

Item No. 7.	Classification: Open	Date: 10 May 2022	Meeting Name: Licensing Sub-Committee (Urgency)
Report Title		Licensing Act 2003: Chill Out Restaurant and Bar, Arch 148, Eagle Yard, Hampton Street, London SE1 6SP – Temporary Event Notice	
Ward(s) of group(s) affected		North Walworth Ward	
From		Strategic Director of Environment	

RECOMMENDATIONS

1. That the licensing sub-committee decide whether or not to issue a counter notice in respect of temporary event notice (TENs) 877336, served by Mr Jimmy Alexander Cano Rios, with regards to event to be held at Chill Out Restaurant and Bar, Arch 148, Eagle Yard, Hampton Street, London SE1 6SP on 15 May 2022 from 00:01 to 04:30.
2. Notes:
 - The TEN submitted is only for the premises of Chill Out Restaurant and Bar.

BACKGROUND INFORMATION

The Licensing Act 2003

3. On 24 November 2005 the Licensing Act 2003 came into effect establishing a licensing regime for the following licensable activities:
 - a) The retail sale of alcohol
 - b) The supply of alcohol to club members or on behalf of a club
 - c) The provision of regulated entertainment
 - d) The provision of late night refreshments.
4. The Act established a process for the giving of “temporary event notices” (TENs).
5. Amendments to the Licensing Act 2003 were brought about by way of the Police Reform and Social Responsibility Act 2011 as of 25 April 2012.
6. A premises user may serve a TEN, where it is proposed to use the premises concerned to provide one or more licensable activities for a period not exceeding 168 hours for less than 500 persons.
7. A person holding a personal license issued under the Act may serve up to 50 TENs in a calendar year. Non personal licence holders may serve up to five TENs in the same period. No premises may be used for more than 20 TENs in a calendar year or for more than 26 days in a calendar year.
8. No premises may be used for temporary events that are less than 24 hours apart.

9. The police or environmental health authority may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their intervention may in some cases result in the licensing authority imposing conditions on a TEN.
10. If the police or environmental health team believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, namely:
 - i. The prevention of crime and disorder
 - ii. The prevention of public nuisance
 - iii. The promotion of public safety
 - iv. The protection of children from harm.
11. The police or environmental health team 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.
12. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
13. 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.
14. 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 Notice

15. On 25 April 2022 a TEN was served by Jimmy Alexander Cano Rios for an event at Chill Out Restaurant and Bar, Arch 148, Eagle Yard, Hampton Street, London, SE1 6SP. The event is to be held on the 15 May 2022 from 00:01 to 04:30. A copy of the TEN application is attached to this report as Appendix A.
16. The TEN is summarised as follows:
 - To permit the sale of alcohol, regulated entertainment and late night refreshment on 15 May 2022 between 00:01 to 04:30 for licensable activities with an additional 30 mins to allow for the safe dispersal of patrons and the closure of the premises.

17. The maximum number of people expected at any one time at the premises is 170. The supply of alcohol is in respect of consumption on the premises only.

The objection notice

18. On 27 April 2022 the Metropolitan Police Service served an objection in respect of the TEN on the grounds of the prevention of crime and disorder.
19. The police state that the premises currently holds a premises licence, and has recently submitted a TEN for 17 and 18 April 2022. Following this event the police received complaints stating:
- “People leaving establishment beyond 4am and drunk and disorderly and creating anti-social behaviour in area. We were subjected to hour’s anti-social behaviour by drunken yobs. Shouting, arguing urinating behind the church while security men did nothing.”
 - “It’s really getting serious here now with continued anti-social behaviour most weekends as a result of non-existent dispersal policies. They are not worth the paper they are written on.”
20. A Copy of the police objection is attached to this report in Appendix B.

