

Item No. 6.	Classification: Open	Date: 10 May 2017	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Bala Baya, Arch 25, Old Union Yard Arches, Union Street, London SE1 0UR	
Ward(s) or groups affected:		Cathedral	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee decide whether or not to issue counter notices in respect of a temporary event notice (TEN) 858083 served by Ms Charlotte Evans in regards to an event to be held at Bala Baya, Arch 25, Old Union Yard Arches, Union Street, London SE1 0UR. The TEN is between 23:30 on Friday 12 May 2017 and 05:00 on Saturday 13 May 2017.

BACKGROUND INFORMATION

The Licensing Act 2003

2. On 24 November 2005 the Licensing Act 2003 established 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 16 April 2017 the TEN was served by Ms Charlotte Evans in respect of an event intended to be held at Bala Baya, Arch 25, Old Union Yard Arches, Union Street, London SE1 0UR. A copy of the TEN is attached to this report as Appendix A.
14. The TEN is summarised as follows:
 - TEN 858083: To allow the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment between 23:30 on Friday 12 May 2017 and 05:00 the following day. The maximum number of people expected at any one time at the premises is 250. The activities are to take place on the premises only.

The objection notices

15. On 18 April 2017 the councils environmental Protection Team ("EPT") served an objection notice in respect of the TEN.

16. The objection notice states that this venue was recently the source of a noise complaint from a member of the public and upon investigation by the noise officer was found to be open beyond the hours permitted on the premises licence.

17. EPT make the following points in support of their objections:

- The premises licence for Arch 25 was granted under licence number 851909 in June 2016. The opening times sought of the licence mirrored the hours agreed through planning. The licence also restricts recorded music to be played indoors until 23:00 on Thursdays to Saturdays.
- Southwark's noise and nuisance service received a noise complaint from a residential neighbour at 22:58 on Thursday 30 March 2017 regarding loud audible music being emitted from the Bala Baya premises.
- A noise and nuisance team officer visited the complainants property at 00:10 on Friday 31 March 2017 and witnessed a statutory nuisance being caused due to the level of intrusion from music and people noise being emitted from the Bala Baya premises. The noise officer visited the premises at 00:30 to discuss this matter with the manager.
- EPT have stated that the noise officer witnessed the premises open and the playing of recorded music beyond the permitted times stated on the premises licence which subsequently caused a statutory noise nuisance.
- EPT have strong concerns that if this TEN event were to be granted then further noise nuisance will be caused and therefore object to this application with regards to the prevention of public nuisance licensing objection. The hours stipulated on the premises licence (and the planning application) are relevant considering the location of the arch premises and the proximity of residential neighbours.
- EPT have also object based on the crime and disorder licensing objective, whereas granting the TEN application will be in breach of planning law. The event will exceed the hours stipulated on the planning application, furthermore the event planned is for drinking, dancing and entertainment which is contrary to the A3 (restaurant) use class.

18. A copy of the EPT objection notice is 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.

No.	Premises user	Date of event	Time of event and activities
1	Samuel Shaun	31/12/16	23:30 – 05.00 following day Alcohol, LNR, and Regulated Entertainment Indoors only
2	Charlotte Evans	1/4/17	23:30 – 05.00 following day Alcohol, LNR, and Regulated Entertainment Indoors only
3	Charlotte Evans	12/5/17	23:30 – 05.00 following day Alcohol, LNR, and Regulated Entertainment Indoors only

Premises history

20. The premises consists of a restaurant within a railway arch on the ground floor of Arch 25 in Old Union Yard Arches, London SE1.
21. The premises licence was granted to Sefardi Ltd on 8 June 2016. The notice of decision is attached as appendix C.

Premises Licence

22. Details of current premises licence:

- **Opening hours of the premises**
Monday to Sunday 07:00 - 23:30
- **Films - indoors**
Thursday to Saturday 21:00 - 23:00
- **Recorded music - indoors**
Thursday to Saturday 21:00 - 23:00
- **Sale by retail of alcohol to be consumed on premises**
Monday to Friday 12:00 -23:30
Saturday and Sunday 10:00 – 23:30

23. The current premises licence is attached as Appendix D.

Licensing visit history

24. A visit was carried out by an enforcement officer whilst operating under a TEN on 1 April 2016 at 21:45. The officer reported no issues.

The local area.

25. A map showing the location of the premises is attached to this report as Appendix E. The premises are identified at the centre of the circle on the map.

Policy considerations

26. 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

27. The sub-committee is asked to consider whether the 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

28. 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.
29. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

Resource implications

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

Consultation

31. 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

32. 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
33. The principles which sub-committee members must apply are set out below.

Principles for making the determination

34. 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.
35. 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.
36. 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

37. 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
38. Members are also referred to the Home Office revised guidance on conditions.

Reasons

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

Hearing procedures

40. 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.
41. 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.
 42. 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.
 43. 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.
 44. 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.
 45. 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.

46. 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

47. 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.

Strategic Director of Finance and Governance

48. 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 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	Environmental protection team representation
Appendix C	Notice of decision from 8 June 2016
Appendix D	Premises licence
Appendix E	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Mark Orton, Licensing Enforcement Officer		
Version	Final		
Dated	24 April 2017		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS/DIRECTORATES/CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Law and Democracy	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
Cabinet Member	No	No	
Date final report sent to Constitutional Team			26 April 2017