

Item No. 8.	Classification: Open	Date: 2 March 2023	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Studio 68 London, Railway Arch 68, Ewer Street, London SE1 0NR	
Ward(s) of group(s) affected		Borough & Bankside	
From		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee decide whether or not to issue a counter notice in respect of temporary event notice (TENs) 879622, served by Miss Tamara Kramer, with regards to event to be held at Studio 68 London, Railway Arch 68, Ewer Street, London SE1 0NR on 4 to 5 March 2023 from 01:00 to 04:00.

2. Notes:

The TEN submitted is only for the premises of Studio 68 London. The main studio 'LA' space and 'NY' second space will be used to host the event on the night.

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 12 TENs in a calendar year or for more than 21 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, they 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.
11. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
12. 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.
13. 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 (TEN)

14. On 13 February 2023 a TEN was served by Miss Tamara Kramer for an event at Studio 68 London, Railway Arch 68, Ewer Street, London SE1 0NR. The event is to be held on the 4 to 5 March 2023 from 22:00 to 4:00. A copy of the TEN application is attached to this report as Appendix A.
15. The TEN is summarised as follows:
 - To permit the sale of alcohol, regulated entertainment and late night refreshment on 4 to 5 March 2023 between 01:00 to 04:00 for licensable activities. The maximum number of people expected at any one time at the premises is 200. Regulated entertainment will be in the form of playing Melodic music. The supply of alcohol is in respect of consumption on the premises only.

The objection notice

16. On 16 February 2023 the environmental protection team served an objection in respect of the TEN on the grounds of the prevention of public nuisance and public safety.
17. The environmental protection team state that the premises recently obtained a premises licence in October 2022, to which they objected to and hours were reduced

and additional conditions agreed in order to grant the licence. The conditions attached to the premises licence relevant to this application are:

- 340 - That licensable activities shall only take place as ancillary to activities consistent with a dance studio;
 - 349 - No externally promoted DJ led events shall take place at the venue;
 - 350 - The venue shall not operate as a night club;
 - 355 - The only patrons to use these premises shall be dancers who are either training, and may wish a drink after their sessions, or other dancers who are watching others train. These premises are not open to the general public to 'walk in';
18. There are also concerns over the planning permission and the restrictions on the hours of use at the premises. Planning permission was sought to extend the hours of use in September 2022 and the application was refused.
 19. There are also concerns over the noise impact assessment report submitted with the TEN by the applicant. The report is produced by Synapse Sound, however the environmental protection team are not aware of the said consultancy, can find no record / website / companies house information of the said consultancy, nor do Synapse Sound appear in the Institute of Acoustics (IoA) 'find a supplier' web page.
 20. Furthermore the author of the report, is stated to be an Associate Member of the IoA (AMIoA), however a check on the IoA website on 16 February 2023 for a membership check (<https://www.ioa.org.uk/membership-check>) found no members by that name. There are concerns over who produced this report (not an accredited noise consultancy).
 21. The environmental protection team have also raised concerns regarding noise impact, particularly low frequency noise, from the proposed use, which is stated not to meet Southwark's noise standards for entertainment venues.
 22. The environmental protection team have raised concerns regarding the potential for public nuisance to occur by way of late night noise from the proposed use of the arch as a nightclub. They note that the applicant has previously applied for this TEN event, application date 17 January 2023, to which they objected and the applicant withdrew the application before it went to a licensing sub-committee. They believe this to be the same event and note that the applicant has removed the word "techno" from this latest TEN application. This application states "playing Melodic music", whereas the previous TEN stated "playing Melodic Techno music".
 23. This TEN application also removed the link to the business / operators who would be running the event. Concern is also raised with regards to the fact that the premises is proposed to be hired out to external operators to use the premises as a nightclub.
 24. Concerns in relation to the public safety licensing objective. There are noted discrepancies between the previous TEN application and this TEN application with regards to the number of persons attending and which studios will be in use. Possible overcrowding could therefore occur in the main studio as well potential public nuisance issues of guests using Ewer Street alleyway for the toilet if the arch provisions are overrun. The use of the alleyway for smoking / drinking by up to 200

people during the event could also cause public nuisance by way of noise, with the door/entrance constantly in use for ingress and egress.

25. A Copy of the environmental protection team's objection is attached to this report in Appendix B.

TENs History

26. 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?
Tamara Kramer	2/12/22 - 3/12/22	Sale of alcohol on the premises, regulated entertainment & late night refreshment between 20:30 and 02:00	No
Tamara Kramer	04/03/2023 – 05/03/2023	Sale of alcohol on the premises, regulated entertainment & late night refreshment between 01:00 and 04:00	Withdrawn

Premises history

27. A premises licence was issued in respect of the premises on the 18 October 2022. Miss Tamara Kramer is the licence holder and DPS. The Premises licence is attached as Appendix C.

Premises licence

28. The details of the current premises licence are set out below:

- **Plays – indoors:**
 - Friday: 23:00 to 01:00
 - Saturday: 23:00 to 01:00
- **Films – indoors:**
 - Sunday to Thursday: 12:00 to 23:00
 - Friday and Saturday: 12:00 to 01:00
- **Live music – indoors:**
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00

- **Recorded music – indoors:**
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00
- **Performance of dance – indoors:**
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00
- **Late night refreshment – indoors**
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00
- **Sale by retail of alcohol to be consumed on premises:**
 - Sunday to Thursday: 12:00 to 00:00
 - Friday and Saturday: 12:00 to 01:00

