

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 16 February 2017	<b>Meeting Name:</b> Licensing sub-committee
<b>Report title:</b>		Licensing Act 2003: Lush Bar, 280 Old Kent Road, London SE1 5UE	
<b>Ward(s) or groups affected:</b>		East Walworth	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the sub-committee decide whether or not to issue counter notices in respect of two temporary event notices (TENs) 758512 and 762133 served by Mr Douglas Otunyo, in regards to events to be held at the Lush Bar, 280 Old Kent Road, London SE1 5UE. TEN 758512 is between 22:00 on 18 February 2017 and 01:00 the following day and on 19 February 2017 between 22:00 and 00:00. TEN 762133 is between 22:00 on 24 February 2017 and 02:00 the following day and on 25 February 2017 between 22:00 and 00:00.

## BACKGROUND INFORMATION

### The Licensing Act 2003

2. On 24 November 2005 the Licensing Act 2003 came into effect establishing a licensing regime for the following licensable activities:
  - a) The retail sale of alcohol
  - b) The supply of alcohol to club members or on behalf of a club
  - c) The provision of regulated entertainment
  - d) The provision of late night refreshments.
3. The Act established a process for the giving of "temporary event notices" (TENs).
4. Amendments to the Licensing Act 2003 were brought about by way of the Police Reform and Social Responsibility Act 2011 as of 25 April 2012.
5. A premises user may serve a TEN, where it is proposed to use the premises concerned to provide one or more licensable activities for a period not exceeding 168 hours for less than 500 persons.
6. A person holding a personal license issued under the Act may serve up to 50 TENs in a calendar year. Non personal licence holders may serve up to five TENs in the same period. No premises may be used for more than 12 TENs in a calendar year or for more than 21 days in a calendar year.
7. No premises may be used for temporary events that are less than 24 hours apart.

8. The police or environmental health authority may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their intervention may in some cases result in the licensing authority imposing conditions on a TEN.
9. If the police or environmental health team believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. This must be given within three working days of the receipt of the TEN.
10. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
11. The police or environmental health may contact the premises user to discuss their objections and attempt to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified. If there is no agreement, the licensing authority must hold a hearing to consider the notice.
12. If the licensing authority receives an objection notice from the police or environmental health that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions, and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and give a counter notice. This prohibits the event from taking place.

## **KEY ISSUES FOR CONSIDERATION**

### **The temporary event notices**

13. On 3 February 2017 and 9 February 2017 two separate TENs were served by Mr Douglas Otunyo (The premises licence holder of the premises) in respect of events intended to be held at Lush Bar, 280 Old Kent Road, London SE1 5UE. Copies of the TENs are attached to this report as Appendix A.
14. The TENs are summarised as follows:
  - TEN 758512: To allow the sale of alcohol and the provision of late night refreshment between 22:00 on 18 February 2017 and 01:00 the following day and 19 February 2017 from 22:00 to 00:00. The maximum number of people expected at any one time at the premises is 100. The activities are to take place on the premises only.
  - TEN 762133: To allow the sale of alcohol and the provision of late night refreshment between 22:00 on 24 February 2017 and 02:00 the following day and 25 February 2017 from 22:00 to 00:00. The maximum number of

people expected at any one time at the premises is 100. The activities are to take place on the premises only.

### **The objection notices**

15. On 7 February and 10 February 2017 the Metropolitan Police Service served objection notices in respect of the TENs.
16. The objection notices state that this venue was the subject of a recent expedited premises licence review on the grounds of serious crime and disorder.
17. The police make the following points in support of their objections:
  - As a result the premises licence was significantly modified to include a substantial reduction in hours, the removal of the designated premises supervisor (DPS) and the suspension of the premises licence.
  - This suspension was completed on the 9 January 2017 and the new premises licence became effective. On the 22 January 2017 at around 0200 hours Police visited the premises and entered via the main entrance. They noticed the lack of any SIA registered door staff as per condition 341 and that there did not appear to be any ID scanning system in operation as per condition 369.
  - This latest TEN would allow the premise to circumvent the modified licence and essentially allow the premises to operate over an entire weekend with no control measures in place.
  - It should also be noted that the applicant is the very same person that the licensing subcommittee sought to have removed from the licence as they had no confidence in his ability to manage the premises in a satisfactory manner or work within the conditions of the premises licence.
18. Copies of the Police objection notices are attached to this report in Appendix B.

### **TENs history**

19. Below is the recent history of TENs for the last year in respect of the premises. A schedule of the TENs since 26/8/2014 is attached to this report in Appendix C.

