

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 8 April 2021	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Mi Llajta Sabores De Bolivia Ltd, 315 Camberwell Road, London SE5 0HQ	
<b>Ward(s) or groups affected:</b>		Camberwell Green	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION(S)

1. That the licensing sub-committee considers an application made by Mi Llajta Sabores De Bolivia Ltd for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Mi Llajta Sabores De Bolivia, 315 Camberwell Road, London SE5 0HQ.
2. Notes:
  - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from two local residents and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 13 of this report provides a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A and Appendix B.
  - c) Paragraphs 17 to 21 of this report deal with the representations submitted in respect of the application and are attached as Appendix D and Appendix E. A Copy of the representation submitted by the Metropolitan Police Service, which has subsequently been withdrawn, is attached to this report as Appendix C. A map showing the location of the premises is attached to this report as Appendix F.
  - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

## **BACKGROUND INFORMATION**

### **The Licensing Act 2003**

3. The Licensing Act 2003 provides a licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
  - The prevention of crime and disorder
  - The promotion of public safety
  - The prevention of nuisance
  - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
  - The Act itself
  - The guidance to the act issued under Section 182 of the Act
  - Secondary regulations issued under the Act
  - The licensing authority's own statement of licensing policy
  - The application, including the operating schedule submitted as part of the application
  - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence application**

8. On 05 February 2021 by Mi Lljajta Sabores De Bolivia Ltd applied for a premises licence to be granted under the Licensing Act 2003 in respect of

the premises known as by Mi Lljajta Sabores De Bolivia, 315 Camberwell Road, London SE5 0HQ.

9. The premises is described in the application as:
  - “A Cafe and Restaurant specialized in South American food. We have tables and chairs for our costumers and also toilet facilities.”
10. The hours within the application are summarised as follows:
  - The sale by retail of alcohol (on sales):
    - Monday to Sunday from 11:00 to 22:00
  - Opening hours:
    - Monday to Sunday from 09:00 to 22:30
11. The designated premises supervisor is to be Jhovanni Jose Guzman Rodriguez.
12. The premises licence application form provides the applicant’s operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached as Appendix A.
13. The premises plans attached to this application are detailed as Appendix B to this report.

### **Representations from responsible authorities**

14. A representation had been submitted by the Metropolitan Police Service.
15. The Metropolitan Police Service representation has been withdrawn, based on conciliation with the applicant. The applicant has agreed to amend the premises licence application operating schedule to incorporate conditions suggested by the Metropolitan Police Service detailed below.
  - That a CCTV system be installed at the premises and be maintained in good working order and be continually recording at all times the premises are in use under the licence. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises.

- That all CCTV footage be kept for a period of 31 days and shall on request be made immediately available to officers of the police and the council.
  - That a member of staff should be on duty at all times the premises is open that is trained in the use of the CCTV and able to view and download images to a removable device on request of Police or council officer.
  - That all staff are trained in their responsibilities under the licensing act 2003 and training records to be kept and updated every 6 months and shall, upon request, be made immediately available to officers of the police and the council.
  - That intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such person as an ancillary to their meal.
  - That the service of alcohol shall be by waiter/waitress service only and to persons seated at a table. No vertical drinking is permitted.
  - That customers shall use no outside area other than those who temporarily leave the premises to smoke a cigarette and No more than five people at one any time.
  - That no alcoholic drinks shall be allowed outside at any time.
16. The Metropolitan Police Service representation and agreement to withdraw its representation is attached at Appendix C.

### **Representations from other persons**

17. Representations have been received from two local residents.
18. Representation to this application has been made on the grounds of public safety, the prevention of crime and disorder and the prevention of public nuisance.
19. One local resident states the premises have blocked the buildings fire exit. They are also worried the premises intend to extend the café into the yard outside, creating a noise nuisance for others occupying the building. This representation is attached at Appendix D.
20. The second resident in their representation to this application states 'This building and the area in general is already subject to crime and disorder because of the Nollywood nightclub that is part of the building. 315 Camberwell Rd has been broken into on numerous occasions, the front door that was meant to be a temporary door has been covered in graffiti, as is the vast majority of the rest of the whole building'

21. Further the resident states 'I feel the granting of this application will inevitably greatly increase the footfall directly in front of 315 Camberwell Road leading to even more opportunistic crime, while people are moving in and out of the restaurant, either sitting in the restaurant or getting takeaways. I feel the area directly outside the proposed restaurant will be an even greater target for crime and disorder and subject to even greater public nuisance'. A copy of this representation is attached to this report as Appendix E.

