

Item No. 5.	Classification: Open	Date: 21 April 2016	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Tropical 186-188 Old Kent Road, London SE1 5TY	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Mr Carlos Fernando Delgado Armijos to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Tropical, 186-188 Old Kent Road, London SE1 5TY.
2. Notes:
 - a) This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Tropical 186-188 Old Kent Road, London SE1 5TY under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination
 - b) Paragraphs 9 and 10 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.
 - c) Paragraphs 13 to 16 of this report deal with the representations received in respect of the application. Copies of the relevant representations and associated correspondence are attached as Appendix C.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

Within Southwark, the licensing responsibility is wholly administered by this council.

4. 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.
5. In carrying out its licensing functions, a licensing authority must also have regard to:
- The Act
 - 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
6. 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

7. The licence was first issued in 2006 when the premise was called Parrilladus Del Sur. The premises licence was transferred on 11 May 2015 to the current premises licence holder Mr Carlos Fernando Delgado Armijos.
8. The premises licence allows for the following activities and times:
- Sale of alcohol for consumption off the premises
Friday and Saturday between 12:00 and 23:30
Sunday between 12:00 and 22:00
 - Late night refreshment
Friday and Saturday between 23:00 and 23:30
 - Entertainment similar to live/recorded music - indoors
Friday, Saturday and Sunday between 12:00 and 23:30
 - The other provisions for entertainment listed on the premises licence are now subject to de-regulation.
9. A copy of the premises licence is provided as Appendix A.

The variation application

10. On 23 February 2016, Mr Carlos Fernando Delgado Armijo applied to this council to vary the premises licence issued in respect of the premises known as Tropical, 186-188 Old Kent Road, London SE1 5TY.

The application is summarised as follows:

- To extend recorded music and performances of dance from the deregulated finish time of 23:00 hrs to:
Sunday to Wednesday 23:00 to 00:00 hours

Thursday 23:00 to 01:00 hours
 Friday and Saturday 23:00 to 02:30 hours.

- To add anything similar to live and recorded music and performances of dance on:
 Sunday to Wednesday 20:00 to 00:00 hours
 Thursday 20:00 to 01:00 hours
 Friday and Saturday 20:00 to 02:30 hours.
- To extend late night refreshment on:
 Sunday to Wednesday 23:00 to 00:00 hours
 Thursday 23:00 to 01:00 hours
 Friday and Saturday 23:30 to 02:30 hours.
- To extend sale of alcohol hours for consumption on the premises on;
 Sunday 22:00 to 00:00 hours
 Monday to Wednesday 10:00 to 00:00 hours
 Thursday 10:00 to 01:00 hours
 Friday and Saturday 23:30 to 02:00 hours.
- To extend the opening hours of the premises to
 Sunday 10:00 to 12:00 and 22:30 to 00:00 hours
 Monday to Wednesday 10:00 to 12:00 and 18:00 to 00:00 hours
 Thursday 10:00 to 12:00 and 18:00 to 01:00 hours
 Friday and Saturday 10:00 to 12:00 and 00:00 to 02:30 hours.

11. The operating hours for the premises should the variation be granted as per application, with the deregulated activities for under 500 persons excluded, would be as in the table below:

	Monday	Tuesday	Wed	Thursday	Friday	Saturday	Sunday
Live Music					23:00 to 22:00	23:00 to 22:00	23:00 to 22:00
Recorded music	23:00 to 00:00	23:00 to 00:00	23:00 to 00:00	23:00 to 01:00	23:00 to 02:30	23:00 to 02:30	23:00 to 00:00
performance of dance	23:00 to 00:00	23:00 to 00:00	23:00 to 00:00	23:00 to 01:00	23:00 to 02:30	23:00 to 02:30	23:00 to 00:00
Entertainment similar	20:00 to 00:00	20:00 to 00:00	20:00 to 00:00	20:00 to 01:00	20:00 to 02:30	20:00 to 02:30	20:00 to 00:00
Late night refreshment	23:00 to 00:00	23:00 to 00:00	23:00 to 00:00	23:00 to 01:00	23:00 to 02:30	23:00 to 02:30	23:00 to 00:00
Sale of alcohol on the premises	10:00 to 00:00	10:00 to 00:00	10:00 to 00:00	10:00 to 01:00	10:00 to 02:30	10:00 to 02:30	10:00 to 00:00
Opening hours	10:00 to 01:00	10:00 to 01:00	10:00 to 01:00	10:00 to 02:00	10:00 to 03:00	10:00 to 03:00	10:00 to 01:00