<b>No.</b>	<b>Premises user</b>	<b>Date of event</b>	<b>Time of event and activities</b>
1	Douglas Otunyo	26/8/16	00.00 – 04.30 Alcohol, LNR, and Regulated Entertainment Late TEN, Police rep, Counter notice

No.	Premises user	Date of event	Time of event and activities
2	Douglas Otunyo	20-21/1/17	16:00 – 02:30 16:00 – 00:00 Alcohol and LNR Late TEN, Police rep, Counter notice
3	Douglas Otunyo	27-28/1/17	22:00 – 01:00 Late TEN Alcohol and LNR
4	Douglas Otunyo	3-4/2/17	22:00 – 01:00 Late 22:30 – 00:00 Alcohol and LNR TEN, Police & EPT rep, Counter notice
5	Douglas Otunyo	10-11/2/17	22:00 – 02:00 22:00 – 00:00 Alcohol and LNR

### Premises history

20. The premises in respect of the premises licence consists of a bar and restaurant on the ground floor of 280 Old Kent Road.
21. The premises licence was carried over from the Justices and music and dancing licenses in the 2005 transition, the premises was called Pardis during this period with a different premises licence holder and DPS. This premises licence was revoked by the Licensing sub-committee on 17 December 2013 following an expedited review application by the Police for a serious assault.
22. A new application for a premises licence was submitted by the current premises licence holder, Douglas Otunyo in 7 April 2014 with Mr Otunyo as the DPS.
23. The licence was varied and later hours till 03:00 the following days on Friday and Saturday were granted by the licensing sub-committee 6 November 2014.
24. An application for an expedited review of the premises licence was submitted by the Metropolitan Police Service and at the hearing of 22 September 2016 the licence was suspended for a period of 3 months, the DPS was removed from the licence, hours were reduced and conditions modified. A copy of the notice of decision is attached as Appendix D.
25. An application to change the DPS to Mr Forlain Olaopa was submitted on 9 January 2017. Since then the venue has been visited on one occasion when licensable activities were being carried out. This was on 28 January 2017. Mr Olaopa was not present. The premises licence holder, Mr Otunyo, was. When asked, he stated that Mr Olaopa was not working that night.
26. A minor variation was submitted on 20 January 2017. This was refused because it was seeking to remove conditions imposed at the hearing of the expedited review on 22 September 2016. Representations were also received from responsible

authorities. Due to the application being refused the applicant was advised to submit a full variation.

27. An application to vary the premises licence was submitted on 26 January 2017 consisting of the following;

- Variation for removal of condition 369 (id scanner)
- Removal of regulated entertainment
- Reduction of security from 3 to 1 (341 and 841)
- To add condition to serve food with drinks
- Last entry Friday and Saturday to change to 01:00 instead of 2am
- Polycarbonate/plastic condition adjust to Friday and Saturday from 22:00 condition 844.

28. This variation has yet to be determined. The last date for representations is 23 February 2017.

### **Premises licence**

29. Details of current premises licence:

- **Licensable activities authorised by the licence**  
Live Music - Indoors  
Recorded Music - Indoors  
Late Night Refreshment - Indoors  
Sale by retail of alcohol to be consumed on premises
- **Opening hours of the premises**  
Sunday to Wednesday           06:00 - 00:00  
Thursday                           06:00 - 00:30  
Friday and Saturday           06:00 - 02:00
- **Live Music - Indoors**  
Monday to Sunday           12:00 - 23:00
- **Recorded Music - Indoors**  
Sunday to Wednesday       12:00 - 23:30  
Thursday                       12:00 - 00:00  
Friday and Saturday       12:00 - 01:30
- **Late Night Refreshment - Indoors**  
Sunday to Wednesday       23:00 - 23:30  
Thursday                       23:00 - 00:00  
Friday and Saturday       23:00 - 01:30
- **Sale by retail of alcohol to be consumed on premises**  
Sunday to Wednesday       12:00 -23:30  
Thursday                       12:00 - 00:00  
Friday and Saturday       12:00 - 01:30

30. The current premises licence is attached as Appendix E.

## **Licensing visit history**

31. Saturday 12 November 2016 23:00 – private party taking place, no regulated activity
32. Saturday 14 January 2017 22:25 – small private party taking place, no regulated activity
33. Sunday 22 January 2017 01:45 – premises compliant
34. Saturday 28 January 2017 21:47 – the applicant Mr Otunyo showed some confusion over dates covered by the TEN, advice was given on how to ensure TENs are completed was given.
35. Dates shown above are when access was gained and activity could be confirmed. Visits to the premises were carried out during the period of suspension showing the premises closed.
36. During a visit by the Metropolitan Police Service it was noted that the ID scanning system was not being used. A warning letter was sent by a council officer.
37. During a visit dated 24 January 2015 breaches of the licence were witnessed by officers of the council. The breaches related to the sound limiter, ID scanning system, staff training, evacuation procedure and dispersal policy. A warning letter was sent.
38. Following breaches of the licence found during inspections by officers of the council and the police, enforcement action is being taken. A case for prosecution is being built. Breaches included ineffective use of the ID scanning system and the admittance of patrons beyond the permitted times.
39. Further details of the licensing visits are attached to this report as Appendix F.

