

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 5 August 2021	<b>Meeting Name</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP - Review	
<b>Ward(s) or groups affected:</b>		North Walworth	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION:

1. That the licensing sub-committee considers an application made under Section 53A of the Licensing Act 2003 by the Chief of Police for the Metropolitan Police area, of the premises licences issued in respect of the premises known as the Pasaje Primavera – Arch 146, Eagle Yard, Hampton Street, London, SE1 6SP.
2. Notes
  - a) A copy of the current premises licences issued in respect of the premises are attached to this report as Appendix A.
  - b) The grounds for the review are stated in paragraphs 16 to 27 of this report. A copy of the full application and certificate are provided as Appendix B with an additional extract of the crime report.
  - c) A copy of the notice of decision from the previous hearing held on 15 July 2021 is in Appendix D.
  - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

## 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 ground floor premises known as Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP.
9. The premises licence was first issued on 01 August 2011. On 14 September 2018 Pasaje Primavera Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence. This was heard at a licensing sub-committee Hearing on 12 November 2018, at which point the variation was granted.
10. On 20 December 2018 the Metropolitan Police Service applied to the licensing authority for a summary review of the premises licence. The application refers to a serious incident witnessed by police officers at 20:00 on Friday 15 December 2018 and draws from further CCTV evidence acquired later. The matter involved a large fight with armed participants. One of the armed males was the son of the premises' owner whom was in charge of the premises that night, Mr Ian Gualavisi.
11. As a result, the licensing sub-committee put a number of measures in place, namely:
- i. That Mr Ian Gualavisi (Person A) and Mr Ronalo Palacios (Person B) be excluded from the premises.
  - ii. That all staff shall receive conflict management training within 28 days.
  - iii. That all staff are retrained in the use of CCTV and their obligations in respect of conditions 288 and 289 of the premises licence within 28 days.
12. A copy of the notice of decision from the full hearing is attached in Appendix C.

13. The current licence allows the following licensable activities as follows:
- Opening hours:
    - Sunday to Thursday from 06:00 to 01:00
    - Friday and Saturday from 06:00 to 03:00
  - The sale by retail of alcohol (on sales only):
    - Sunday to Thursday from 11:00 to 00:00
    - Thursday and Friday from 11:00 to 02:30
  - The provision of late night refreshment (indoors):
    - Sunday to Thursday from 23:00 to 00:00
    - Friday and Saturday from 23:00 to 02:30
  - Regulated entertainment in the form of live music and recorded music (indoors) and facilities for making music (indoors):
    - Monday to Sunday from 06:00 to 00:00
14. A copy of the current premises licence is attached as Appendix A.

#### **Designated premises supervisor**

15. The designated premises supervisor (DPS) of the premises is Segundo Vicente Gualavisi Carlosama who has been DPS since the licence was first issued in 2011 and holds a personal licence issued by the London Borough of Lambeth.

#### **The review application and certificate**

16. On 13 July 2021 the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises known as the Pasaje Primavera, Arch 146, Eagle Yard, Hampton Street, London SE1 6SP.
17. On 13 July 2021 a Superintendent for the Metropolitan Police Service certified that in the Superintendent's opinion the premises are associated with serious crime, serious disorder or both.
18. On Saturday 10 July 2021 at approximately 02:40 a number of calls were made to the police stating that a fight was taking place at or near Rincon Costeno, Arch 146 Eagle Yard. This premises currently holds a premises licence 869693 under the business name of Pasaje Primavera. Shortly after this police received a call from the London Ambulance Service (LAS) stating they were dealing with a male victim with significant head injuries and a possible machete wound to his back.
19. Police arrived on scene to speak with the victim, who was uncooperative towards Police. He apparently could not remember where or how he received his injuries and wanted the matter forgotten. Police discovered that the incident took place at 146 Eagle Yard, they attended the venue and found it to be locked and secure with no staff or patrons inside. A key holder attended the premises and allowed police

access. Inside the venue Police found a significant amount of blood, tables and chairs turned over and smashed glass all over the floor. It should be noted that no calls were made to the emergency services from the premises or staff at the premises.

