

Item No. 7.	Classification: Open	Date: 28 June 2017	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Roxy Bar and Screen, 128-132 Borough High Street, London SE1 1LB (Temporary Event Notice: 859221)	
Ward(s) or groups affected:		Cathedrals	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee decide whether or not to issue a counter notice in respect of a temporary event notice (TEN) 859221 served by Ms Lauren Barrett in regards to an event to be held at Roxy Bar and Screen, 128-132 Borough High Street, London SE1 1LB. The TEN is between 00:01 and 06:00 on Sunday 2 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 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 June 2017 the TEN was served by Ms Lauren Barrett in respect of an event intended to be held at Roxy Bar and Screen, 128-132 Borough High Street, London SE1 1LB. A copy of the TEN is attached to this report as Appendix A.
14. The TEN is summarised as follows:
 - TEN 859221: To allow the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment between 00:01 on Sunday 2 July 2017 and 06:00. The maximum number of people expected at any one time at the premises is 220. The activities are to take place on the premises only.
15. TENs do not carry conditions, however members do have the power to impose conditions from an existing premises licence on the TEN at hearing should they be minded not to issue a counter notice. If the conditions available do not adequately address the promotion of the licensing objectives there is no power to impose other conditions.

The objection notice

16. On 21 June 2017 the councils environmental protection team (“EPT”) served an objection notice in respect of the TEN.
17. The objection notice state 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.
18. The environmental protection team make the following points in support of their objections:
 - EPT have concerns over the TENs applicant and Roxy management applying for TEN events, detailing the events as ‘film screenings’ which in reality, from the recent NTE visit, appear to be for the use of the premises as a vertical drinking bar/club.
 - As such EPT have concerns that public noise nuisance will occur to the residential flats above the premises if these late night events continue to take place at the premises.
 - The website content, as stated above, advises that the premises “Takes 100 for a screening”. The TEN application for the 2nd July is for 220 people, which suggests it will not be used for a film screening.
 - After a review of the Roxy website there is no mention of a film screening for the evening of Saturday 1st July (the TEN application is for an extension of Saturday night into the morning of Sunday 2nd July); <http://www.roxybarandscreen.co.uk/listings/?cat1=film>. To note there are screenings planned for the evenings of Friday 30th June and Sunday 2nd July.
 - EPT have concerns regarding public nuisance for this TEN application and therefore raise objection.
 - EPT would request the licensing sub committee, if the TEN is considered acceptable, to formally apply the premises licence conditions to cover the extra hours under this TEN event, as well as consider imposing a condition that live and recorded music is not permitted, i.e. only background music along with the film screening.
19. A copy of the EPT objection notice is attached to this report in Appendix B.

TENs History

20. 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	Lauren Barrett	28/10/2016 29/10/2016	20:00 – 06.00 following day Alcohol, LNR, and Regulated Entertainment On and off premises
2	Lauren Barrett	25/11/2016 26/11/2016	20:00 – 04.00 following day Alcohol, LNR, and Regulated Entertainment On and off premises
3	Lauren Barrett	09/12/2016 10/12/2016	19:00 – 04.00 following day Alcohol, LNR, and Regulated Entertainment On and off premises
4	Lauren Barrett	15/12/2016 16/12/2016	20:00 – 04.30 following day Alcohol, LNR, and Regulated Entertainment On and off premises
5	Lauren Barrett	21/12/2016 22/12/2016	20:00 – 06.00 following day Alcohol, LNR, and Regulated Entertainment On and off premises
6	Lauren Barrett	22/10/2016 22/10/2016	00:01 – 04.00 Alcohol, LNR, and Regulated Entertainment On premises
7	Lauren Barrett	17/11/2016 18/11/2016	19:00 – 03.00 following day Alcohol, LNR, and Regulated Entertainment On premises
8	Lauren Barrett	03/12/2016 04/12/2016	00:01 – 06.00 following day Alcohol, LNR, and Regulated Entertainment On and off premises
9	Lauren Barrett	09/12/2016 09/12/2016	00:01 – 06.00 Alcohol, LNR, and Regulated Entertainment On and off premises

No.	Premises user	Date of event	Time of event and activities
10	Jody Barton	01/01/2017 01/01/2017	00:01 – 06.00 Alcohol, LNR, and Regulated Entertainment On and off premises
11	Jody Barton	06/02/2017 06/02/2017	00:01 – 06.00 Alcohol, LNR, and Regulated Entertainment On and off premises
12	Jody Barton	27/02/2017 27/02/2017	00:01 – 06.00 Alcohol, LNR, and Regulated Entertainment On and off premises
13	Azad Hussain	26/03/2017 26/03/2017	00:01 – 04.00 Alcohol, LNR, and Regulated Entertainment On and off premises
14	Azad Hussain	30/04/2017 30/04/2017	00:01 – 04.00 Alcohol, LNR, and Regulated Entertainment On and off premises
15	Lauren Barrett	13/05/2017 13/05/2017	00:01 – 04.30 following day Alcohol, LNR, and Regulated Entertainment On and off premises
16	Lauren Barrett	27/05/2017 28/05/2017	00:01 – 05.00 following day Alcohol, LNR, and Regulated Entertainment On and off premises
17	Lauren Barrett	25/06/2017 25/06/2017	00:01 – 06:00 Alcohol, LNR, and Regulated Entertainment On and off premises