12. The variation to the premises licence application form provides the applicant's operating schedule. Parts M, N, O and P set out the operating controls in full, with reference to the four licensing objectives as outlined in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

13. On 28 May 2015 the designated premises supervisor was also varied to Mr Carlos Fernando Delgado Armijos who holds a personal licence issued by the London Borough of Southwark.

Representations from other persons

14. No representations have been submitted by other persons

Representations from responsible authorities

15. There were five representations submitted by responsible authorities.
16. The metropolitan police submitted a representation which states concerns that the premises already has a terminal hour of midnight, however on three occasions the premises has operated beyond midnight and the premises management have failed to evidence that they are responsible operators and able to comply with their premises licence.
17. On 6 December 2015 at 02:15 hrs, police found a man sitting in a telephone box extremely intoxicated and the premises was found to be open 2 hours after the closing time on their premises licence, a section 19 closure notice was issued.
18. On 3 January 2016 at 03:15hrs, officers again visited premises and found it open and people drinking inside 3 hours beyond the opening times of the premises, a section 19 closure notice was issued.
19. On 28 February 2016 at 01:55hrs, officers attended the venue and the premises were operating selling alcohol and playing music, a temporary event notice had been applied for, a counter notice served following an objection but later it transpired that the objection notice was incorrectly served.
20. The environmental protection team also have serious concerns over the ability of the premises management to effectively operate the premises in accordance with the current conditions and hours of the existing premises licence and that the granting of these longer and hours and additional licensable activity, with very little management and structural controls proposed to control noise, will conceivably lead to public nuisance being caused.
21. The trading standards have concerns regarding a lack of conditions to prevent the sale of alcohol to children and no regard to children on the premise and times at which children can be present or being accompanied by a responsible adult and the premise seems to be wish to admit children up to the proposed closing times.
22. The public health responsible authority submitted a representation which contends that early-morning alcohol purchasers are more likely to be alcohol misusers and may thereby contribute to antisocial behaviour and increased hours of alcohol sales are associated with an increase in alcohol-related harm and research shows that those people who buy alcohol at later times during a night are more likely to drink in excess that night.
23. Public health recommend that the start time of alcohol sales be changed to 11:00 for all days of the week and, as Tropical is situated in a residential area, end time of alcohol sales to be 2300 as is recommended in the Southwark statement of licensing policy 2016-2020.

24. The licensing authority as a responsible authority states that this premises is situated in a residential area. Under Southwark's statement of licensing policy 2016-2020 the appropriate closing times for restaurants, cafes, public houses, wine bars or other drinking establishments is 23:00 hours and night clubs (with sui generis planning classification) are not considered appropriate for this area.
25. The later operation of the premises and people leaving the premises later at night would impact further upon local residents living nearby and in the surrounding streets. The management would have no control of patrons that have left the premises and the possible impact of any associated rowdy and anti-social behaviour or crime and disorder.
26. Copies of all the representations received are attached to this report as Appendix C.

Conciliation

27. The representations have been sent to the applicant, however there has not been any conciliation with regards to this application and the representations.