20. The police managed to gain access to the CCTV which was viewed at the scene. The CCTV shows between 6 and 8 persons inside the venue sat at a table drinking what appears to be bottles of beer. One view shows the victim bending down behind the bar area, the suspect comes up from behind the victim and smashes a glass bottle across the back of the victims head. A fight then starts between the two males. The other people inside then attempt to break up the fight. It is not entirely clear what happened after this but the victim was attended to by the LAS outside the Elephant & Castle tube station. From the details contained in the crime report and CAD messages the victim was treated for a significant head injury and what is described by the LAS as a machete wound to his back. He was conveyed to hospital for further treatment.
21. The police in their application also refer to the incident on Saturday 18 December 2018 detailed in paragraph 10 of this report. The investigation of this incident established the suspect as the son of the premises licence holder. Following a review of the premises licence the licensing sub-committee came to a decision that the suspect would be permanently barred from the premises. See condition 846 of the premises licence.
22. It was also agreed that SIA door supervisors would be employed on Friday and Saturday nights when the premises operates after midnight. It is not clear at this stage if any SIA were employed on 10 July 2021. By allowing this same individual into the licensed premises they have breached the conditions of the premises licence, as a result a serious crime was committed inside the premises. No calls to the emergency services calls were received from the premises or staff. On attending the venue it was found to be locked and secured with a crime scene unattended inside.
23. The Metropolitan Police Service are of the opinion that this was a deliberate act from those at the premises to cover up the fact a serious crime had occurred on their licensed premises and ask the licensing sub-committee to consider immediate interim steps to promote the prevention of crime and disorder licensing objective and to suspend the premises licence, pending a full review hearing.
24. A copy of the review application is attached to this report as Appendix A along with an extract of the crime report.
25. The premises licence was subsequently reviewed at an interim steps hearing on 15 July 2021. A copy of the notice of decision is available in Appendix D.
26. As a result, the premises licence was suspended by the licensing sub-committee.
27. At the time this report was published, the Metropolitan Police Service has not provided additional supporting documentation.

## **Representations from responsible authorities**

28. At the time that this report was published, a supporting representation has been made only by environmental health in their role as a responsible authority under the licensing objective of public safety for failing to contact emergency services following the violent incident and for moving the victim.

## **Representations from other persons**

29. Representations have not been made by other persons.

## **Operating history**

30. Paragraphs 8-14 give the recent history of the premises.
31. On 25 May 2019, the Police visited the premises and found the premises operating beyond hours. A warning letter was issued and is available in Appendix F.
32. In addition, on 28 August 2019, a transfer application was received and granted to the current licence holder, Rincon Costeno Limited.
33. There is no history of TENS and no complaints have been received specifically about this premises, however, there are generic complaints from local residents of anti-social behaviour in the immediate vicinity caused by patrons of the various premises in Eagle Yard.

## **The local area**

34. A map of the local area is attached at Appendix G. There are a number of other licensed premises in the locality, namely:

### **Ivory Arch, 80-82 Walworth Road, London SE1 6SW:**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Sunday from 11:00 to 00:00 (midnight)
- The provision of late night refreshment (both indoors and outdoors):
  - Monday to Sunday from 23:00 to 00:00 (midnight).
- The provision of regulated entertainment in the form of live music, recorded music, films and plays:
  - Monday to Sunday from 11:00 to 00:00 (midnight).

### **Mamuska, 16 Elephant and Castle, London SE1 6TH**

- The sale by retail of alcohol (both on and off sales):
  - Monday to Saturday from 10:00 to 02:00 (the following day)
  - Sunday from 12:00 (midday) to 23:00.

- The provision of late night refreshment (both indoors and outdoors):
  - Monday to Saturday from 23:00 to 02:30 (the following day)
  - Sunday from 23:00 to 23:30.
- The provision of regulated entertainment in the form of live music, recorded music, and performances of dance:
  - Monday to Saturday from 09:00 to 02:00 (the following day)
  - Sunday from 09:00 to 23:00.

**Chatkhara Restaurant, 84 Walworth Road, London SE1 6SQ**

- The provision of late night refreshment (indoors):
  - Monday to Sunday from 23:00 to 02:00 (the following day).

