

Item No. 5.	Classification: Open	Date: 26 September 2023	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: El Mero, Basement, 18 Amelia Street, London SE17 3PY	
Ward(s) of group(s) affected		North Walworth	
From		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by El Mero Taco Ltd for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as El Mero, Basement, 18 Amelia Street, London SE17 3PY.
2. Notes:
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application was subject to representations from two Responsible Authorities (not withdrawn) and is, consequently, referred to the Sub-Committee for determination.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 application form can be found at Appendix A.
 - c) Paragraphs 14 to 19 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted are attached in Appendixes B and C. A map showing the location of the premises is attached to this report as 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 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 2 August 2023, El Mero Taco Ltd applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as El Mero, Basement, 18 Amelia Street, London SE17 3PY.

9. The nature of the application, as shown in the original application form is described as a "*[basement] restaurant and bar within the [Eurotraveller] Hotel*".

10. The hours applied for in the application are as follows:
 - Recorded music – indoors:
 - Thursday to Saturday: 22:00 to 03:30

 - Performance of dance – indoors:
 - Thursday to Saturday: 22:00 to 03:30

 - Late night refreshment – indoors:
 - Monday to Sunday: 23:00 to 03:30

 - The supply of alcohol – to be consumed on the premises:
 - Monday to Sunday: 10:00 to 03:30

- Opening hours:
 - Monday to Sunday: 10:00 to 04:00.
11. The applicant also volunteered a number of suggested proposed conditions to help promote the licensing objectives.
 12. The application form can be found at Appendix A.

Designated premises supervisor

13. The proposed designated premises supervisor is Julio Estalin Delgado, who holds a personal licence issued by the London Borough of Bromley.

Representations from responsible authorities

14. Representations were received from the Metropolitan Police Service and licensing, as a responsible authority.
15. The police representation stated the hours proposed by the applicant were far in excess of those set out in the council's statement of licensing policy. They also commented on the premises seeking to be more of a nightclub, rather than a bar/restaurant, given the late night music element from Thursday to Saturday. The Met Police also raised concerns that the control measures initially offered by the applicant not being adequate enough to uphold the licensing objectives.
16. The representation from the police can be found at Appendix B.
17. Licensing's representation raised concerns about the hours proposed by the applicant, citing them as being out of step with the council's statement of licensing policy. Additionally, Licensing suggested the terminal hours should be reduced overall, so that this did not cause adverse issues in the area. They also suggested entirely replacing the conditions proposed by the applicant with a significant number of others conditions which they felt better upheld the licensing objectives.
18. The licensing representation can be found at Appendix C.

Representations from other persons

19. There have been no representations from members of the public in relation to this application.

Conciliation

20. Whilst discussions are ongoing between the applicant and both the police and licensing, at the time of writing this report, both both responsible authorities have yet to withdraw their representations, thus triggering the need for a sub-committee Hearing.

Map

21. A map showing the location of the premises is attached to this report as Appendix D and the following licensed premises are within the immediate vicinity of the application site:

Eurotraveller Hotel, 18 Amelia Street, London SE17 3PY:

- Recorded music – indoors:
 - Sunday to Thursday: 12:00 to 01:30
 - Friday and Saturday: 12:00 to 03:00
- Facilities for dancing – indoors:
 - Sunday to Thursday: 12:00 to 01:00
 - Friday and Saturday: 12:00 to 03:00
- Entertainment Similar to live/recorded music and dance– Indoors:
 - Monday to Wednesday: 17:00 to 01:00
 - Thursday: 17:00 to 01:30
 - Friday and Saturday: 16:00 to 02:30
 - Sunday: 15:00 to 01:00
- Late night refreshment - indoors:
 - Sunday to Thursday: 23:00 to 01:00
 - Friday and Saturday: 23:00 to 02:30
- Sale by retail of alcohol (to be consumed on premises):
 - Monday to Thursday: 12:00 to 01:00
 - Friday and Saturday: 12:00 to 03:00
 - Sunday: 11:00 to 01:30
- Opening hours:
 - Sunday to Thursday: 12:00 to 02:00
 - Friday and Saturday: 12:00 to 04:00

Husky Music Co, 29A Amelia Street, London SE17 3PY:

- Live music – indoors:
 - Friday and Saturday: 21:00 to 23:00
- Late night refreshment - indoors:
 - Friday and Saturday: 23:00 to 00:30

- Sale by retail of alcohol (to be consumed on premises):
 - Sunday to Thursday: 12:00 to 23:00
 - Friday and Saturday: 07:00 to 00:30
- Opening hours:
 - Sunday to Thursday: 07:00 to 23:30
 - Friday and Saturday: 07:00 to 01:00

