 and recorded music (indoors):
    - Friday and Saturday from 14:00 to 23:30
    - Sunday from 14:00 to 22:30
  - Opening hours:
    - Sunday to Thursday from 09:00 to 23:00
    - Friday and Saturday from 09:00 to 00:00 (midnight)
  - A copy of the existing premises licence is attached as Appendix A.

### **The variation application**

8. On 30 August 2019 Sabor De Mi Tierra Limited 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 Corporation Ponce, Arch 144, Eagle Yard, Hampton Street, London, SE1 6SP.
9. The application for variation is described as follows:
  - ‘...Extension of opening and licensable hours Friday and Saturday. Removal of Condition 840. Amendment of Condition 843.’
  - Removal of Condition 840: That intoxicating liquor shall not be sold or supplied on the *premises* otherwise than to persons taking a substantial table meal there and for consumption by such persons as ancillary to their meal.
  - Amendment of Condition 843: That on Friday and Saturdays one SIA registered door supervisor shall patrol the outside areas of the premises between the hours of 21:00 until close to monitor the patrons and number of smokers outside the premises.
  - The application is essentially to extend the weekend hours of the operation for sale of late night refreshment and alcohol and the provision of regulated entertainment and for the premises to no longer run as a restaurant.
10. A copy of the application is attached to this report as Appendix B.

### **Designated premises supervisor**

11. The designated premises supervisor (DPS) under the existing premises licence is Luis Ernesto Barragan Ponce (the previous licence holder Director), holding a personal licence with the London Borough of Lambeth.

### **Representations from responsible authorities**

12. The Metropolitan Police Service have made a representation under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The police have concerns relating to the premises location in relation to residential properties and that the hours applied for are significantly outside of the hours recommended in the Southwark licensing policy. In addition, the police have received complaints regarding the management of the premises and been part of inspections with the night time economy team, during which multiple licence breaches were found on two occasions, during the consultation period relating to this variation application.
13. Southwark environmental protection team have made a representation. They have raised concerns in relation to the proximity to residential addresses and the egress of noise, pointing to a history of complaints in the area concerning noise. The representation also raises concerns that the operating schedule of the application falls short on addressing concerns relating to the potential for public nuisance. The department's noise team have also received multiple noise complaints.
14. Southwark Public Health have made a representation. Their concerns are in relation to the extension of hours outside of the recommended hours in the Southwark licensing policy and the potential for alcohol-related harm from a late-night premises.

15. Southwark trading standards have made representation, stating that the hours applied for are outside of the recommended hours in the Southwark licensing policy. In addition, attention is drawn to the recent licence breaches and that the premises is already being run as a nightclub / bar and further that young children remain on the premises late at night.
16. The licensing authority have made 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. A warning letter from a recent inspection is exhibited as part of the representation. The warning letter shows multiple licence breaches and states that the premises is already being run as a non-food-led premises.
17. Copies of all the representations made by responsible authorities are available in Appendix C.

### **Representations from other persons**

18. Representations have been received from 26 local addresses, predominately from with the Strata Building located nearby. These are available in Appendix D.
19. There are ongoing concerns in relation to music noise emanating from the premises and the anti-social behaviour already caused by patrons departing the premises and similar premises in the immediate vicinity. Residents state that the premises already opens beyond its hours, fails to control its patrons and has concerns that the children of the patrons are left unattended outside the premises late at night. Residents are concerned that the granting of this variation will exacerbate existing issues.

### **Conciliation**

20. Copies of representations were provided to the applicant's agent. At the point of publication of this report, the applicant had not responded the concerns of the responsible authorities or local residents.

