

Item No.	Classification:	Date:	MEETING NAME
28	Open	03/03/03	Licensing Committee
Report title:		Entertainment Licensing – El Unico Viva Espanla, 29 – 33 Camberwell Church Street, SE5	
Ward(s) or groups affected:		Brunswick Park Ward	
From:		Director of Environment & Leisure	

RECOMMENDATIONS

1. That the Committee considers an application by Mr Jose Raido Rodriguez for the transfer of the Weekday and Sunday public music and dancing licence in respect of the basement area of the premises known as El Unico Viva Espania at 29 – 33 Camberwell Church Street, SE5.
2. The application for transfer of the premises licence is referred to the Committee for determination as to whether the applicant is fit and proper.
3. The basement area of the premises is currently licensed for the provision of public entertainment through to 2.a.m. on Friday and Saturday nights and 11.p.m. on Sundays.

BACKGROUND INFORMATION

4. The Council's Licensing Sub-Committee first licensed the premises at 29 – 33 Camberwell Church Street, SE5, for the provision of public entertainments back in November 1990. The premises were originally licensed for Weekday and Sunday public music and dancing with extended hours operation on Monday to Wednesday nights to 1.a.m.; on Thursday to Saturday nights to 2.a.m.; and on Sunday nights to 12 midnight. This first licence covered both the ground and basement floors of the premises. The licence was issued to Mr Jose Raido Rodriguez who is the applicant under consideration. The licence was initially constrained by a "works condition" requiring the completion of specified public safety works. This condition was satisfied in April 1992 at which point the licence became operable.
5. Mr Rodriguez subsequently went on to hold the premises public entertainments licences for another four years. The Council's Licensing Sub-Committee revoked Mr Rodriguez licence in February 1996 following his conviction for breach of the terms, conditions and restrictions of the premises licence in May 1995.
6. The premises remained unlicensed for over a year. In April 1997 Ms Irene Louca (who is the wife of Mr Rodriguez) sought to re-instate the licence in respect of the basement of the premises in her name. Ms Louca provided written confirmation at the time of making the application of a tenancy agreement made out in her own name and that she alone would be responsible for the operation of the premises under the licence
7. The matter was considered by the Council's Licensing Sub-Committee and the licence was re-instated in November 1997. Again the licence was granted with a "works condition" attached. This condition was satisfied in November 2001. The premises have been able to lawfully provide licensable entertainment since.
8. On 30 September 2002 Mr Rodriguez (who retains a freehold interest in the property) applied for the transfer of the premises licence back into his name.

9. On 14 January 2003 the application was referred to the Licensing Committee for determination. However a constitutional matter led to the Committee not being in quorum.
10. Given the decision of the Council's Licensing Sub-Committee of February 1996 the application is referred to the Licensing Committee for consideration as to whether Mr Rodriguez is fit and proper to hold a licence.

KEY ISSUES FOR CONSIDERATION

Mr Rodriguez Conviction

11. On 5 December 1995 Mr Rodriguez appeared at Camberwell Green Magistrates Court charged with five separate counts of breach of the terms, conditions and restrictions of the premises public entertainments licence. Mr Rodriguez attended Court represented and pleaded guilty to all five charges. He was fined £150 for each offence (making a total of £750) and was ordered to make a contribution toward the Council's costs of £250.
12. The breaches were identified in the course of a "during performance inspection" of the premises conducted by officers from the Licensing Service at 01.15 on the morning of Saturday 13 May 1995. The breaches comprised: -
 - . (a) That the rear fire exit from the ground floor of the premises was bolted closed;
 - . (b) That the inward opening final exit door between the lobby and reception was not locked back in the open position, nor was a notice displayed indicating this requirement;
 - . (c) That the escape stairs from the basement bar were partially obstructed by a chair;
 - . (d) That the fire door on the ground floor in the lobby between the kitchen and stairs from the basement was propped open by a cylinder; and
 - . (e) That persons were being admitted to the basement area upon payment of an admission fee beyond 12 midnight.
13. Mr Rodriguez had previously been warned concerning failure to comply with the terms, conditions and restrictions of the premises licence. This warning was given as a consequence of an earlier "during performance inspection" of the premises conducted on the night of 5 August 1994. This inspection had found obstructed fire exits; fire doors propped open by fire extinguishers; and fire extinguishers in need of maintenance inspections.

The Operation of the Premises

14. The premises are situated on the corner of Camberwell Church Street and Kimpton Road in SE5. During Mr Rodriguez previous time as public entertainment licence holder the premises had operated as a hotel with ground floor Spanish restaurant and basement level Tapas bar with music and dancing entertainment provided on both ground floor and basement levels. Admission to the ground floor restaurant was by Camberwell Church Street with alternative means of escape leading onto Kimpton Road. Admission to the basement tapas bar was gained separately by Kimpton Road with two alternative means of escape back onto both Camberwell Church Street and Kimpton Road. The hotel reception area is via the corner of Camberwell Church Street / Kimpton Road.

