

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 20 August 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Funkidory, 42 Peckham Rye, London SE15 4JR	
<b>Ward(s) or groups affected:</b>		Rye Lane	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Sergio Leanza & Anna Fairhead-Benitez to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Funkidory, 42 Peckham Rye, London SE15 4JR.
2. Notes:
  - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Funkidory, 42 Peckham Rye, London SE15 4JR under section 34 of the Act. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the licensing sub-committee for determination. A copy of the premises licence is attached as 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.
  - Paragraphs 14 to 17 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached in Appendices C to E.
  - A map showing the location of the premises is attached as Appendix E.

## 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, 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 variation 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 in respect of the premises known as Funkidory, 42 Peckham Rye, London SE15 4JR allows the following licensable activities:
- The sale of alcohol to be consumed on the premises:
    - Tuesday and Thursday: 17:00 to 23:00
    - Friday: 16:00 to 00:00 (midnight)
    - Saturday: 14:00 to 00:00
    - Sunday: 14:00 to 22:00
  - Late night refreshment and recorded music:
    - Friday and Saturday: 23:00 to 00:00
  - Opening hours:
    - Tuesday and Thursday: 17:00 to 23:30
    - Friday: 16:00 to 00:30
    - Saturday: 14:00 to 00:30
    - Sunday: 14:00 to 22:30
  - Sergio Leanza is the designated premises supervisor (DPS) in respect of the premises.
9. A copy of the existing premises licence is attached as Appendix A.

## **The variation application**

10. On 17 June 2020 Anna Fairhead-Benitez & Sergio Leanza 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 Funkidory, 42 Peckham Rye, London, SE15 4JR.
11. The application is summarised as follows:
  - To amend the hours permitted for the sale of alcohol to:
    - Monday to Sunday: 09:00 to 00:00
  - To allow for the sale of alcohol to be consumed off the premises
  - To amend the hours permitted for recorded music to:
    - Monday to Sunday: 23:00 to 00:00
  - To amend the opening hours of the premises to:
    - Monday to Sunday; 09:00 to 01:00
  - **Note:** Following discussions with the licensing responsible authority the applicant agreed to amend the application so that recorded music is to cease at 23:00 on Sunday to Thursday and at 00:00 on Friday and Saturday, that the sale of alcohol is to cease at 23:00 on Sunday to Thursday and at 00:00 on Friday and Saturday and that the premises are to close at 23:30 on Sunday to Thursday and at 00:30 on Friday and Saturday.
12. The application form provides the applicant's operating schedule. Parts F, J, K, L and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. If an amended premises licence is issued in respect of the application then the information provided in part M of the operating schedule will form the basis of conditions that will be included in the licence.
13. A copy of the application is attached as Appendix B.

## **Representations from responsible authorities**

14. The council's licensing responsible authority submitted a representation objecting to the application. The licensing responsible authority suggested that the operating times stated in the application be reduced. The licensing responsible authority also recommended that conditions specifying the following be included in the application: (1) that an 'accommodation limit' (being the maximum amount of customers permitted at the premises at any one time) be set, (2) that a dispersal policy be written regarding the operation of the premises, (3) that off sales are sold in sealed containers and (4) that signage relating to off sales be displayed at the premises. The applicant agreed to the licensing responsible authority's suggestions and the licensing responsible authority withdrew their representation.
15. Copies of the representation submitted by the licensing responsible authority and related correspondence are attached to this report as Appendix C.

### **Representations submitted by other persons**

16. Three representations have been submitted by other persons. Two of the representations object to the application and have been submitted by a local business owner (hereafter referred to as 'party 1') and a local resident (hereafter referred to as 'party 2'). The third representation has been submitted by a local resident (hereafter referred to as 'party 3') and supports the application.
17. Copies of the representations submitted by other persons, and related correspondence, are attached to this report in Appendices D and E.

### **Conciliation**

18. The applicant was sent a copy of the representation submitted by the licensing responsible authority and was advised to contact the licensing responsible authority directly should the applicant wish to attempt to conciliate the licensing responsible authority. Following discussions between the licensing responsible authority and the applicant, the licensing responsible authority withdrew their representation.
19. The applicant was sent copies of the representations submitted by the other persons objecting to the application and was advised that the applicant could respond to those other persons' representations via the Licensing Unit should the applicant wish to attempt to conciliate those other persons. The applicant has provided responses to the other persons who objected to the application.
20. At the time of the writing of this report the representations submitted by the other persons objecting to the application remain outstanding and therefore must be considered by the licensing sub-committee.
21. The licensing sub-committee will be apprised as to any conciliation, whether partial or full, of any other person who has submitted a representation objecting to the application.

