

<b>Item No.</b> 8.	<b>Classification:</b> Open	<b>Date:</b> 5 December 2018	<b>Meeting Name:</b> Licensing sub-committee
<b>Report title:</b>		Licensing Act 2003: Londis, 53 Borough High Street, London SE1 1NE	
<b>Ward(s) or groups affected:</b>		London Bridge and West Bermondsey Ward	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the sub-committee decide whether or not to issue a counter notice in respect of temporary event notice (TENs) 865670, served by Mr Shahid Akhtar, in regards to the event to be held at Londis, 53 Borough High Street, London SE1 1NE on 1 January 2019 between 01:59 and 08:00.

## BACKGROUND INFORMATION

### The Licensing Act 2003

2. 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.
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 1 November 2018 a TEN was served by Mr Shahid Akhtar in respect of an event intended to be held at Londis, 53 Borough High Street, London SE1 1NE between 01:59 on 1 January 2019 and 08:00 the same day. A copy of the TEN is attached to this report as Appendix A.
14. The TEN is summarised as follows:
  - To permit the sale of alcohol, between 01:59 and 08:00 on 1 January 2019 the maximum number of people expected at any one time at the premises is 35. The supply of alcohol is in respect of consumption off the premises only as this is an off licence.

### **The objection notices**

15. On 1 November 2018 the Metropolitan Police served an objection in respect of the TEN on the grounds of the prevention of crime and disorder and prevention of public nuisance.
16. Police state that the premises has been found to be operating in breach of the current premises licence and in breach of those conditions applied to the licence to promote the above licensing objectives.

17. A Copy of the police objection is attached to this report in Appendix B.

### TENs History

18. Below is the history of TENs for the last year in respect of the premises.

<b>Applicant</b>	<b>Date of event</b>	<b>Time of event and activities</b>	<b>Counter Notice Issued?</b>
Shahid Akhtar	01.01.2018 01:59 – 08:00	Sale of alcohol off the premises	No

### Premises history

19. The premises in respect of the premises licence consists of a shop on the ground floor of 53 Borough High Street, London SE1 1NE. The premises licence was granted on the 10 September 2010. The premises licence holder and designated premises supervisor (DPS) was Raju Kanadia.
20. The licence was transferred on the 24 October 2011 into the name of Shahid Akhtar.
21. An application for a change of DPS to Mr Shahid Akhtar was made on 23 December 2018
22. A full variation was submitted on 5 March 2013 to extend the hours for the sale of alcohol from 02:00 to 08:00, modify condition 344 and remove condition 340. The application was subsequently withdrawn by the applicant, as a result of taking legal advice concerning the Southwark's cumulative impact policy.
23. A hearing took place on the 13 November 2018. The hearing was adjourned and re scheduled for the 5 December 2018. The police and applicant have agreed to adjourn the hearing whilst the applicant submits a minor variation. The application will be to add conditions imposed by the police, which will be used as part of the proposed event on 1 January 2019. An update on this conciliation will be given at the hearing.

### Premises Licence

24. Details of current premises licence:

- **Licensable activities authorised by the licence:**
  - Sale by retail of alcohol to be consumed off premises.
- **Opening hours of the premises:**
  - Monday to Sunday from 08:00 to 02:00.

- **Sale by retail of alcohol to be consumed off premises:**
  - Monday to Sunday from 08:00 to 02:00.

25. The current premises licence is attached as Appendix C.

### **Licensing visit history**

26. On 10 August 2013 officers witnessed that the premises were trading after the terminal hour of 02:00. A test purchase was carried out and a can of red stripe was successfully purchased at 02:25. Officers requested to see CCTV footage, but were informed that the CCTV recorder was locked away at that time.
27. On 14 September police attended the premises at 20:37 to carry out an inspection. CCTV was checked and found only to be storing images for 11 days in breach of condition 289. A notification of offences was issued to the licence holder and DPS, who refused to sign the form and accused officers of trying to catch him out.
28. On 20 October 2018 the premises were visited at 22:09. Two intoxicated customers entered the premises and purchased cans of Strongbow 8% ABV in breach of condition 343 and offence under Section 141 Licensing Act 2003. The member of staff then became argumentative with officers. A warning letter was issued to Mr Shahid Akhtar on the 1 November 2018.
29. On 4 November 2018 at 02:15 officers attended the premises and witnessed an argument between an intoxicated customer and a member of staff for not selling alcohol. The premises licence specifies that the closing hour of the premises should be 02:00.
30. Further details of the visit are attached to this report as Appendix D.
31. Full list of visits made by the night time economy team attached as Appendix E

### **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 each 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.

### **Conditions**

43. 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

44. 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**

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

### **Hearing procedures**

46. 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.
47. 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.
48. 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.

49. 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.
50. 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.
51. 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.
52. 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**

53. 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.

### **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	The temporary event notice
Appendix B	The Metropolitan Police Service representation
Appendix C	Details of current premises licence
Appendix D	Warning letter
Appendix E	Full night time economy visit list
Appendix F	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Charlie Jerrom, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	23 November 2018	
<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	No	No
<b>Cabinet Member</b>	<b>No</b>	<b>No</b>
<b>Date final report sent to Constitutional Team</b>	23 November 2018	