

Item No. 5.	Classification: Open	Date: 27 February 2020	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003: Costa Azul Mexican Bar & Grill, 190-192 Old Kent Road, London SE1 5TY	
Ward(s) or groups affected:		Faraday Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the licensing sub-committee considers whether it is appropriate to take interim steps pending the determination of an application for a summary review, made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area, of the premises licences issued in respect of the premises known as Costa Azul Mexican Bar, 190 – 192 Old Kent Road, London SE1 5TY.
2. **Notes:**
 - a) Under section 53A(2) of the licensing act 2003 the licensing authority must consider interim steps within 48-hours following the submission of an application under Section 53A of the licensing act 2003.
 - b) A copy of the full application is attached as Appendix B.

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 licence issued in respect of the premises known as Costa Azul Mexican Bar, 190 – 192 Old Kent Road, London SE1 5TY allows licensable activities as follows:

- Late night refreshment (indoors and outdoors):
 - Monday to Thursday: 23:00 – 01:00
 - Friday to Saturday: 23:00– 02:00
 - Sunday: 23:00 – 01:00

- Sale by retail of alcohol (On Sales):
 - Monday to Wednesday: 11:00 – 00:00
 - Thursday: 11:00 – 01:00
 - Friday to Saturday: 10:00 – 03:00
 - Sunday: 10:00 – 01:00

- Facilities for Dancing (indoors):
 - Monday to Thursday: 17:00 – 00:00
 - Friday to Saturday: 17:00 – 03:00
 - Sunday: 12:00 – 01:00

- Entertainment similar to live/recorded music (indoors):
 - Monday to Thursday: 17:00 – 00:00
 - Friday to Saturday: 17:00 – 03:00
 - Sunday: 12:00 – 01:00

- Performance of Dance (indoors):
 - Monday to Thursday: 18:00 – 00:00
 - Friday: 17:00 – 01:00
 - Saturday: 17:00 – 02:00
 - Sunday: 17:00 – 00:00

- Recorded Music (indoors):
 - Monday to Thursday: 11:00 – 00:00
 - Friday to Saturday: 11:00 – 03:00
 - Sunday: 11:00 – 02:00

- Live Music (indoors):
 - Monday to Thursday: 11:00 – 00:00
 - Friday to Saturday: 11:00 – 03:30
 - Sunday: 11:00 – 02:00

- Opening Hours:
 - Monday to Wednesday: 07:00 – 01:30
 - Thursday: 07:00 – 02:00
 - Friday to Saturday: 07:00 – 04:00
 - Sunday: 07:00 – 01:30

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

Designated premises supervisor

10. The designated premises supervisor (DPS) of the premises is Edison Ivan Caviedes Cruz.

The review application and certificate

11. On 25 February 2020 the Metropolitan Police Service applied to this licensing authority for a summary review of the premises licence issued in respect of the premises known as Costa Azul Mexican Bar & Grill, 190 – 192 Old Kent Road, London SE1 5TY.
12. On 25 February 2020 a Superintendent for the Metropolitan Police Service certified that in their opinion the premises are associated with serious crime, serious disorder or both.
13. The application is concerned with a serious incident that took place on Thursday 23 January 2020 at approximately 03:40.
14. Metropolitan Police Officers were called to Costa Azul, 190 – 192 Old Kent Road, London SE1 5TY the call came from the London Ambulance Service for assistance with a male that had been assaulted. On arrival a male victim was found unresponsive on the pavement with blood coming from his mouth. Due to the seriousness of his injuries he was transferred to Kings College Hospital and at the time of submission of this review application the police state the victim remains on life support, with his injuries being assessed as life threatening.
15. An initial statement from a member of the security staff and witness to the incident stated that the victim had attempted to gain entry to the premises but was refused due to being intoxicated. When outside of the venue it is alleged an argument began with the suspect who has then pushed him to the ground and whilst on the ground the suspect has continued to kick the victim.
16. The Metropolitan Police Service state a witness was able to identify the suspect and the suspect was arrested by Police shortly after. Further information from the witnesses and friends of the victim indicate a slightly different version of events. According to their statements the victim had been drinking inside the venue since approximately 20:00. He was removed from the premises by security staff at 03:00 where he remained outside until he was assaulted between 03:20 and 03:40.
17. The suspect for this offence has stated that the victim approached him outside the club and that he appeared to be very drunk.
18. The Metropolitan Police Service states that it is their belief that the level of intoxication of the victim is highly likely to have been a contributing factor in the outcome of this incident. Early intervention by staff at the venue could have in their opinion prevented this very serious crime.
19. The Metropolitan Police Service have carried out an initial search of their crime reporting systems and found a further four assaults associated with the premises, all indicate that high levels of intoxication were an aggravating factor.

