

Item No. 5.	Classification: Open	Date: 4 April 2024	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Costa Azul, Unit 4 Railway Arch 102a Rockingham Street, London SE1 6PG	
Ward(s) of group(s) affected		Chaucer	
From		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Amber J Restaurant Ltd to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Costa Azul, Unit 4 Railway Arch 102a Rockingham Street, London SE1 6PG.
2. Notes:
 - a) The application seeks to vary the premises licence held in respect of the premises known as Costa Azul, Unit 4 Railway Arch 102a Rockingham Street, London SE1 6PG under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by a responsible authority and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 8 and 9 of this report provides a summary of the current premises licence issued in respect of the premises. A copy of the current premises licence is attached as Appendix A.
 - c) Paragraphs 10 to 18 of this report provide a summary of the application. A copy of the application is attached to this report as Appendix B.
 - d) Paragraphs 19 to 30 of this report deal with the representations submitted in respect of the application. A copy of the representations is attached to this report as Appendix C.
 - e) Paragraphs 31 to 38 provide a summary of the history of the premises with a list of temporary event notices licensing visits in Appendix D
 - f) A map showing the location of the premises is attached to this report as Appendix E.
 - g) 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 current premises licence

8. The premises licence issued in respect of the premises known as Costa Azul, Unit 4 Railway Arch 102a Rockingham Street, SE1 6PG was transferred to the current premises licence holder on 18 August 2021 and allows the following licensable activities:
 - **Live music – indoors**
 - Sunday to Thursday: 11:00 to 23:00

- Friday and Saturday: 11:00 to 00:00
- **Recorded music – indoors**
 - Sunday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 00:00
- **Late night refreshment – indoors**
 - Friday and Saturday: 23:00 to 00:30
- **The sale of alcohol to be consumed off the premises:**
 - Sunday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 00:30
- **The sale of alcohol to be consumed on the premises:**
 - Sunday to Thursday: 11:00 to 23:00
 - Friday & Saturday: 11:00 to 00:30
- **Opening hours:**
 - Sunday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 01:00.

9. A copy of the existing premises licence is attached as appendix A.

The variation application

10. On 11 February 2024 Amber J Restaurant Ltd applied to this council to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Costa Azul, Unit 4 Railway Arch 102a Rockingham Street, London SE1 6PG.
11. The variation application is described by the applicant as:

“Extend hours for Licensable activity”
12. The application seeks to vary the finishing hours for recorded music, late night refreshment, sale of alcohol for consumption on the premises and opening times.
13. Additionally it seeks to add an additional licensable activity for performance of dance.
14. The application does not propose any alteration to the licensable activities for live music and the sale of alcohol for consumption off the premises.

15. If granted the following hours will apply:

- **Live music – indoors**
 - Sunday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 00:00
- **Recorded music – indoors**
 - Sunday to Thursday: 11:00 to 00:30
 - Friday and Saturday: 11:00 to 02:30
- **Performance of dance – indoors**
 - Sunday to Thursday: 11:00 to 00:30
 - Friday and Saturday: 11:00 to 02:30
- **Late night refreshment – indoors**
 - Sunday to Thursday: 23:00 to 00:30
 - Friday and Saturday: 23:00 to 02:30
- **The sale of alcohol to be consumed off the premises:**
 - Sunday to Thursday: 11:00 to 23:00
 - Friday and Saturday: 11:00 to 00:30
- **The sale of alcohol to be consumed on the premises:**
 - Sunday to Thursday: 11:00 to 00:30
 - Friday and Saturday: 11:00 to 02:30
- **Opening hours:**
 - Sunday to Thursday: 11:00 to 01:00
 - Friday and Saturday: 11:00 to 03:00.

16. The application also offers a number conditions within the operating schedule attached to the variation application.

17. Some of the proposed conditions are similar to existing conditions, however the section of the application that asks the applicant to identify those conditions currently imposed on the licence which they believe could be removed as a consequence of the proposed variation has been left blank.