### **Conciliation**

22. As stated above, the representation from the Metropolitan Police Service has been conciliated and is detailed at Appendix C.

### **Premises history**

23. No authorisation under current or prior licensing legislation has been held in respect of the premises.

### **Map**

24. A map of the local area is attached as Appendix F. While there are a significant number of licensed premises in the locality, there are a number of licensed premises in the immediate vicinity, namely:

#### **Mozah Anx, 278 Camberwell Road, London SE5 0DL**

- Late night refreshment – indoors:
  - Monday to Tuesday from 23:00 to 00:00
  - Wednesday from 23:00 to 00:30
  - Thursday to Saturday from 23:00 to 01:30
  - Sunday 23:00 to 23:30
- Sale by retail of alcohol to be consumed on the premises:
  - Monday to Tuesday from 12:00 to 00:00
  - Wednesday from 12:00 to 00:30
  - Thursday to Saturday from 12:00 to 01:30
  - Sunday 12:00 to 23:30
- Opening hours:
  - Monday to Tuesday from 11:00 to 00:30
  - Wednesday from 11:00 to 01:00
  - Thursday to Saturday from 11:00 to 02:00
  - Sunday 11:00 to 00:00.

### **The Planet Nollywood, 319 Camberwell Road, London SE5 0HQ**

- Films, sporting Event, live music, recorded music, performance of dance, entertainment similar to live/recorded music - indoors:
  - Monday to Thursday from 10:00 to 03:00
  - Friday to Sunday from 10:00 to 05:00
- Late night refreshment – indoors:
  - Monday to Thursday from 23:00 to 03:00
  - Friday to Saturday from 01:00 to 05:00
  - Sunday from 23:00 to 05:00
- Sale by retail of alcohol to be consumed on premises:
  - Monday to Thursday from 10:00 to 03:00
  - Friday to Sunday from 10:00 to 05:00
- Sale by retail of alcohol to be consumed off premises:
  - Monday to Thursday from 10:00 to 03:00
  - Friday to Sunday from 10:00 to 05:00
- Plays – indoors:
  - Monday to Thursday from 02:00 to 03:00
- Boxing or wrestling – indoors:
  - Monday to Saturday from 09:00 to 23:00
  - Sunday from 12:00 to 22:30
- Opening hours:
  - Monday to Thursday from 10:00 to 03:30
  - Friday to Sunday from 10:00 to 05:30.

### **Southwark Council statement of licensing policy**

25. 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.

26. 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.

### **Camberwell cumulative impact area (CIA)**

27. Council assembly approved the introduction of a special policy for Camberwell on the cumulative impact of a concentration of licensed premises (saturation/cumulative impact policy) on 5 November 2008. This application falls within the policy area.
28. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
29. The effect of this special policy is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating

schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

30. Within Southwark's statement of licensing policy 2021 - 2026, the premises is situated in the Camberwell 'district town centre'. 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:

- Restaurants and cafes:
  - Sunday to Thursday: 00:00
  - Friday to Saturday: 01:00.

### **Community impact statement**

31. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

### **Resource implications**

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

### **Consultation**

33. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

34. Initially there had been issues with the notice in that one was advertised, but no application had been received by the Licensing Authority. After that, a notice was put in place, but was not accepted as being valid. The notice was then taken down completely. The correct notice was put in place on 07 August 2020 and the 28 day consultation started.

### **Community impact statement**

35. 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**

36. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

37. The principles which sub-committee members must apply are set out below.

### **Principles for making the determination**

38. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

39. The principles which sub-committee members must apply are set out below.

40. 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.

41. Relevant representations are those which:

- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

42. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:

- To grant the licence subject to:
  - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
  - Any condition which must under section 19, 20 or 21 be included in the licence.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premises supervisor.
- To reject the application.

### **Conditions**

43. 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.

44. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

45. 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.

46. 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.

47. 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**

48. 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**

49. 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.
50. This matter relates to the determination of an application for a premises licence under Section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

### **Council's multiple roles and the role of the licensing sub-committee**

51. 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.
52. 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.
53. 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.

54. 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.
55. 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.
56. 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.
57. 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.
58. 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**

59. 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

60. 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 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	Application for a premises licence
Appendix B	Premises plans
Appendix C	Metropolitan Police Service representation and conciliation with applicant
Appendix D	Resident 1 representation
Appendix E	Resident 2 representation
Appendix F	Map of the locality

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Richard Kalu, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	18 March 2021	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	24 March 2021	