

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 13 May 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: El Paso Latino, 34 New Kent Road, London SE1 6TJ	
<b>Ward(s) or groups affected:</b>		Chaucer	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Luis Alberto Ossa Fernansez to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: El Paso Latino, 34 New Kent Road, London SE1 6TJ.
2. Notes:
  - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: El Paso Latino, 34 New Kent Road, London SE1 6TJ under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to outstanding representations submitted by local residents and is therefore referred to the sub-committee for determination.
  - Paragraph 8 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
  - Paragraphs 10 to 12 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B. A map showing the location of the premises is attached as Appendix D.
  - Paragraphs 15 to 18 of this report deal with the representations submitted in respect of the application in Appendix C.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 provides the licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:

- The prevention of crime and disorder
  - The promotion of public safety
  - The prevention of nuisance
  - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
- The Act itself
  - The guidance to the act issued under Section 182 of the Act
  - Secondary regulations issued under the Act
  - The Licensing authority's own statement of licensing policy
  - The application, including the operating schedule submitted as part of the application
  - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The current premises licence**

8. The current premises licence issued in respect of the premises known as the El Paso Latino, 34 New Kent Road, London, SE1 6TJ was issued in September 2018 and allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
    - Monday to Sunday from 10:00 to 22:30
  - Opening hours:
    - Monday to Sunday from 07:00 to 23:00
9. A copy of the existing premises licence is attached as Appendix A.

### **The variation application**

10. On 27 January 2020 Luis Alberto Ossa Fernansez 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 El Paso Latino, 34 New Kent Road, London SE1 6TJ.
11. The application for variation is described as follows:
- '...We would like to extend our current alcohol licence to serve alcohol until 02:00hrs on Thursdays, Fridays and Saturdays. Further more we would like to amend out licence to allow our customers to purchase alcohol without the compulsory purchase of food.

I have had El Paso for three months now. I have built up a good clientele who are of the middle age/older Latino demographic, who do not wish to go to

crowded places to socialise. I strongly believe these changes will help me to cater better to the clientele's wishes.'

12. As well as the extension to the hours, the variation also seeks the removal of Condition 340: "Intoxicating liquor shall not be sold or supplied on the premises other than to persons having table meals and is for consumption by such person as an ancillary to this food".
13. A copy of the application is attached to this report as Appendix B.

#### **Designated premises supervisor**

14. The designated premises supervisor (DPS) under the existing premises licence is Vanessa Moore holding a personal licence with the London Borough of Islington.

#### **Representations from responsible authorities**

15. The Metropolitan Police Service have made representation stating that the granting of additional hours will take the premises beyond those which are recommended by the Southwark statement of licensing policy. The police state that if additional hours were granted, that the removal of the condition defining alcohol as being ancillary to food should be retained.
16. The licensing authority (LA) have also made representation with similar concerns to that of the Metropolitan Police Service that the hours are beyond the recommended hours in the statement of licensing policy and that greater hours would require the 'restaurant condition' to remain.
17. Copies of the representations made by responsible authorities are available in Appendix C.

#### **Representations from other persons**

18. No representations were received from other persons.

#### **Conciliation**

19. 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**

20. Two temporary events notices (TENs) have been issued to the premises.

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
Vanessa Moore	31/04/2020 to 01/02/2020 until 02:00	<ul style="list-style-type: none"> <li>○ Alcohol (on sales)</li> <li>○ Late Night Refreshment</li> </ul>	No
Vanessa Moore	28/02/2020 to 29/02/2020 from 22:30 to 04:00	<ul style="list-style-type: none"> <li>○ Alcohol (on sales)</li> <li>○ Late Night Refreshment</li> </ul>	No

21. On 25 July 2018 El Paso Café Limited applied for a new premises licence in respect of this premises. Representations were received from responsible authorities, but subsequently conciliated. The licence was granted on 05 September 2018.
22. On 16 October 2019 Luis Alberto Ossa Fernansez applied to transfer the premises licence to El Paso Cafe Limited.
23. On 3 January 2020, the DPS was varied to Vanessa Moore.
24. There are no complaints regarding this premises.
25. There have been two inspections conducted at the premise. The summary of the inspections is set out below::