18. A copy of the application is attached to this report as Appendix B.

Representations from responsible authorities

19. Representations were submitted by the Metropolitan Police Service and the licensing authority.
20. The police object to the granting of this variation to the licence under the prevention of crime and disorder licensing objective. They state that the venue currently has operating hours that exceed those recommended within the Southwark statement of Licensing policy for such a venue, and seeks to extend these hours even further to those that are in line with a nightclub.
21. They also say that the streets are many residential buildings and have seen an increase in alcohol related crime and disorder at weekends with the venue being subject to a number of crime reports all of which the contributory factor appears to be over intoxication, to extend the hours will only add to the antisocial behaviour endured already by local residents.
22. The police acknowledge that the premises proposes additional control measures to address the licensing objectives, however the police are of the opinion that even with these and any further measures added the location is not suitable for such late operating hours
23. The licensing representation relates to the promotion of the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives. It observes that the premises is near to high traffic areas of New Kent Road and Elephant and Castle. However, Rockingham Street itself is quiet and receives minimal traffic in the evening or early hours of the morning. During the late evening and early hours of the morning, it receives minimal pedestrian traffic except for local residents.
24. The representation states that the locale has many high-density residential housing estates and blocks in the immediate and wider vicinity of the premises in all directions and provides a map of the local area, showing the proximity of the premises to local residential housing blocks and photographs of the streets.
25. The representation does not object to the grant of the extended hours for Sunday to Thursday, but does object to any extension on Friday and Saturday nights which would be outside the recommended closing times in the Southwark statement of licensing policy.
26. The representation also objects to the schedule of conditions provided on application replacing the existing licence conditions in their entirety.
27. The licensing authority representation also provides a copy of the notice of decision dated 13 January 2014 for the original licence application.
28. A copy of the representations submitted by the responsible authorities is attached as Appendix C.

Representations from other persons

29. No representations have been submitted by other persons.

Conciliation

30. The applicant has received copies of the representative but at the time of writing has not engaged with the responsible authorities.

Premises licensing history

31. The original premises licence application in respect of the premises was contested by 3 responsible authorities, 41 residents and the ward councillor. The licence was granted by the licensing sub-committee on 13 January 2014 with reduced hours and additional conditions to Wilson Ivan Delgado Armijos (AKA Wilson Ivan Armijos Delgado. Mr Delgado/Armijos was also the designated premises supervisor.

32. In September 2014 the premises licence was varied to adjust the conditions, the variation was uncontested.

33. In June 2021 the premises licence was varied to add off sales of alcohol and increase the licensable activities. The application was contested by 3 responsible authorities which was conciliated by the applicant agreeing to earlier hours, which forms the current premises licence.

34. The premises licence was transferred to the current premises licence holder Amber J Restaurant Ltd on 18 August 2021

35. There have been 30 temporary event notices (TENs) submitted in respect of the premises since the transfer.

36. Six licensing visit have been made to the premises.

37. The details of the TENs and licensing visits are provided in Appendix D.

Complaints

38. There have been 4 complaints made to the council and two referrals as follows:

Received date	Time	Category	Unit	How received	Complaint text
08/06/2023	16.22	L72 Public nuisance	Licensing	E-mail	Restaurant downstairs is too loud. Resident states it is a club on weekends.
01/09/2023	22.59	NR1 Loud Music - RR	Noise Team	Telephone	Music - Resident reporting restaurant playing loud music
08/09/2023	21.1	NR1 Loud Music - RR	Noise Team	Telephone	Music - Resident reporting Loud music being played coming from a

Received date	Time	Category	Unit	How received	Complaint text
18/09/2023	8.32	L72 Public nuisance	Licensing	E-mail	Noise Team inform licensing they attended premises and served a noise abatement notice.
12/01/2024	23.24	NR1 Loud Music - RR	Noise Team	Telephone	Music - has reported loud music from Coaster
12/01/2024	23.24	L72 Public nuisance	Licensing	E-mail	Noise Team attended on 13th January at 00:20. witnessed a breach of licensing condition as the music was still playing inside the venue when visited them.

