

Meeting Name:	Licensing Sub-Committee
Date:	12 September 2024
Report title:	Licensing Act 2003: Barrio Latino, Arch 183, 30 Manor Place, London SE17 3BB
Ward(s) or groups affected:	North Walworth
Classification:	Open
Reason for lateness (if applicable):	Not applicable
From:	Acting Strategic Director, Environment, Neighbourhoods and Growth

RECOMMENDATION

1. That the licensing sub-committee considers an application made Barrio Latino Management Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Barrio Latino, Arch 183, 30 Manor Place, London SE17 3BB.
2. Notes:
 - a) This application is for a premises licence and has been submitted under Section 17 of the Licensing Act 2003. The application is subject to representations submitted by licensing as a responsible authority and one 'other person' and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 8 to 13 of this report provide a summary of the application. A copy of the application submitted with the application are attached to this report as Appendix A.
 - c) Paragraphs 14 to 23 of this report deal with the representations submitted in respect of the application. A copy of the representations from the responsible authorities are available in Appendix B. The representations from the other persons are attached as Appendix C. A map showing the location of the premises is attached to this report as Appendix F.
 - 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 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 28 May 2024 Barrio Latino Management Limited applied to this council for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Barrio Latino, Arch 183, 30 Manor Place, London SE17 3BB.

9. The hours applied for are summarised as follows:
- The sale by retail of alcohol (on sales only):
 - Sunday and Thursday: 16:00 to 02:30
 - Friday and Saturday: 16:00 to 03:30
 - The provision of late night refreshment (indoors):
 - Sunday and Thursday from 23:30 to 02:30
 - Friday and Saturday from 23:30 to 03:30
 - The provision of regulated entertainment in the form of recorded music (indoors) and anything similar:
 - Sunday and Thursday from 23:30 to 02:30
 - Friday and Saturday from 23:30 to 03:30
 - Opening Hours:
 - Sunday and Thursday from 16:00 to 03:00
 - Friday and Saturday from 16:00 to 04:00.
10. The premises, and the intended operation of the premises, are described in the application simply as follows:
- “Arch for events”. And later in the application as: Night Club”
11. The premises licence application form provides the applicant’s operating schedule. Parts A, B, E, F, G, H, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application.
12. A copy of the application and the proposed conditions are attached to this report as Appendix A.

Designated premises supervisor

13. The proposed designated premises supervisor is Sergio Esteban Perez De La Cruz, who holds a personal licence from the London Borough of Islington.

Representations from responsible authorities

14. There are representations from four responsible authorities, namely the Metropolitan Police Service (Licensing Division), the council’s environmental protection team, the council’s trading standards team and licensing as a responsible authority.

15. The representation from the police notes that while the premises is located within the Elephant and Castle major town centre, the locality is densely residential and the premises is not suitable to be run as a night club. It goes on to state that the conditions offered in the operating schedule are insufficient to address any concerns that they may have and that the granting of such late hours would have a detrimental impact on the surrounding community.
16. The representation from the council's environmental protection team highlights the concern that the granting of such a licence could cause significant public nuisance, not just from the premises, but by patrons accessing and departing the venue.
17. Complaints have already been received by the Southwark noise team, before the licence has even been granted. If the licensing sub committee were minded to grant, additional conditions have been suggested. A noise impact assessment report has been requested, but to date has not been forthcoming.
18. The representation from trading standards has simply asked for additional conditions to protect underage patrons from accessing alcohol. No response has been received.
19. There is a representation from licensing as a responsible authority made under the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. The representation points to the hours applied being significantly outside of those recommended in the Southwark statement of licensing policy and that the premises is in close proximity to residential dwellings.
20. Additionally the licensing responsible authority has stated that the conditions offered in the application are insufficient and should be replaced by those recommended in the representation. It also points to an incident where the premises was found to be trading without a premises licence in place.
21. The representations are available in Appendix B.

