

Licensing Sub-Committee

Minutes of the OPEN section of the Licensing Sub-Committee held on Thursday 9 December 2021 at 10.00 am. This was a virtual meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Ian Wingfield
Councillor Charlie Smith

OTHER MEMBERS PRESENT: P.C. Graham White, Metropolitan Police Service

OFFICER SUPPORT: Debra Allday, legal officer
Wesley McArthur, licensing officer
Jayne Tear, licensing responsible authority officer
Richard Earis, environmental protection team officer
Tim Murtagh, constitutional officer

1. APOLOGIES

2. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were no late and urgent items of business.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: THE EXECUTIVE LOUNGE, UNIT 1, 777 OLD KENT ROAD, LONDON SE15 1NZ

The licensing officer presented their report. Members had no questions for the licensing officer.

The applicant's legal representative addressed the sub-committee. Members had questions for the applicant's representative.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing responsible authority officer.

The meeting adjourned at 12.40pm for a comfort break. The meeting reconvened at 12.45pm.

The licensing sub-committee heard from the environmental protection team officer. Members had no questions for the environmental protection team officer.

The Metropolitan Police Service officer addressed the sub-committee. Members had questions for the police officer.

The local residents objecting to the application addressed the sub-committee. One of the residents was represented by their landlord. Members had questions for the local residents.

The meeting adjourned at 2pm for a lunch break. The meeting reconvened at 2.30pm.

The sub-committee noted the written representations from the local residents who were not in attendance.

All parties were given up to five minutes for summing up.

The meeting adjourned at 3.10pm for the sub-committee to consider its decision.

The meeting reconvened at 4.05pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Speedlink Services Limited for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of the premises known as The Executive Lounge, Unit 1, 777 Old Kent Road, London SE15 1NZ be granted as follows:

Hours

Supply of alcohol for consumption on and off the premises

Sunday to Thursday 11:00 – 22:30
Friday & Saturday 11:00 – 23:00

Proposed opening hours of the premises

Sunday to Thursday 11:00 – 23:00
Friday & Saturday 11:00 – 23:30

Non standard timings

That on New Years Eve the permitted hours in respect of licensable activities are 11:00 to -01:00 and the permitted opening hours are 11:00 to 01:30.

Conditions

1. That the connecting door to be removed and wall reinstated prior to opening.
2. That the supply of alcohol will be made by waitress/waiter service to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal and there shall be no sales of alcohol at the bar.
3. Premises to be vacated and closed 30-mins after licensable activities.
4. That no sales of miniature or quarter bottles of spirits of any kind shall be permitted.
5. That there will be no externally promoted DJs or events.
6. That patrons shall be encouraged to take public transport.
7. That when taxis are ordered for customers for the collection of patrons from the premises staff members shall instruct taxi services not to sound the driver's car horns outside the premises, but to approach the premises in person and verbally (without raised voices) alert staff that the driver's are at the premises to collect customers and/or telephone and/or text patrons of their arrival.
8. That management will direct all taxi services not to wait on Sylvan Terrace or Helbeck Terrace.
9. That patrons shall be encouraged not to park on Sylvan Terrace or Hillbeck Terrace.
10. That all staff will be trained to ensure that patrons leave the premises in a quiet and orderly manner.
11. That on each day of the week members of staff shall clear away any litter arising from the operation of the premises, left in the immediate vicinity of the premises, when the premises closes.
12. That the sound level of music played at the premises shall be controlled at all times solely by the, manager, DPS or other person nominated by the manager or DPS.
13. That all exterior doors at the premises shall be kept closed during the

- provision of any regulated entertainment except for the purposes of immediate / emergency access and egress to and from the premises.
14. That whenever the premises are open after 00:00 hours a minimum of 2 SIA registered door supervisors shall be on duty from 22:00 until the premises are shut.
 15. That all windows and external doors shall be kept closed at all times when regulated entertainment takes place, except for the immediate access and egress of persons.
 16. That a written dispersal policy be devised in respect of the premises. A copy of the policy shall be kept at / be accessible at the premises at all times that the premises are in use and shall be made available to council or police officers immediately on request. The policy must include (but not necessarily be limited to) the following:
 - The full name and address of the premises
 - The name(s) of the licensee and premises' designated premises supervisor
 - Details as to how customer / staff egress at the premises shall be managed to minimise causing nuisance
 - Details of public transport in the vicinity and how customers will be advised in respect of it
 - Details of the management of taxis to and from the premises
 - Details of the management of any 'winding down' period at the premises
 - Details of the use of security and stewarding in respect of managing customer dispersal from the premises
 - Details of any cloakroom facility at the premises and how it is managed
 - Details of road safety in respect of customers leaving the premises
 - Details of the management of ejections from the premises
 - Details of how refuse / waste in the local vicinity arising through the operation of the premises will be cleared up (e.g. flyer clean up, post event clean up)
 - Details of any other premises licence conditions relating to dispersal / the management of patrons arriving at / leaving the premises
 - Details as to the management (if any) of parking in regards to customer's vehicles.
 - All relevant staff (e.g. SIA staff, managers / supervisors, stewards, bar staff or any other relevant staff) should be trained in respect of the policy. A record of the training, including the trainee's name (in capital letters) & signature, date that each member of staff is trained and declaration that the dispersal policy has been read and understood shall be kept at the premises and be made immediately available for inspection by officers of the council or police on request.
 17. That the premises will endeavour not to use single use plastics.
 18. That direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.