Operating history

Complaint and visit history

28. On 17 June 2015 a licensing officer visited the premises and conducted an induction meeting with the premises licence holder Mr Armijos. Mr Armijos was given advice on the Licensing Act 2003 and how to be compliant with the terms and conditions of his premises licence.
29. There have been a number visits made to the premises by licensing officers working on the night-time economy team since the current licence holder transferred the premises licence.
30. The first two visits were both on the morning of Sunday 6 December 2015 at 01:28 and 02:30 hours. Officers met the Police on site and observed an intoxicated man being put into an ambulance on a stretcher and that the premises was open and operating. The manager showed the officer a TEN for the next week and was therefore advised to close and disperse her clientele in a quiet and safe way. They observed the Police serve a section 19 closure notice.
31. A visit made on 8 January 2016 at 21:52, licensing officers were accompanied by a police officer. An inspection of the premises was carried out and observed two breaches of the premises licence conditions. The police were observed to serve another section 19 closure notice.
32. The council licensing officer sent a warning letter with regard to the offences observed on 8 January 2016.
33. On visits made to the premises by licensing officers on, and subsequent to, 30 January 2016 the premises was found to be compliant or closed.
34. The council's licensing team are currently investigating alleged offences under the section 136 of the Licensing Act 2003 in relation to police visits and have interviewed Mr Armijos who admitted the offences and has given assurances that they will not be repeated. A simple caution is to be offered as a resolution. An update of this investigation will be provided at the hearing.

35. A copy of the council's night time economy team's visit reports to the premises, the signed induction visit document and the warning letter are attached to this report as Appendix D.
36. No complaints have been received in respect of the operation of the premises from members of the public.

Temporary event notices

37. There have been no temporary event notices submitted in respect of the premises within the last 12 months.

The local area

38. A map of the area is attached to this report as Appendix E. The premises are identified at the centre of the map by a black diamond.
39. The premises is adjacent to Costa Azul 190-192 Old Kent Road SE1 5TY which has the following activities:

Recorded music

Monday to Thursday 11:00 to 00:00

Friday and Saturday 11:00 to 03:00

Sunday 11:00 to 02:00

Late night refreshment

Monday to Thursday 23:00 to 01:00

Friday & Saturday 23:00 to 02:00

Sunday 23:00 to 01:00

Sale by retail of alcohol on premises

Monday to Wednesday 11:00 to 00:00

Thursday 11:00 to 01:00

Friday and Saturday 10:00 to 03:00

Sunday 10:00 to 01:00

Opening Hours

Monday to Wednesday 07:00 to 01:30

Thursday 07:00 to 02:00

Friday and Saturday 07:00 to 04:00

Sunday 07:00 to 01:30

40. Under the Southwark statement of licensing policy 2016-2020 the premises is located in a residential area and the following closing times are recommended as appropriate within this area for this categories of premises indicated as follows:
- Closing time for restaurants and cafes is 23:00 hours daily
 - Closing time for public houses, wine bars or other drinking establishments is 23:00 hours
 - Closing time for hotel bars and guest houses. No restrictions for residents
 - Closing time for night clubs (with sui generis planning classification) are not considered appropriate for this area
 - Off licences and alcohol sales in grocers and supermarkets are considered appropriate for this area
 - Takeaways are not considered appropriate for this area

Southwark statement of licensing policy 2016-20

41. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016. 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. To be read in conjunction with Appendix B to the policy.
 - 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.

Resource implications

43. A fee of £190 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.

Consultation

44. 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 exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

45. 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

Director of Law and Democracy

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

Principles for making the determination

48. 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.
49. 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.
50. 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.
51. 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

52. 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.
53. The four licensing objectives are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of nuisance; and
 - The protection of children from harm.

54. 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.
55. 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.
56. 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.
57. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing procedures

59. 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.

60. 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

61. 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.
62. 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.
63. 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.
64. 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.
65. 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.
66. 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 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
67. 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

68. 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.

BACKGROUND DOCUMENTS

Background Papers	Held At	Cont
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Kirty Read Tel. 0207 525 5748

APPENDICES

Name	Title
Appendix A	Copy of existing premises licence
Appendix B	Copy of the application
Appendix C	Copies of the responsible authorities' representations
Appendix D	Licensing information
Appendix E	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	David Franklin, Team Leader Licensing	
Version	Final	
Dated	6 April 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	8 April 2016	