

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 11 September 2017	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: 133 Copeland Road, London SE15 3SN – Temporary Event Notices	
<b>Ward(s) or groups affected:</b>		The Lane	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the sub-committee decide whether or not to issue counter notices in respect of two temporary event notices (TENs) 860028, 860030 served by Miss Kelly Stewart & Mrs Lori Wilson, in regards to events to be held at two individual locations at 133 Copeland Road, London, SE15 3SN.

### Notes:

2. Temporary Event Notice 860028 has been submitted for 133 Copeland Road, London SE15 3SN (Copeland Square) on 15 September from 17:00 to 22:00 and on 16 and 17 September 2017 from 12:00 to 22:00.
3. Temporary Event Notice 860030 has been submitted for Copeland Gallery, 133 Copeland Road, London SE15 3SN on 15 September 2017 from 18:00 to 02:00, 16 September 2017 from 12:00 to 02:00 and 17 September 2017 from 12:00 to 00:00.

## BACKGROUND INFORMATION

### The Licensing Act 2003

4. 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.
5. The Act established a process for the giving of “temporary event notices” (TENs).
6. 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.
7. 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.

8. 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.
9. No premises may be used for temporary events that are less than 24 hours apart.
10. 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.
11. 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.
12. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
13. 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.
14. 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**

15. On 11 August 2017 two separate TENS were served by Miss Kelly Stewart & Mrs Lori Wilson in respect of an event intended to be held at various sites located at Copeland Road Industrial Park.
16. The site locations as per the TENS which have been submitted to Southwark Council Licensing are detailed in TENS applications as 133 Copeland Road, London, SE15 3SN (Copeland Square) and Copeland Gallery, 133 Copeland Road, London SE15 3SN.

17. Copies of the TENs are attached to this report as Appendix A and B.
18. The TENs are summarised as follows:
  - 133 Copeland Road, London, SE15 3SN (Copeland Square) - TEN 860028: To allow the sale of alcohol to be consumed On the premises and the provision of regulated entertainment on 15 September - 17:00hrs to 22:00hrs on 16 and 17 September 2017 – 12:00hrs to 22:00hrs. The maximum number of people expected at any one time at the premises is 499. The activities are to take place On the premises only.
  - Copeland Gallery,133 Copeland Road, London, SE15 3SN - TEN 860030: To allow the sale of alcohol to be consumed On the premises, the provision of regulated entertainment and the provision of late night refreshment on 15 September 2017 -18:00hrs to 02:00hrs, 16 September 2017 -12:00hrs to 02:00hrs and 17 September 2017 – 12:00hrs to 00:00hrs. The maximum number of people expected at any one time at the premises is 499. The activities are to take place On & Off the premises only.

### **The objection notices**

19. On 14 August 2017 the environmental protection team (EPT) served objection in respect of the TENs.
20. The EPT objection has been made on the grounds crime prevention objective EPT state that if granted in the current format, there would be more than 499 people in the audience for outdoor entertainment on Copeland Square, and therefore it is likely that licensing offences would be committed.
21. EPT also state that they object on the grounds of the prevention of public nuisance objective that the TENs requested to authorise activities in respect of what is clearly one event (see attached event plan). Artificially dividing the area into smaller plots of 499 people each as a device to avoid the need for a premises licence, prevents public consultation taking place, and as all relevant considerations in respect of an event of over 499 capacity may not have been considered, increases the risk of public nuisance.
22. A copy of the EPT objection is attached to this report in Appendix C.

### **TENs History**

23. On 9 June 2017 a TENs was served in respect of an event intended to be held at Copeland Gallery, 133 Copeland Road, London, SE15 3SN.
24. The TEN is summarised as follows:
  - Copeland Gallery (9L), Unit 9L, 133 Copeland Road, London, SE15 3SN - TEN 859126: To allow the sale of alcohol to be consumed on & off the premises, provision of regulated entertainment on 21 July 2017 between 12:00hrs – 00:00hrs, 22 July 2017 between 12:00hrs – 02:00hrs and the 23 July 2017 between 00:00hrs and 02:00hrs. The maximum number of people

expected at any one time at the premises is 499. The activities are to take place on & off the premises only.

25. On 13 June 2017 the environmental protection team (EPT) served objection in respect of the TENs.
26. The EPT objection was made on the grounds that the TEN submitted was as a way to exceed the 499 capacity limit, which therefore undermines the Licensing Act.
27. EPT also stated that the TEN submitted exceeded the 499 event capacity limit, creates a risk that licensing objectives, specifically prevention of crime and disorder, public safety, and the prevention of public nuisance will not be upheld.
28. The objected TENs application went before licensing sub-committee on 27 June 2017.
29. The TEN was granted at licensing sub –committee on 27 June 2017. A copy of the licensing sub – committee decision notice is attached to this report as Appendix E.
30. Below is the recent history of TENs which have been submitted over the last year for locations specified by the applicant in TENs applications at the site of 133 Copeland Road, London, SE15 3SN.