15. Since re-instatement of the premises licences only the basement area is licensed for public entertainment. The ingress and egress to / from the premises remain as previously.
16. As explained earlier in this report, although the premises licence was re-instated in Mrs Louca's name in November 1997 the premises re-instated licence has only been operable since November 2001. There has been no evidence that the licence was used in breach of the constraint during this time.
17. Prior to completion of the required public safety works Mrs Louca sought to further extend the licensed hours of the premises operation to 1.a.m. Monday, Tuesday and Wednesday nights; to 2.a.m. on Thursday nights; and to midnight on Sunday nights. This application was opposed and considered by the Council's Licensing Committee on 20 November 2001. The application was refused. Grounds for refusal of the application included that the "applicant had been away for at least 10 weeks and her return is unknown. The applicant is not therefore involved in the day to day management of the premises."
18. Following completion of the required public safety works the premises was visited for the purposes of a "during performance inspection" of the premises on 25 January 2002. Officers found that while the premises were in operation licensable public entertainment was not being provided. Mrs Louca was not present. Officers met with the Manager of the premises and a Mr Louca (Mrs Louca's son) and discussed good management practice. A further meeting followed which took place on 6 February 2002. Mrs Louca was again absent and the meeting was held with Mr Rodriguez and Mr Louca. At this meeting applications for an increase in the numbers of persons permitted within the basement area and for the inclusion of Mr Louca upon the premises licence were discussed.
19. On 30 September 2002 Mr Rodriguez made simultaneous applications (a) for the transfer of the licence back into his own name; and (b) for an increase in the permitted accommodation under the licence granted in respect of the basement area from 50 to 150 persons.
20. The application for the increase in permitted numbers is opposed. Determination of this separate application is dependant upon decision on the transfer of the premises licences.
21. In the event that this application is not granted then the licence reverts back to Mrs Louca. Mrs' Louca's position at the premises is unclear at this moment in time. Further information will be provided orally at the meeting.

Noise Team Comments

22. There have been no complaints of noise emanating from these premises.

Licence Conditions

23. As detailed the basement area of the premises is currently licensed for weekday and Sunday public music and dancing to 11.p.m. Sunday to Thursday; and to 2.a.m. on Friday and Saturday nights.
24. The licence is subject to compliance with the Council's Rules of Management for Places Licensed for the Provision of Public Entertainment and to the following special licence conditions:-
 - (a) That suitable notices shall be displayed and announcements shall be made requesting patrons and staff to leave the premises in a quiet and orderly manner so as not to disturb local residents;

- . (b) That the fire door which provides access to the stairs which leads directly to the ground floor hotel reception area shall only be used in the case of emergencies;
- . (c) That a Southwark Council registered door supervisor shall be employed at all times during the operation of the licence to control entrance and exit to / from the licensed area; and
- . (d) That the total number of persons that may be accommodated at any one time in the basement area of the premises shall not exceed 50.

RESOURCE IMPLICATIONS

25. There are no resource implications contained within this report.

CONSULTATION

26. Consultation on this application has been undertaken as directed by statute with the Commissioner of Police for the Metropolis and the London Fire and Emergency Planning Authority. No opposition to the transfer of the premises licence has been raised. Full public consultation has been carried out in accordance with the Council's procedures on the variation of the premises licensed hours and this issue will be dealt with elsewhere.

EQUAL OPPORTUNITIES IMPLICATIONS

27. Each application is required by law to be considered upon its own merits with all relevant matters taken into account.

REPORT BY THE BOROUGH SECRETARY & SOLICITOR - LEGAL ISSUES

28. The report recommends that Members decide whether or not to grant the application for transfer of the public entertainment licence in respect of the basement area of the premises known El Unico Viva Espania from Mrs Irene Louca to Mr Jose Raido Rodriguez.
29. Members have wide powers under Section 52 and Schedule 12 of the London Government Act 1963 to grant music and dancing licences subject to such terms, conditions and restrictions as they may specify. Members may impose standard rules of management for places of public entertainment in their entirety. Members may not, however, impose conditions concerning the sale of alcohol as this is within the jurisdiction of the local licensing justices.
30. In hearing this matter Members are under a duty to consider the application on its merits and in accordance with the natural rules of justice. 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. Secondly, Members must give fair consideration to the contentions of all persons entitled to make representations to them.
31. In considering this application, Members are subject to a duty to ensure the health and safety of all citizens and residents in the Borough, which will include normal uses of the premises and residences in and around its area. The Committee is therefore entitled to consider the suitability of the applicant and the premises including their location and impact

upon the environment in the surrounding area and upon the amenity issues of granting the licence and its effect upon local residents.

32. Members are 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 responsible for the same incidents to be relevant. However, if such events are properly attributable to the premises being open, the evidence is inadmissible and should be excluded.

BACKGROUND PAPERS

33. Background papers, which include Schedule 12 of the London Government Act 1963 and the premises case file ELU/ELUNICO, are kept at the Environmental & Leisure Department, Licensing Unit, Chaplin Centre, Thurlow Street, SE17 2DG and may be viewed by arrangement with Diane Kraus who can be contacted on telephone number 020 7525 5688.

AUDIT TRAIL

Lead Officer	Tim England	
Report Author	Diane Kraus	
Version	Final/complete version of the report.	
Dated	24 February 03	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	No	No
Noise Team	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services		24/02/03