

## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 4 JUNE 2020

#### SECTION 17 LICENSING ACT 2003: EMPIRE LOUNGE, UNIT 2, 777 OLD KENT ROAD, LONDON SE15 1NZ

#### 1. Decision

That the application made by George Nwachukwu for a premises licence to be granted under Section 17 Licensing Act 2003 in respect of the premises known as the Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ be refused.

#### 2. Reasons

The licensing sub-committee heard from the applicant's representative who advised that the application was essentially to extend hours. The applicant had been very seriously financially affected by the mandatory closure of The Empire Lounge and as a result of the implementation of The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020; it would be necessary to extend the premises operating hours to aid the recovery of the business.

The applicant's representative expressed his surprised by the number of representations received opposing the application. They advised that they felt that there was no rational explanation as to how the applicant was being treated. No residents had submitted representations and historically, it was the residents that made complaints of noise nuisance. The very small number of noise complaints could now only be treated as private nuisance complaints and therefore did not undermine the prevention of public nuisance licensing objective. The noise complaints that resulted in the review of the licence in 2017 were vexatious. This was proved by the fact that the licensing sub-committee took no action other than to require the applicant to implement a dispersal policy.

The applicant's representative further stated that since the review application in October 2017 there had been only three complaints of noise nuisance which, the representative said was de minimus.

Concerning the objection made by the planning service, the sub-committee were reminded by the applicant's representative that planning was a separate regime to licensing and was therefore an irrelevant consideration.

The representative stated that the police had failed to establish that the premises had accounted for any crime and disorder and therefore their representation could be dismissed.

The applicant's representative also contended that the area was now largely an industrial area and that there were premises in the area and across the road that had operating hours of up to 03:00.

The licensing sub-committee heard from the council's planning enforcement officer who objected to the application on the grounds of prevention of crime and disorder. They advised that the premises are subject to a planning condition restricting in its hours of

operation to 23:00. The hours are restricted to protect the amenity of adjoining residents. The officer advised that this planning condition had not been adhered to and a planning enforcement notice was in place to ensure compliance. Breaching the requirements of the planning enforcement notice is a criminal offence under Section 179 of the Town & Country Planning Act 1990.

The planning enforcement officer informed the sub-committee that the applicant applied to alter the terms of the planning condition to extend operating hours and was refused on by the Planning Inspector on 15 December 2016. A further application was made to change the operating hour to 01:00, but this was refused by the council. The refusal was then appealed and on 22 May 2019 and the Planning Inspector upheld the council's decision to refuse planning permission. A similar decision had been made by an independent planning inspector on 15 December 2016. An extension of the operating hours was considered to harm residential amenity. The sub-committee were also advised that the planning status of the premises is now well settled and there was no prospect of there being any change to the planning position.

The licensing sub-committee then heard from the environmental protection officer who objected to the application on the grounds of prevention of public nuisance. They advised that complaints of noise nuisance have been made in respect of the premises since it has operated as Empire Lounge. Numerous breaches of licence conditions have been also been witnessed by council officers. In addition, the premises has been observed operating outside of the hours permitted by the premises licence issued in respect of the premises. They were of the opinion that opening until 02:30 hours on Friday and Saturday evenings and playing recorded music until 02:00 on those nights would almost definitely lead to further public nuisance and other disturbance to local residents.

The officer from the Metropolitan Police Service objected to the application and referred to the applicant's planning applications to extend the premises' hours of operation, which had been refused. The extension to licensing hours would be in conflict with planning permission and could result in the applicant being prosecuted for breach of planning legislation, thus undermining the prevention of crime and disorder licensing objective. The officer also referred to the premises operating in breach of its licence conditions on numerous occasions, in addition to complaints of noise nuisance made by local residents caused by the premises' patrons. A grant of the application would have a negative impact on local residents and also lead to an increase in public nuisance and crime and disorder in the area.

The officer representing licensing as a responsible authority informed the sub-committee that, in accordance with Southwark's statement of licensing policy, the premises are located in a residential area and the recommended closing time for the sale of alcohol is 23:00 daily. They further added that the licensing policy also recommends that nightclubs are not suitable in such residential areas. They advised that the premises already holds a premises licence (number 859547), where the closing times are already in excess of those considered appropriate for the area. The premises has also operated in breach of its licence conditions and complaints have been received from local residents in the past concerning the premises operation. A further extension of operating hours would impact negatively on local residents.

A local ward councillor also made representations objecting to the application and referred to the prior operation of the premises which has led to alleged noise nuisance, crime and disorder and anti-social behaviour in the local area.

