

Item No. 5.	Classification: Open	Date: 9 December 2021	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: The Executive Lounge, Unit 1, 777 Old Kent Road, London SE15 1NZ	
Ward(s) of group(s) affected		Old Kent Road	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application submitted by Speedlink Services Limited for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as The Executive Lounge, Unit 1, 777 Old Kent Road, London SE15 1NZ.
2. Notes:
 - a) The application is for a premises licence and was submitted under Section 17 of the Licensing Act 2003. The application is subject to representations and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 9 and 12 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
 - c) Paragraphs 13 to 27 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as Appendices B and C. A map showing the location of the premises is attached to this report as Appendix Q.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to applications made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence application

8. On 21 September 2021 Speedlink Services Ltd applied to this council for the grant of a premises licence in respect of The Executive Lounge, Unit 1, 777 Old Kent Road, London SE15 1NZ.
9. The application is summarised as follows:
 - **Late Night Refreshment:**
 - Sunday to Thursday: 23:00 – 00:00 (midnight)
 - Friday and Saturday: 23:00 – 01:00
 - **Supply of alcohol for consumption on and off the premises:**
 - Sunday to Thursday: 11:00 – 00:00
 - Friday and Saturday: 11:00 – 01:00

- **Proposed opening hours of the premises:**
 - Sunday to Thursday: 11:00 – 00:30
 - Friday and Saturday: 11:00 – 01:30
 - **Non standard timings:**
 - That on Bank Holidays the permitted hours in respect of licensable activities are 11:00 to 02:00 and the permitted opening hours are 11:00 to 02:30.
 - The premises are described in the application as a restaurant.
10. The premises licence application form provides the applicant's operating schedule. Parts I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application then the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application.
 11. A copy the application to which this report relates is attached as Appendix A.

Designated Premises Supervisor

12. The proposed designated premises supervisor of the premises is Temple Ubazue.

Representations submitted by responsible authorities

13. Representations have been submitted by this council's environmental protection team, the Metropolitan Police Service and by this council's licensing responsible authority.
14. The environmental protection team notes that according to this council's statement of licensing policy, the premises are located in a residential area and that the closing times recommended in the statement of licensing policy for premises located in residential areas and licensed to sell alcohol is 23:00 hours daily.
15. The environmental protection team contend that the site plan provided is indicative of a bar style operation rather than that of a restaurant, that the premises are linked to a licensed premises next door (known as The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ) by way of an internal door between the premises, and that the listed controls \ conditions in Part M of the application are insufficient to meet the prevention of public nuisance licensing objective.
16. The Metropolitan Police Service notes that one of the directors of Speedlink Services limited is a Mr George Nwachukwa and that Mr Nwachukwa

operates The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ which is directly next door to Unit 1, 777 Old Kent Road, London SE15 1NZ (the premises to which this application relates).

17. The Metropolitan Police Service contends that Unit 1, 777 Old Kent Road, London, SE15 1NZ can be directly accessed via a doorway from Unit 2, 777 Old Kent Road, London, SE15 1NZ as has been witnessed by the Police on the 28 May 2021 and 11 July 2021. The police further contend that during these visits The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ was witnessed to be being operated in breach of the Coronavirus regulations in force at that time.
18. The Metropolitan Police Service state that the plan submitted with this application shows a total of 24 seated covers out of a proposed maximum capacity of 100 people at the premises at any one time, potentially leaving 76 patrons with no way of being seated to consume a table meal.
19. The Metropolitan Police Service notes that according to this council's statement of licensing policy, the premises are located in a residential area and that the closing times recommended in the Statement of Licensing Policy for premises located in residential areas and licensed to sell alcohol is 23:00 hours daily. The Metropolitan Police Service recommend that that the application is rejected.
20. The licensing responsible authority notes that, according to this council's statement of licensing policy, the premises are located in a residential area and that the closing times recommended in the statement of licensing policy for premises located in residential areas and licensed to sell alcohol is 23:00 daily.
21. The licensing responsible authority notes that one of the directors of Speedlink Services limited is a Mr George Nwachukwa and that Mr Nwachukwa operates The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ which is directly next door to Unit 1, 777 Old Kent Road, London SE15 1NZ (the premises to which this application relates).
22. The licensing responsible authority contends that Unit 1, 777 Old Kent Road, London SE15 1NZ can be directly accessed via a doorway from Unit 2, 777 Old Kent Road, London SE15 1NZ.
23. The licensing responsible authority further alleges that during recent enforcements visits licensing officers have noted that Unit 1, 777 Old Kent Road, London SE15 1NZ was being used for licensable activities without a licencing authorisation first being obtained and that a warning letter was sent to Mr George Nwachukwu regarding this matter.
24. The licensing responsible authority states that the plan submitted with this application shows a total of 24 seated covers out of a proposed maximum capacity of 100 people at the premises at any one time, potentially leaving 76 patrons with no way of being seated to consume a table meal. .

25. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as Appendix B.

Representations from other persons

26. Three representations have been submitted by 'other persons', those all being local residents and referred to hereafter as parties 1-3. The representations state that the existing operation of The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ gives rise to extreme noise nuisance and anti-social behaviour in the locale, that granting a licence in respect of Unit 1, 777 Old Kent Road, London SE15 to the same operator as The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ will exacerbate such problems and will effectively amount to an extension of the operation of Unit 2, 777 Old Kent Road, London SE15 1NZ. All of the representations strongly object to the application.
27. Copies of the representations submitted by the other persons are attached to this report as Appendix C.

Conciliation

28. All of the representations received have been provided to the applicant.
29. At this time all of the representations submitted remain outstanding and must be considered by the licensing sub committee.
30. The licensing sub-committee will be informed as to any conciliation of the objectors at the licensing sub-committee hearing to determine this application.

Premises history

31. No licensing authorisation under the Licensing Act 2003 or any other legislation has been held regarding the premises.
32. No temporary event notices have been submitted regarding the premises.

Premises history regarding The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ

33. This is an application for a new premises licence in respect of Unit 1, 777 Old Kent Road, London SE15 1NZ. However, because Mr George Nwachukwu is the licensee in respect of The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ, and a director of Speedlink Services Ltd (the applicant), due to the concerns raised relating to the access between Units 1 and 2 at 777 Old Kent Road in addition to the possibility this application may effectively amount to an extension of the operation of The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ, the operating history regarding The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ is included below.

34. A premises licence was issued to Mr George Nwachukwu in respect of The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ on 25 September 2016. On the licence Mr Nwachukwu was specified as the premises' DPS. A copy of the license is attached as appendix D.
35. On 15 December 2016 a complaint was made to Southwark's Anti-Social Behaviour Unit (SASBU) by a local resident ('resident 1') alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to the Licensing Unit by SASBU.
36. On 23 December 2016 a complaint was made to a local ward councillor by a second local resident ('resident 2') alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to the Licensing Unit by the local ward councillor.
37. On 3 January 2017 a complaint was made to a local MP by a third local resident ('resident 3') alleging that customers using the premises engage in anti-social behaviour in the locale. The complaint was forwarded to local ward councillors by the local MP. The complaint was then forwarded to the Licensing Unit by a local ward councillor.
38. As a result of the above complaints an induction meeting at the premises was undertaken by a licensing officer on 5 January 2017. At the induction meeting the conditions of the premises licence issued in respect of the premises, the remit of the Licensing Unit and the potential consequences of breaching licensing legislation were explained to the licensee. During the induction meeting it was established that the following conditions of the premises licence issued in respect of the premises were not being complied with:
 - Condition 841 - concerning a dispersal policy required at the premises.
 - Condition - 4A1 - concerning a refusal register required at the premises.
 - Condition 305 - concerning signage required to be displayed at the premises.
 - Condition 288 - concerning the maintenance of a CCTV system at the premises.
39. A warning letter was sent to the licensee in regards to the above breaches of the licence conditions.
40. On 20 June 2017 an application to vary the premises licence issued in respect of the premises was submitted. The application sought to extend the hours permitted for licensable activities at the premises and extend the premises' opening hours. The application was subject to representations submitted by responsible authorities and four 'other persons' and so the application was referred to the licensing sub-committee for determination.
41. On 14 July 2017 an inspection of the premises was undertaken by a licensing officer. At the time of the inspection the premises were found to be being operated in compliance with the conditions of the premises licence issued in respect of the premises.