Date	Time	Outcome
31/05/2019	18:15	<p>No full licence.</p> <p>The following breaches:</p> <ul style="list-style-type: none"> <li>○ <b>288</b> That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises;</li> <li>○ <b>289</b> All CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council. There will be at least one person on duty at all times that is familiar with the operation of the CCTV and able to download the footage upon request;</li> </ul> <p>The CCTV was not fully operational, not could anyone at the premises operate the CCTV. Officers were advised that recordings are only retained for 10days, which is not long enough. A larger hard drive will be required and all members of staff trained on how to use the CCTV in the event of future inspections.</p> <ul style="list-style-type: none"> <li>○ <b>340</b> Intoxicating liquor shall not be sold or supplied on the premises other than to persons having table meals and is <b>for</b> consumption by such person as an ancillary to this food;</li> <li>○ <b>350</b> Alcohol will be served via table service only;</li> </ul> <p>Alcohol was being served to people not having a meal and who were not seated at tables. One customer was stood at the bar area consuming beer without food.</p> <ul style="list-style-type: none"> <li>○ <b>343</b> The <b>written</b> dispersal policy shall be kept at the premises with the licence and made available for inspection by authorised council officers or the police;</li> </ul>

		<p>No written dispersal policy was available for inspection.</p> <ul style="list-style-type: none"> <li>○ <b>344</b> The premises will use a 'Challenge 25' system, with <b>appropriate</b> signage;</li> </ul> <p>There was no signage.</p> <ul style="list-style-type: none"> <li>○ <b>345</b> The premises will have a sign on exit asking customers to respect neighbours upon departure;</li> </ul> <p>There was no signage.</p> <ul style="list-style-type: none"> <li>○ <b>346</b> The <b>premises</b> will maintain a refusals book;</li> </ul> <p>There was no refusals book.</p> <p>Warning letter sent.</p> <p>Revisit at 18:45 on 26/07/2019, premises was closed.</p>
18/01/2020	21:50	<p>Premises now under new management. Same conditions as above breached (namely, condition numbers: 288, 289, 340, 350, 343, 344, 345 and 346), including CCTV recording for only 10days; and x3 sales of alcohol at the bar (without table service) witnessed during inspection. Application to vary licence has since been made.</p>

## Map

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

### **Sainsbury's, 40 New Kent Road, London SE1 6TL:**

- The sale by retail of alcohol (off sales only):
  - Monday to Sunday from 00:00 to 00:00

### **May Stores Ltd. (Select and Save), Unit A, 28 Arch Street, London SE1 6AS**

- The sale by retail of alcohol (off sales only):
  - Monday to Sunday from 07:00 to 02:00

### **Naranjo, 113c Elephant Road, London SE17 1LB:**

- The sale by retail of alcohol (on sales only):
  - Monday to Sunday from 07:00 to 22:30

### **Davish News, 30 New Kent Road, London SE1 6TJ:**

- The sale by retail of alcohol (off sales only):
  - Monday to Sunday from 07:00 to 23:00

**Agata London Ltd. (Elephant Food and Wine), Unit 5, Metro Central Heights, 119 Newington Causeway, London SE1 6DQ:**

- The sale by retail of alcohol (off sales only):
  - Monday to Sunday from 00:00 to 00:00

**Elephant and Castle Public House, 121 Newington Causeway, London SE1 6BN:**

- The sale by retail of alcohol (on sales only):
  - Sunday to Wednesday from 11:00 to 00:00
  - Thursday from 11:00 to 01:00
  - Friday and Saturday from 11:00 to 02:00
- The provision of late night refreshment (both indoors and outdoors):
  - Sunday to Wednesday from 23:00 to 00:30
  - Thursday from 23:00 to 01:30
  - Friday and Saturday from 23:00 to 02:30
- The provision of regulated entertainment in the form of recorded music:
  - Sunday to Wednesday from 11:00 to 00:00
  - Thursday from 11:00 to 01:00
  - Friday and Saturday from 11:00 to 02:00.

**Southwark council statement of licensing policy**

27. 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.
28. 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)**

29. According to the statement of licensing policy the premises are not located in any of the council’s cumulative impact zones. The premises sits in the Elephant and Castle major town centre area. Closing times as stated below are suggested in the statement of licensing policy for the following types of licensed premises located in the Elephant and Castle major town centre area:
- 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).

### **Resource implications**

30. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value Band B has been paid by the applicant company in respect of this application.

### **Consultation**

31. 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**

32. 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**

33. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
34. The principles which sub-committee members must apply are set out below.

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

35. 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.
36. 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.
37. 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.
38. 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**

39. 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.
40. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
41. 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.
42. 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.

43. 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.
44. 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**

45. 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**

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 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**

47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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**

54. 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

55. 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

Background Papers	Held At	Contact
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

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copies of representations from responsible authorities:
Appendix D	Map of the local area

### AUDIT TRAIL

<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>	13 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>	30 April 2020	