



## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 13 OCTOBER 2022

#### **SECTION 51 LICENSING ACT 2003: COOL & COZZY LOUNGE, THE FLYING DUTCHMAN, 156 WELLS WAY, LONDON SE5 7SY**

##### **1. Decision**

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 submitted by an other person for the review of the premises licence issued in respect of Cool & Cozzy Lounge, The Flying Dutchman, 156 Wells Way, London SE5 7SY and having had regard to all relevant representations has decided to revoke the premises licence.

##### **2. Reasons**

This was an application made by an other under Section 51 Licensing Act 2003 for the review of the premises licence in respect of Cool & Cozzy Lounge, The Flying Dutchman, 156 Wells Way, London SE5 7SY.

The representative for the premises noted that the sole director for the premises licence holder and company was present at the sub-committee meeting. All dealings that the representative had were with the designated premises supervisor (DPS) and it was his understanding that the DPS and director were one and the same and sought confirmation from the director that they were content to be represented by him. This was confirmed.

The applicant for the review advised the sub-committee that the premises was located on Wells Way, Camberwell which was in a very residential area. The applicant's family had moved there three years previously. Prior to that, the applicant had lived on Electric Avenue, Brixton and despite this, had not experienced anything like the anti-social behaviour and licensing breaches that they had with Cool and Cozzy.

They advised that the problems with the premises had resulted in sleep disruption which was worst between 02:00 to 07:00 hours at the weekends. The incidents occurred primarily at weekends and that it was unusual to occur during the week. The problems had intensified since 2019.

The applicant stated that there had been extensive criminal and licensing violations all of which had been reported to the responsible authorities. The applicant's family had experienced drink driving, physical fights and illegal parking outside their home. There had also been public intoxication, extreme levels of noise, especially outside but also coming from inside the premises after closing hours. The Applicant had witnessed people urinating and vomiting outside of their home. There had also been reoccurring

pest infestations as a result of food being left out outside of the premises and the premises dustbins overflowing. Patrons were regularly in the premises garden, screaming and engaging in verbal and physical fights.

Large amounts of broken glass were regularly left by the premises on the pavement which had caused injuries to the family dog, requiring veterinary treatment. The applicant was also threatened by a patron of the premises who came to the applicant's front door screaming, with a knife. The individual kicked the applicant's front door so badly, it had to be replaced.

The applicant informed the sub-committee that the regular disturbances were extremely stressful. Reference was also made to the premises operating throughout the pandemic. The DPS, had been spoken to and was apologetic, but the problems always continued. The DPS had shown that he either had a lack of capacity or sound judgment to manage the premises. The DPS arranged a meet to discuss the noise level, but it felt that this was little too little, too late. The applicant requested that members revoke the premises licence.

The Chair of the licensing sub-committee noted that the premises had been transferred to an arts company, but the Applicant stated they had seen no evidence of this. The premises only appeared to operate as a nightclub.

The applicant advised that they had a Ring camera at their front door and all incidents had been captured on it, which were then duly sent to the police and the council. It was explained to the applicant that only trading standards had submitted a representation from all the responsible authorities. It was also advised that unless the applicant had submitted the evidence as part of their review application in advance of the hearing, the sub-committee would not be able to take the evidence into account.

The licensing sub-committee then heard from the trading Standards officer who stated that the ownership of the business was FDN Arts and Events Limited, who was the landlord to the premises and that DPS had been running the business before 2019. FDN Arts and Events maintained their position as premises licence holder, meaning they specified who could run the own business. The premises licence holder (director) interrupted and stated that they were not responsible for how the DPS ran the business.

The representative for trading standards advised that during the COVID pandemic, he had attended the premises with the police on numerous occasions during the lockdown and the premises was always locked and in darkness. It was compliant with the restrictions and closures imposed by the Coronavirus Regulations. Any suggestion that the premises were open, was untrue. Trading standards had been directed to attend the premises due to the extent of complaints received by the council. When the restrictions were being lifted, the premises were open and the DPS had demonstrated compliance with the COVID regulations and guidance.

When the review application had been submitted, the officer stated he had attended the premises and whilst initially there were a number of conditions not complied with, this had vastly improved. The officer confirmed that he had not witnessed any of the things being complained about, nor had the police raised any concerns to him. Other

venues in the area, had caught the officer's attention more than the Cool & Cozy Lounge. The officer had witnessed patrons using the external area/garden but the SIA security appeared strict on patron order/disorder.

The licensing sub-committee heard from other person 9. Concerning the queues into the premises, they had witnessed up to 30 to 40 people queuing to get in and called the noise team five or six times. Patrons drinking in the queue/outside the premises was not a problem nor did they feel the glass issue raised by the applicant was a problem.

