

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 24 March 2020	<b>Meeting Name</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Costa Azul Mexican Bar & Grill, 190-192 Old Kent Road, London, SE1 5TY	
<b>Ward(s) or groups affected:</b>		Faraday Ward	
<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 area for the review of the premises licence 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)(b) of the Licensing Act 2003 the licensing authority must determine the review within 28-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 to 01:00
  - Friday to Saturday: 23:00 to 02:00
  - Sunday: 23:00 to 01:00
- Sale by retail of alcohol (On Sales):
  - Monday to Wednesday: 11:00 to 00:00
  - Thursday: 11:00 to 01:00
  - Friday to Saturday: 10:00 to 03:00
  - Sunday: 10:00 to 01:00
- Facilities for Dancing (indoors):
  - Monday to Thursday: 17:00 to 00:00
  - Friday to Saturday: 17:00 to 03:00
  - Sunday: 12:00 to 01:00
- Entertainment similar to live/recorded music (indoors):
  - Monday to Thursday: 17:00 to 00:00
  - Friday to Saturday: 17:00 to 03:00
  - Sunday: 12:00 to 01:00
- Performance of Dance (indoors):
  - Monday to Thursday: 18:00 to 00:00
  - Friday: 17:00 to 01:00
  - Saturday: 17:00 to 02:00
  - Sunday: 17:00 to 00:00
- Recorded Music (indoors):
  - Monday to Thursday: 11:00 to 00:00
  - Friday to Saturday: 11:00 to 03:00
  - Sunday: 11:00 to 02:00
- Live Music (indoors):
  - Monday to Thursday: 11:00 to 00:00
  - Friday to Saturday: 11:00 to 03:00
  - Sunday: 11:00 to 02:00

- Opening Hours:
  - Monday to Wednesday: 07:00 to 01:30
  - Thursday: 07:00 to 02:00
  - Friday to Saturday: 07:00 to 04:00
  - Sunday: 07:00 to 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 February 2020 at approximately 03:40hrs
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 03:00hrs 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 revoked.
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.
25. On the 17 February 2020 at licensing sub – committee interim steps were imposed on the premises subject to a full review hearing scheduled for the 24 March 2020. The interim steps are detailed in a decision notice detailed at Appendix C.
26. Metropolitan Police Service Officers visited the premises on Saturday 29 February 2020 at 20:35hrs and witnessed various breaches of the premises licence and served a Section 19 Closure Notice.
27. The premises licence breaches witnessed by Metropolitan Police Service officers were detailed on a section 19 closure notice and the premises licence breaches detailed as:
  - **290** - That an SIA registered door supervisor be employed in order to supervise admissions to and departures from the premises and to ensure that the premises maximum accommodation limit is not exceeded.
  - **336** A personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.
  - **342** A recognised Training scheme for all the staff concerned with the sale or supply of intoxicating liquor.
28. On Saturday 7 March 2020 at 00:15 Metropolitan Police Officers visited the premises and state in their witness statements that the interim steps imposed at licensing sub – committee on the 17 February were witnessed being breached at the premises.
29. A Metropolitan Police Service Officer states in his witness statement ‘The first additional condition imposed on the venue was that last entry to the premises was at 0000hrs’. The Officer in his witness statement states ‘they watched as 9 people turned up at the venue and were allowed in’.
30. On the 11 March 2020 the licensing service received supplementary evidence in support of the review application from the Metropolitan Police Service. This evidence is by way of Section 19 Closure Notice, witness statements from Metropolitan Police Service Officers, email complaint and summary of related crime and disorder incidents in respect of the premises which are detailed at Appendix F.

## **Representations from other Responsible Authorities**

31. Licensing as a responsible authority state that there is no confidence in Edison Ivan Caviedes Cruz the licensee to uphold the four licensing objectives or to ensure the conditions on the premises licence are being met. They also have serious concerns in the ability of Mr Alejandro Ortiz Mendez the DPS to train staff regarding the responsible sales of alcohol at the premises; to ensure that the licensed conditions are being met, or to uphold the licensing objectives.
32. Further, licensing as a responsible authority state the licensing sub-committee hearing for interim steps was on 27 February 2020 and yet on Saturday 29 February 2020, 3 other licensing breaches were witnessed. licensing as a responsible authority state if these conditions were being complied with it would help to prevent patrons becoming overly intoxicated and lower the risk of incidents like the one which occurred on 23 February 2020 of happening.
33. Licensing as a responsible authority state they fully support the police in submitting this review and it would seem that the incident that happened on 23 February 2020 has not been taken seriously by the licensee or DPS, or that they have a total lack of understanding of what is required to manage a licensed premises and promote the licensing objectives, It the therefore the recommendation of Licensing as Responsible Authority that the licence is revoked.
34. A copy of the representation received from licensing as a responsible authority in support of the Metropolitan Police Service Review application is attached to this report as Appendix G.
35. A representation has been received from trading standards as a responsible authority in support of the Metropolitan Police Service Review hearing.
36. A witness statement has been provided in respect of an enforcement visit carried out at the premises on the 29 February 2020 where various breaches of the premises licence were witnessed by officers.
37. A copy of the trading standards responsible authority representation in support of the Metropolitan Police Service review is attached at Appendix H.

## **Representations from other persons**

38. 11 letters of support have been received from local resident(s) in support of the premises which is detailed at Appendix I.
39. A statement of support of the premises was received on the 11 March 2020 from Mr Edison Ivan Caviedes Cruz the current premises licence holder, Mr Alejandro Ortiz Mendez the current designated premises supervisor and Mr Vicente Pico the new proposed premises licence holder and designated premises supervisor for this premises. This statement is attached at Appendix J.

