



## **Licensing Sub-Committee**

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 9 May 2024 at 10.00 am at Online/Virtual

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**PRESENT:** Councillor Renata Hamvas (Chair)  
Councillor Sunny Lambe  
Councillor Margy Newens

**OFFICER SUPPORT:** Debra Allday, legal officer  
Andrew heron, licensing officer  
Wesley McArthur, licensing responsible authority officer  
Ray Moore, trading standards officer  
Andrew Weir, constitutional officer

### **1. APOLOGIES**

The chair explained to the participants and observers how the meeting would run.

Everyone then introduced themselves.

There were no apologies for absence.

### **2. CONFIRMATION OF VOTING MEMBERS**

The voting members were confirmed verbally, one at a time.

### **3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT**

There were none.

### **4. DISCLOSURE OF INTERESTS AND DISPENSATIONS**

There were none.

**5. LICENSING ACT 2003: TROPICAL, 186-188 OLD KENT ROAD, LONDON SE1 5TY**

The licensing officer presented their report. Members had questions for the licensing officer.

It was noted that the police and trading standards had conciliated with the applicant.

The representative for the applicant addressed the sub-committee. Members had questions for the applicant's legal representative.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing responsible authority officer.

All parties were given up to five minutes for summing up.

The meeting adjourned at 11.36am for the sub-committee to consider its decision.

The meeting reconvened at 12.22pm and the chair advised everyone of the decision.

**RESOLVED:**

That the application made by Carlos Fernando Delgado Armijos for a premises licence to be varied under Section 34 of the Licensing Act 2003 in respect of the premises known as Tropical, 186-188 Old Kent Road, London SE1 5TY be refused.

**Reasons**

This was an application made by Carlos Fernando Delgado Armijos to vary a premises licence in respect of Tropical, 186-188 Old Kent Road, London SE1 5TY

The Licensing Officer confirmed that an inspection on 26 April 2024 found the premises was in breach of its conditions and a warning letter had been sent. The breaches in the licence conditions were similar to those found in 2017 including CCTV, training, fire extinguishers and training.

The licensing sub-committee heard from the representative for the applicant who confirmed the variation application was to extend the hours of the premises.

Recent applications for La Cantaleta Paisa (175 Old Kent Road) and Mambo (190 Old Kent Road) had resulted in both the premises closing hours being extended. The La Cantaleta Paisa closing times were Monday to Thursday: 23:30, Friday and Saturday: 05:30, and Sunday: 00:30. The Mambo closing times were Monday to

Wednesday: 01:30 Thursday: 02:00, Friday and Saturday: 04:30 and Sunday: 01:30. Both of the premises had a negative impact on Tropical custom and they were unable to compete with the other premises, hence the application.

The premises attracted South American customers, who loved to get up and samba. The premises had been sound proofed and no complaints had been received from the licensed premises, the hotel above or other residents. A shared car park was at the rear of the premises. The Metropolitan Police Service and trading standards had both conciliated with additional fairly minor conditions. Unfortunately, licensing as a responsible authority (LRA) indicated that it was not prepared to consult whatsoever.

It was accepted that there had been breaches of licence conditions identified at the inspection on 26 April, but the breaches were not in the representative's submission. They were described as "operational breaches", not major breaches. Major breaches would be breaches of conditions meaning that they were not running the premises properly (e.g. allowing children to drink alcohol) The conditions that had been breached were more minor in nature: signage hadn't been re-erected after redecoration and some new staff needed retraining and there was not a full first aid box on site. All matters had now all been rectified and there would be continued compliance when the premises operated the additional hours.

During the informal discussion stage, the representative for the applicant was challenged about Tropical being referred to as a club. The representative confirmed that the premises was "primarily" a restaurant, "serving food at the moment". The primary business was food and alcohol was secondary.

The representative for the premises was reminded that under Southwark's statement of licensing policy (SoLP), night clubs (with sui generis planning classification) were not deemed suitable for the area. The representative added that the plan was to only serve alcohol alongside a substantial table meal and service would be to patrons who were seated and eating despite there being no restaurant condition in the application or existing licencee.

The licensing sub-committee heard from the LRA officer They advised that to date, the premises had been found operating non compliantly five times, Although the incidents of non-compliance could be considered historical, the most recent non-compliance was two weeks previously, on 26 of April 2024.

