

Item No. 5.	Classification: Open	Date: 2 June 2010 at 10am.	MEETING NAME Licensing Sub-Committee
Report title:		Licensing Act 2003 – Banana’s Bar, 374 Walworth Road, London SE17 2NF	
Ward(s) or groups affected:		Premises are within: Faraday	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee considers an application made by Minho Montalegre Limited to vary a Premises Licence granted under the Licensing Act 2003 in respect of the premises known as: Bananas Tapas Bar Restaurant, 374 Walworth Road, London SE17 2NF.

2. **Notes:**

- a) *The application seeks to vary existing licensable activities held under current legislation in respect of the premises known as: Bananas Tapas Bar Restaurant 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 London Fire Emergency & Planning Authority, Environmental Protection Team and interested parties and is therefore referred to the Sub-Committee for determination;*
- b) *Paragraphs 12 to 16 of this report provide a summary of the application under consideration by the Sub-Committee (A copy of the full application is provided as Appendix a).*
- c) *Paragraphs 17 - 21 of this report deals with the representations and comments received to the application. (copies of relevant representations and conciliations are attached as Appendices c, d & e).*

BACKGROUND INFORMATION

The Licensing Act 2003

- 3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for:
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) The provision of late night refreshment
- 4. Within Southwark, this Council wholly administers the licensing responsibility.
- 5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are
 - a) The prevention of crime and disorder;

- b) The promotion of public safety
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
- a. The Act itself;
 - b. The Guidance to the act issued under Section 182 of the Act;
 - c. Secondary regulations issued under the Act;
 - d. The Licensing Authority's own Statement of Licensing Policy
 - e. The application, including the operating schedule submitted as part of the application
 - f. Relevant representations
7. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing justice's licences, public entertainment licences and night café licences were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licences into the relevant licences under the new system. Licences that were so converted were converted on existing terms, conditions and restrictions. The 6 August date having now passed operators are still able to apply to secure the new licences before the date upon which the new licensing regime comes into being – 24 November 2005 – but must now apply for new licences.
8. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.
9. Although applications submitted after 6 August 2005 no longer carry "grandfather" conversion rights, licensing authorities are directed that applicants do have an "added protection" under the law. Where an applicant seeks a premises licence intended to cover the retail sale of alcohol and that premises operation is currently covered by a justices licence, the licensing authority concerned cannot apply conditions restricting the hours at which alcohol is sold at present unless there has been a material change in the circumstances since the Justices Licence was granted, or the Police have made representations in connection with the prevention of crime.

KEY ISSUES FOR CONSIDERATION

The current Premises Licence

10. The current licence in respect of the premises known as Bananas Tapas Bar Restaurant, 374 Walworth Road, London SE17 2NF was issued 29 March 2010. It allows the following licensable activities.
- Recorded music; facilities for dancing
Monday – Sunday from 11.00- 00.00;
 - Sale and Supply of alcohol on and off the premises:
Monday – Saturday from 09.00- 01.00;
Sunday 12.00 – 01.00

- Operating hours of premises;
Monday – Saturday from 09.00- 01.30;
Sunday 12.00 – 01.30

11. A copy of the existing Premises Licence is attached as Appendix b.

The variation application

12. On 19 March 2010, Minho Montalegre Limited applied to this Council to vary the Premises Licence issued in respect of the premises known as Banana's Tapas Bar Restaurant, 374 Walworth Road, LONDON SE1 2NF under section 34 of the Licensing Act 2003.

Details of the variation application

13. The variation application is summarized as follows:

- **To permit the provision of regulated entertainment**
(live music, performance of dance, provision of facilities for making music)
 - Fri & Sat from 11.00 - 03.30 on the day following
 - Sun from 11.00 – 02.00 on the day following
- **To extend the terminal hour permitted for recorded music and provision of facilities for dancing:**
 - Fri & Sat from 00.00 - 03.30 on the day following
 - Sun from 00.00 – 02.00 on the day following
- **To permit the provision of late night refreshment**
 - Mon – Thurs from 23.00 - 00.00
 - Fri & Sat from 23.00 – 03.00 on the day following
 - Sun from 23.00 – 01.30 on the day following
- **To extend the terminal hour for the sale and supply of alcohol:**
 - Fri & Sat from 01.00 - 03.30 on the day following
 - Sun from 01.00 – 02.00 on the day following
- **The opening hours of the premises requested are**
 - Fri & Sat from 09.00 - 04.00 on the day following
 - Sun from 09.00 – 02.30 on the day following

A copy of the variation application is attached as Appendix a to the report.

