

Item No. 6.	Classification: Open	Date: 24 August 2018	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Pulse Club, 1 - 4 Blackfrairs Arches, Invicta Plaza, London SE1 9UF	
Ward(s) or groups affected:		Borough and Bankside	
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 temporary event notices (TEN) 864429, 864420, 864424 served by Gareth Roberts for events to be held at Pulse Club 1-4 Blackfrairs Arches, Invicta Plaza, London SE1 9UF. The TENs are between 09:00 on Thursday 06 September 2018 to 05:00 on Friday 07 September 2018.

Note:

2. The TEN's submitted are for various locations within Pulse club described by the applicant as Pulse club - Area 1, Pulse club - Area 2, Pulse club – Arch 5, space adjacent to Pulse to allow sound and and glassware use immersive event with different areas sectioned off and capacity controlled. Use of Areas 3-5 Pulse club to allow glassware for corporate event – immersive event with different areas sectioned off and capacity controlled.

BACKGROUND INFORMATION

The Licensing Act 2003

3. 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.
4. The Act established a process for the giving of “temporary event notices” (TENs).
5. 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.
6. 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.

7. 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.
8. No premises may be used for temporary events that are less than 24 hours apart.
9. 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.
10. 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.
11. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
12. 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.
13. 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

14. On 13 August 2018 three TENs were served by Gareth Roberts in respect of an event intended to be held at Pulse Club 1 - 4 Blackfrairs Arches, Invicta Plaza London SE1 9UF. A copy of the TENs are attached to this report as Appendix A. The TENs are summarised as follows:
 - TEN 864429 to be held in Areas 1 and 2 at Pulse Club, 1 - 4 Invicta Plaza, London SE1 9UF.
 - TEN 864424 to be held at Arch 5 space adjacent to Pulse 5, Invicta Plaza London SE1 9UF.

- TEN 864420 to be held at Areas 3 to 5 at Pulse Club, 1 - 4 Invicta Plaza London SE1 9UF.
- Each TEN is to allow the sale of by retail of alcohol, the provision of regulated entertainment and the provision of late night refreshment between 09:00 on Thursday 6 September 2018 through to 05:00 the following morning on Friday 7 September 2018. The three TEN applications seek to licence one large event (Flavourology) at the premises which will be for 1298 persons. The activities are to take place on two separate premises.
- The TENs state that they are to use the designated areas to allow the use of glassware for corporate event, an immersive event with different areas sectioned off and capacity controlled.

The objection notice

15. On 13 August 2018 the councils environmental protection team (EPT) served an objection notice in respect of the various TENs submitted for Pulse Club, 1 - 4 Invicta Plaza London SE1 9UF and 5 Invicta Plaza London SE1 9UF on the grounds of public nuisance.
16. The EPT objection notice states that the TENs applications are all applied for by Mr Gareth Roberts and seek to licence one large event (Flavourology) at the premises which will for 1298 persons. An event for 500+ people should be applied for using a time limited licence.
17. EPT state that after numerous instances of multiple TENs being used to licence larger events in Southwark over the past few years, draft amendments to Southwark's licensing policy have been proposed to address this. EPT make reference to Southwark's amended licensing policy's paragraphs 69, 70, 71, 72 and 73 which is relevant to the objection they have raised.
18. On 16 August 2018 the Metropolitan Police Service served an objection notice in respect of the TENs submitted by the applicant. The Metropolitan police stated that they are of the opinion that this application should have been dealt with by way of a time limited premises licence application.
19. The Metropolitan police objection states that a time limited premises licence application would allow for a full consultation and the ability to comment on and attach the appropriate control measures for an event attracting 1,298 people.
20. The Metropolitan police raised the request made by the applicant for the use of glassware during the event which is a specific condition placed on their premises licence banning the use of glassware following a murder inside the venue during a corporate event some years ago.
21. The Metropolitan police objected states that the use of the TENs would in effect allow the event to operate without any control measures in place.
22. The Metropolitan police objects to the TENs on the grounds that it would undermine the prevention of crime and disorder licensing objective.

23. A copy of the EPT objection notice and the Metropolitan police service notice is attached to this report as Appendix B and Appendix C.

TENs History

24. A copy of the TENs history for Pulse Club is attached to this report as Appendix D.

Premises history

25. The premises operate as a night club.
26. A premises licence was granted to A&M Leisure Limited on 11 August 2008. This licence is attached as Appendix E.
27. On the 11 August 2011 A&M Leisure Limited made an application for a minor variation to remove existing conditions and add new conditions to their premises licence. Moreover, the application sought to change current approved plans with new plans submitted in support with their application. A partial copy of the plan is attached as Appendix F.
28. On the 10 May 2012 the Licensing Authority received an application for a minor variation from A&M Leisure Limited following a serious incident that occurred at Pulse club on the 4 April 2012. This application was submitted following a serious incident involving the murder of a man attending a corporate event at the premises where the weapon used was a glass bottle. The conditions proposed by the applicant in consultation with the police included the condition 344. A copy of the minor variation application is attached as Appendix G.
29. The most recent change to the Designated Premises Supervisor (DPS) was made on 24 July 2018.

Licensing visit history

30. A visit was carried out by a health and safety enforcement officer and a police constable on 10 September 2016 for a joint inspection on the premises, there were no reported issues in regards to compliance and operation of the premises.

The local area.

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

Policy considerations

32. 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

33. 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

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

Resource implications

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

Consultation

37. 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

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

Principles for making the determination

40. 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.
41. 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.

42. 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.
43. The Revised Guidance issued under section 182 of the Licensing Act 2003 issued in April 2018 under Large scale time-limited events requiring premises licences, in section 5.25 states:
- 5.25 Licensing authorities should note that a premises licence may be sought for a short, discrete period. The 2003 Act provides that a temporary event notice is subject to various limitations (see Chapter 7 of this Guidance). The temporary provision of licensable activities that fall outside these limits will require the authority of a premises licence if the premises are currently unlicensed for the activities involved.
44. The explanatory notes that accompany the Licensing Act 2003 states in section 101 regarding a minimum of 24 hours between event periods in section 171 of the act:
- That there must be a minimum period of 24 hours between temporary events held on the same premises by a premises user, or held by that user and another person who is related to, associated with or in business with that user. This prevents a premises user holding numerous consecutive temporary events as a means of avoiding an application for a premises licence. If a temporary event takes place on premises that are included within or include other premises where another temporary event takes place, then the two events are deemed to take place on the same premises.

Conditions

45. The sub-committee may only attach conditions on the carrying on of permitted licensable activities on TENs where they premises is already in subject to a premises licence and the conditions are carried over from that premises licence. The sub-committee's function is to determine whether a counter notice should be issued

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) 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. Due to the time limited nature of TENs 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 notices
Appendix B	Environmental Protection Team objection
Appendix C	Metropolitan Police Service objection
Appendix D	Copy of temporary event notices history
Appendix E	Pulse premises licence
Appendix F	Copy of partial plans of the premises
Appendix G	Minor variation application
Appendix H	Map of the area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Justin Williams, Licensing Enforcement Officer		
Version	Final		
Dated	17 August 2018		
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		20 August 2018	