42. On 1 August 2017 a complaint was made to SASBU by 'resident 1' alleging that the premises were being operated outside of the hours permitted for licensable activities by the premises licence issued in respect of the premises (specifically "past midnight"), and that customers shout and drink in the surrounding streets when leaving the premises. The complaint was forwarded to the Licensing Unit by SASBU.
43. A licensing sub-committee hearing in respect of the variation application submitted on 20 June 2017 was held on 6 September 2017. At the hearing the application was granted with hours that were reduced from the hours applied for. A copy of the notice of decision in regards to the hearing is attached as Appendix E.
44. On 7 September 2017 a complaint was made to the licensing unit by a fourth local resident ('resident 4') stating that the provision of licensable activities at the premises, outside of the hours permitted for licensable activities by the premises licence issued in respect of the premises, was being advertised in respect of the premises.

N.B. The hours referred to in the complaint are a closing time of 23:00 on Monday to Thursday and "till late" on Friday and Saturday. The decision made by the licensing sub-committee on 6 September 2017 allowed for a closing time of 00:00 (midnight) on Monday to Thursday.

45. On 12 July 2017 an application was submitted by an 'other person' ('resident 1'), under Section 51 of the Licensing Act 2003, for the review of the premises licence held by George Nwachukwu in respect of the premises known as The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ.
46. On 2 October 2017 a licensing sub-committee hearing in respect of the review application submitted on 12 July 2017 was held. At the hearing condition 852, requiring that a dispersal policy be devised in respect of the premises, was imposed on the premises licence issued in respect of the premises. A copy of the notice of decision in regards to the hearing is attached as Appendix F.
47. On 27 January 2018 the police visited the premises and noted various breaches of the premises licence issued in respect of the premises. The police provided the Licensing Unit with two witness statements regarding the visit. The witness statements are attached as Appendix G.
48. On 2 February 2018 a second induction meeting with the Mr Nwachukwu was undertaken. At the induction meeting the conditions of the premises licence issued in respect of the premises, the remit of the Licensing Unit and the potential consequences of breaching licensing legislation were again explained to the licensee.
49. On 2 April 2018 a complaint was made by 'resident 2' to the licensing unit. The complaint alleged that noise nuisance caused by loud music frequently emanated from the premises and that the premises frequently operated outside of the hours permitted.

50. On 5 April 2018 a complaint was made to a local ward councillor by 'resident 2' alleging that noise nuisance caused by loud music frequently emanated from the premises and that the premises frequently operated outside of the hours permitted.
51. As a result of 'resident 2's' complaints of 2 April 2018 & 5 April 2018 a visit to the premises by a licensing officer was undertaken on 6 April 2018. At the time of the inspection it was noted that the premises were operating outside of the hours permitted by the planning permission granted in respect of the premises. A witness statement pertaining to this visit is attached as Appendix H.
52. On 9 April 2018 the council's planning service sent a letter with questions asked of Mr Nwachukwu under caution. The questions pertained to a planning enforcement notice dated 26 October 2017 requiring that the premises either operate as per the hours allowed by the planning permission granted in respect of the premises or cease operating as a restaurant and hot food takeaway. Copies of this letter and the related planning enforcement notice are attached as Appendix I.
53. On 13 April 2018 an inspection of the premises was undertaken by a licensing officer. Various breaches of the premises licence issued in respect of the premises were noted by the inspecting officer. A warning letter was sent to the premises regarding the inspection.
54. On 11 August 2018 the police visited the premises and in their opinion licensable activities were being provided at the premises outside of the hours permitted by the premises licence issued in respect of the premises. The police provided the Licensing Unit with a witness statement regarding the visit. The witness statement is attached as Appendix J.
55. On 3 November 2018 a re-inspection of the premises was undertaken by a licensing officer. The premises were found to be being operated compliantly.
56. On 14 February 2019 a complaint was made by 'resident 2' to the licensing unit. The complaint alleged that noise nuisance caused by loud music frequently continues to emanate from the premises and that the premises continues to frequently be operated outside of permitted hours.
57. On 13 February 2020 a complaint was made by a fifth local resident ('resident 5') alleging that noise nuisance caused by loud music frequently emanated from the premises and that the premises frequently operated outside of the hours permitted.
58. On 8 March 2020 an inspection of the premises was undertaken by a licensing officer. One condition (number 288 relating to CCTV at the premises) was found to be being breached.
59. On 6 April 2020 Mr George Nwachukwu applied to this council for the grant of a premises licence in respect of Empire Lounge, 777 Old Kent Road, London

SE15 1NZ. The application effectively sought to extend the hours permitted for licensable activities as permitted by the extant licence issued in respect of the premises. The application was subject to representations. The application was refused at a licensing sub-committee hearing held to determine the application on 4 June 2020. A copy of the notice of decision in regards to the hearing is attached as Appendix K.