**Corporation Ponce, Arch 144, Eagle Yard, Hampton Street, London SE1 6SP**

- The sale by retail of alcohol (on sales):
  - Sunday to Monday from 14:00 to 22:30
  - Friday and Saturday from 14:00 to 23:30.
- The provision of late night refreshment (indoors):
  - Friday and Saturday from 23:00 to 23:30.
- The provision of regulated entertainment in the form of live music and recorded music:
  - Friday to Saturday from 14:00 to 23:30
  - Sunday from 14:00 to 22:30.

**La Barra (Downstairs), Arch 147, Eagle Yard, Hampton Street, London SE1 6SP**

- The sale by retail of alcohol (on sales):
  - Sunday to Thursday from 10:00 to 23:30
  - Saturday and Sunday from 10:00 to 00:00.
- The provision of late night refreshment (indoors):
  - Sunday to Thursday from 23:00 to 23:30
  - Saturday and Sunday from 23:00 to 00:00.

**Rincon Tropical (Upstairs), Arch 147, Eagle Yard, Hampton Street, London SE1 6SP**

- The sale by retail of alcohol (on sales):
  - Sunday to Thursday from 10:00 to 23:30
  - Saturday and Sunday from 10:00 to 00:00.
- The provision of late night refreshment (indoors):
  - Sunday to Thursday from 23:00 to 23:30
  - Saturday and Sunday from 23:00 to 00:00.

**Chill Out Billards Pool Limited, Arch 148, Eagle Yard, Hampton Street, London SE1 6SP:**

- The sale by retail of alcohol (on sales):
  - Sunday to Thursday from 10:00 to 23:30
  - Saturday and Sunday from 10:00 to 00:30
- The sale by retail of alcohol (off sales):
  - Sunday to Thursday from 10:00 to 00:00
  - Saturday and Sunday from 10:00 to 01:00
- The provision of late night refreshment (indoors):
  - Sunday to Thursday from 23:00 to 23:30
  - Saturday and Sunday from 23:00 to 00:30

**Southwark Council statement of licensing policy**

35. Council assembly approved Southwark's statement of licensing policy 2021 - 2026 on 25 November 2020. The policy came into effect on 1 January 2021.
36. 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.
37. 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 area (CIA)**

38. Within Southwark's statement of licensing policy, the premises are identified as being outside of a cumulative impact zone but situated in the Elephant and Castle major town centre area.
39. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for these categories of premises:
- Closing time for restaurants and cafes:
    - Sunday to Monday to 00:00 (midnight)
    - Friday and Saturday to 01:00 (the following day)
  - Closing time for public houses, wine bars or other drinking establishments:
    - Sunday to Monday to 23:00
    - Friday and Saturday to 00:00 (midnight)
  - Closing time for night clubs (with sui generis planning classification):
    - Monday to Thursday to 01:00 (the following day).

### **Resource implications**

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

## **Consultation**

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

## **Community impact statement**

42. 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 Governance**

43. 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.
44. The principles, which sub-committee members must apply, are set out below.

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

45. 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.
46. 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.
47. 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.
48. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
49. The authority may decide to take no action is if it finds no interim steps are appropriate to promote the licensing objectives.

50. 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.
51. 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**

52. Where the authority takes interim steps on 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**

53. 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.

- 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**

54. 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.
55. 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.
56. 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.
57. 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.
58. 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.
59. The sub-committee can consider matters within the application that have been raised through representations from other persons and responsible authorities.
60. 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.

61. 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**

62. 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**

63. 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, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel: 020 7525 5748

### **APPENDICES**

<b>Name</b>	<b>Title</b>
Appendix A	Copy of current premises licence
Appendix B	Copy of the review application
Appendix C	Copy of the Notice of Decision from 16 January 2019
Appendix D	Copy of the Notice of Decision from 15 July 2021
Appendix E	Representation from Environmental Health
Appendix F	Warning letter from Police May 2019
Appendix G	Map showing the location of the premises

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
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<b>Dated</b>	26 July 2021	
<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 Governance	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>	26 July 2021	