

Item No. 6.	Classification: Open	Date: 21 March 2011 10am	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – Las Delicias, 99 Southampton Way, London SE5 07SX	
Ward(s) or groups affected:		Premises are within: Brunswick Park	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by Nelson Gutierrez Pardo for a grant of a Premises Licence under the Licensing Act 2003 in respect of the premises known as Las Delicias, 99 Southampton Way, London SE5 07SX
2. Notes:
 - a) This application forms a new application for a Premises Licence, under Section 17 of the Licensing Act 2003. The application is subject to representations from Responsible Authorities and Interested Parties and is therefore referred to the Sub-Committee for determination;
 - b) Paragraphs 8 to 12 of this report provide a summary of the application the Premises Licence under consideration by the Sub-Committee (A copy of the full application is provided as Appendix a)
 - c) Paragraphs 13 & 14 of this report deal with the representations received to the Premises Licence application. (A copy of each of the relevant representations are attached as Appendices b& c).

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) 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
 - a) The prevention of crime and disorder;
 - b) The promotion of public safety
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to

- a. The Act itself;
 - b. The Guidance to the act issued under Section 182 of the Act;
 - c. Secondary regulations issued under the Act;
 - d. The Licensing Authority's own Statement of Licensing Policy
 - e. The application, including the operating schedule submitted as part of the application
 - f. Relevant representations
7. The applications 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 interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

MATTERS FOR CONSIDERATION

The Application for a New Grant

8. On 17 January 2011, an application was made by Nelson Gutierrez Pardo for a grant of a Premises Licence in respect of the ground floor of the premises known as Las Delicias, 99 Southampton Way, London SE5 7SX under section 17 of the Licensing Act 2003. A copy of the application is attached as appendix a.
9. The application is therefore summarized as follows:
- To permit the provision of regulated entertainment
- *(Live music, recorded music, facilities for making music and dancing)*
 - Sunday to Thursday 09.00 to 21.00
 - Friday and Saturday 09.00 to 04.00 on the day following
 - To permit the provision of late night refreshment
 - Friday and Saturday 23.00 to 04.00 on the day following
 - To permit the sale and or supply of alcohol
 - Sunday to Thursday 09.00 to 21.00
 - Friday and Saturday 09.00 to 04.00 on the day following
 - Proposed opening hours of the premises are
 - Sunday to Thursday 09.00 to 21.30
 - Friday and Saturday 09.00 to 04.30 on the day following
10. The application form provides the applicant's operating schedule. Parts E, F, I, J, L M and O set out the proposed operating hours in full.
11. Part P of the application and appendix b provides any additional steps that are proposed by the applicant to promote the four licensing objectives as set out in the Licensing Act 2003. In the event that the Sub-Committee should approve the

application any proposals stated here must become conditions on any subsequent Premises Licence issued.

Designated Premises Supervisor

12. The proposed designated premises supervisor Licence is Nelson Gutierrez Pardo. Note (however, Nelson Gutierrez Pardo is in the process of obtaining a personal licence).

Representations From Interested Parties

13. There are 11 representations lodged by interested parties and a local ward councillor. The representations are primarily concerned with the history of noise nuisance, and anti social behaviour that is being experienced at present and which they fear might escalate as a result of the proposed grant. Copies of the representations are attached as appendix b.

Representations From Responsible Authorities

14. There are 4 representations lodged by the Metropolitan Police and the Council's Environmental Protection Team (EPT), Trading Standards and the Planning Department. The representations mostly outline control measures that should be undertaken to reduce the risk of crime and disorder and noise nuisance if the licence is granted. Copies of the representations are attached as appendix c.

Conciliation

15. Conciliation was offered as part of the application process. However there has been no response from the applicant. As such the application is being submitted for determination by the Licensing Sub-Committee.

Recent history

16. On 14 November 2010 the Licensing unit received complaints with regards to unlicensed activities and loud music emanating from 99 Southampton Way. This resulted in visits made to the premises and a warning letter being issued on 19 November 2010.

Temporary events notices

17. Below is a list of temporary event notices applied for in December 2010.

	From	To
17 Dec 10	18:00	04.00
18 Dec 10	18:00	04.00
31 Dec 10	18.00	04.00
1 Jan 2011	18:00	04.00

The Local Area

18. A map of the local vicinity is attached appendix d. For the purposes of scale only the circle on the map has a 100-metre radius. The operating terminal hours of the following premises licensed for regulated entertainment and late night refreshment are shown on the map.

- Flying Dutchman, 156 Wells Way , SE5 (Sun – Thurs – 00.30, Fri & Sat 01.30)

Southwark council statement of licensing policy

19. Council assembly approved the Southwark’s statement of licensing policy on 4 November 2009. Sections of the statement that are considered to be of particular relevance to this application are
- Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives;
 - Section 5 which sets out the council’s approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence;
 - Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998;
 - Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours;
 - Section 8 provides general guidance on ensuring public safety including safe capacities;
 - Section 9 provides general guidance on the prevention of nuisance; and
 - Section 10 provides general guidance on the protection of children from harm.
20. 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.

RESOURCE IMPLICATIONS

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

CONSULTATIONS

22. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in the ‘Southwark News’ and a similar notice exhibited outside of the premises.

COMMUNITY IMPACT STATEMENT

23. 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

Strategic director of communities, law & governance

24. The Sub-Committee is asked to determine the application for a grant of a premises licence.
25. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities.

Interested Parties must live in the vicinity of the premises. This will be decided on a case-by-case basis.

26. 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 and crime and disorder in the Borough.
27. Interested Parties, 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 day on which the applicant was notified by the licensing authority of the decision to be appealed against.
28. The principles that Sub-Committee members must apply are set out below.

Principles for making the determination

29. 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.
30. 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 (in this case, the initial objections from the Fire Service have been withdrawn).
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
31. 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

Conditions

32. 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.
33. The four licensing objectives are
 - a. The prevention of crime and disorder;
 - b. Public safety;
 - c. The prevention of nuisance; and
 - d. The protection of children from harm.

34. 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.
35. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment 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.
36. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.
37. Members are also referred to the DCMS guidance on conditions, specifically section 10, and Annex D of the Amended Guidance issued under section 182 of the Licensing Act 2003 March 2010.

Reasons

38. If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application, it must give reasons for its decision.

Hearing Procedures

39. 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.

40. As this matter relates to the determination of an application for a grant 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

41. 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.
42. 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.
43. 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.
44. 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.
45. Members will be aware of the Council's Code of Conduct that 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.

Guidance

46. Members are required to have regard to the DCMS 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.

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

APPENDICES

No.	Title
Appendix A	Copy of the application
Appendix B	Copy of the representation from interested parties
Appendix C	Copies of representations from responsible authorities
Appendix D	Copy of the local area map
Appendix E	List of representations (On closed agenda)

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	10 March 2011	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director for Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	10 March 2011	