Licensing visit history

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

The local area

30. A map of the local area is attached as Appendix D. There are other licensed premises in the immediate vicinity:

Pedal Me, Railway Arches 52-53, Ewer Street, London SE1 0NR

- The sale by retail of alcohol (off sales):
 - Monday to Sunday: 08:00 to 23:00

Spots and Stripes, Railway Arch 63-64, Ewer Street, London SE1 0NR

- The sale by retail of alcohol (on sales):
 - Monday to Sunday: 09:00 to 01:00
- The provision of regulated entertainment in the form of recorded music:
 - Monday to Sunday: 09:00 to 01:00
- The provision of regulated entertainment in the form of live music:
 - Monday to Sunday: 09:00 to 01:00
- The provision of regulated entertainment in the form of plays:
 - Monday to Sunday: 09:00 to 01:00

- The provision of regulated entertainment in the form of films:
 - Monday to Sunday: 09:00 to 01:00
- The provision of regulated entertainment in the form of indoor sporting events:
 - Monday to Sunday: 09:00 to 01:00
- The provision of regulated entertainment in the form of performance of dance:
 - Monday to Sunday: 09:00 to 01:00
- The provision of late night refreshment (indoors):
 - Monday to Sunday: 23:00 to 01:00

The Charlotte, 204 Union Street, London SE1 0LX

- The sale by retail of alcohol (both on and off sales):
 - Sunday to Wednesday: 11:00 to 23:00
 - Thursday to Saturday: 11:00 to 01:00
- The provision of regulated entertainment in the form of recorded music:
 - Sunday to Wednesday: 11:00 to 23:00
 - Thursday to Saturday: 11:00 to 01:00

Balabaya, Arch 25, Old Union Yard Arches, 229 Union Street, London SE1 0UR

- The sale by retail of alcohol (both on and off sales):
 - Monday to Friday: 12:00 to 23:30
 - Saturday to Sunday: 10:00 to 23:30
- The provision of regulated entertainment in the form of films
 - Thursday to Saturday: 21:00 to 23:00
- The provision of regulated entertainment in the form of recorded music
 - Monday to Saturday: 08:00 to 23:30
 - Sunday: 08:00 to 22:00

MC & Sons, 160 Union Street, London SE1 0LH

- The sale by retail of alcohol (off sales only):
 - Monday to Saturday: 10:00 to 23:00
 - Sunday: 12:00 to 22:30

- The sale by retail of alcohol (on sales):
 - Monday to Wednesday: 10:00 to 23:00
 - Thursday: 10:00 to 01:00
 - Friday to Saturday: 10:00 to 00:00
 - Sunday from 12:00 to 22:30
- The provision of late night refreshment (indoors):
 - Monday to Saturday: 23:00 to 23:30

Bread Street Kitchen Southwark, Basement and Part Ground Floor, 47-51 Great Suffolk Street, London SE1 0BS:

- The provision of regulated entertainment in the form of films (Basement):
 - Monday to Wednesday: 11:00 to 00:00
 - Thursday to Saturday: 11:00 to 02:00
 - Sunday from 11:00 to 23:30
- The provision of regulated entertainment in the form of live music (Basement):
 - Thursday to Saturday: 23:00 to 02:00
- The provision of regulated entertainment in the form of recorded music (Ground floor):
 - Monday to Saturday: 11:00 to 00:00
 - Sunday: 11:00 to 23:30
- The provision of regulated entertainment in the form of recorded music (Basement):
 - Monday to Wednesday: 11:00 to 00:00
 - Thursday to Saturday: 11:00 to 02:00
 - Sunday: 11:00 to 23:30
- The provision of late night refreshment (indoors) (Basement)
 - Monday to Wednesday: 23:00 to 00:30
 - Thursday to Saturday: 23:00 to 02:00
 - Sunday: 23:00 to 00:00
- The provision of late night refreshment (indoors) (Ground floor):
 - Monday to Saturday: 23:00 to 00:30
 - Sunday: 23:00 to 00:00
- The provision of late night refreshment (indoors) (Green-marked hatched area):
 - Monday to Saturday: 23:00 to 00:00
 - Sunday: 23:00 to 23:30

- The sale by retail of alcohol (on sales) (Basement):
 - Monday to Wednesday: 11:00 to 00:00
 - Thursday to Saturday: 11:00 to 02:00
 - Sunday from: 11:00 to 23:30
- The sale by retail of alcohol (on sales) (Ground floor):
 - Monday to Saturday: 11:00 to 00:00
 - Sunday: 11:00 to 23:30
- The sale by retail of alcohol (on sales) (Green marked hatched area):
 - Monday to Saturday: 11:00 - 00:00
 - Sunday: 11:00 to 23:30
- The sale by retail of alcohol (off sales only) (Basement and ground floor):
 - Monday to Saturday from 11:00 to 00:00
 - Sunday from 11:00 to 23:30.

Policy considerations

31. 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

32. The sub-committee is asked to consider whether then issue of a counter notice is necessary for the promotion of the prevention of public nuisance and protection of public safety licensing objectives.

Community impact statement

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.

Climate change implications

35. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
36. 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.

37. 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.

38. 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

39. 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

40. 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.

41. 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.

42. 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>.

43. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

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

Consultation

46. The Act provides for no consultations to take place other than the process outlined in this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

47. 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
48. The principles which sub-committee members must apply are set out below.

Principles for making the determination

49. 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.
50. 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.
51. 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

52. 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

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

Hearing procedures

54. 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.

55. 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.

56. 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.

57. 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.
58. 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.
59. 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.
60. 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

61. 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, Finance

62. 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 Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	Licensing Unit Hub 2 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read (020 7525 5748)

APPENDICES

Name	Title
Appendix A	Temporary events notice
Appendix B	Environmental protection team objection to temporary event notice
Appendix C	Current premises licence
Appendix D	Map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
Report Author	Jamie Stubbs, Licensing Enforcement Officer	
Version	Final	
Dated	20 February 2023	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	22 February 2023	