Reasons

This was an application by Speedlink Services Limited made under s.17 Licensing Act 2003 for a premises licence in respect of The Executive Lounge, Unit 1, 777 Old Kent Road, London SE15 1NZ.

Prior to the Applicant's presentation, his representative made a submission concerning the additional evidence that was submitted by the Metropolitan Police Service and stated that the additional evidence was sent when he was in Court, after he had already prepared for the hearing. The evidence submitted was served very late and ambushed the Applicant. The officer from the Metropolitan Police Service explained that he was covering the author of Police representation and was informed he was to cover the Licensing Sub-Committee only 2-days previously. As soon as he became aware he served the additional evidence. The Licensing Sub-Committee noted that the additional evidence had been served in accordance with regulation 18 The Licensing Act 2003 (Hearings) Regulations 2005 therefore, there was no reason why the evidence should be excluded as requested by the Applicant's representative.

The Applicant's representative then moved on and gave his presentation to support the application. He asked that the application should be considered on its own merit and that all the evidence relating to Unit 2 (Empire Lounge) was irrelevant and should be ignored. The application was for a restaurant with alcohol and late night refreshment Sunday to Thursday until 00:00 hours and Friday and Saturday until 01:00 hours, with closing at 00:30 hours (Sunday to Thursday) and 01:30 (Friday and Saturday). It was disputed that the area could be considered as residential, but more akin to a District Town Centre and gave the names of a number of businesses in the area. Many of each had a late night licence. A number of conditions had been included in the operating schedule of this application, which would give the sub-committee confidence that the premises would operate as a restaurant which included a restaurant/table meal condition in addition to the installation of a noise limiting device. A lot of the representations received made reference to there being fixed seating for 24 covers. The sub-committee were reminded that only fixed seating needed to be included on the plan and assured the members that there was sufficient tables and chairs for 100 covers.

Concerning Unit 2 (Empire Lounge), the premises had been trading for over 5-years and there had been no serious crime and disorder, nor abatement notices served. There had been 11-visits by authorities since August 2021 and complaints about noise. Regardless, the premises had been soundproofed. The premises would have food led functions. There would be some music and it would not be a night club. During the discussion stage with the Applicant and his representative it was accepted that there would be a DJ, but they would be subject to sound limiter and the sound proofing. There would be no dancing and there was no dance floor on the premises. With that in mind, there could be no noise complaints. The

complaints of parking could not be attributed to Empire Lounge. The churches in the building had music past 00:00 hours and their attendees park across the road.

The Council encouraged businesses and Mr Nwachukwu was a local person, invested in a void property had spent £100,000 in renovations and would employ 8-staff at the premises. He also contributed to the Council £20,000 in business rates. This should be commended. Unless there was evidence to the contrary, the Applicant's representative contended that the licence should be granted with the hours sought, not punished.

The Licensing Sub-Committee heard from Licensing as a responsible authority whose representation was based on Southwark's Statement of Licensing Policy 2021 – 2026 and related to for the prevention of crime and disorder and the prevention of public nuisance the licensing objectives. Under Southwark's Statement of Licensing Policy the premises were situated in a residential area and where the appropriate closing times for restaurants, public houses, wine bars or other drinking establishments would be 23:00 hours daily; Night Clubs (with sui generis planning classification) were not considered appropriate for this area. The officer requested that if the sub-committee were minded to grant the application, then the opening times should be brought in line with the hours recommended in the policy.

The officer (for Licensing as a responsible authority) also referred to the Empire Lounge next door where the licensee and DPS is George Nwachukwu in addition to the interlinking door between the two premises. A warning letter was sent in respect of this on 17 August and 24 November 2021. It was suggested that if the licence was granted, then a condition should be added that the doorway be blocked up.