Concern was raised about the style of questioning of one of the members of the sub-committee. The councillor made a point of personal explanation and explained that they had attended the premises as a customer on approximately two occasions, but did not have a personal relationship with the applicant in any way. They further added that they would consider everything in a fair and unbiased way, as they had done with every other application that they had previously deliberated on, in their role as a member of the

licensing sub-committee. All parties accepted the councillor's representations and everyone, including the applicant and their representative had no objection to the councillor remaining on the licensing sub-committee panel of members for the hearing.

This matter last came before the licensing sub-committee in 2017, firstly on 6 September 2017 in respect of a variation application and again on 2 October 2017 in respect of a review application. The variation application essentially sought to amend the premises' terminal hour(s) from Sunday to Friday 23:30 and Saturday 00:30 (the following day) to Sunday to Thursday 01:00 hours (the following day) and Friday, Saturday and Bank Holidays 03:30 hours (the following day). That application was granted, albeit with reduced terminal hour(s) of Sunday to Thursday 00:00 and Friday, Saturdays and bank holidays to 01:00. The sub-committee granted these reduced hours due to the complaints of noise nuisance in addition to the planning permission and planning enforcement notice stipulating a terminal hour of 23:00. The sub-committee modified the premises licence at the review hearing on 2 October 2017 by adding the condition requiring the premises to have an agreed dispersal policy.

Since this time, the licensing sub-committee noted complaints of noise nuisance and that the premises were in breach of licensing conditions on numerous occasions times including:

- 27 January 2018: Condition 352 (minimum 2-SIA registered door supervisors shall be on duty from 22:00 until the premises are shut on Friday and Saturday); condition 843 (visibly display that entry not be permitted to patrons who use Sylvan Road to either park, drop off or collect by private or hackney carriage vehicles); condition 288 (CCTV) and condition 293 (training records). As a result of the licence breaches a Section 19 Closure Notice was issued.
- 16 February 2018: Condition 352 (SIA door supervisors). A Section 19 Closure Notice was issued as a result.
- 11 August 2018: The premises was found to be operating beyond its terminal hour, alcohol was being served, a DJ was playing loud recorded music contrary to there being no recorded music on the licence.
- 14 December 2019: The premises was operating beyond its terminal hour and serving alcohol.
- 8 March 2020: Condition 288 (CCTV).

This licensing application was submitted on 6 April 2020 and this sub-committee would expect in the lead up to such an application, it would have operated impeccably. That is not the case here. Due to the location of the premises, the sub-committee felt that additional evidence that they could manage later opening in this location such as with temporary event notices would have been useful. Again, this has not happened. This application sought extended hours with no additional control measures from those already in existence. The applicant has therefore failed to demonstrate how they could provide licensable activities outside the recommended hours in the Southwark statement of licensing policy, while mitigating against any additional crime, disorder and public nuisance that the hours may attract, as highlighted in paragraph 165 (of the policy).

The applicant's contention that the premises were located in an industrial area was dismissed. The other premises with operating hours until 03:00 were historical, prior to the Southwark statement of licensing policy being amended to include recommended opening hours. Furthermore, the map included in the agenda papers (page 174) was out of date as a new residential development had now been erected. In addition, a council housing estate (the Tustin Estate) was in the vicinity and would likely be affected by the applicant's operation. The sub-committee concluded that the applicant had failed to address how

patrons could disperse at a later hour without disturbing residents, particularly if they came by car, as the only place to park is close by on Sylvan Grove.

The licensing sub-committee recognised that licensing and planning are two separate regimes. There is also no legal basis for this sub-committee to refuse this application solely because the applicant does not have planning permission. Allowing a limited extension to the operating hours in the variation application of 6 September 2017 has demonstrated that licensing considerations have not been bound by planning considerations or the planning permission currently in place. The planning permission has been revisited by the applicant and it noted that Planning Inspector refused to extend the operating hours beyond the 23:00 hours sought due to the loss of residential amenity.

The applicant already has operating hours beyond those recommended in the Southwark statement of licensing policy. It now seeks a further extension until 00:00 (Sunday to Thursday) and 02:30 Friday, Saturday and bank holidays). This is a significant extension. Any grant of the extended hours would result in a Section 179 Town and Country Planning Act 1990 prosecution, if the applicant operated with these extended hours, which in turn would undermine the prevention of crime and disorder licensing objective. In the circumstances, the licensing sub-committee expects the applicant to obtain planning permission in advance of this licensing application and rely on paragraph 105, Southwark statement of licensing policy in support of this.

On this basis, this application is refused.

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.

### **3. 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.

Issued by the Constitutional Team on behalf of the Director of Law and Democracy.

Date: 4 June 2020