### **Operating history**

21. Multiple temporary events notices (TENs) have been issued to the premises.

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
Luis Ernesto Barragan Ponce	From 01/01/2017 to 01/01/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 12/02/2017 to 12/02/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 05/03/2017 to 05/03/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 26/03/2017 to 26/03/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the	No

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
		premises	
Luis Ernesto Barragan Ponce	From 14/05/2017 to 14/05/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 09/07/2017 to 09/07/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 09/07/2017 to 09/07/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 17/09/2017 to 17/09/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 08/10/2017 to 08/10/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 29/10/2017 to 29/10/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 09/12/2017 to 09/12/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 25/12/2017 to 25/12/2017 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 01/01/2018 to 01/01/2018 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 27/01/2018 to 27/01/2018 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	Withdrawn following representation from Police
Luis Ernesto Barragan Ponce	From 28/01/2018 to 28/01/2018 00:00 - 04:00	Sale by retail of alcohol to be consumed on the premises	Withdrawn following representation from Police
Jimmy Canos Ross	From 02/03/2018 to 04/03/2018 For 48 hrs from 23:30	Sale by retail of alcohol to be consumed on the premises	Late TEN, rejected following representation from Police

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
Luis Ernesto Barragan Ponce	From 26/08/2018 to 26/08/2018 22:01 - 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 16/09/2018 to 16/09/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 07/10/2018 to 07/10/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 28/10/2018 to 28/10/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 04/11/2018 to 04/11/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 02/12/2018 to 02/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 09/12/2018 to 09/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 15/12/2018 to 15/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 16/12/2018 to 16/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	Rejected as not 24hrs between events
Luis Ernesto Barragan Ponce	From 23/12/2018 to 23/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 25/12/2018 to 25/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 30/12/2018 to 30/12/2018 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 01/01/2019 to 01/01/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto	From 20/01/2019 to	Sale by retail of	No

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
Barragan Ponce	20/01/2019 00:00 to 04:00	alcohol to be consumed on the premises	
Luis Ernesto Barragan Ponce	From 26/01/2019 to 26/01/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 17/02/2019 to 17/02/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 03/03/2019 to 03/03/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 24/03/2019 to 24/03/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 12/05/2019 to 12/05/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 19/05/2019 to 19/05/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 26/05/2019 to 26/05/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 09/06/2019 to 09/06/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 06/06/2019 to 16/06/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 23/06/2019 to 23/06/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 11/08/2019 to 11/08/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No
Luis Ernesto Barragan Ponce	From 25/08/2019 to 25/08/2019 00:00 to 04:00	Sale by retail of alcohol to be consumed on the premises	No

22. On 4 February 2016 Ponce's Corporation Limited applied for a new premises licence in respect of this premises. The Metropolitan Police Service and the council's environmental protection team objected to the application. The application went before the Southwark licensing sub-committee on 19 April 2016 and the licence was granted with conditions.
23. On 22 December 2017 Ponce's Corporation Limited (Co Number: 07237574, Director: Luis Ernesto Barragan Ponce) applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence. The application drew representations from 11 local residents and the Metropolitan Police Service, Southwark environmental protection team, Southwark public health and Southwark licensing authority as responsible Authorities. The Police provided evidence that the premises had been visited at 02:40 on 6 January 2018 and was found to be open and selling alcohol to the public, contrary to the premises licence in place. The application was withdrawn on 18 January 2018, before the sub-committee hearing, the following week.
24. On 30 July 2018, a designated premises supervisor variation application was received, changing to the name of Luis Ernesto Barragan Ponce and transferring the licence to Sabor De Mi Tierra Ltd (Co Number: 11365743, Director: Maria Dineis Gaitan Varagas).
25. On 30 August 2019 Sabor De Mi Tierra Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence, which makes up the current application under consideration.
26. Complaints have been received by the council's licensing department specifically to this premises, however, complaints are often also in relation to anti-social behaviour in the immediate vicinity associated with surrounding premises. The council's environmental health department's noise team have also received additional complaints which are listed in their written representation. The following are complaints specifically to this premises:

<b>Date</b>	<b>Complainant</b>	<b>Complaint</b>	<b>Action</b>
21/05/2018	Local Resident	Complaint of escalating weekend noise from premises. Doors left open during regulated entertainment.	Premises visited 21:25 on 30/05/2018. Doors closed. Advice given to keep doors closed.  Further walk-bys to note doors closed: 09/06/2018, 15/06/2018, 16/06/2018, 29/06/2018, 14/07/2018 and 07/09/2018
08/08/2019	Local Resident	Complaint of table outside with customers consuming alcohol	Visit 22:18 on 16/08/2019 – advised to keep doors closed. No table outside – advised no off sales, or licenced area outside.

