

Item No. 5.	Classification: Open	Date: 10 August 2023	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Carnaval del Pueblo, The Great Lawn, Chumleigh Gardens, Burgess Park, Camberwell, London SE5 0AT	
Ward(s) of group(s) affected		Faraday Ward	
From		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Carnaval del Pueblo Asociación for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Carnaval del Pueblo, The Great Lawn, Chumleigh Gardens, Burgess Park, Camberwell, London SE5 0AT.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from four Responsible Authorities and from one residential objector and is, therefore, referred to the Sub-Committee for determination.
 - b) Paragraphs 8 to 13 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 A.
 - c) Paragraphs 14 to 24 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted (and some withdrawal statements) are attached in Appendixes B to F. A map showing the location of the premises is attached to this report as Appendix I.
 - 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 procedure, 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 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 persons 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 premises licence application

8. On 16 June 2023, Carnaval del Pueblo Asociación applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Carnaval del Pueblo, The Great Lawn, Chumleigh Gardens, Burgess Park, Camberwell, London SE5 0AT. The premises and purpose is described in the original application as follows:

“This event is for a festival on Sunday, 20th August 2023 and we host this event annually. This year, we are expecting 5,000 people at any one time. However, our intention is to upscale the event in the future so we are choosing to apply for 10,000 people now, to ensure we can use the licence for a longer period (hence no end date). The premises are a section of The Burgess Park called the Great Lawn, close to Chumleigh Gardens, off Albany Road and so an outdoor setting. There will be a gazebo bar with chairs and tables and a cold vehicle chilling drinks over night. There will be food stalls/vans closing at 9.30pm. There will be a main stage with Latin American live orchestra music from folk to salsa and we will monitor the sound level throughout the day. There will be a marquis too within which pre recorded Latin music will be played and some drumming for dance workshops and free style dance.”

9. As stated above, if the application were granted, the applicant was looking to hold an event under this new licence (for between 10,000 to 14,999 people) once a year annually, beginning with Sunday 20 August 2023.

10. The hours applied for in the original application were as follows:

- Live music (indoors and outdoors):
 - Sunday: 11:00 to 23:00.
- Recorded music (indoors and outdoors):
 - Sunday: 11:00 to 23:00.
- Performance of dance (indoors and outdoors):
 - Sunday: 11:00 to 23:00.
- Anything similar to live music, recorded music and performance of dance:
 - Sunday: 11:00 to 23:00.
- The sale by retail of alcohol (on the premises):
 - Sunday: 11:00 to 21:30.
- Opening hours:
 - Sunday: 11:00 to 23:00.

11. A copy of the original application can be found at Appendix A.

12. However, following the conclusion of the consultation period and primarily following correspondence with licensing (as a responsible authority), and discussions with the principal licensing officer, the applicant has revised their proposed hours of activities and operation as follows (these are the proposed hours that the sub-committee are being asked to consider).

- Live music (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
- Recorded music (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
- Performance of dance (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
- Anything similar to live music, recorded music and performance of dance (indoors and outdoors):
 - Sunday: 11:00 to 22:00.

- The sale by retail of alcohol (on the premises):
 - Sunday: 11:00 to 21:30.
- Opening hours:
 - Sunday: 11:00 to 22:00.

Designated premises supervisor

13. The proposed designated premises supervisor is David Enrique Gutierrez, who holds a personal licence issued by the London Borough of Hounslow.

Representations from responsible authorities

14. Representations have been submitted by trading standards, licensing, the Metropolitan Police Service and the environmental protection team (EPT) as responsible authorities.
15. The trading standards representation related solely for the need, in their view, of the addition of a Challenge 25 Policy so that older looking under eighteen year olds were not served alcohol. Some additional conditions to mitigate this issue were suggested and the applicant has accepted these, so trading standards have withdrawn their representation.
16. The original representation, suggested conditions and withdrawal statement can be found at Appendix B.
17. Licensing's representation related to concerns that the initial measures put forward by the applicant to safeguard the licensing objectives were not robust enough given the potential size of the event. As a result, further conditions were suggested (in the event the application were to be granted) and, due to the applicant accepting these conditions in full, licensing then withdrew its representation.
18. The original representation, suggested conditions and withdrawal statement can be found at Appendix C.
19. The police representation relates mainly to the issue of high volumes of people being in the park and the original proposed hours (which have since been revised) having the potential to cause increase and could potentially cause an increase in crime and disorder. The police also raised concern about a lack of an event management place and suitable dispersal policy which have now been secured following the applicant's negotiations with licensing.
20. The original representation (which has not yet been withdrawn by the police) can be found at Appendix D.
21. The representation from EPT contained concerns about the lack of an event management plan (now in place). It also referred to noise from the venue, and the timing of the event, potentially causing public nuisance to neighboring residents and recommended some conditions to mitigate this.
22. The original representation (which has not yet been withdrawn by EPT) and suggested conditions can be found at Appendix E.

