

Item No. 6.	Classification: Open	Date: 15 December 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 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 10 to 11 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 A. A copy of the existing premises licence is attached as Appendix B.
 - c) Paragraphs 13 to 22 of this report deals with the representations received to the premises licence application and conciliations progress made. Copies of the relevant representations from responsible authorities are attached as Appendix C.
 - d) Paragraphs 23 to 32 of this report deals with the visits and complaints made to the premises and warning letter/s issued. Copies of documents are attached as Appendix D.
 - e) Paragraph 34 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix E.
 - f) 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 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 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 Carlos Fernando Delgado Armijos.
9. The premises licence allows for the following activities and times:
 - **Recorded music**
Monday to Sunday from 23:00 to 00:00
 - **Performance of dance**
Monday to Sunday from 20:00 to 00:00
 - **Entertainment Similar to live/recorded music - Indoors**
Monday to Sunday from 20:00 to 00:00
 - Late night refreshment
Monday to Sunday from 23:00 to 00:00

- **Sale of alcohol for consumption on the premises**
Monday to Sunday from 11:00 to 00:00
- **Operating hours**
Monday to Sunday from 10:00 to 00:30.

10. A copy of the premises licence is provided as Appendix B.

The variation application

11. On 20 October 2016, 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 premises is a 'Bar/Restaurant with a South American cultural feel and serving South American cuisine.

The application is summarised as follows:

- **Recorded music**
Friday and Saturday from 00:00 to 02:00
- **Performance of dance**
Friday and Saturday from 00:00 to 02:00
- **Entertainment Similar to live/recorded music - Indoors**
Friday and Saturday from 00:00 to 02:00
- **Late night refreshment**
Friday and Sat 00:00 to 02:00
- **Sale of alcohol for consumption on the premises**
Friday and Saturday from 00:00 to 02:00
- **Operating hours**
Friday and Saturday from 12:00 to 02:30.

12. The variation to the premises application form provides the applicant operating schedule. Parts F, , H, I, J, K, L,M, N O and P set out the proposed operating hours and operating controls 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 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 A.

Designated premises supervisor

13. The proposed designated premises supervisor (DPS) is Carlos Fernando Delgado Armijos who has a personal licence issued by Southwark Council.

Representations from responsible authorities

14. Representations have been submitted by the Metropolitan Police Service, licensing (as a responsible authority), planning and public health.

15. The police representation state that the premises are situated in a residential area as designated by the Southwark statement of licensing policy 2016-2020. The guidance suggests for this location being a residential area and the venue being a restaurant the latest terminal hour is 23:00 daily, therefore the premises current opening hours are very generous with a closure time of 00:30 and sale of alcohol until 00:00.
16. There is also an outstanding police investigation into a violent incident involving the DPS and partner whilst on duty at the premises which brings into question his credibility to manage.
17. The Licensing representation reiterates that the premises is situated in a residential area as described in Southwark's statement of licensing policy and the appropriate closing times for restaurants, public houses, wine bars or other drinking establishments in this area is 23:00 daily. Night clubs (with sui generis planning classification) are not considered appropriate for this area.
18. They are also concerned with crime and disorder and public nuisance as the later operation of the premises and of people leaving the premises later a night would impact upon local residents living nearby and in the surrounding streets. The management would have no control of patrons that have left the premises if it were allowed to open later and the possible impact of any rowdy and anti-social behaviour or crime and disorder.
19. The planning representation states that the site is subject to planning permission that conditions the terminal hour of the restaurant to 23:00. There are three flats immediately above the restaurant and the condition relating to the permitted hours is to protect their residential amenity. Allowing the hours to be extended beyond 23:00 and the licensing statement of policy hours of 00:00 is not justified and they object on the grounds that it is likely to result in nuisance for those living in the vicinity.
20. The public health representation have concerns regarding the hours of alcohol sales requested. They state that given the applicant already holds a licence to sell alcohol until 00:00 daily, they already are in possession of a very permissive licence and recommend that this application for a variation is rejected.
21. The representations are attached as Appendix C.