TENs History

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

Applicant	Date of event	Time of event and activities	Counter Notice Issued?
Jimmy Alexander Cano Rios	04/12/2021 – 05/12/2021	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 03:00 and 00:01 – 03:00	No
Jimmy Alexander Cano Rios	18/12/2021 – 19/12/2021	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 04:00	No
Jimmy Alexander Cano Rios	11/12/2021 – 12/12/2021	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 04:00	No
Jimmy Alexander Cano Rios	25/12/2021 – 25/12/2021	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 04:00	No

Applicant	Date of event	Time of event and activities	Counter Notice Issued?
Jimmy Alexander Cano Rios	13/02/2021 – 13/02/2021	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 04:00	No
Jimmy Alexander Cano Rios	17/04/2022 – 18/04/2022	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 04:30 - 23:30 – 00:00 and 00:01- 04:30	No
Jimmy Alexander Cano Rios	15/02/2020 – 16/02/2020	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30 and 00:01- 06:30	No

Premises history

22. A premises licence was issued in respect of the premises on the 26 May 2021. Chill Out Billiards Pool Limited is the licence holder and Jimmy Alexander Cano Rios is the designated premises supervisor (DPS). The Premises licence is attached as Appendix C. A copy of Notice of Decision from the licensing sub-committee of 26 May 2021 is attached as Appendix D

Premises licence

23. Details of current premises licence:

- **Recorded Music – Indoors:**
 - Monday 08:00 - 23:30
 - Tuesday 08:00 - 23:30
 - Wednesday 08:00 - 23:30
 - Thursday 08:00 - 23:30
 - Friday 08:00 - 00:30
 - Saturday 08:00 - 00:30
 - Sunday 08:00 - 23:30

- **Late Night Refreshment – Indoors:**
 - Monday 23:00 - 23:30
 - Tuesday 23:00 - 23:30
 - Wednesday 23:00 - 23:30
 - Thursday 23:00 - 23:30
 - Friday 23:00 - 00:30
 - Saturday 23:00 - 00:30
 - Sunday 23:00 - 23:30

- **Sale by retail of alcohol to be consumed on premises:**

- Monday 10:00 - 23:30
- Tuesday 10:00 - 23:30
- Wednesday 10:00 - 23:30
- Thursday 10:00 - 23:30
- Friday 10:00 - 00:30
- Saturday 10:00 - 00:30
- Sunday 10:00 - 23:30

- **Sale by retail of alcohol to be consumed off premises:**

- Monday 10:00 - 00:00
- Tuesday 10:00 - 00:00
- Wednesday 10:00 - 00:00
- Thursday 10:00 - 00:00
- Friday 10:00 - 01:00
- Saturday 10:00 - 01:00
- Sunday 10:00 - 00:00

- **Opening hours:**

- Monday 08:00 - 00:00
- Tuesday 08:00 - 00:00
- Wednesday 08:00 - 00:00
- Thursday 08:00 - 00:00
- Friday 08:00 - 01:00
- Saturday 08:00 - 01:00
- Sunday 08:00 - 00:00.

Licensing visit history

24. No licensing inspection or enforcement visits has been made at the premises.

The local area

25. A map of the local area is attached as Appendix E. There are a number of other licensed premises in the immediate vicinity:

Aguila Restaurant, Arch 147 Eagle Yard, Hampton Street, London SE1 6SP:

- The sale by retail of alcohol (on sales):
 - Monday to Thursday from 10:00 to 22:00
 - Friday and Saturday from 10:00 to 0:30
 - Sunday from 10:00 to 23:30
- The provision of late night refreshment (both indoors and outdoors):
 - Friday and Saturday from 23:00 to 00:30
 - Sunday from 23:00 to 00:00

- The provision of regulated entertainment in the form of recorded music:
 - Monday to Saturday from 23:00 to 01:00
 - Sunday from 23:00 to 00:00

Chaqueno Grill, Arch 145 Eagle Yard, London SE1 6SP:

- The sale by retail of alcohol (on sales):
 - Monday to Sunday from 09:30 to 22:00
 - Friday and Saturday from 09:30 to 23:00
- The provision of regulated entertainment in the form of recorded music:
 - Monday to Thursday from 08:00 to 23:00
 - Friday and Saturday from 08:00 to 00:00
 - Sunday from 08:30 to 23:00
- The provision of regulated entertainment in the form of live music:
 - Monday to Thursday from 18:00 to 21:30
 - Friday and Saturday from 17:00 to 21:30
 - Sunday from 17:00 to 19:30