Representations from other persons

22. Representations have been submitted by ten other persons. These representations are available in Appendix C. The representations raise concerns regarding:
 - Already opening as an unlicensed premises;
 - The potential for noise egress from the premises with the proximity to residential dwellings;
 - Concerns that noise has already been significant not just from the premises being open, but by patrons as they access the premises;
 - Health and safety fire risks;
 - Rubbish from patrons;
 - Management already failing to act on in-person complaints from residents.

23. It should be noted that in Other Person J's representation there is a link to short videos giving examples of the issues being observed.

Conciliation

24. All representations were sent to the applicant. None of the representations have been conciliated.

Premises history

25. This premises has not been licensed previously, however, they have had temporary event notices (TENs). The premises used all of their TENs for this calendar year by 25 April 2024. A list of TENs for the last 12 months are below:

Applicant	Dates	Activities	Counter Notice
Ana Suero	25/11/2023 to 26/11/2023 from 00:00 to 03:00	Late TEN: alcohol, regulated entertainment and late night refreshment for 65 persons	No
Jose Manuel Perez De La Cruz	25/12/2023 to 26/12/2023 from 21:00 to 05:00	Late TEN: alcohol, regulated entertainment and late night refreshment for 60 persons	No
Jose Manuel Perez De La Cruz	01/01/2024 to 01/01/2024 from 01:00 to 05:00	Alcohol, regulated entertainment and late night refreshment for 60 persons	No
Jose Manuel Perez De La Cruz	06/01/2024 to 07/01/2024 from 21:00 to 05:00	Alcohol, regulated entertainment and late night refreshment for 70 persons	No
Jose Manuel Perez De La Cruz	14/01/2024 to 15/01/2024 from 21:00 to 06:00	Late TEN: alcohol and regulated entertainment for 100 persons	No
Jose Manuel Perez De La Cruz	13/01/2024 to 14/01/2024 from 21:00 to 06:00	Late TEN: alcohol and regulated entertainment for 100 persons	Rejected – no 24h gap to previous
Jose Manuel Perez De La Cruz	19/01/2024 to 22/01/2024 from 20:00 to 06:00	Late TEN: alcohol and regulated entertainment for 100 persons	No
Jose Manuel Perez De La Cruz	03/02/2024 to 06/02/2024 from 12:05 to 05:00	Late TEN: alcohol and regulated entertainment for 100 persons	No
Sergio Esteban Perez de la Cruz	01/03/2024 to 04/03/2024 from 21:00 to 04:00	Late TEN: alcohol and regulated entertainment for 100 persons	No
Sergio Esteban Perez de la Cruz	03/04/2024 to 06/05/2024 from 18:00 to 04:00	Late TEN: alcohol and regulated entertainment for 100 persons	No
Sergio Esteban Perez de la Cruz	24/05/2024 to 27/05/2024 from 12:00 to 04:00	Late TEN: alcohol and regulated entertainment for 120 persons	Yes – No more TENs

Applicant	Dates	Activities	Counter Notice
Sergio Esteban Perez de la Cruz	31/05/2024 to 03/05/2024 from 12:00 to 04:00	Late TEN: alcohol and regulated entertainment for 120 persons	Yes – No more TENs
Sergio Esteban Perez de la Cruz	21/06/2024 to 24/06/2024 from 16:00 to 04:00	Late TEN: alcohol, regulated entertainment and late night refreshment for 100 persons	Yes – No more TENs

26. In December 2023 an application was received for a premises licence for Arch 183 with a premises named 'Level High' with the applicant name as Jose Manuel Perez De La Cruz. However, the application was incomplete and was rejected. The application was never reignited.
27. It is understood from the representation from EPT that noise complaints have been received, please see below. Upon receipt of the representations from local residents, while not recorded as complaints as they were in relation to the consultation, the comments made were investigated by the night time economy team due to the nature of claims that the premises was already opening, without a licence in place.