The primary problem was the external noise particularly from patrons. The premises was generally well soundproofed; there was some noise, but not an amount that justified a complaint. The SIA security were able to control the door and the immediate area, but it was areas beyond the immediate vicinity that was the main problem which the DPS had not satisfactorily addressed.

The problems were at their worst between 02:30-05:30 hours. Curbing the last entry to 00:00 hours would assist the local residents. Other person 9 also referred to Southwark's statement of licensing policy and highlighted that the premises was located in a residential area and the recommended closing time was 23:00 hours and that nightclubs were not considered appropriate for residential areas. Local residents had attempted to deal with the matter amicably with the DPS, but there had been no improvements, hence the review application. It was felt that no additional conditions would alleviate situation.

It was pointed out that the recommended closing hours were introduced by council assembly after the variation of the premises licence in 2015.

The licensing sub-committee then heard from other persons 11 and 12. Other person 11 stated that FDL Arts and Events Limited was the premises licence holder and that they were the sole director of it. Person 11 was previously the DPS and ran the premises, before the current DPS. The premises was previously an arts venue between Monday and Friday, renting space to local students to show/perform their arts. At weekends, there were DJs playing until 06:00 hours. There were stringent rules as to how the premises operated at the weekends, which caused the least amount of nuisance to the neighbourhood. A lease had been signed with the DPS application. The rules of as to how the premises ran (including at the weekends) were then passed to the DPS.

Since the DPS variation in 2019, there had been regular complaints of loud music and patrons not being managed well. Other person 11 stated they personally felt very disappointed with how the venue had been run and the amount of complaints that they had received from the local community. Other person 11 stated that they regretted appointing the DPS. Measures could have been put in place by the DPS to minimize any disturbance to the neighbours, but not implemented.

Person 11 stated they had no faith in the DPS. The DPS would neither implement nor comply with any conditions that the sub-committee imposed. They deeply regret appointing the DPS and being the premises license holder, were "absolutely not against the licence being revoked".

The representative for the DPS interjected and advised the sub-committee that he was likely to be conflicted in representing both the DPS and person 11 (as the premises licence holder) and requested a break to take instructions.

Following the brief adjournment the legal representative informed the sub-committee that it was not unusual in reviews applications to represent both the premises licence holder and a DPS. On this occasion however, there had been nothing in the agenda papers to indicate that other person 11 was in fact, the premises licence holder (or sole director of the company that was the premises licence holder).

The legal representative stated that due to a conflict, he was unable to assist the sub-committee. Further, because the DPS had not submitted a representation during the consultation period, he was not permitted to make verbal submissions in his own right to the sub-committee in respect of the review application. Regardless of Section 52(7) and Section 52(8) Licensing Act 2003, it was unclear why the premises licence holder failed to apply for a DPS variation.

The legal advisor to the sub-committee then asked the other person 11/premises licence holder to clarify that they were content for the premises licence to be revoked. This was confirmed. Other person 11/premises licence holder stated that the reason they had not removed the DPS was because they had a real fear of retaliation and wanted to go through the review process to ensure sure that the licence was revoked by the licensing sub-committee. To this, the legal advisor requested that the matter should go into a closed session to liaise with the members.

In hearing the evidence from the local residents, the members were initially of the view that the most appropriate course of action may have been to remove the DPS. However, in view of the other person/premises licence holder informing that sub-committee that they were content for the premises licence to be revoked, members concluded little would be gained in hearing any further action, particularly in light of the conflicting evidence from the applicant, trading standards and other person 9. However, the Chair of the sub-committee expressed extreme dissatisfaction with how the meeting had progressed.

Other person 11 was not just a resident, but the owner of the premises and the premises licence holder. Their representation made no reference to this at all. The representation was submitted in the name of EP, rather than their full legal name (held at Companies House).

The premises licence holder had the power to appoint and remove a DPS. Rather than administer the DPS' removal, they had allowed the local residents to endure the significant disturbance from the premises. The members did not accept other person 11/premises licence holder's belief that the removal of the DPS would result attract retaliation, given that they submitted a written representation and was happy to speak at a public sub-committee meeting.

It was apparent that the licensing review process was being exploited as a cheap alternative to terminating the business relationship and commercial lease through the civil courts. The licensing sub-committee unanimously felt that the matter should be

investigated further for potential criminal offences of Making a False Statement (Section 158 Licensing Act 2003) and/or Failing to Disclose Information (Section 3 Fraud Act 2006).

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

### **3. Appeal rights**

This decision is open to appeal by either:

- a) The applicant for the review
- b) The premises licence holder
- c) Any other person who made relevant representations in relation to the application.

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

This decision does not have effect until either

- a) The end of the period for appealing against this decision; or
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

Issued by the Constitutional Team on behalf of the Director of Legal Services

Dated 21 October 2022