## **Operating history**

40. 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).
41. 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.

42. On the 21 April 2016 an application was granted to change the DPS of the premises and specified Alejandro Ortiz Mendez as the DPS.
43. On the 13 September 2016 a premises licence transfer application was granted which specified Alejandro Ortiz Mendez as the new premises licence holder.
44. On the 28 July 2017 a premises licence transfer application was granted which specified Mr Edison Ivan Caviedes Cruz as the premises licence holder. This premises licence is detailed at Appendix A
45. On the 10 June 2019 at 01:30hrs 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.
46. A warning letter was sent to the premises licence holder regarding these issues on the 11 June 2019 and is detailed at Appendix D
47. 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.
48. Subsequent to the review hearing (interim Steps) on the 17 February 2020. A further enforcement visit was undertaken at the premises to ensure that the premises was adhering to the interim steps as per licensing sub-committee decision notice detailed at Appendix C.
49. When officers visited the premises on the 29 February 2020 various breaches of the premises licence and review interim steps were witnessed. These breaches are detailed in the licensing responsible authority representation detailed at Appendix G and the trading standards responsible authority representation detailed at Appendix H.
50. A list of temporary event notices (TENs) submitted in respect of the premises is attached as Appendix E
51. On Tuesday, 10 March 2020 a premises licence transfer application was received by Southwark Council Licensing. This application has specified Elvis Vicente Pico Valarezo as the new premises Licence Holder. A copy of this application is detailed at Appendix K.
52. On Tuesday, 10 March 2020 a change of designated premises supervisor application was received by Southwark Council licensing. This application has specified Elvis Vicente Pico Valarezo as the new designated premises supervisor for the premises. A copy of this application is detailed at Appendix L.

### **The local area**

53. A map of the area is attached to this report as Appendix M. Details of licensed premises in the immediate vicinity of the premises are detailed below.

#### **Modern Supermarket, 177 – 179 Old Kent Road, London SE1 5NA**

- Sale of alcohol:
  - Monday to Saturday: 08:00 to 23:00

- Sunday: 10:00 to 22:30

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

- Late night refreshment:
  - Monday to Saturday: 23:00 to 00:30
  - Sunday: 23:00 to 00:00
- Sale of alcohol:
  - Monday to Saturday: 11:00 to 00:00
  - Sunday 12:00 to 23:30

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

- Late night refreshment:
  - Monday to Sunday: 23:00 to 03:30
- Sale of alcohol (on and off sales):
  - Monday to Sunday: 10:00 to 02:30

**New Wing Food, 227 Old Kent Road, London SE1 5LU**

- Late night refreshment:
  - Monday to Sunday: 23:00 to 00:00
- Sale of alcohol (off-sales):
  - Monday to Sunday: 00:00 to 00:00

**Euro Traveller Hotel, 194 – 202 Old Kent Road, London SE1 5TY**

- Live music (indoors):
  - Monday to Saturday: 11:00 to 23:00
  - Sunday: 11:00 to 22:00
- Recorded music (Indoors):
  - Monday to Saturday: 11:00 to 23:00
  - Sunday: 11:00 to 22:00
- Performance of dance (Indoors):
  - Monday to Saturday: 11:00 to 23:00
  - Sunday: 11:00 to 22:00
- Sale of alcohol (on-sales) bar and restaurant
  - Monday to Saturday: 09:00 to 23:00
  - Sunday: 09:00to 22:00

- Sale of alcohol (on-sales) hotel bar:
  - 24 hours

**Tropical, 186 – 188 Old Kent Road, London SE1 5TY**

- Late night refreshment (Indoors)
  - Monday to Sunday: 23:00 to 00:00
- Sale of alcohol (on-sales)
  - Monday to Sunday 11:00 to 00:00
- Recorded music (indoors):
  - Monday to Sunday: 23:00 to 00:00
- Performance of dance (indoors):
  - Monday to Sunday 20:00 to 00:00.

**Southwark Council statement of licensing policy**

54. 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.

55. 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)**

56. The premises is not in a cumulative impact zone.. The premises is situated in a residential area.

57. 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:
  - Monday to Sunday 23:00
- Public houses wine bars or other drinking establishments:
  - Monday to Sunday 23:00

### **Resource implications**

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

### **Consultation**

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

### **Community impact statement**

60. 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**

61. 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.

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

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

63. 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.

64. 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.
65. 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.
66. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
67. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
68. 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.
69. 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**

70. 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**

71. 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.

72. 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**

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.
79. 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.
80. 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**

81. 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**

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

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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, 3 <sup>rd</sup> Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read <a href="tel:02075255748">Tel:02075255748</a>

## APPENDICES

Name	Title
Appendix A	Copy of current premises licence
Appendix B	Copy of the review application
Appendix C	Copy of Decision Notice (Interim Steps) - 17 February 2020
Appendix D	Licensing warning letter - 11 June 2019
Appendix E	Details of temporary event notices submitted in respect of the Premises
Appendix F	Metropolitan Police Service - supplementary evidence supporting review application
Appendix G	Licensing responsible authority representation
Appendix H	Trading standards responsible authority representation
Appendix I	Local resident's letters of support
Appendix J	Statement of support for premises
Appendix K	Premises licence transfer application
Appendix L	Change of designated premises supervisor
Appendix M	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Richard Kalu, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	11 March 2020	
<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>		13 March 2020