

Item No. 7.	Classification: Open	Date: 11 March 2021	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Eurotraveller Hotel, 194-202 Old Kent Road, London SE1 5TY - Review	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by Southwark's trading standards department under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Jayesh Patel in respect of the premises known as Eurotraveller Hotel, 194-202 Old Kent Road, London SE1 5TY.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 12 to 18 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The review application is supported by representations submitted by the Metropolitan Police (Licensing Division) and the licensing authority in their roles as responsible authorities. Copies of the representations are attached as Appendix B. Details of the representations are provided in paragraphs 19 to 22.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix C. A map of the area that the premises are located in is attached as Appendix D.
 - 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 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. 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.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any Responsible Authority or other person to apply to the local Licensing Authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence allows the provision of licensable activities as follows:
- The sale of alcohol to be consumed on the premises (bar and restaurant):
 - Monday to Saturday: 09:00 to 23:00
 - The sale of alcohol to be consumed on the premises (hotel bar only):
 - Monday to Sunday: 00:00 to 00:00
 - Live music, recorded music, performances of dance, facilities for making music, provisions similar to making music:
 - Monday to Saturday: 11:00 to 23:00
 - Sunday: 11:00 to 22:00
 - Opening hours:
 - Monday to Sunday: 00:00 to 00:00

10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix C.

Designated premises supervisor (DPS)

11. The current designated premises supervisor (DPS) named on the licence is Jayesh Patel, who is also the licensee of the premises.

The review application

12. On 18 January 2021, an application was submitted by trading standards under Section 51 of the Licensing Act 2003, for the review of the premises known as Eurotraveller Hotel, 194-202 Old Kent Road, London SE1 5TY.
13. The review The review application was submitted in respect of the prevention of crime and disorder, public safety an the prevention of public nuisance licensing objectives. Paragraphs 14 to 16 summarise that the following has been witnessed and / or taken place at the premises:
14. A visit took place at the premises on Saturday 28 November 2020, during the period that has been referred to as the “second lockdown” during the Coronavirus pandemic. At the time the emergency legislation relating to business closures was the Health Protection (Coronavirus, Restrictions) (No 4) (England) Regulations 202 (SI 2020 No 1200). On that date licensing visited the premises accompanied by two members of the police night time economy team. They had become aware of activity happening within the hotel and upon entering discovered an illegal casino being operated with customers consuming drinks on the premises contrary to these regulations. Consumption of drinks on the premises was an offence at the time under Regulation 15(1).
15. It is also worth noting that casinos were also required to be closed at this time by virtue of Regulation 16(1). Furthermore this casino operation was not licensed under the provisions of the Gambling Act 2005. It should be noted that this illegal casino was operating within the bar are of a Chinese restaurant run within Mr Patel’s licensed premises. It should be noted that at the time of the visit, the CCTV system required under conditions 288 and 289 on the license had been removed. Although at this point in time the government had suspended the application of conditions on premises licenses for a period, the removal of the CCTV system could impact on issues of public safety and public nuisance relating to the premises.
16. On Friday 18 December trading standards and licensing revisited and issued Mr Patel both a Prohibition Notice and a Fixed Penalty Notice for the drinking on the premises on 28 November 2020. This £1000 Fixed Penalty Notice was paid for by Mr Patel on 24 December 2020
17. Trading standards are seeking revocation of the premises licence.
18. Full details of the grounds for the review are provided within review the application. A copy of the review application is attached as Appendix A. This is accompanied

by supporting documentation from Trading Standards which will be relied upon during the Hearing.

Representations from responsible authorities

19. There are supporting representations submitted in support of the review application by the Metropolitan Police Service and the licensing authority.
20. The Police representation is submitted in support of the trading standards review in respect of the visit on 28 November 2020, stating: "The Eurotraveller Hotel chose to operate in deliberate and flagrant breach of regulations".
21. The licensing authority's representation is made in support of the review and with regards to promoting the prevention of crime and disorder, the prevention of public nuisance, public safety and protection of children from harm licensing objectives and also has regard to the Southwark statement of licensing policy 2021 – 2026. It draws attention to the joint visit carried out at the premises as described within the application. The licensing unit are currently considering further enforcement action.
22. Copies of the representations are attached as Appendix B.