The officer for the LRA stated that it demonstrated a pattern of non-compliant behaviour which did not provide any confidence that the premises would operate compliantly. It was also important to note from the officer who inspected the premises on 26 April had no knowledge of the premises licence conditions, particularly the on-going application to significantly extend the operating hours. The premises may have stated that training had been provided to staff, but it had been under the DPS' operation for nine years and the training should have already been provided and maintained.

The LRA officer also stated that the police may have conciliated and agreed conditions with the applicant, but they this was prior to the inspection when the premises operating non-compliantly. It was the officer's view that the any additional or new conditions would be of little value, if they were unable to comply with those on the licence.

The LRA officer also referred to the style of operation being more akin to a late night bar/nightclub than a restaurant, which had also been alluded to by the applicant's representative during the course of the hearing.

The premises licence originally applied for was for a restaurant. It was inappropriate for a further late night bar/nightclub in the location, which was also noted in the licencing sub-committee's decision on 22 October 2022 (Agenda, page 77) where the sub-committee chose not to grant similar extended hours. In view of this, there was no reason for the licencing sub-committee to deviate from its prior decision.

It was noted that the Metropolitan Police Service conciliated with the applicant and agreed conditions.

The officer for trading standards confirmed they had conciliated with the applicant and agreed conditions.

This licensing sub-committee was troubled that a licensing inspection resulted in the premises being found to be in serious breach of its premises licence:

- a. Condition 172 - No first aid materials were available nor was a first aider on site.
- b. Condition 255 - Fire extinguishers at the premises had not been examined for over 12 months.
- c. Condition 289 - 31 days' worth of CCTV footage was not available.
- d. Conditions 4AB, 4AC, 4AG, 4AI - A challenge 25 policy was not in place, challenge 25 notices were NOT displayed, and no refusals register was available and when asked, staff were not able to explain what C25 was, nor is and had no knowledge of what challenge 25 was and staff had not been trained.

It was apparent that the non-compliance had been on-going for some time; staff did not understand the basics of challenge 25; CCTV could not be accessed and confirmed if functional and the fire extinguishers, had not been maintained for over a year. These are more than just the "minor" signage the representative for the premises referred to. The breaches are significant and serious.

Although the premises has operated a number of temporary event notices (TENs), the TENs mechanism is not intended to be used as a precursor to an application for a premises licence, or premises licence variation.

The sub-committee was also troubled with the applicant's representative describing the premises as a club, whose South American patrons "loved to get up and samba". There was also no restaurant condition on either the current premises licence or the variation application. This suggested to the sub-committee the intention was for the premises to operate as a nightclub.

The applicant already has generous hours until 00:30 and the Southwark's SoLP 2021-2026 which provides the recommended closing hours for the area as being restaurants 23:00 daily with nightclubs not being considered appropriate. These hours have been approved by full council on four separate occasions.

Paragraph 117 of the SoLP provides:

"117. In considering applications...this Authority will take the following matters into account:

- Whether the premises is located within a current Cumulative Impact Area;
- The type and mix of premises and their cumulative impact upon the local area;
- The location of the premises and their character;
- The views of the Responsible Authorities and other persons;
- The past compliance history of the current management;
- The proposed hours of operation;
- The type and numbers of customers likely to attend the premises;
- Whether the Applicant is able to demonstrate commitment to a high standard of management for example through the level of consideration given to the promotion of the licensing objectives; by active participation in PubWatch; and adopting the Council's Women's Safety Charter;
- The physical suitability of the premises for the proposed licensable activities i.e. in terms of safety, access, noise control etc."

(Emphasis has been added by the sub-committee).

Operating extended and very late hours comes with huge responsibility due to the increased risks. It is for this reason this licensing sub-committee has no confidence that that the grant of this application will promote the licensing objectives and therefore is unwilling to digress from the SoLP without exceptional reason.

If the applicant can demonstrate that it can run the premises compliantly business for a period of at least than six months, the sub-committee may be more inclined to grant the application, however, it is reminded that each application must be judged on I own merit, and this does not bind any future licensing sub-committee.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

## **Appeal rights**

The applicant may appeal against any decision to modify the conditions of the licence; and:

Any person who made relevant representations in relation to the application who desire to contend that:

- a) The variation ought not to be granted; or
- b) That, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 12.25pm.

**CHAIR:**

**DATED:**