Map

39. A map showing the location of the premises is attached to this report as Appendix E. The following premises are permitted to provide licensable activities as stated:

The Elephant & Castle P/H, 1 Newington Causeway, London SE1 6BN:

- The provision of live music, recorded music, anything similar to live or recorded music, films, performances of dance, indoor sporting events:
 - Sunday to Thursday: 07:00 to 01:00
 - Friday and Saturday: 07:00 to 02:00
- The provision of recorded music, anything similar to live or recorded music, performances of dance:
 - Sunday to Thursday: 07:00 to 00:00
 - Friday and Saturday: 07:00 to 01:00
- The provision of live music:
 - Monday to Sunday: 07:00 to 00:00
- The sale of alcohol:
 - Sunday to Thursday: 07:00 to 01:00
 - Friday and Saturday: 07:00 to 02:00
- The provision of late night refreshment:
 - Sunday to Thursday: 23:00 to 02:00
 - Friday and Saturday: 23:00 to 03:00

JD Wetherspoons t/a The Rockingham Arms, 119 Newington Causeway, London SE1 6BN:

- The sale of alcohol:
 - Sunday to Thursday: 09:00 to 00:30
 - Friday and Saturday: 09:00 to 01:00
- The provision of late night refreshment:
 - Sunday to Thursday: 23:00 to 00:30
 - Friday and Saturday: 23:00 to 01:00

Nando's Restaurant, Unit 4, 119 Newington Causeway, London SE1 6BN:

- The sale of alcohol:
 - Monday to Saturday: 11:00 to 00:00
 - Sunday: 11:00 to 23:30
- The provision of late night refreshment:
 - Monday to Saturday: 23:00 to 00:30
 - Sunday: 23:00 to 00:00

Lenos & Carbon, 5 – 7 Rockingham Street, London SE1 6PD:

- The sale of alcohol:
 - Monday to Thursday: 11:00 to 22:00
 - Friday and Saturday: 11:00 to 22:00
 - Sunday: 14:00 to 21:00.

Southwark Council statement of licensing policy

40. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and came into effect on 1 January 2021.
41. 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.
42. 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.
43. 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)

44. The premises are not situated in a cumulative impact area.
45. The premises also falls within the The Elephant and Castle Major Town Centre.

46. Under the Southwark's statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for the categories of premises stated:

- Restaurants and cafes:
 - Friday to Saturday: 0:100
 - Sunday to Thursday: 00:00
- Public houses, wine bars or other drinking establishments:
 - Friday to Saturday: 00:00
 - Sunday to Thursday: 23:00.

Climate change implications

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

48. 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.

49. Examples of such agreements may be:

- Not 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.

50. 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

51. 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

52. 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.

53. 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.
54. 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>.

55. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

57. A fee of £315.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value C.

Consultation

58. 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 similar notices were exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

59. 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

Assistant Chief Executive – Governance and Assurance

60. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.
61. The principles which sub-committee members must apply are set out below.

Principles for making the determination

62. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
63. The general principle is that applications for variation 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.
64. 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 other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
65. 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;
 - Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation.

Conditions

66. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
67. The four licensing objectives are;
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.

68. 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.
69. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
70. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
71. 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

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

Hearing procedures

73. 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.
74. This matter relates to the determination of an application to vary a premises licence under section 34 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

75. 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.
76. 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.
77. 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.
78. 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.
79. 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.

- 80. 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.
- 81. 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.
- 82. 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

- 83. 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 of Finance

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

APPENDICES

Name	Title
Appendix A	Copy of the current premises licence
Appendix B	Copy of the variation application
Appendix C	Responsible authority representations
Appendix D	List of temporary event notices and licensing visits
Appendix E	Map showing the location of the premises

AUDIT TRAIL

Lead Officer	Toni Ainge, Strategic Director of Environment, Neighbourhoods and Growth	
Report Author	David Franklin, Principal Licensing Officer	
Version	Final	
Dated	19 March 2024	
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 of Finance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	20 March 2024	