**Copeland Gallery (9L), Unit 9L, 133 Copeland Road, London, SE15 3SN**

No.	Premises user	Date of event	Time of event and activities
1	Simon Cotton	22/07/2017 to 23/07/2017	12:00hrs - 02:00hrs  Sale by retail of alcohol to be consumed on & off the premises  Provision of Regulated Entertainment
2	Simon Cotton	21/07/2017 to 23/07/2017	21st 12:00hrs - 00:00hrs 22nd 12:00hrs- 02:00hrs 23rd 00:00hrs - 02:00hrs  Sale by retail of alcohol to be consumed on & off the premises  Provision of Regulated Entertainment.

3	Sophie Nathan	20/05/2017 to 21/05/2017	00:00hrs - 02:00hrs (Each Day)  Sale by retail of alcohol to be consumed on the premises  Provision of Regulated Entertainment
4	Jack Callum Wilkinson	12/05/2017 to 16/05/2017	Start - Friday 12th May 2017 - 1200hrs End - Tuesday 16th May 2017 - 01:00hrs  Sale by retail of alcohol to be consumed on & off the premises  Provision of Regulated Entertainment  Provision of Late night Refreshment
5	Tom Joseph Middleton	From 22/04/2017 to 23/04/2017	12:00hrs to 04:00hrs  Sale by retail of alcohol to be consumed on the premises  Provision of Regulated Entertainment  Provision of Late night Refreshment
6	Joao Soares Neto	01/10/2016 to 02/10/2016	11:00hrs - 18:00hrs both days  Sale by retail of alcohol to be consumed on & off the premises
7	Christopher Vaughan	08/07/2016 to 08/07/2016	18:00hrs – 00:00hrs  Sale by retail of alcohol to be consumed on premises  Provision of Regulated Entertainment  Provision of Late night Refreshment

8	Glenn Middleditch	13/05/2016 to 15/05/2016	13/05/2016 11:00hrs - 04:00hrs 14/05/2016 11:00hrs - 23:00hrs 15/05/2016 11:00hrs - 22:00hrs  Sale by retail of alcohol to be consumed on the premises  Provision of Regulated Entertainment  Provision of Late night Refreshment
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### Premises history

31. The premises licence for Roof A, Bussey Building, Rear 133 Rye Lane, London, SE15 4ST was granted on 1 July 2013. The premises operates as a bar located on the rooftop of the Bussey Building.
32. The current premises licence holder is a Mr Jonathan Wilson and Mrs Lorelie Wilson. The designated premises supervisor of the premises is a Mr Gerry Cottle.

### Premises Licence

33. 133 Copeland Road, London, SE15 3SN (Carpark) and Copeland Gallery (9L), Unit 9L, 133 Copeland Road, London, SE15 3SN do not currently benefit from a premises licence.
34. Details of the current premises licence for Bussey Building (D), Block A Roof Top Rear of D, 133 Copeland Road, London, SE15 3SN is detailed below;
  - **Licensable activities authorised by the licence**  
Plays – Outdoors  
Films - Outdoors  
Live Music - Outdoors  
Sale by retail of alcohol to be consumed on premises
  - **Opening hours of the premises**  
Monday to Sunday 12:00 - 00:00
  - **Plays – Outdoors**  
Monday to Sunday 12:00 - 00:00
  - **Films - Outdoors**  
Monday to Sunday 12:00 - 00:00
  - **Live Music - Outdoors**  
Monday to Sunday 12:00 - 22:00
  - **Sale by retail of alcohol to be consumed on premises**  
Monday to Sunday 17:00 - 23:00

35. This current premises licence for Bussey Building (D), Block A Roof Top Rear of D, 133 Copeland Road, London, SE15 3SN is attached as Appendix D.

### **Licensing visit history**

36. No licensing enforcing visits have been made to the premises in the last 12 months.

### **The local area**

37. A map of the area is attached to this report as Appendix F. The premises are identified at the centre of the map in hatch blocking. The following licensed premises are also shown on the map:

- **PECKHAMPLEX, 95A Rye Lane, SE15 4ST** licensed for:

The provision of films on Sunday to Thursday between 09:00 and 00:00 (midnight) and on Friday and Saturday between 09:00 and 02:00.

Sale of alcohol to be consumed on the premises on Monday to Thursday between 14:00 and 22:00 and on Friday to Sunday between 12:00 and 23:00.

- **Roof B (Bussey Building), 133 Copeland Road SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises on Monday to Friday between 17:00 and 22:30 and on Saturday between 12:00 and 22:30.