14. The variation application form provides the applicant's operating schedule. Parts E, F, G, I, J, L M and O set out the proposed operating hours in full.

15. Part P of the variation application provides any additional steps that might be proposed by the applicant to promote the four licensing objectives as set out in the Licensing Act 2003. In the event that the sub-committee should approve the application any proposals stated here must become licence conditions.

Designated Premises Supervisor

16. The designated premises supervisor under the existing premises licence is Bartłomiej Marcin Gasior, he holds a personal licence issued by Royal Borough of Windsor & Maidenhead.

Representations from Interested Parties

17. There are representations lodged by six local residents (one comprising a petition signed by 40 residents); and also Fielding Street Residents Association. The representations are primarily concerned with the prevention of public and noise nuisance and crime and disorder. The representations are attached as appendix c to the report.

Representations from Responsible Authorities

18. There were two representations lodged by the London Fire Emergency Planning Authority, (LFEPA) and the Councils Environmental Protection Team (EPT). Both representations outlined control measures that should be undertaken to increase safety and to reduce noise nuisance if the licence is granted.
19. However after conciliation and agreement with the applicant, the following conditions have been incorporated into the operating schedule by the applicant. Accordingly, these conditions will be attached should the licence be granted. The EPT therefore have withdrawn their representation.
 - No external sound systems shall be imported onto the premises; any imported musical instruments requiring amplification shall be amplified via the existing sound system (controlled by means of the Sound Limiting Device).
 - There shall be no removal and loading of equipment from the premises between the terminal hour and 08.00 hours.
 - After 22.00 hours, no more than ten (10) patrons shall be permitted to use the smoking area at any one time.
20. The London Fire and Emergency Defence Authority after a further inspection conducted at the premises on 17 May 2010 have withdrawn their representation with no further comments. The withdrawal email is attached as part of appendix d.
21. The applicant met with the Metropolitan Police who did not submit a representation as the applicant had agreed to their request that the operating schedule be amended to include the following condition. The email updating the operating schedule is attached as part of appendix d.
 - That there shall be no new admissions after 01.30am.

Conciliation

22. A conciliation statement was issued by the applicant having had regards to the representation received, copies were distributed to residents for their information. A copy of the statement is attached as appendix d to the report.
23. A meeting was also held on Tuesday 11 May 2010 between the management of the premises who were represented by Mr Richard Nash (Licensing consultant) and the interested parties consisting of six local residents and the chair of Fielding Street Residents Association).

Interested Parties comments

24. The interested parties amplified their concerns with regards to effect of noise nuisance already being experienced by local residents. They also pointed out that the proposed hours till 4am will have a real detrimental effect on their lives due to lack of proper sleep caused by the bass of music and also by patrons smoking outside, patrons leaving at later hours and the occasional arguing and fighting.
25. They also had concerns about the premises operating beyond its terminal hours with loud music being heard past the current operating time of 01.30 concerns were also raised with regards to patrons who looked under age being admitted to the premises and patrons from other closed premises who will gain entry having already had a few drinks.

The Management comments

26. Mr Nash addressed these issues by stating that this application was made by new management and as such the nature of the premises would change to a restaurant with about 25 covers which would provide cabaret style (laid back, Latin music, some live and some recorded) entertainment. He also stated that the target clientele would be the more mature patrons and also people who work in the catering trade who finish work late to have somewhere to go after work.
27. He also mentioned that the new management by way of the application and the operating schedule was trying to put in management controls to alleviate the problems of the past. As such a sound limiting device had been installed and set, also SIA door staff will be provided. He also gave an assurance that if the licence was granted the walls of the premises would be rebuilt to stem out noise escape.
28. He stated that the Police and Environmental Protection Team were satisfied with the proposals made in the operating schedule and amendments and agreements made to it and as such had withdrawn their objections to the application.
29. The interested parties were still not happy with the intended operating hours and noise nuisance issues. Therefore the application is being submitted for determination by the Licensing Sub-Committee.
30. Additional supplementary statements to support the management cause are attached as appendices f/f1/f2 to the report.

Recent information relating to the premises

31. On 16 March 2010 an application was made to transfer the licence from the previous owner Mr Candido Rodrigues to Minho Montalegre Limited.

32. Also on the 26 March 2010 an application was made to transfer the Designated Premises Supervisor to Bartomiej Marcin Gasior.