## **The local area**

40. A map showing the location of the premises is attached to this report as Appendix G. The premises are identified at the centre of the circle on the map. The following licensed premises are also shown on the map and have closing times as stated:

### **Off licence**

- G & F Supermarket, 272-274 Old Kent Road SE1 5UE (Monday - Sunday 24 hours)
- Nishas News, 246 Old Kent Road SE1 5UB (Monday - Sunday until 23:30)
- B & B Newsagent, 104 - 106 Dunton Road, London SE1 5UN (Monday - Sunday until 23:00)

### **Late night refreshment**

- Super Pizza, 292 Old Kent Road SE1 5UE (Sunday - Thursday until 01:00 and Friday - Saturday until 02:00)

- Perfect Fried Chicken, 259 Old Kent Road SE1 5LU (Monday - Sunday until 00:00)
- Old Kent Fish Bar, 253 Old Kent Road SE1 5LU (Monday – Sunday until 01:00)
- Village Pizza, 230 Old Kent Road SE1 5UB (Sunday - Thursday until 03:00 and Friday - Saturday until 04:00)
- Halal Kebab House, 273 Old Kent Road SE1 5LU (Monday - Sunday until 03:00)
- El Turkistan Takeaway, 304 Old Kent Road SE1 5UE (Sunday - Thursday until 02:00 and Friday - Saturday until 03:00)

### **Restaurant**

- New Wing Fu, 227 Old Kent Road, London SE1 5LU (Monday - Sunday until 00:00)

### **Policy considerations**

41. Section 4 of the Southwark statement of licensing policy on “administration, exercise and delegation of function” deals with the parameters under which TENs may be considered.

### **Consideration by the sub-committee**

42. The sub-committee is asked to consider whether then issue of a counter notice is necessary for the promotion of the prevention of public nuisance and protection of public safety licensing objectives.

### **Community impact statement**

43. Members are advised that under the Act, the matters to which consideration may be given in this instance are the crime and disorder and public nuisance objectives.
44. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

### **Resource implications**

45. A fee of £21.00 has been paid by the applicant in respect of each TEN, this being the statutory fee payable.

### **Consultation**

46. The Act provides for no consultations to take place other than the process outlined in this report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

47. The sub-committee is asked to determine the notification of this temporary event under Section 105 of the Licensing Act 2003 and to consider whether or not

counter notice should be issued in the circumstance. It must only issue a counter notice if they believe the event would undermine the crime prevention objective set out in the Act

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

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

49. The general principle is that temporary event notices must be accepted unless a relevant objection is received from the police. This is subject to the proviso that the premises user has complied with regulations and submitted the notice within a prescribed time.

50. A relevant objection is that which:

- Is about the likely effect of the TEN on the promotion of the crime prevention of the licensing objectives
- Is made by the metropolitan police
- Has not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

51. If a relevant objection notice is received then the sub-committee must have regard to it in determining whether it is necessary for the promotion of the prevention of crime prevention and the prevention of public nuisance licensing objectives of the Licensing Act to:

- Issue a counter notice by adding to, omit, and/or alter the conditions of the licence or
- Reject the whole or part of the application for TEN.

### **Conditions**

52. The sub-committee may attach conditions on the carrying on of permitted licensable activities. The sub-committee's function is to determine whether a counter notice should be issued

53. Members are also referred to the Home Office guidance on conditions, specifically section 7, and Annexes D, E, F and G.

### **Reasons**

54. The sub-committee must give reasons for its decision to issue or not to issue a counter notice.

### **Hearing procedures**

55. 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 objection.
  - 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 submission.
  - The committee shall disregard any information given by a party which is not relevant:
    - To the particular submission before the committee
    - To the licensing objectives prevention of crime and disorder.
  - 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 the objection and notice the authority may take into account documentary or other information produced by a party in support of their objection or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
56. This matter relates to the determination of a notification for a temporary event notice under section 105 of the Licensing Act 2003. Regulation 26(1) (c) requires the sub-committee to make its determination at the conclusion of the hearing.
57. 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.
58. As a quasi-judicial body the licensing sub-committee is required to consider the temporary event notice 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 the police objection.

59. 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.
60. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making the objection 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.
61. Where the relevant counter notice under section 105(3) is given the premises user may appeal against that decision. Where a counter notice is not given, the chief officer of police may appeal against that decision. The appeal must be made 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. No appeal may be brought later than five working days before the day on which the event begins.

### **Guidance**

62. Members are required to have regard to the Home Office revised 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.

### **REASONS FOR URGENCY**

63. The TENs process is time limited, and due to legislative time constraints it would not be possible to wait for a further meeting to be held to consider this report.

### **REASONS FOR LATENESS**

64. This report was not available for circulation within five clear days before the meeting due to legislative time constraints.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Licensing Act 2003 Home Office revised guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	Licensing Unit Hub 2 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read (020 7525 5748)

## APPENDICES

No.	Title
Appendix A	The temporary event notice
Appendix B	The Metropolitan Police representation
Appendix C	List of previous TENs applied for
Appendix D	Notice of Decision for the expedited review
Appendix E	Copy of current premises licence
Appendix F	List of licensing visits to venue
Appendix G	Map of the area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Mark Orton, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	10 February 2017	
<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 Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	<b>No</b>	<b>No</b>
<b>Date final report sent to Constitutional Team</b>		13 February 2017