

Item No. 6.	Classification: Open	Date: 4 July 2017	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Rock Island, 320-322 Old Kent Road, London SE1 5UE. – Temporary Event Notice	
Ward(s) or groups affected:		East Walworth	
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) 859138 served by Ms Claire Joy Steele in regards to an event to be held at Rock Island, 320 – 322 Old Kent Road, London SE1 5UE. The TEN is between 11.00 on Friday 7 July 2017 and 02.30 on Saturday 8 July 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 15 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 9 June 2017 the TEN was served by Ms Claire Joy Steele in respect of an event intended to be held at Rock Island, 320 – 322 Old Kent Road, London SE1 5UE. Ms Steele is the Designated Premises Supervisor for the venue. A copy of the TEN is attached to this report as Appendix A.
14. The TEN is summarised as follows:
 - TEN 859138: A drag-queen show to take place during London Pride fortnight (24 June to 9 July 2017), and to allow the sale of alcohol and the provision of regulated entertainment between 11.00 on Friday 7 July 2017 and 02.00 the following day. To allow the provision of late night refreshment between 23.00 on Friday 7 July 2017 and 02.00 the following day. The opening hours are from 11.00 on Friday 7 July 2017 to 02.30 the following day. The maximum number of people expected at any one time at the premises is 150. The activities are to take place on the premises only.

The objection notices

15. On 13 June 2017 the Metropolitan Police Service served an objection notice in respect of the TEN.
16. The objection notice states that the times of operation of the venue, and some of the conditions on the licence, were imposed at hearings of the Licensing Sub-Committee. These decisions were made to prevent the venue becoming a source of crime and disorder, and public nuisance. Allowing the application would remove all these conditions, and extend the hours of operation, with a negative impact on the Licensing Objectives
17. The Metropolitan Police Service made the following points in support of their objections:
 - The venue submitted a variation to extend its hours of operation to times similar to those requested in the TEN application. The application also asked for the removal of Condition 847 of the premises licence, which only allows alcohol to be consumed as ancillary to a table meal. This application was dealt with at a hearing of the licensing sub-committee on 1 June 2017. An extension in hours was granted, but not to the times requested. The request to remove Condition 847 was not granted.
 - An objector to the variation stated that she had not experienced any problems with the venue since the current premises licence for the venue had been granted in January 2017, but there was a prevailing fear the problems experienced in 2015 would return and having heard from all of the responsible authorities, did not have confidence in the management of the premises.
 - The Metropolitan Police Service are concerned that granting the TEN application would circumvent all the conditions of the premises licence that have been crafted to ensure that the venue only operates as a restaurant.
18. A copy of The Metropolitan Police Service 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	Claire Joy Steele	14/02/2017	11.00 – 02.00 following day Alcohol and Regulated Entertainment 23.00 – 02.00 following day LNR Indoors only

Premises history

20. The licensed part of the venue consists of a bar and restaurant on the ground floor.

21. The premises has previously held a licence and operated as a restaurant and nightclub, known as The Thomas A'Becket. The previous licence was revoked by the licensing sub-committee on 10 March 2015 following an expedited review submitted by The Metropolitan Police relating to serious crime and disorder. There were further representations regarding persistent breaches of the premises licence and anti-social behavior associated with the premises. The notice of decision is attached as Appendix C.
22. A new application for a premises licence was submitted by Paul Anthony Scarborough on 16 November 2016 and granted at the hearing held on 30 January 2017. The notice of decision is attached as Appendix D.
23. An application for a variation of the licence was submitted on 4 April 2017. The application asked to extend the hours of operation of the venue; and remove Condition 847 which required alcohol to only be sold as an ancillary to a meal. Representations against the application were received, and the application was dealt with at a hearing of the licensing sub-committee on 1 June 2017. The hours were extended, but not to the times requested. The request to remove Condition 847 was not granted. The applicant is entitled to appeal against this decision, and the deadline for the appeal is 27 June 2017. To date, the applicant has yet to indicate whether or not they are going to appeal. Because of this, the licence issued on 27 February 2017 is still in force. The notice of decision is attached as Appendix E.

Premises Licence

24. Details of current premises licence:
 - **Opening hours of the premises**
Monday to Sunday from 11.00 to 00.00
 - **Late night refreshment**
Monday to Sunday from 23.00 to 23:30
 - **Sale by retail of alcohol to be consumed on premises**
Monday to Sunday from 11.00 to 23.30.
25. The current premises licence is attached as Appendix F.

Licensing visit history

26. The venue was inspected on 11 March 2017 at 19.30. The following breaches of the premises licence were discovered:
 - No one on the premises was able to retrieve CCTV footage
 - The dispersal policy could not be produced
 - Training records for staff could not be produced
 - The incident book couldn't be produced
 - There wasn't any "Challenge 25 signage
 - The refusals register could not be produced
 - Signs requesting patrons to respect the neighbours were not displayed.

27. Another visit was made on 17 March 2017. It was not a full inspection. However, CCTV footage and staff training records could not be produced when requested.
28. As a result of these two visits a warning letter was issued, which is attached as Appendix G.
29. The venue was visited on 24 March 2017. On this occasion staff training records and the incident book were produced. "Challenge 25" signage was displayed and CCTV footage was shown.

The local area.

30. A map showing the location of the premises is attached to this report as Appendix H. The premises are shown as the hatched area on the map.

Policy considerations

31. 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

32. 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

33. 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.
34. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

Resource implications

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

Consultation

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

37. 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

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

Principles for making the determination

39. 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.

40. 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.

41. 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

42. 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

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

Reasons

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

Hearing procedures

45. 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.
46. 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.
47. 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.
48. 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.
49. 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.

50. 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.
51. 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

52. 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

53. 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	Metropolitan Police representations
Appendix C	Notice of decision from 10 March 2015
Appendix D	Notice of decision from 30 January 2017
Appendix E	Notice of decision from 1 June 2017
Appendix F	Premises licence
Appendix G	Warning letter of 21 March 2017
Appendix H	Map of Location

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Alexander Lisowski, Licensing Enforcement Officer	
Version	Final	
Dated	19 June 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	22 June 2017	