Representations from other persons

23. One representation has been received from a member of the public who, in relation to the licensing objectives, commented on the issue of public nuisance that the event could potentially cause.
24. This representation can be found at Appendix F.

Conciliation

25. In terms of responsible authorities, the applicant has addressed the concerns raised by trading standards and licensing. However, at the time of publishing this report, discussions with the police and EPT were still ongoing. The representation from the other person is also outstanding. Consequently, further updates are likely to be forthcoming leading up to, and on, the date of the sub-committee hearing.

Application history

26. Burgess Park has hosted multiple large events historically and it has its own premises licence in place for regulated entertainment (and can be found at Appendix G). However, the applicant is not intending to use this licence for their event.
27. The applicant is currently operating under an existing licence (for a maximum of 2,000 people) which was granted on 20 July 2022 and allows for the following licensable activities:
 - Live music (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
 - Recorded music (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
 - Performance of dance (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
 - Entertainment similar to live/recorded music (indoors and outdoors):
 - Sunday: 11:00 to 22:00.
 - The sale by retail of alcohol (on the premises):
 - Sunday: 11:00 to 22:00.
 - Opening hours:
 - Sunday: 11:00 to 22:00.

28. On 1 August 2022, a change in the designated premises supervisor (DPS) from Nuala Riddell-Morales to Carlos Fernando Delgado Armijos took place.
29. A copy of the existing (and latest) premises licence is attached to this report as Appendix H.

Temporary event notices

30. There have been no temporary event notices associated with this premises since it was initially granted on 20 July 2022.

Complaints

31. There have been no complaints received by the Licensing Unit in relation to the current premises since it was initially granted on 20 July 2022.

Map

32. A map showing the location of the premises is attached to this report as Appendix I. There are no licensed premises within the immediate vicinity of this area, but there are multiple licensed premises in Old Kent Road.

Southwark Council statement of licensing policy

33. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
34. 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 licenses 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.
35. 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.
36. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links for these are below.

Southwark policy:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

Section 182 Guidance:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

Cumulative impact area (CIA)

37. The premises does not fall within a Cumulative Impact Area (CIA).
38. Under the Southwark’s statement of licensing policy 2021 – 2026, the following closing times are recommended as appropriate within the area surrounding Burgess Park:
- Restaurants and cafes:
 - Monday to Sunday: 23:00.
 - Public houses, wine bars or other drinking establishments:
 - Monday to Sunday: 23:00.
 - Off licenses:
 - Monday to Sunday: 23:00.
 - Cinemas:
 - Monday to Sunday: 23:00.

Climate change implications

39. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
40. Climate change is not a legal factor in the consideration of a grant of a premises license under the current licensing objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by the operation of the premises.
41. Examples of such an agreement may be:
 - Not to use single use plastics, such as disposable plastic glasses, when selling alcohol at the premises.
 - Encourage patrons not to drive to venues by providing details of public transport on their webpages/tickets.
42. The council's climate change strategy is available at:

<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

44. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions.
45. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people who have protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.
46. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing Policy 2021 – 2026 at:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

47. The equalities impact assessment is available at:

<https://modern.gov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf>

Health impact statement

48. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

Resource implications

49. A fee of £2,100 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value A.

Consultation

50. Consultation has been carried out on 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 was exhibited outside of the premises for a period of 28 consecutive days.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

51. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

52. The principles which sub-committee members must apply are set out below.

Principles for making the determination

53. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

54. The principles which sub-committee members must apply are set out below.

55. The general principle is that applications for premises licence applications 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.

56. 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 interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

57. 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:

- To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premises supervisor.
- To reject the application.

Conditions

58. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, 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.

59. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

60. 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.

61. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license 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.

62. 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

63. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

Hearing procedures

64. 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.
65. This matter relates to the determination of an application for a premises licence under Section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

66. 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.
67. 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.

68. 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.
69. 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.
70. 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.
71. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
72. 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.
73. 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

74. Members are required to have regard to the Home Office 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, Finance

75. 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 Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Premises licence application
Appendix B	Trading standards representation and withdrawal statement
Appendix C	Licensing representation and withdrawal statement
Appendix D	Police representation
Appendix E	Environmental protection team representation
Appendix F	Other person representation
Appendix G	Burgess Park premises licence
Appendix H	Current premises licence
Appendix I	Map of the locality

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
Report Author	Matt Tucker, Principal Licensing Officer	
Version	Final	
Dated	25 July 2023	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		27 July 2023