### **Operating history**

22. The current premises licence in respect of the premises was issued on 3 April 2018.

### **Deregulation of entertainment**

23. On 6 April 2015 entertainment became deregulated and as a result:
  - Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
  - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
  - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
  - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.

24. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
25. The showing of films has not been de-regulated.

### **Map**

26. Due to an IT problem it was not possible to produce a map for this report, however the following premises are in the close vicinity of the premises and are licensed as stated:

#### **The White Horse, 20 Peckham Rye, London SE15 4JR licensed for:**

- The provision of regulated entertainment and the sale of alcohol to be consumed on and off the premises:
  - Monday to Thursday: 08:00 to 00:00 (midnight)
  - Friday and Saturday: 08:00 to 01:00
  - Sunday: 12:00 to 23:30
- The provision of late night refreshment:
  - Monday to Thursday: 23:00 to 00:00
  - Friday and Saturday: 23:00 to 01:00
  - Sunday: 23:00 to 23:30

#### **Alpha Off Licence, 24 Peckham Rye, London SE15 4JR licensed for:**

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday: 06:00 to 23:00

#### **Rye News, 34 Peckham Rye, London SE15 4JR licensed for:**

- The sale of alcohol to be consumed off the premises:
  - Monday to Saturday: 08:00 to 23:00
  - Sunday: 10:00 to 22:30

#### **Guerrilla, 38 Peckham Rye, London SE15 4JR licensed for:**

- Recorded music and the sale of alcohol to be consumed on and off the premises:
  - Sunday to Thursday: 11:00 to 23:30
  - Friday and Saturday: 11:00 to 01:30
- Late night refreshment:
  - Sunday to Thursday: 23:00 to 23:30
  - Friday and Saturday: 23:00 to 01:30

**Banh Banh, 46 Peckham Rye, London SE15 4JR** licensed for:

- The sale of alcohol to be consumed on the premises:
  - Tuesday to Saturday: 11:00 to 23:00
  - Sunday: 11:00 to 22:30

**Batch, 56 Peckham Rye, SE15 4JR** licensed for:

- The sale of alcohol to be consumed on and off the premises, live music and recorded music:
  - Monday to Thursday: 17:00 to 23:00
  - Friday: 17:00 to 01:00
  - Saturday: 12:00 to 01:00
  - Sunday: 12:00 to 23:00

**Pedler Peckham Rye, 58 Peckham Rye, London SE15 4JR** licensed for:

- Recorded music and the sale of alcohol to be consumed on and off the premises:
  - Monday to Sunday: 09:00 to 01:00
- Late night refreshment:
  - Monday to Sunday: 23:00 to 01:00.

**Southwark council saturation policy for Peckham**

27. Council assembly approved the introduction of a special policy for Peckham on the cumulative impact of a concentration of licensed premises (saturation policy) on 12 October 2011. This was renewed in March 2019 when full council assembly approved the 2019 - 2021 statement of licensing policy.
28. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
29. The effect of this special policy is that is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
30. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

**Southwark council statement of licensing policy**

31. 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.
32. 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.
33. According to this council's statement of licensing policy the premises are located in a Peckham 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 residential areas:
- Restaurants:
    - Sunday to Thursday: 00:00
    - Friday and Saturday: 01:00
  - Public houses, wine bars, or other drinking establishments and bars in other types of premises:
    - Sunday to Thursday: 23:00
    - Friday and Saturday: 00:00.

## **Resource implications**

34. 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**

35. 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**

36. 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**

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

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

39. 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.
40. 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.
41. 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.
42. 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**

43. 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.
44. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
45. 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.
46. 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.
47. 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.
48. 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**

49. 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**

50. 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**

51. 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.
52. 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.
53. 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.
54. 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.

55. 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.
56. 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.
57. 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**

58. 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**

59. 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

Name	Title
Appendix A	Copy of the premises licence
Appendix B	Copy of the application
Appendix C	Copies of the representation submitted by the licensing responsible authority, and related correspondence
Appendix D	Copies of the representations objecting to the application submitted by other persons, and related correspondence
Appendix E	Copy of the representation in support of the application submitted by an other person

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure		
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer		
<b>Version</b>	Final		
<b>Dated</b>	6 August 2020		
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<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	
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