Additional information relating to history of premises

33. On 25 November 2009 the Licensing Sub-Committee considered an application for 4 sets of temporary event notices (TENs) made by the previous licensee, due to representations made by the Metropolitan Police with regards to crime and disorder. The decision made was to refuse the applications as the licensing sub-committee was satisfied that the licensee had not managed the premises having regard to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.
34. On 14 December 2009 an application was also determined for a variation to extend the operating hours of a premises licence. The application was opposed by the Metropolitan Police and a local resident. The decision was also to refuse the variation as the sub-committee was satisfied that the licensee had not managed the premises having regard to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

The Local Area

35. A map of the local area is attached as appendix g. The operating terminal hours of the following premises licensed for regulated entertainment and late night refreshment are shown on the map:

Off Licences

- Capalina Stores, 365 Walworth Road SE17 (Mon - Sat until 23:00 and Sun 22.30)
- Oli Centre, 332 344 Walworth Road, SE17 (Mon – Sun 24hrs.)
- Iceland Stores, 332 344 Walworth Road, SE17 (Mon- Sat 23:00; Sun till 22.30)

Public Houses with entertainment

- Red Lion, 407 Walworth Road, SE17 (Sun – Thurs till 00:30; Fri & Sat till 01.30)

Late Night Refreshment

- Walworth Kebab & Burger Bar, 360 Walworth Road, SE17 (Sun – Thurs till 02.00; Friday & Saturday till 04:00)
- La Luna, 380 Walworth Road, SE17 (Mon – Sat 00:30; Sun till 00.00)
- Winner, 3 Westmoreland Road, SE17 (Mon - Thurs till 00:00; Fri & Sat till 00.30; Sun till 23.30)
- Sierra Spot, 6 Arnside Street, London SE17 (Mon – Thurs till 00.00; Fri & Sat till 00.30 and Sun till 22.30)

Southwark Council Statement of Licensing Policy

36. Council Assembly approved the Southwark Statement of Licensing Policy on 2 April 2008. Sections of the Statement that are considered to be of particular relevance to this application are
- a. Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives

- b. Section 5 which sets out the Council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
- c. Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998
- d. Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
- e. Section 8 provides general guidance on ensuring public safety including safe capacities
- f. Section 9 provides general guidance on the prevention of nuisance
- g. Section 10 provides general guidance on the protection of children from harm.

37. 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

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

CONSULTATIONS

39. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in a local news and a similar notice exhibited outside of the premises.

COMMUNITY IMPACT STATEMENT

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

SUPPLEMENTARY ADVICE FROM THE STRATEGIC DIRECTOR OF COMMUNITIES, LAW & GOVERNANCE

41. The sub-committee is asked to determine the application for a variation of a converted premises licence.

42. The requirement is to give all parties a fair, unbiased hearing.

43. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case-by-case basis.

44. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under Section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent and crime and disorder in the borough.
45. Interested parties, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the Magistrates' Court within a period of 21 days beginning with day on which the applicant was notified by the licensing authority of the decision to be appealed against.
46. The principles that sub-committee members must apply are set out below.

Principles for making the determination

47. 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.
48. 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.
49. Relevant representations are those which
 - Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an interested party or responsible authority
 - Have not been withdrawn (in this case, the initial objections from the Fire Service have been withdrawn).
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
50. 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

51. 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.
52. The four licensing objectives are
 - a. The prevention of crime and disorder;
 - b. Public safety;
 - c. The prevention of nuisance; and
 - d. The protection of children from harm.

53. 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.
54. 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.
55. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors.
56. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing Procedures

58. 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.
59. As this matter relates to the determination of an application to vary 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

60. 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.
61. 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.
62. 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.
63. 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.
64. Members will be aware of the Council's Code of Conduct that requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

Guidance

65. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

BACKGROUND DOCUMENTS

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

APPENDICES

No.	Title
Appendix A	Copy of the variation application
Appendix B	Copy of the existing premises licence
Appendix C	Copies of the representations from interested parties
Appendix D	Copies of withdrawal emails
Appendix E	Copy of conciliation statement from applicant
Appendices F/F1/F2	Copy of additional support statement from applicant
Appendix G	Copy of the local area map
Appendix H	List of representations (On closed agenda)

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	24 May 2010	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law and Governance	Yes	Yes
Finance Director	No	No
Cabinet Member	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	24 May 2010	