The Licensing Sub-Committee then heard from the Environmental Protection Team who also referred to the proposed operating hours being inappropriate for the area and that they significantly exceeded the hours in the Statement of Licensing Policy of 23:00 hours daily. The officer stated that the area was residential and therefore noise sensitive which was demonstrated by the complaint history from residents in the vicinity in relation to the adjacent unit. It was the officer's conclusion that any operation outside recommended the Policy hours would lead to public nuisance.

The officer also stated that patrons being able to purchase alcohol at the bar were also indicative of a drinking establishment.

The officer was also of the view that there were insufficient controls in the operating schedule to address the prevention of public nuisance licensing objective. The unit was converted from a shop, allowed without consent by the new Planning Use Class 'E', however no detail has been provided in the application of any suitable kitchen extraction system to prevent public nuisance from odours and fume as a result of commercial cooking activities. With a restaurant of the size indicated operating the proposed hours, the officer would

expect a kitchen extract discharge at 1m above building eaves level with substantial smoke and odour abatement plant in line with EMAQ guidance, which did not appear to be in place and if this were the case, would lead to a high risk of smoke and/or odour nuisance and potentially the health and safety of patrons and staff inside the premises.

The Licensing Sub-Committee then heard from the officer for the Metropolitan Police Service (MPS) who referred to the doorway between the two venues, which was evident during licensing visits conducted by Police on 28 May 2021 and 11 July 2021. During these visits the premises was also found to be operating in contravention of the then coronavirus regulations relating to the service of food and drink to patrons whilst sat at tables only. On 28 May Mr Nwachukwa was given advice on the then Coronavirus Regulations and the breach was dealt with by way of a verbal warning. On the second visit on 11 July 2021 the premises were again found in breach of the Regulations. Patrons were seen at the bar purchasing drinks, and groups of people were standing around and some dancing. No face coverings were being worn. Mr Nwachukwa was issued with a £1000 fixed penalty notice (FPN) for this offence. Due to the non-payment of the FPN, a prosecution was on-going.

This premises sits within a residential area as detailed within Southwark's Statement of licensing policy. The Policy looks at the potential impact certain types of premises are likely to have on the licensing objectives. The recommended closing times for restaurants in a residential area is 2300. The hours applied for are substantially greater than those recommended. Having looked at Google maps it is clear to see there are a number of residential premises within very close proximity to this premises. The applicant should consider the details contained within the Policy and reduce the hours to those recommended.

The Licensing Sub-Committee then heard from other persons. Party 3 was represented by their landlord who explained that since Empire Lounge was using Unit 1, loud music and customers' anti-social behaviour has increased. On occasions, residents were required to call as they were threatened by customers. The situation has impact on his tenant's mental health resulting in lack of sleep and work performance.

Party 2 was also represented by their landlord. The Executive Lounge was situated in a residential area with the rear of the building being only 7-metres from the nearest residential building. It would be inappropriate to allow the premises to operate beyond 23:00 hours contrary to Southwark's Statement of Licensing Policy. It was the view of Party 2 that the Executive Lounge would be an extension to the applicant's associated operation of restaurant and nightclub next door at the Empire Lounge. Residents on Sylvan Grove had suffered over the previous 3-4 years with loud music, noise, anti-social behaviour and violent crimes emanating from that operation. Statistics from the Metropolitan Police Crime Statistics for August 2021 at 777 Old Kent Road, London SE15 1NZ recorded 14 crimes and the highest concentration of crimes recorded by the MPS in the vicinity centred around the Empire Lounge. If the application for the Executive Lounge was approved,

crime and disorder would increase, not decrease, based history of the applicants Empire lounge operational breaches and on the trends of crimes emanating from that operation and its patrons.

The Licensing Sub-Committee noted the representation from one other person who was not in attendance at the meeting.

The Licensing Sub-Committee considered this application on its own merit and this decisions was made in accordance with the Licensing Act 2003 together with the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018), Southwark's Statement of Licensing Policy and based on the information presented in the agenda papers, together with the verbal presentations.

Concerning the hours granted, the sub-committee were of the view that the area was residential as detailed in the Southwark's Statement of Licensing Policy. The representations from other persons supported this position. The Licensing Sub-Committee considered an application in respect of the Empire Lounge which was refused on 4 June 2020. This decision was unchallenged. The owner and licensee of the Empire Lounge is Mr Nwachukwu who attended the Licensing Sub-Committee with his legal representative, David Dadds both of whom attended this hearing also. The Notice of Decision (page 87 of the agenda) makes reference to:

"The applicant's contention that the premises were located in an industrial area was dismissed.....a new residential development had now been erected.....a council housing estate (the Tustin Estate) was in the vicinity and would likely be affected by the applicant's operation."