The provision of films on Monday to Sunday between 12:00 and 00:00.

The provision of live music on Monday to Sunday between 12:00 and 22:00.

The provision of plays on Monday to Sunday between 12:00 and 23:00.

- **CLF Art Café, 133 Copeland Road, London, SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

Late Night Refreshment on Thursday 23:00 to 02:30 and Friday and Saturday 23:00 to 06:00.

The provision of films premises Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

Recorded music Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

Performance of Dance Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

Entertainment Similar to live/recorded music Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

The provision of live music Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

The provision of plays Monday to Wednesday between 09:00 and 23:00, Thursday 09:00 to 02:30 and Friday and Saturday 09:00 to 06:00.

- **Forza Win Ltd, Unit 4.1, Copeland Industrial Park, 133 Copeland Road, SE15 3SN** licensed for:

The sale of alcohol to be consumed on the premises on Wednesday to Saturday between 12:00 and 23:30 and on Saturday between 12:00 and 22:30.

- **The Last Refuge Arts, 133 Unit, 9a Copeland Road, SE15 3SN** licensed for:

The provision of films on Monday to Friday between 18:00 and 00:00 and on Saturday and Sunday between 12:00 and 00:00.

The sale of alcohol and the provision of live music and recorded music on Monday to Friday between 17:30 and 00:00 and on Saturday and Sunday between 14:30 and 00:00.

The provision of plays on Monday to Friday between 19:30 and 22:30 and on Saturday and Sunday between 14:30 and 22:30.

- **Frank's Café, Levels 9 & 10, Peckham Multi Story Car Park, 95A Rye Lane, London, SE15 4ST** licensed for:

The sale of alcohol to be consumed on the premises on Monday to Sunday between 11:00 and 23:00.

- **Frank's Café, Levels 7 & 8, Peckham Multi Story Car Park, 95A Rye Lane, London, SE15 4ST** licensed for:

The sale of alcohol to be consumed on the premises Tuesday to Friday 17:00 to 23:00 Saturday 12:00 to 23:00 and Sunday 12:00 to 22:00.

- **Bold Tendencies, Levels 7 & 8, Peckham Multi Story Car Park, 95A Rye Lane, London, SE15 4ST** licensed for:

The provision of live and recorded music to Friday 17:00 to 23:00 Saturday 12:00 to 23:00 and Sunday 12:00 to 22:00.

- **Rye Express, 137-139 Unit 1 Rye Lane SE15 4ST** licensed for:

The sale of alcohol to be consumed off the premises Monday to Sunday 08:00 to 00:00.



- **John The Unicorn, 157-159 Rye Lane, SE15 4TL** licensed for:

The sale of alcohol to be consumed on the premises Sunday to Thursday 11:00 to 00:00 and Friday to Saturday 11:00 to 01:00.

The provision of late night refreshment Sunday to Thursday 23:00 to 00:00 and Friday to Saturday 23:00 to 01:00.

- **Iceland Frozen Foods, 74 Rye Lane, SE15 5DQ** licensed for:

The sale of alcohol to be consumed off the premises Monday to Saturday 08:00 to 23:00 and Friday to Saturday 10:00 to 22:30.

- **Ali Baba Bar, 133 Copeland Road** licensed for:

The sale of alcohol to be consumed on the premises Friday 16:00 to 22:45 and Saturday and Sunday 12:00 to 22:45.

The provision of live and recorded music Friday and Saturday 18:00 to 23:00 and on Sunday 12:00 to 22:30.

### **Policy considerations**

38. 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**

39. 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**

40. 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.
41. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

### **Resource implications**

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

### **Consultation**

43. 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**

44. 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.
45. The principles which sub-committee members must apply are set out below.

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

46. 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.
47. 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.
48. 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**

49. 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
50. Members are also referred to the Department for Culture, Media and Sport (DCMS) guidance on conditions, specifically section 7, and Annexes D, E, F and G.

### **Reasons**

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

### **Hearing procedures**

52. 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.
53. 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.
54. 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.

55. 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.
56. 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.
57. 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.
58. 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**

59. 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**

60. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

### **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	Temporary event notice - 133 Copeland Road, London, SE15 3SN (Copeland Square)
Appendix B	Temporary event notice - Copeland Gallery, 133 Copeland Road, London, SE15 3SN
Appendix C	Environmental protection team objection
Appendix D	Copy of current premises licence (Bussey Building (D), Block A Roof Top Rear of D, 133 Copeland Road, London, SE15 3SN)
Appendix E	Licensing sub-committee decision from 27 June 2017
Appendix F	Map of the area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Richard Kalu, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	24 August 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	Yes	Yes
<b>Cabinet Member</b>	<b>No</b>	<b>No</b>
<b>Date final report sent to Constitutional Team</b>	24 August 2017	