60. On 25 July 2021 a complaint was made by a sixth local resident ('resident 6') to the licensing unit. The complaint alleged that customers used a local businesses' car park to park their cars and whilst using the car park caused noise nuisance, engaged in anti-social behaviour and that, when confronted about their behaviour, the premises' customers were rude to local residents.
61. On 29 July 2021 a complaint was made by 'resident 2' to the licensing unit. The complaint alleged the premises' customers frequently engaged in anti-social behaviour in the immediate locale and that the premises were frequently operated outside of the hours permitted. Resident 2 requested that the premises be monitored.
62. On 6 August 2021 during a visit to the premises it was noted that an internal door had been installed at Unit 2, 777 Old Kent Road, London SE15 1NZ (The Empire Lounge) leading to Unit 1, 777 Old Kent Road, London SE15 1NZ (The Executive Lounge). A warning letter was sent to Mr George Nwachukwu regarding this matter and also the alleged operation of the premises outside of permitted hours. A copy of the warning letter is attached as Appendix L.
63. On 22 October 2021 council officers visited the premises. A council officer noted the doorway between Unit 1 and Unit 2 777 Old Kent Road, London SE15 1NZ and took a photograph of the doorway. The photograph is attached as Appendix M.
64. On 4 October 2021 a complaint was made by a seventh local resident ('resident 7') to the licensing unit. The complaint alleged that the premises' customers caused noise nuisance, engaged in anti-social behaviour and that the premises were frequently operated outside of permitted hours.
65. On 15 November 2021 a complaint was made by an eighth local resident ('resident 8') to the licensing unit. The complaint alleged that the premises were being used for illegal private parties and that when such parties took place the premises' shutters were kept closed to elude the detection of the parties. It was further alleged that these parties finished between 02:00 and 03:00.
66. On 25 November 2021 a warning letter was sent to the licensee regarding a change to the layout of the premises (the addition of a new internal doorway which leads to Unit 1, 777 Old Kent Road, London SE15 1NZ) that is not reflected on the floor plan attached to the premises licence issued in respect of the premises. A copy of this is attached as Appendix N.

67. The premises have been monitored periodically as a result of the complaints outlined above. Details of this monitoring are provided in Appendix O.
68. A list of the temporary event notices (TENs) submitted in respect of the premises is attached as Appendix P.

Deregulation of entertainment

69. On 6 April 2015 entertainment became deregulated and as a result:
- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
 - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
70. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
71. The showing of films has not been de-regulated.

Map

72. A map showing the location of the premises is attached to this report as Appendix Q. The following licensed premises are also shown on the map and provide licensable activities as stated:

The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
licensed for:

- The provision of late night refreshment:
 - Sunday to Thursday: 23:00 - 23:30
 - Friday and Saturday: 23:00 - 00:30
- The sale of alcohol to be consumed both on and off the premises:
 - Sunday to Thursday: 11:00 - 23:30
 - Friday and Saturday: 11:00 - 00:30

- **805 Restaurant, 805-809 Old Kent Road, London SE15 1NX** licensed for:
 - The provision of late night refreshment:
 - Monday to Sunday: 23:00 - 00:30
 - The sale of alcohol to be consumed both on and off the premises and the provision of regulated entertainment
 - Monday to Sunday: 14:00 - 00:30
- **Champagne Bar & Lounge, 817 Old Kent Road, London SE15 1NX** licensed for:
 - The provision of late night refreshment:
 - Monday to Sunday: 23:00 - 00:30
 - The sale of alcohol to be consumed both on and off the premises:
 - Sunday to Thursday: 10:00 - 00:00
 - Friday and Saturday: 10:00 - 03:00

Iceland Foods LTD, 789-799 Old Kent Road, London SE15 1NZ licensed for:

- The sale of alcohol to be consumed off the premises
 - Monday to Saturday: 08:00 - 23:00
 - Sunday: 10:00 - 22:30

Murco Costcutter Hopfields Service Station, 747-759 Old Kent Road, London SE15 1NZ licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 00:00 - 00:00 (24 hours sales)
- The provision of late night refreshment
 - Friday and Saturday: 23:00 - 05:00

Southwark council statement of licensing policy

73. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and came into effect on 1 January 2021.
74. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this Authority relies in determining licence applications
 - Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 – Local cumulative impact policies. This sets out this authority’s approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
 - Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this Authority might consider appropriate by type of premises and (planning) area classification.
 - Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
 - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
75. The purpose of Southwark’s Statement of Licensing Policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

Cumulative Impact Area (CIA)

76. The premises is not situated in any of Southwark’s CIAs. The premises is situated in a residential area.
77. Under the Southwark statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within this area for these categories of premises:
- Restaurants:
 - Monday to Sunday: 23:00

- Public houses, wine bars, or other drinking establishments and bars in other types of premises:
 - Monday to Sunday: 23:00
- Nightclubs:
 - Not suitable for residential areas.

Climate change Implications

78. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
79. Climate change is not a legal factor in the consideration of a grant of a premises license under the current licensing objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by the operation of the premises.
80. Examples of such agreements may be:
- Not to use single use plastics, such as disposable plastic glasses, when selling alcohol at the premises.
 - Encourage patrons not to drive to venues by providing details of public transport on their webpages/tickets.
81. The council's climate change strategy is available at:
<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

82. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

Equalities (including socio-economic) impact statement

83. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the Council to consider all individuals when carrying out its functions.
84. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct;

advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.

85. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 – 2026:
<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

86. The equalities impact assessment is available at:
<https://moderngov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf>

Health impact statement

87. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

Resource implications

88. A fee of £315.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

Consultation

89. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

90. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

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

Principles for making the determination

92. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

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

94. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.
95. Relevant representations are those which:
- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an interested party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
96. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence.
 - To exclude from the scope of the licence any of the licensable activities to which the application relates.
 - To refuse to specify a person in the licence as the premises supervisor.
 - To reject the application.

Conditions

97. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
98. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.

99. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
100. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
101. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

102. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

Hearing procedures

103. 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 representations.
 - 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 application.
 - The committee shall disregard any information given by a party which is not relevant to the particular application before the committee and the licensing objectives.
 - 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 any representations or notice made by a party the authority may take into account documentary or other information

produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

104. This matter relates to the determination of an application for a premises licence under Section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

105. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
106. 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.
107. As a quasi-judicial body the licensing sub-committee is required to consider the application 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 all persons entitled to make representations to them.
108. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
109. 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.

110. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
111. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations 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.
112. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee 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.

Guidance

113. Members are required to have regard to the Home Office 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

114. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the application
Appendix B	Copies of the representations submitted by responsible authorities
Appendix C	Copies of the representations submitted by other persons
Appendix D	Copy of premises licence number 859547 in respect of The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
Appendix E	Copy of the notice of decision regarding the variation application from 6 September 2017 regarding Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
Appendix F	Copy of the notice of decision regarding the review application from 2 October 2017 regarding Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
Appendix G	Copies of the Metropolitan Police Service witness statements regarding a visit to the Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ on 27 January 2018
Appendix H	Copy of the licensing officer witness statement regarding a visit to Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ on 6 April 2018
Appendix I	Copies of the planning caution letter of 9 April 2018 and related planning enforcement notice regarding Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
Appendix J	Copy of the Metropolitan Police Service witness statements regarding a visit to Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ on 11 August 2018
Appendix K	Copy of the notice of decision in respect of the premises licence application from 4 June 2020 regarding Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
Appendix L	Copy of a warning letter in respect of Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ dated 17 August 2021
Appendix M	Photograph showing the internal door linking Units 1 & 2, 777 Old Kent Road, London SE15 1NZ
Appendix N	Copy of a warning letter in respect of Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ dated 25 November 2021
Appendix O	Details of licensing night time visits to the premises
Appendix P	List of temporary event notices submitted in respect of Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ
Appendix Q	Map of the local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	26 November 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	29 November 2021	