Date	Complainant	Complaint	Action
12/08/2019	Local Resident	Complaint of noise of music and cheering from premises	See above.
16/09/2019	Local Resident	Complaint of the last six weeks trading until midnight on a Sunday with the following issues: - Patrons leaving the premises extremely noisily; - No visible signs at the entrance and exit reminding customers to leave the premises sensibly; - Children left unsupervised after 23:00; - People leaving premises with alcohol; - People leaving the premises urinate outside Strata building; - No soundproofing - loud music spilling out of venue; - People loitering outside, drinking, smoking and shouting; unchallenged by the venue staff.	Visit at 21:19 on 21/09/2019 (follow up inspection – continued breaches of licence found). Warning given re patrons on egress and use of external area.
29/09/2019	Local Resident	- Premises open on Sunday beyond closing time (complaint that this is a regular Sunday issue); - Audible music.	

27. Inspections conducted at the premises:

Date	Time	Outcome
15/12/2018	20:45	Breaches of conditions: 352, 353, 356, 357, 361 and 841. Warning letter sent.  Revisit at 22:30 on 09/02/2019, premises found to be compliant.
07/09/2019	20:23	Breaches of conditions: 343, 344, 351, 354, 356 and 840 – premises found to be running as a nightclub / bar. S19 Closure Notice issued by Police and warning letter sent.  Revisit at 21:19 on 21/09/2019, breaches of conditions: 351, 356, 357, 362, 840 and 841.  Premises revisited at 00:12 on 22/09/2019, found to be closed.

**Map**

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

**Dragon Castle, 100 Walworth Road, London SE17 1JL**

- The sale by retail of alcohol (on sales only):
  - Monday to Sunday from 11:00 to 23:30
- The provision of late night refreshment (both indoors and outdoors):
  - Monday to Sunday from 11:00 to 23:30

**Da Spago Limited, Unit 1, 163 Dashwood Way, London SE17 3PZ**

- The sale by retail of alcohol (off sales only):
  - Monday to Saturday from 08:00 to 19:30
  - Sunday from 11:00 to 15:00

**After Taste Chinese Restaurant, 97 Newington Butts, London SE1 6SF**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday from 11:00 to 00:00 (midnight)
  - Sunday from 12:00 (midday) to 23:30
- The provision of late night refreshment (indoors):
  - Monday to Saturday from 23:00 to 00:00 (midnight)
  - Sunday from 12:00 (midday) to 23:30

**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)

**La Barra, Arch 147, Eagle Yard, London SE1 6SP**

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

**Rincon Tropical, 2<sup>nd</sup> Floor, Arch 147 Eagle Yard, London SE1 6SP**

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

**Southwark council statement of licensing policy**

29. Council assembly approved Southwark's statement of licensing policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. 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.

### **Cumulative impact zone (CIZ)**

31. The premises is not situated in any of Southwark’s CIZs. The premises is situated in the Elephant and Castle major town centre area.
32. Under the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for these categories of premises:

- Restaurants and cafes:
  - Sunday to Monday to 00:00 (midnight)
  - Friday and Saturday to 01:00 (the following day)
- Public houses, wine bars or other drinking establishments:
  - Sunday to Monday to 23:00
  - Friday and Saturday to 00:00 (midnight)
- Night clubs (with sui generis planning classification):
  - Monday to Thursday to 01:00 (the following day)
  - Friday and Saturday to 03:00 (the following day)

### **Resource implications**

33. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band A 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 and a similar notice exhibited at 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 Democracy**

36. The sub-committee is asked to determine the application to vary the 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
- 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 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 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
- 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.

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

50. 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.
51. 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.
52. 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.
53. 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.

54. 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.
55. 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.
56. 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**

57. 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**

58. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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**

<b>Name</b>	<b>Title</b>
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Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copies of representations from responsible authorities:
Appendix D	Copies of the representations submitted by local residents
Appendix E	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	9 October 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>	9 October 2019	