Date/Time	Complainant	Complaint	Action
15/05/2024 at 09:46	Local resident (Other person J)	Noise coming from a night club affecting the resident not having enough sleep. The noise usually occurs on Friday, Saturday, Sunday and Monday from 04:00hrs onward after the club has closed for the day. Resident is also concerned about the location of the club.	Complaint to noise team
09/07/2024 at 09:49	Local resident (Other person H)	Complaint against noise from people leaving club venue between 03:00 to 04:30. Issue is worse during the weekend however reporting resident states it has now started during the week. Management at Venue have been approached regarding noise level. Club venue located at railway arch 183 13 Manor place se17	Complaint to noise team

28. Further to the representations which claimed that the premises was already operating without a licence, enforcement officers from the night time economy team carried out a joint visit with the Metropolitan Police Service on Saturday 13 July 2024 at around 02:30. The premises was found to be operating as a night club, with payments being made across the bar. A statement from the lead officer on that visit can be found in Appendix D, along with a notice from the council and the police. It should be noted that the individual in charge that night is the current proposed DPS.

29. A warning letter was sent and is available in Appendix E. Officers carried out further visits as part of the night time economy inspections and found the premises to be closed.

Map

30. A map showing the location of the premises is attached to this report as Appendix F. The following are a list of similarly licensed premises are in the immediate vicinity (100m) of the premises application:

McDonalds, 198-200 Walworth Road, London SE17 1JJ, licenced for:

- The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 05:00

Fees Restaurant, 210 Walworth Road, London SE17 1JE, licenced for:

- The sale by retail of alcohol (on and off sales):
 - Monday to Sunday: 10:00 to 23:00
- The provision of late night refreshment (indoors and outdoors):
 - Monday to Sunday: 23:00 to 03:00

El Mero, 18 Amelia Street, London SE17 3PY, licenced for:

- The sale by retail of alcohol (on sales):
 - Monday to Sunday: 10:00 to 22:30
- The provision of regulated entertainment in the form of recorded music and performances of dance (indoors):
 - Thursday to Saturday: 22:00 to 23:00

Southwark Council statement of licensing policy

31. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
32. 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.
33. 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.
34. 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>
35. 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.

Cumulative impact area (CIA)

36. The premises is located outside of a cumulative impact area but within the Elephant and Castle major town centre.
37. The recommended closing hours for public houses under the statement of licensing policy for that location is:
 - Sunday to Thursday until 23:00
 - Friday and Saturday until 00:00.
38. The recommended closing hours for restaurants under the statement of licensing policy for that location is:
 - Sunday to Thursday until 00:00
 - Friday and Saturday until 01:00.
39. The recommended closing hours for nightclubs (with 'sui generis' planning classification) under the statement of licensing policy for that location is:
 - Monday to Thursday until 01:00
 - Friday and Saturday until 03:00.

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

Community impact statement

40. 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

41. 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.
42. 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 with 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.
43. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 – 2026:

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

44. The equalities impact assessment is available at:

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

Health impact statement

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

Climate change implications

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

47. 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.

48. 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.

49. The council's climate change strategy is available at:

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

Resource implications

50. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value B.

Consultation

51. 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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive, Governance and Assurance

52. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
53. The principles which sub-committee members must apply are set out below.

Principles for making the determination

54. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
55. The principles which sub-committee members must apply are set out below.
56. 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.
57. 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.
58. 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

59. 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.
60. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
61. 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.
62. 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.
63. 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

64. 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

65. 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.

66. 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

67. 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.

68. 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.

69. 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.

70. 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.
71. 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.
72. 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.
73. 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.
74. 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.

Strategic Director of 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	Southwark Licensing, C/O Regulatory Services, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 55748
Home Office Revised Guidance to the Act		
Secondary Regulations		
Southwark statement of licensing policy		
Case file		

APPENDICES

No.	Title
Appendix A	Copy of the application
Appendix B	Representations from responsible authorities
Appendix C	Representations from Other Persons against the application
Appendix D	Statement and notices for visit 13 July 2024
Appendix E	Warning letter for unlicensed activity
Appendix F	Map of locality

AUDIT TRAIL

Lead Officer	Acting Strategic Director, Environment, Neighbourhoods and Growth	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	28 August 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		28 August 2024