Casa Columbia Bakery, Arch 141 Eagle Yard, Hampton Street, London SE1 6SP:

- The sale by retail of alcohol (on sales only):
 - Monday to Sunday from 11:00 to 22:30

Dragon Castle, 100 Walworth Road, London SE17 1JL:

- The sale by retail of alcohol (on sales only):
 - Monday to Sunday from 11:00 to 23:30
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Sunday from 11:00 to 23:30

Da Spago Limited, Unit 1, 163 Dashwood Way, London SE17 3PZ:

- The sale by retail of alcohol (off sales only):
 - Monday to Saturday from 08:00 to 19:30
 - Sunday from 11:00 to 15:00

After Taste Chinese Restaurant, 97 Newington Butts, London SE1 6SF:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 11:00 to 00:00 (midnight)
 - Sunday from 12:00 (midday) to 23:30
- The provision of late night refreshment (indoors):
 - Monday to Saturday from 23:00 to 00:00 (midnight)
 - Sunday from 12:00 (midday) to 23:30

Ivory Arch, 80-82 Walworth Road, London SE1 6SW:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 11:00 to 00:00 (midnight)
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Sunday from 23:00 to 00:00 (midnight)
- The provision of regulated entertainment in the form of live music, recorded music, films and plays :
 - Monday to Sunday from 11:00 to 00:00 (midnight)

Mamuska, 16 Elephant and Castle, London SE1 6TH:

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 10:00 to 02:00 (the following day)
 - Sunday from 12:00 (midday) to 23:00
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Saturday from 23:00 to 02:30 (the following day)
 - Sunday from 23:00 to 23:30
- The provision of regulated entertainment in the form of live music, recorded music, and performances of dance:
 - Monday to Saturday from 09:00 to 02:00 (the following day)
 - Sunday from 09:00 to 23:00

Chatkhara Restaurant, 84 Walworth Road, London SE1 6SQ:

- The provision of late night refreshment (indoors):
 - Monday to Sunday from 23:00 to 02:00 (the following day)

La Barra, Arch 147, Eagle Yard, London SE1 6SP:

- The sale by retail of alcohol (on sales only):
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:00

Rincon Tropical, 2nd Floor, Arch 147 Eagle Yard, London SE1 6SP:

- The sale by retail of alcohol (on sales only):
 - Sunday to Thursday from 10:00 to 23:00
 - Friday and Saturday from 10:00 to 00:00
- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 23:30
 - Friday and Saturday from 23:00 to 00:30.

Policy considerations

26. 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

27. 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.

Climate change implications

28. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
29. 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.
30. Examples of such agreements may be:
- Not 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.

31. 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

32. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.
33. 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.
34. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

Equalities (including socio-economic) impact statement

35. 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.
36. 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.
37. 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>.

38. The equalities impact assessment is available at:

<https://moderngov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf>

Health impact statement

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

Resource implications

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

Consultation

41. 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 Governance

42. 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
43. The principles which sub-committee members must apply are set out below.

Principles for making the determination

44. 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.
45. 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.
46. 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

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

Reasons

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

Hearing procedures

49. 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.
50. 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.
51. 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.

52. 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.
53. 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.
54. 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.
55. 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

56. Members are required to have regard to the Home Office revised guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

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

REASONS FOR URGENCY

58. The TENs process is time limited, and due to legislative time constraints it would not be possible to wait for a further meeting to be held to consider this report.

REASONS FOR LATENESS

59. Due to the time limited nature of TENs there was not sufficient time to prepare and clear the report in time for the main agenda dispatch.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office revised guidance Secondary Regulations Statement of Licensing Policy Case file.	Licensing Unit Hub 2 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read (020 7525 5748)

APPENDICES

No.	Title
Appendix A	Temporary events notice
Appendix B	Police objection to temporary events notice
Appendix C	Current Premises licence
Appendix D	Previous notice of decision from 26 May 2022
Appendix E	Map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Justin Williams, Licensing Enforcement Officer	
Version	Final	
Dated	29 April 2022	
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	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	3 May 2022	