20. The Metropolitan Police Service state there appears to have been an initial attempt by security staff to cover up the fact the victim had been drinking inside the venue prior to his assault.
21. Further, the Metropolitan Police Service state that they would have serious concerns for the safety of other patrons becoming exposed to the potential of serious harm and injury if the premises is permitted to continue to operate.
22. The Metropolitan Police Service recommend that the following interim step is taken prior to the full review hearing in respect of the premises:
 - That the licence is suspended until such time that the full licensing review is determined.
23. The licensing sub-committee is not restricted to just considering this step.
24. A copy of the review application from the Metropolitan Police Service in support of the review application is attached to this report as Appendix B.

The review procedure

25. The current hearing is for the purpose of considering if interim steps are needed as a result of the summary review submitted by the police, prior to the pending full review hearing that will be held on 24 March 2020.
26. The licensing sub-committee is not obliged to hear evidence from other parties at this stage of the procedure. However the premises licence holder and DPS have been invited to attend the hearing.
27. The review is currently being consulted on and a public notice is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full hearing of the licensing sub-committee.
28. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

Operating history

29. A premises licence was issued on the 6 August 2007 in respect of the premises Costa Azul Mexican Bar, 190 – 192 Old Kent Road, London SE1 5TY. This premises licence detailed Mr Wilson Delgado as the premises licence holder. Mr Fernando Ramos was specified as the designated premises supervisor (DPS).
30. A change of DPS application was submitted and granted on the 4 December 2014 which specified Flor Jeauqueline Delgado Armijos as the new designated premises supervisor.
31. On 21 April 2016 an application was granted to change the DPS of the premises and specified Alejandro Ortiz Mendez as the DPS.
32. On 13 September 2016 a premises licence transfer application was granted which specified Alejandro Ortiz Mendez as the new premises licence holder.
33. On 28 July 2017 a premises licence transfer application was granted which specified Mr Edison Ivan Caviades Cruz as the premises licence holder. This premises licence is detailed at Appendix A

34. On 10 June 2019 at 01:30 licensing officers visited and inspected the premises and found the following two licence condition breaches:
- 288 – That recordings taken by the CCTV system installed upon the premises shall be kept and made available for inspection by authorised officers for a period of thirty one (31) days
 - 342 – A recognised Training scheme for all the staff concerned with the sale or supply of intoxicating liquor.
35. A warning letter was sent to the premises licence holder regarding these issues on the 11 June 2019 and is detailed at Appendix C
36. On the 3 August 2018 a re-visit was made to the premises and the premises licence condition breaches previously witnessed at the premises had now been rectified.
37. Details of temporary event notices (TENs) submitted in respect of the premises are attached as Appendix D.

The local area

38. A map of the local area is attached at Appendix E.

Southwark Council statement of licensing policy

39. 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.

40. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

Resource implications

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

Consultation

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

Community impact statement

43. 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

44. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003.
45. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

46. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where.
- The application is properly made in accordance with Section 53A of the Act.
 - The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.
47. 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.
48. 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 premises licence.
49. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.

50. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
51. 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.
52. 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

53. 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

54. 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.

55. 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

56. 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.
57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.
63. 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

64. 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

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

REASONS FOR LATENESS

66. When an application for an expedited summary review is received from the police under section 53a of the Licensing Act 2003 the council's licensing authority has a statutory duty hold a hearing within 48 hours from receipt of the application to consider interim steps that may be placed on the premises licence until such time as the application can be fully determined.

REASONS FOR URGENCY

67. The council has a statutory duty under section 53a to hold an interim hearing within 48 hours of receipt of a summary review.

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	Copy of current premises licence
Appendix B	Copy of the review application
Appendix C	Licensing warning letter - 11 June 2019
Appendix D	Details of temporary event notices submitted in respect of the premises
Appendix E	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Richard Kalu, Principal Licensing Officer	
Version	Final	
Dated	26 February 2020	
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
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