

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 9 February 2023	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Cool and Cozy Lounge,156 Wells Way, London SE5 7SY	
<b>Ward(s) of group(s) affected</b>		St Giles Ward	
<b>From</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Cool and Cozy Restaurant Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Cool and Cozy Lounge (nee Flying Dutchman), 156 Wells Way, London SE5 7SY.
2. Notes:
  - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 11 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 12 to 21 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted responsible authorities are attached to this report in Appendix B. The representations against the application are in Appendix C. The representations supporting the application are in Appendix D. A map showing the location of the premises is attached to this report as Appendix F.
  - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application 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 16 December 2022 Cool & Cozy Restaurant Limited applied to this council for the grant of a premises licence in respect of Cool and Cozy Lounge (nee Flying Dutchman) – 156 Wells Way, London, SE5 7SY. The premises are described in the application simply as being:
  - “Bar/nightclub.”.
9. The application and is summarised as follows:
  - The sale by retail of alcohol (on sales):
    - Monday to Sunday from 10:00 to 04:00
  - The provision of late night refreshment (indoors):
    - Monday to Sunday from 23:00 to 04:00
  - The provision of regulated entertainment in the form of plays, live and recorded music, films (Indoors) and performances of dance:
    - Monday to Sunday from 23:00 to 04:00

- Opening hours:
  - Monday to Sunday from 10:00 to 04:30
- Non-standard timings:
  - On Bank Holidays, opening times will be extended by one hour
  - From the end of the permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

### **Designated premises supervisor**

10. The proposed designated premises supervisor (DPS) of the premises is Francis Kpandeh who has a personal licence by London Borough of Southwark and is a director of the applicant company.
11. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, 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 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. A copy of the application and premises plan is attached to this report in Appendix A.

### **Representations from responsible authorities**

12. Representations were submitted by the Metropolitan Police Service (Licensing Division), the environmental protection team and the licensing authority, in their roles as responsible authorities.
13. The Metropolitan Police Service has made a representation which raises concerns in relation the prevention of crime and disorder in that the granting of a premises licence for a nightclub in a residential area would be both inappropriate and contrary to the Southwark statement of licensing policy. It states that the operating schedule within the application does not sufficiently address the concerns of running a nightclub in this particular locality.
14. The representation from the council's environmental protection team (EPT) is made under the licensing objective of the prevention of public nuisance. The representation points to a history of noise complaints emanating from the venue and notes that EPT supported a recent review of the previous premises licence initiated in August 2022. It raises concerns that the hours sought are significantly beyond those recommended in the Southwark statement of licensing policy, that there are concerns with the management and that there remains an issue with potential for noise egress.
15. The representation from the licensing authority states that the grant would undermine all four of the licensing objectives. It points to the review brought by local residents in August 2022 and heard by the Southwark licensing sub-committee on 13 October 2022. The licensing authority also states that the DPS for the current application is the same as the previous DPS for the licence which was revoked. Significantly, the premises is in close proximity to residential addresses and this type

of venue is therefore inappropriate for the area. Finally, the hours applied for are outside of the Southwark statement of licensing policy and essentially, the new hours applied are longer than the hours on the previously revoked licence.

16. The representations are available in Appendix B.

### **Representations from other persons**

17. There are representations from 25 other persons objecting the the application, including local residents, a community church and a residents association.
18. The concerns centre on the fact that the previous premises licence was recently revoked following a review by local residents. The premises has been run on temporary events notices since the revocation and has continued to cause antisocial behaviour in this time. There are issues with the premises being in close proximity to residential properties.
19. The representations against the application are available in Appendix C.
20. There are two representations in favour of the application, stating that the applicant will support the licensing objectives.
21. The representations supporting the application are available in Appendix D.

### **Conciliation**

22. The applicant's legal representative has been sent copies of all the submitted representations. At the point that this report was composed, the representations had not been addressed.
23. The licensing sub-committee will be apprised as to any conciliation, whether partial or full, of any of the other persons, or responsible authorities, who submitted representations.

### **Premises history**

24. The premises has operated as a drinking establishment since 1878 and operated under prior licensing legislation until 2005 when the Justices Licence held under the Licensing Act 1964 was converted into a premises licence held under the Licensing Act 2003.
25. On 13 February 2015 the licence was transferred to FDL Arts Ltd. The company directors were Antonio Mori and Manuela Codo.
26. On 25 February 2015 the licence was transferred to FDL Arts and Events Limited. The company directors were Antonio Mori and Manuela Codo.
27. On 18 March 2015 an application to vary the premises licence was submitted. The application sought to extend the premises operating hours. The application was granted and allowed for the current operating hours.
28. On 4 September 2019 Francis Kpandeh was specified as the designated premises supervisor in respect of the premises.