Representation from other persons

22. There are no representations from other persons.

Conciliation

23. The representations were forwarded to the applicant. The licensing sub committee will be updated of any developments on 15 December 2016.

Complaint and visit history

24. Application to vary the premises licence to extend the hours for licensable activities and operational hours was submitted on 23 February 2016. This was met with representations from responsible authorities and was resolved through conciliation by a reduction in the hours sought. The agreed hours are reflected under the current premises licence (para 8).

25. 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.
26. 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.
27. The first two visits were both on the morning of the Sunday 6 December 2015 at 01:28 and 02:30. Council 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 temporary event notice 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.
28. 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, namely notices were not displayed stating "No Drugs" (condition 298) and notices were not displayed requesting customers to "leave the premises in a quiet and orderly manner (condition 311). The police were observed to serve another section 19 closure notice.
29. The council licensing officer sent a warning letter with regard to the offences observed on 8 January 2016.
30. Further visits were made to the premises by licensing officers on, and subsequent to, 30 January 2016 the premises was found to be compliant or closed.
31. The council's licensing team investigated alleged offences under the section 136 of the Licensing Act 2003 in relation to police visits made on 3 January 2016 at 03:15. The premises was found to be providing licensable activities beyond permitted hours and officers interviewed Mr Armijos who admitted the offences and gave assurances that they would not be repeated. A simple caution was offered as a resolution.
32. 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.
33. No complaints have been received in respect of the operation of the premises from members of the public.

Temporary events

34. Nine temporary event notices detailed below have been submitted this year

Date	Times
13 Feb 2016	23:00 to 03:00
27 Feb 2016	23:00 to 03:00
25 Mar 2016	23:00 to 03:00
21 May 2016	23:00 to 03:00
28 May 2016	23:00 to 03:00
11 Jun 2016	23:00 to 03:00

Date	Times
30 Jul 2016	23:00 to 03:00
8 Oct 2016	23:00 to 03:00
29 Oct 2016	23:00 to 03:00

The local area

35. A map of the area is attached to this report as Appendix E. The premises is identified by a triangle at the centre of the map. For purposes of scale-only the circle on the map has a 100 metre radius. The following licensed premises terminal hours are also shown on the map:

- Costa Azul, 190-192 Old Kent Road, London SE1 (Monday to Wednesday till 02:00, Friday and Saturday till 04:00 and Sunday till 01:30)
- Euro Traveller Hotel, 190-194 Old Kent Road, London SE1(24 hours)
- Daniels Bar, 207 Old Kent Road, SE1 (Monday to Sat till 00.30 and Sunday till 00.00)
- Le Joint, 193 Old Kent Road, London SE1 (Monday to Sunday till 03:00)
- New Wing Fu, 227 Old Kent Road, London SE1 (Monday to Sunday till 00:00)
- Metelica, 229 Old Kent Road, SE1 (Monday to Sunday till 21:00).

Deregulation of entertainment

36. On 6 April 2015 entertainment became deregulated and as a result:

- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
- Live amplified music is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.

37. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Southwark statement of licensing policy

38. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:

- Closing time for restaurants and cafes is 23:00 daily
- Closing time for Public Houses Wine bars or other drinking establishments is 23:00 daily
- Closing time for Hotel bars and guest houses : No restrictions for residents
- 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

39. Council assembly approved Southwark's statement of licensing Policy 2016-20 on 25 November 2015. 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.
40. 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

41. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band A.

Consultation

42. 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

43. 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

44. The sub-committee is asked to determine the variation application for a premises licence under section 34 of the Licensing Act 2003.
45. The principles which sub-committee members must apply are set out below.

Principles for making the determination

46. 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.
47. 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.
48. 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.
49. 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

50. 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.
51. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.

52. 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.
53. 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.
54. 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.
55. 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

56. 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

57. 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.
58. 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

59. 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.
60. 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.
61. 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.
62. 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.
63. 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.
64. 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.
65. 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.

66. 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

67. 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 and Governance

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

APPENDICES

Name	Title
Appendix A	Variation application
Appendix B	Current licence
Appendix C	Representations from responsible authorities
Appendix D	Licensing information
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	2 December 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		2 December 2016