American Hot Pizza, 30 Manor Place, London SE17 3BB:

- Recorded music – indoors:
 - Monday to Sunday: 11:00 to 01:00
- Performance of dance – indoors:
 - Monday to Sunday: 11:00 to 01:00
- Entertainment Similar to live/recorded music – Indoors:
 - Monday to Sunday: 11:00 to 01:00
- Facilities for making music – indoors:
 - Monday to Sunday: 11:00 to 01:00
- Facilities for dancing – indoors:
 - Monday to Sunday: 11:00 to 01:00
- Provisions similar to making music and dancing – indoors:
 - Monday to Sunday: 11:00 to 01:00
- Late night refreshment - indoors:
 - Monday to Sunday: 23:00 to 01:00
- Sale by retail of alcohol (to be consumed on premises):
 - Monday to Sunday: 11:00 to 01:00.
- Opening hours:
 - Monday to Sunday: 00:00 to 00:00

McDonald's Restaurants, 198-200 Walworth Road, London SE17 1JJ:

- Late night refreshment - indoors:
 - Monday to Sunday: 23:00 to 05:00
- Opening hours:
 - Monday to Sunday: 00:00 to 00:00

Memz Off Licence, 187 Walworth Road, London SE17 1RW:

- Sale by retail of alcohol (to be consumed off premises):
 - Monday to Sunday: 08:00 to 23:00
- Opening hours:
 - Monday to Sunday: 07:00 to 23:00

The Tankard, 178 Walworth Road, London SE17 1JL:

- Live music – indoors:
 - Friday and Saturday: 19:00 to 00:00.
- Recorded music – indoors:
 - Friday and Saturday: 19:00 to 00:00
- Late night refreshment - indoors:
 - Monday to Sunday: 23:00 to 23:30
- Sale by retail of alcohol (to be consumed on and off premises):
 - Monday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 00:00
 - Sunday: 11:00 to 22:30
- Opening hours:
 - Monday to Thursday: 11:00 to 23:30
 - Friday and Saturday: 11:00 to 00:30
 - Sunday: 11:00 to 23:00

John Smith House, 144-152 Walworth Road, London SE17 1JL:

- Sale by retail of alcohol (to be consumed on premises):
 - Monday to Sunday: 00:00 to 00:00.

- Opening hours:
 - Monday to Sunday: 00:00 to 00:00

Mayor of Walworth, 140 Walworth Road, London SE1 6SW:

- Live music – indoors:
 - Monday to Sunday: 12:00 to 22:00
- Recorded music – indoors:
 - Sunday to Thursday: 10:00 to 00:00
 - Friday and Saturday: 10:00 to 02:00
- Late night refreshment - indoors:
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 02:00
- Sale by retail of alcohol (to be consumed on and off premises):
 - Sunday to Thursday: 10:00 to 00:00
 - Friday and Saturday: 10:00 to 02:00
- Opening hours:
 - Sunday to Thursday: 09:00 to 00:30
 - Friday and Saturday: 09:00 to 02:30.

Southwark Council statement of licensing policy

22. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
23. 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.
24. 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.
25. 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://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

Cumulative impact area (CIA)

26. The premises does not fall within a CIA, but does fall within the Elephant and Castle major town centre area.
27. Under the Southwark statement of licensing policy 2021 – 2026, the following closing times are recommended as appropriate within this area:
- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00

- Public houses, wine bars or other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00
- Nightclubs:
 - Monday to Thursday: 01:00
 - Friday and Saturday: 03:00
 - Sunday: 00:00
- Off licenses:
 - Monday to Sunday: 00:00
- Cinemas:
 - Monday to Sunday: 02:00
- Takeaways:
 - Sunday to Thursday: 00:00
 - Friday and Saturday: 01:00.

Climate change implications

28. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
29. 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.
30. 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.
31. 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

32. 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

33. 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.
34. 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.
35. 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>

36. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

38. A fee of £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

39. 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

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

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

Principles for making the determination

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

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

44. 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.

45. 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.

46. 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

47. 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.

48. The four licensing objectives are:

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

49. 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.

50. 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.

51. 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

52. 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

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 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.
54. 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

55. 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.
56. 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.
57. 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.
58. 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.

59. 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.
60. 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.
61. 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.
62. 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

63. 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

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

APPENDICES

Name	Title
Appendix A	Premises licence application.
Appendix B	Police representation.
Appendix C	Licensing representation.
Appendix D	Area map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director, Environment, Neighbourhoods and Growth		
Report Author	Matt Tucker, Principal Licensing Officer		
Version	Final		
Dated	8 September 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		11 September 2023	