29. On 3 October 2020 an application to review the premises licence issued in respect of the premises was submitted by a local resident (other person 3). They withdrew their review on 6 October 2020 as they wished to preserve their anonymity.
30. On 4 September 2021 the licence was transferred to FDN Arts and Events Limited. The company director is Manuela Codo. A copy of this licence is available for Members' information in Appendix E.
31. On 24 July 2022, an application was submitted by an other person, under Section 51 of the Licensing Act 2003, for the review of the premises known as Cool & Cozy Lounge, The Flying Dutchman, 156 Wells Way, London SE5 7SY.
32. The matter was considered by the licensing sub-committee on 13 October 2022 and the sub-committee saw fit to revoke the premises licence. A copy of the notice of decision from that hearing is available in Appendix F.

### Temporary events notices

33. Below is a list of temporary events notices:

<b>Date of Application</b>	<b>Date of Event</b>	<b>Applicant</b>	<b>Licensable Activities</b>	<b>Counter notice?</b>
08/12/2022	16/12/2022 to 18/12/2022 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No
13/12/2022	30/12/2022 to 01/01/2023 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No
13/12/2022	23/12/2022 to 26/12/2022 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No
29/12/2022	06/01/2023 to 08/01/2023 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No
29/12/2022	13/01/2023 to 15/01/2023 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No
12/01/2023	20/01/2023 to 22/01/2023 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No

<b>Date of Application</b>	<b>Date of Event</b>	<b>Applicant</b>	<b>Licensable Activities</b>	<b>Counter notice?</b>
19/01/2023	27/01/2023 to 29/01/2023 from 12:00 to 04:00	Francis Kpandeh	Sale by retail of alcohol (on sales), regulated entertainment and late night refreshment for 300 persons	No

## Map

34. A map showing the location of the premises is attached as Appendix G. The following licensed premises are within the locality of the premises (100 metres):

**Happy Valley, 160 Southampton Way, London SE5 7EW** licenced for:

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

**Cool and Cozy Restaurant, Ground floor and basement, 101 Southampton Way, London SE5 7SX** licensed for:

- The sale by retail of alcohol to be consumed on the premises:
  - Monday to Thursday: 10:00 to 23:00
  - Friday and Saturday: 10:00 to 00:00 (midnight)
  - Sunday: 11:00 to 23:00
- The provision of late night refreshment (indoors):
  - Monday to Sunday: 23:00 to 00:00

**N.B.** The licence holder is Cool and Cozy Restaurant Limited and Francis Kpanideh is the DPS. The premises licence issued in respect of this premises is currently suspended due to non-payment of annual licence fees.

## Southwark council statement of licensing policy

35. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.

36. 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.
37. 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.
38. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. Links are below:

Southwark policy:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

Section 182 Guidance:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf)

### **Cumulative impact area (CIA)**

39. The premises are not situated in a cumulative impact area.
40. According to this council’s statement of licensing policy 2021 - 2026 the premises are situated in a residential area.
41. Under this council’s statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within residential areas for the categories of premises stated:

- Restaurants and cafes, public houses, wine bars, other drinking establishments, bars in other types of premises, event premises / spaces where the sale of alcohol is included in, and ancillary to, a range of activities including meals:
  - Monday to Sunday: 23:00.
- Nightclubs are not considered appropriate for residential areas.

### **Climate change implications**

42. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
43. 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.
44. 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.
45. 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**

46. 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**

47. 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.
48. 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 who have 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.

49. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 – 2026 at:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

50. The equalities impact assessment is available at:

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

### **Health impact statement**

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

### **Resource implications**

52. A fee of £190.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value bands B.

### **Consultation**

53. 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.

### **Community impact statement**

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

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

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

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

### **Principles for making the determination**

57. 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.

58. 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.

59. 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**

60. 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.

61. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

62. 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.

63. 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.

64. 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**

65. 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**

66. 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.
67. 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**

68. 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.

69. 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.
70. 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.
71. 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.
72. 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.
73. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
74. 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.
75. 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**

76. 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**

77. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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**

<b>Name</b>	<b>Title</b>
Appendix A	Application for a premises licence
Appendix B	Representations submitted by responsible authorities
Appendix C	Representations from other persons objecting
Appendix D	Representations from other persons supporting
Appendix E	Copy of the most recent premises licence
Appendix F	Notice of decision from October 2022
Appendix G	Map of the local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Barry O'Callaghan, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	25 January 2023	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	30 January 2023	