Premises history

21. The premises consists of a restaurant and bar at the front of the premises with a cinema screen at the rear. As stated on their website the venue has a capacity of 250 and seats around 100 for a screening.
22. The previous licence was revoked at a hearing on 27 April 2015 following an application by the police for a summary review. It was noted that at the hearing that

the police and the EPT evidence included a statement that the then premises licence holder had moved away from the original business plan for the premises and was using TENs to operate more as a nightclub.

23. A copy of the notice of decision for the review hearing is attached as Appendix C
24. The current premises licence was granted to Red Cinema Ltd on 7 August 2015, the new application was opposed by responsible authorities and residents.
25. The applicant stated at the hearing that the applicant, being aware of the recent events at the premises, indicated that his intention is to revert the premises back to its original use as a food based, coffee house cinema for pre-arranged events only.
26. The licensing sub-committee granted the premises and imposed 18 conditions to promote the licensing objectives.
27. A copy of the notice of decision for the new premises licence hearing is attached as Appendix D.

Premises Licence

28. Details of current premises licence:

- **Opening hours of the premises**
Sunday to Thursday 08:30 - 23:30
Friday and Saturday 08:30 - 01:00
- **Films - Indoors**
Sunday to Thursday 12:00 - 23:00
Friday and Saturday 12:00 - 00:30
- **Live Music - Indoors**
Sunday to Thursday 23:00 - 01:00
Friday and Saturday 23:00 - 00:30
- **Recorded Music - Indoors**
Sunday to Thursday 23:00 - 01:00
Friday 23:00 - 00:30
- **Late Night Refreshment - Indoors**
Sunday to Thursday 23:00 - 02:30
Friday and Saturday 23:00 - 00:30
- **Sale by retail of alcohol to be consumed on premises**
Sunday to Thursday 08:30 - 23:00
Friday and Saturday 08:30 - 00:30.

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

Licensing visit history

30. On 19 November 2016 officers visited the premises to drop off Women's safety charter posters to display in the ladies WC's. The premises was very dirty, and there was broken equipment. The manager was not present.
31. On Arrival officers asked the SIA guard to fetch the person in charge. He said he would go and get the person in charge. Whilst officers were waiting officers walked to the back of the premises just past the bar (at ground floor level) where there were curtains pulled across but there was a gap and they could see people dancing. There were approximately 50 people dancing to music which was not at background level. There was a large screen set up and there was film footage of a pop variety being screened. The patrons were not watching a film per se but dancing to the music that was being played on the sound system. There were helium balloons in a corner of the room and it would seem that some kind of celebration was occurring. The person in charge told officers that his name was Paul Holden. Officers asked if the film screening was downstairs in the premises and was told that the downstairs was closed and not in use. Mr Holden said that the event was on this floor (ground floor). Officers enquired as to where the film screening was as all they could see was the party at the back of the premises behind the curtains and he said that was the film screening. Officers advised that it was a party and not a film screening. Although there was film footage on the screen, there was no sound to accompany the footage, just party music being played through the sound system. Mr Holden told officers that there was a film screening earlier and it had finished. When asked what time it finished he said the film had finished at 8/9pm. When asked why a TEN had been applied for as this would have been allowed within his normal licence, he shrugged in reply.

The local area.

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

Policy considerations

33. 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

34. 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

35. 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.
36. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

Resource implications

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

Consultation

38. 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

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

Principles for making the determination

41. The general principle is that temporary event notices must be accepted unless a relevant objection is received from a relevant person, i.e. the police or the Environmental Protection Team. This is subject to the proviso that the premises user has complied with regulations and submitted the notice within a prescribed time.
42. A relevant objection is that which:
 - Is about the likely effect of the TEN on the promotion of one or more of the licensing objectives
 - Is made by a relevant person
 - Has not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
43. If a relevant objection notice is received then the sub-committee must have regard to it in determining whether it is appropriate for the promotion of a licensing objective of the Licensing Act to:
 - Issue a counter notice
 - Allow the TEN and attach conditions from the premises licence
 - Allow the TEN with no conditions.

Conditions

44. The sub-committee may attach conditions from an existing premises licence on the carrying on of permitted licensable activities. The sub-committee's function is to determine whether a counter notice should be issued.
45. Members are also referred to the Home Office revised guidance on conditions, specifically section 10.

Reasons

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

Hearing procedures

47. 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.

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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

54. 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

55. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

REASONS FOR URGENCY

56. 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

57. The TENs process is time limited and there was not sufficient time to prepare and clear the report in time for the main agenda dispatch.

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	Review notice of decision - 27 April 2015
Appendix D	Notice of decision - 7 August 2015
Appendix E	Premises Licence
Appendix F	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	23 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	26 June 2017	