Representations from other persons

23. No representations have been received by other persons.

Operating History

24. There is a premises licence already in place at the hotel, with Mr Patel as the licence holder and DPS. This has been issued and remains unchanged since 21 September 2007. A copy of the current licence is available in Appendix C.
25. As per the review application, a visit took place at the premises on Saturday 28 November 2020.
26. On Friday 18 December trading standards and licensing revisited and issued Mr Patel both a Prohibition Notice and a Fixed Penalty Notice for the drinking on the premises on 28 November 2020. This £1000 Fixed Penalty Notice was paid for by Mr Patel on 24 December 2020.
27. On 22 December 2020 Eurotravellerhotel Limited applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Eurotraveller Hotel.
28. On 18 January 2020, trading standards in their role as a responsible authority issued a review of the existing premises licence under all four of the licensing objectives. The hearing for the new application will also take place on 11 March 2021.
29. There are no recent complaints regarding the premises, and there is no history of temporary events notices.

The local area

30. A map showing the location of the premises is attached to this report as Appendix D. Old Kent Road is a busy road, with multiple licensed premises along its stretch. The following are a list of licensed premises in the very immediate vicinity of the application:

Dragon Castle, 100 Walworth Road, London SE17 1JL

- The sale by retail of alcohol (on sales only):
 - Monday to Sunday from 11:00 to 23:30
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Sunday from 11:00 to 23:30

Tropical, 186-188 Old Kent Road, London SE1 5TY

- Recorded Music – Indoors:
 - Monday to Sunday from 23:00 to 00:00
- Performance of Dance – Indoors:
 - 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 – Indoors:
 - Monday to Sunday from 23:00 to 00:00
- Sale by retail of alcohol to be consumed on premises:
 - Monday to Sunday from 11:00 to 00:00

Costa Azul Mexican Bar & Grill, 190-192 Old Kent Road, London SE1 5TY

- Live Music – Indoors:
 - Monday to Thursday from 11:00 to 00:00
 - Friday to Saturday from 11:00 to 03:30
 - Sunday from 11:00 to 02:00
- Recorded Music – Indoors:
 - Monday to Thursday from 11:00 to 00:00
 - Friday to Saturday from 11:00 to 03:30
 - Sunday from 11:00 to 02:00

- Performance of Dance – Indoors:
 - Monday to Thursday from 18:00 to 00:00
 - Friday and Saturday from 17:00 - 02:00
 - Sunday from 17:00 to 00:00
- Late Night Refreshment – Indoors:
 - Sunday to Thursday from 23:00 to 01:00
 - Friday and Saturday from 23:00 to 02:00
- Sale by retail of alcohol to be consumed on premises:
 - Monday to Wednesday from 11:00 to 00:00
 - Thursday from 11:00 to 01:00
 - Friday and Saturday from 10:00 to 03:00
 - Sunday from 10:00 to 01:00

New Wing Fu, 227 Old Kent Road, London SE1 5LU

- Late Night Refreshment – Indoors:
 - Monday to Sunday from 23:00 to 00:00
- Sale by retail of alcohol to be consumed off premises:
 - Monday to Sunday from 12:00 to 00:00.

Southwark Council statement of licensing policy

31. Council assembly approved Southwark’s statement of licensing policy 2021-2026 received assent on 25 November 2020 and 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 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.
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.

Cumulative impact area (CIA)

34. Within Southwark’s statement of licensing policy, the premises is outside of a cumulative impact area and within a residential area.
35. Under the Southwark Statement of Licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Hotel bars and guest houses:
 - No restrictions for residents
 - Closing time for night clubs (with 'sui generis' planning classification):
 - Not considered appropriate for this area.

Resource implications

36. There is no fee associated with this type of application.

Consultation

37. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

Community impact statement

38. 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 Governance

39. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
40. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

41. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
42. The four licensing objectives are:
 - The prevention of crime and disorder
 - The protection of public safety
 - The prevention of nuisance
 - The protection of children from harm.
43. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
 - Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.
44. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
 - Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
 - Have not been withdrawn
 - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
45. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
46. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.

47. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
48. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

49. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
 - The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

50. 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.

51. This matter relates to the review of the premises licence under section 51 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

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.

58. 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.

59. 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

60. 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

61. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the review application and supporting documentation from trading standards
Appendix B	Supporting representations from the police and licensing
Appendix C	Copy of the current premises licence and plans
Appendix D	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	1 March 2021	
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		1 March 2021