Paragraph 171 of Southwark's Statement of Licensing Policy provides:

"This Authority recognises the increase in the numbers of premises licensed for the sale or supply of alcohol since the introduction of the 2003 Act and, particularly, the increase in the numbers and density of such premises within the night time economy. In such a densely populated borough such as Southwark where there is often little demarcation between residential and commercial areas the potential for late operating venues and businesses to cause nuisance and disturbance to local residents is considerable. Therefore, there will be no presumption in favour of lengthening licensing hours. The four licensing objectives should be paramount considerations at all times".

Furthermore, paragraph 173 provides:

".....Applicants for licences incorporating hours that fall outside of the guidance offered are expected to explain fully within their application, the arrangements intended to be put in place to ensure that the premises does not add to cumulative impact, or to disturbance and/or disorder in the area late at night. Applicants who wish to provide licensable activities outside the hours specified should ensure that the operating schedule specifies detailed

measures to mitigate against crime, disorder and public nuisance taking into account:

- ***The location of the premises and the character of the local area;***
- ***The proposed hours during which the licensable activities are proposed to take place;***
- ***The adequacy of the proposed control measures intended to promote the licensing objectives;***
- ***The availability of local public transport;***
- ***The proximity of the premises to other licensed premises of a similar nature and the hours of operation of those premises”.***

Aware of the concerns raised in the Notice of Decision of 4 June 2020 (pages 87-90 of the Agenda), the Licensing Sub-Committee were of the view that the Applicant had failed to adequately show consideration of Southwark’s Statement of Licensing Policy the location and character of the area; the proposed hours in the application, the adequacy of proposed control measures and the cumulative impact to given, the premises next door.

Members of the Licensing Sub-Committee also drew upon their own knowledge of the area and were of the view that with residents living in such close proximity to the premises would be disturbed by a licensed premises operating beyond 23:00 hours. There was conflicting evidence before the sub-committee concerning the occupation of the flats above the premises. There was a suggestion from the Applicant that there had been illegal occupiers present. Whether illegal occupiers or tenants, they deserved the same protection from any potential disturbances due to living above a licenced premises.

Since Mr Nwachukwu was director of Speedlink Services Limited, the Applicant for Executive Lounge in addition to being the licensee and DPS of Empire Lounge, the sub-committee took the view that the Empire Lounge was relevant, but only insofar as its compliance record history, as this would be reflective of the management of the Executive Lounge. The Empire Lounge has had a lengthy compliance history. Since at least 28 May 2021 a glass door was erected between Unit 1 and Unit 2. The glass door meant that the plans to Unit 2 were incorrect for at least 6-months. Mr Nwachukwu failed to submit a minor variation to rectify this, despite advice and a warning being given to him.

Police licensing visits were conducted on 28 May 2021 and 11 July 2021 and the premises were operating in contravention of the (then) Coronavirus Regulations. Advice was given at the visit on 28 May and the breach was dealt with by way of a verbal warning. The second visit on 11 July 2021 the premises were again found in breach of Coronavirus Regulations and Mr Nwachukwa was issued with a £1000 fixed penalty notice. The COVID related requirements in regulations and guidance are intended to secure the health and safety of the premises staff, customers and the wider community by reducing the opportunities for an infection to spread. The pandemic has resulted in excess of 44,000 deaths in the UK. The Applicant’s legal representative informed the Licensing Sub-Committee that there had been no

serious crime and disorder at Empire Lounge. This Licensing Sub-Committee consider the non-compliance of COVID regulations extremely serious. Knowingly and deliberately putting the public at serious risk of contracting a potentially fatal respiratory illness COVID19, at a time of a pandemic in the UK, can amount to a criminal offence of causing a public nuisance (which carries a maximum sentence of life imprisonment (*R v Rimmington & Goldstein* [2005] 3 W.L.R. 982)). This is contrary to the Applicant's legal representative's argument that there had been no serious crime (or disorder) at the premises. It is however noted that the Applicant disputes the allegations and is now subject to a prosecution.

s.182 Guidance paragraph 9.16 provides: "The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention", the Applicant is encouraged to provide copies of the sound limited, soundproofing and the extraction system to the Environmental Protection Team in the next 28 days to allow them to advise the Applicant if any further steps/works would be required to prevent a statutory nuisance.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

Appeal Rights

The applicant may appeal against any decision:

- a. To impose conditions on the licence
- b. To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a. The licence ought not to be been granted; or
- b. That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 4.12pm

CHAIR:

DATED: