

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 15 March 2023	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Cool and Cozy Lounge "The Flying Dutchman", 156 Wells Way, London SE5 7SY	
<b>Ward(s) of group(s) affected</b>		St Giles	
<b>From</b>		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) 879741, served by Francis Kpandeh, with regards to event to be held at Cool and Cozy Lounge "The Flying Dutchman", 156 Wells Way, London SE5 7SY on 17 to 18 March 2023 from 12:00 to 03:00.
2. Notes:  
  
The TEN submitted is only for the premises of Cool and Cozy Lounge "The Flying Dutchman".

## 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 2 March 2023 a TEN was served by Francis Kpandeh for an event at Cool and Cozzy Lounge “The Flying Dutchman”, 156 Wells Way, London, SE5 7SY. The event is to be held on the 17 to 18 March 2023 from 12:00 to 3:00. 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 17 to 18 March 2023 between 12:00 to 03:00 for licensable activities. The maximum number of people expected at any one time at the premises is 300. The supply of alcohol is in respect of consumption on the premises only.

### **The objection notice**

16. On 7 March 2023 the environmental protection team served an objection in respect of the TEN on the grounds of the prevention of public nuisance.

17. The environmental protection team state that there is historical record of issues around this premises that had led for its premises licence to be revoked.
18. Further to that, more recent complaints and issues as a result of holding temporary events have been reported. These issues were mainly from rowdy behaviour following what appears to be a patron mismanagement from Cool and Cozy "The Flying Dutchman".
19. It is their opinion that this event is likely to lead to public nuisance as there is no evidence to show that there have been any changes to improve the current situation.
20. They object to the application on the grounds of the likely effect of the sought Notice if granted, on the promotion of the 'prevention of public nuisance' licensing objective.
21. A Copy of the environmental protection team's objection is attached to this report in Appendix B.

### TENs History

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

<b>Applicant</b>	<b>Date of event</b>	<b>Time of event and activities</b>	<b>Counter notice issued?</b>
Francis Kpandeh	16/12/22 - 18/12/22	Sale of alcohol on and off the premises, regulated entertainment & late night refreshment between 12:00 and 04:00	No
Francis Kpandeh	23/12/2022 – 26/12/2022	Sale of alcohol on and off the premises, regulated entertainment & late night refreshment between 12:00 and 04:00	No
Francis Kpandeh	30/12/22 - 01/01/23	Sale of alcohol on and off the premises, regulated entertainment & late night refreshment between 12:00 and 04:00	No
Francis Kpandeh	13/01/2023 – 15/01/2023	Sale of alcohol on and off the premises, regulated entertainment & late night refreshment between 12:00 and 04:00	No
Francis Kpandeh	20/01/2023 – 22/01/2023	Sale of alcohol on and off the premises,	No

<b>Applicant</b>	<b>Date of event</b>	<b>Time of event and activities</b>	<b>Counter notice issued?</b>
		regulated entertainment & late night refreshment between 12:00 and 04:00	
Francis Kpandeh	27/01/2023 – 29/01/2023	Sale of alcohol on and off the premises, regulated entertainment & late night refreshment between 12:00 and 04:00	No
Francis Kpandeh	10/02/2023 – 11/02/2023	Sale of alcohol on the premises, regulated entertainment & late night refreshment between 01:00 and 04:00	No
Francis Kpandeh	17/02/2023 – 19/02/2023	Sale of alcohol on the premises, regulated entertainment & late night refreshment between 01:00 and 04:00	Yes

### **Premises history**

23. 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.
24. On 13 February 2015 the licence was transferred to FDL Arts Ltd. The company directors were Antonio Mori and Manuela Codo.
25. On 25 February 2015 the licence was transferred to FDL Arts and Events Limited. The company directors were Antonio Mori and Manuela Codo.
26. 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.
27. On 4 September 2019 Francis Kpandeh was specified as the designated premises supervisor in respect of the premises.
28. 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.

29. 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 C.
30. 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.
31. The matter was considered by the licensing sub-committee on 13 October 2022 and the Southwark licensing sub-committee saw fit to revoke the premises licence. A copy of the notice of decision from that hearing is available in Appendix D.
32. On 16 December 2022, an application for a new premises licence was submitted by Cool & Cozy Restaurant Ltd. The application looked to name Francis Kpandeh as designated premises supervisor. The premises are described in the application simply as being: "Bar/nightclub". A copy of the application is available in Appendix E.
33. Following a number of objections the matter was considered by the licensing sub-committee on 9 February 2023 and the Southwark licensing sub-committee saw fit to refuse the premises licence application. A copy of the notice of decision from that Hearing is available in Appendix F.
34. The licensing unit has received the following complaints regarding the premises:

Date	Complainant	Complaint sent to / referred from	Details
26/09/2019	Local Resident	SASBU referral	<p>SASBU (ASB): My family lives at XXX Wells Way in Camberwell.</p> <p>On the corner of our road, about xx meters from our front door, is an establishment called the flying Dutchman, although it recently appears to have been rebranded as Cool Cozy.</p> <p>As the Flying Dutchman, on average about once every 3 months, there would be a late night event at a weekend that went on until the very early hours of the morning (5am ish). When it's that infrequently we just used to Put up with it. The venue has a new sign outside now saying Cool Cozy and it's been loud enough to stop my family from sleeping for the last two weekends.</p> <p>From reading on the internet it seems the premises has a permanent licence</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>until 6am at the weekend. How can this possibly be appropriate in a residential area where it's stopping families from sleeping? It stops my family sleeping and there's at least half a dozen houses closer to the venue than mine. Plus there's flats under construction closer than our house.</p> <p>Can you please have a look at this as soon as possible?</p> <p>It's can't be appropriate to give this venue a 6am licence in a residential area where it's adversely impacting the lives of families.</p> <p>The venue has very few customers and it's just not right.</p>
23/04/2021	Local Resident	Licensing	<p>Hello Southwark Council,</p> <p>I'm the neighbour XXXXXXXXXXXXX to the pub.</p> <p>I'm deeply concerned about developments.</p> <p>I have a small xx year old son and our front door opens straight onto the street where XXXXXXXX intends to start hosting outdoor parties.</p> <p>I've also seen the extra seating he has put in the smoking area directly outside my back garden. It will be noisy and judging by past events likely very drunken and potentially violent. I've had people fighting literally on my doorstep on at least 5 occasions since he took over, sometimes very late at night. The fact that the partying is now moving to the street is very worrying.</p> <p>Last summer the place was operated like a nightclub with no social distancing measures.</p> <p>Please take this matter seriously, we have tried every way possible to</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>reason with this man but he nods along then does what he pleases.</p> <p>Cheers,</p>
21/06/2021	Local Resident	Licensing	<p>Hello, we are neighbours to the 'club' The Flying Dutchman, aka Cool and Cozy Lounge at 156 Wells Way, London SE5 7SY.</p> <p>Over the last months, every Friday and Saturday, the venue has been playing extremely loud music and have had their garden filled with drunk and aggressive guests that have been shouting and fighting until 7 in the morning. We have experienced fights outside our doorstep and the police have been called out on numerous occasions.</p> <p>We fear our safety and a lot of guests drive drunk or under the influence so we fear the safety for the community too.</p> <p>This behaviour is also happening many Thursdays and Sundays with loud people being aggressive and shouting in the garden of above mentioned venue but also in the restaurant on 101 Southampton Way, Cool and Cozy. The premises on 101 Southampton Way are cooking food in the garden for the Flying Dutchman until 4 in the morning and have guests in their garden screaming and shouting until 1 in the morning most days.</p> <p>We can't sleep obviously and are also having our mental well-being seriously affected by the behaviour of this venue.</p> <p>How can we stop the manager of these two establishments to ruin our lives?</p> <p>We keep calling noise complaint but nothing happens.</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>What actions do we have to take to work towards getting their licences revoked?</p>
08/08/2021	Local Resident	Licensing	<p>Dear Southwark licencing,</p> <p>We are at our wits end.</p> <p>We've been calling noise control almost every weekend regarding the noise, fights and antisocial behaviour at the Flying Dutchman / Cool and Cozy.</p> <p>It's got to the point where we expect to have a terrible sleep (or no sleep at all) every weekend.</p> <p>Nothing seems to be done and the business continues to operate on breach of the conditions of the licence.</p> <p>Please can you tell us what routes we have to get the licence revoked.</p> <p>Every attempt to get XXXXXXXX to comply has failed.</p> <p>Yours sincerely,</p>
17/08/2021	Local Resident	Local residents group, copied to Licensing for information	<p>Hi all,</p> <p>I can confirm as well that the noise was once again excruciating on both Friday and Saturday. And that the noise keeper on until past 5 am in the morning. It can only be described as torture, since it was impossible to sleep or feel safe. It was as if there was a club venue both in the garden and out on the street. Being xx months pregnant it did not feel safe to ask highly intoxicated guests to lower the music or their voices. The security at the venue did nothing.</p> <p>The council was called several times but no one came to check the noise level.</p> <p>I am more than happy to leave a formal statement if needed. I've also</p>



Date	Complainant	Complaint sent to / referred from	Details
			<p>contacted the council and asked that they share all of my filed complaints. So that they can be shared with you. This might be helpful as it will show the consistency of the ongoing noise level.</p> <p>All the best,</p>
06/09/2021	Local Resident	Licensing	<p>The Flying Dutchman is, as every weekend playing extremely loud music and allow guests to shout scream and argue in the garden. His guests are also parked all over Southampton Way on double yellow and a lot of people are having small pre parties in their cars drinking, smoking weed, and shouting while littering and urinating on our houses. Southwark Council should be ashamed of themselves to let this bully XXXXXXXX continue behaving like this.</p>
06/092021	Local Resident	SASBU referral	<p>Several men are screaming aggressively at a women in at the Cool Cozy Lounge. Loud music is being played. Their own security is not intervening. We are worried about our own safety and others. This type of behaviour happens every weekend.</p>
18/09/2021	Local Resident	Licensing	<p>Hi all,</p> <p>Last night was just awful. Loud music and partying noise woke me from my sleep at 3.30am. Then there was a girl screaming outside. Later on around 6am a girl was knocking on doors with a knife and had to be tasered by the police that the neighbours phoned to come help. The drink driving is blatant also.</p> <p>We never had to once complain before Francis took over. We are beside ourselves. It's utterly exhausting having to phone up and wait for a call back for an hour or more when you want to be asleep. It doesn't seem to make a difference. The situation is almost lawless.</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>How much longer will it go on before we can put a stop to this?</p> <p>Sincerely,</p>
20/09/2021	Local Resident	SASBU referral	<p>The Flying Dutchman is every weekend playing extremely loud music and allow guests to shout scream and argue in the garden. His guests are also parked all over Southampton Way on double yellow and a lot of people are having small pre parties in their cars drinking, smoking weed, and shouting while littering and urinating on our houses. Southwark Council should be ashamed of themselves to let this bully XXXXXXXX continue behaving like this.</p> <p>We are suffering psychologically since we can't sleep and XXXXXXXX is threatening us.</p>
20/09/2021	Local Resident	SASBU referral	<p>There is screaming and fighting in the background at Cool and Cozy lounge, also known as The Flying Dutchman. People are highly intoxicated. This will go on until 06:00 since the owner keeps violating his licensing rights and it has been like this every weekend and some weekdays for the last 1 1/2 years (closer to 2 years). It always follows the same pattern and usually ends with a physical fight among guests in the early hours of the morning. That is when we are forced to call the police. It is having a serious impact on our day-to-day life. The lack of sleep effect our work and personal life.</p>
27/09/2021	Local Resident	SASBU referral	<p>Loud music, shouting, people all over the road, loud arguments in the beer garden of the pub.</p> <p>We couldn't sleep and were very distressed.</p>
28/09/2021	Local Resident	Noise Team referral	<p>Last night from around midnight until past 5am there was loud music coming from the Cool Cozy Pub at 156 Wells Way. There were also loud people outside on the street fighting and causing disturbance. I have a small</p>

Date	Complainant	Complaint sent to / referred from	Details
			child and this ongoing issue with noise is causing much distress.
28/09/2021	Local Resident	Noise Team referral	<p>The Flying Dutchman is, as every weekend playing extremely loud music and allow guests to shout scream and argue in the garden. His guests are also parked all over Southampton Way on double yellow and a lot of people are having small pre parties in their cars drinking, smoking weed, and shouting while littering and urinating on our houses. Southwark Council should be ashamed of themselves to let this bully XXXXXXXX continue behaving like this.</p> <p>My number is XXXXXXXXXXXX.</p>
11/10/2021	Local Resident	SASBU referral	<p>The Flying Dutchman are playing loud music and there are fights and screams in their beer garden. Cars are parked all over Southampton Way and people are littering using drugs and driving under the influence. ON A SUNDAY NIGHT (and Monday morning). How can the council allow this to happen??? It's 2 o'clock in the morning on a Monday.</p> <p>We are scared someone will get hurt and that our property will be destroyed.</p>
17/10/2021	Local Resident	SASBU referral	<p>Women being shouted at and threatened by several men. Fighting.</p> <p>Drunk driving. Loud music. Street littering. Community unsafe.</p>
17/01/2022	Local Resident	Licensing	<p>The venue was closed down last week due to pest issues.</p> <p>We saw rats running around the area just this evening and it has reopened even if the pest issue has not been resolved.</p> <p>People are (once again) arguing in the garden. There is loud music being played and the street has been closed off with traffic cones. People have been seen loudly arguing in the street.</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>This is an absolute outrage and frankly disgusting considering the amount of rats. We are extremely worried about or family's health and safety. We have a new born and now have to worry about both intoxicated people, unacceptable noise volumes (at 05:30 in the morning) and unsanitary conditions.</p>
22/02/2022	Local Resident	Environmental Customer Services, copied to Licensing	<p>Thank you for your email.</p> <p>I just received a very unsatisfactory call from one of your colleagues. The noise problem I was reporting is consistent and unrelenting.</p> <p>It is centred around the premises of 156 wells way, aka the 'cool and cosy lounge' aka the 'Flying Dutchman'.</p> <p>Every single weekend there is considerable noise between the hours of 3-4am and 5.30-6am. While the noise does not come directly from the premises it is entirely caused by its 6am licence.</p> <p>I was advised by your colleague that as this was the case and it had not been witnessed there was to be no further action at this time.</p> <p>I was also advised to call when the disturbance was happening. I have done this many times, having called the noise team when the number was operational at around 3am. Generally I would receive a call back at 4, and someone would attend just after then, when everyone was in the club and there was no disturbance outside.</p> <p>Subsequently, as always, just after 5am everyone would start to leave and the considerable disturbance would resume.</p> <p>I understand this is predominately a licensing issue but the problem is the</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>noise and the antisocial behaviour from the guests, hence I have started the process of resolving it with yourselves.</p> <p>I believe I have cc'd this to the relevant department if, as I was advised by your colleague, as there was nothing you can do.</p> <p>Myself and my wife have to get up at 9-10am every Saturday and Sunday for work and this consistent disruption to our sleep, on a residential road is both unacceptable and incredibly distressing.</p> <p>We're not the only one to be affected!</p> <p>Yours sincerely</p>
23/06/2022	Local Resident	Complaint to local MP referred to Licensing	<p>Dear Harriet,</p> <p>I'm sad to be writing to you again on the same topic over 2 years since the last time. A lot has changed over that time but there are also things that have not.</p> <p>The issues we were having with the Flying Dutchman / Cool &amp; Cozzy across the road from our house really improved after your help back in 2019 and then lay dormant through the pandemic but are unfortunately now back and as bad as ever.</p> <p>To recap I live at XX Wells Way which is a lovely residential street in Camberwell. I now have X children...</p> <p>The reason for my emails is that the Flying Dutchman or Cool &amp; Cozzy as it has now been branded has somehow over the years obtained a completely inappropriate alcohol licence that is totally at odds with it's completely residential location. I believe it's the only standing 6am licence in the whole of Southwark and it's a venue which is totally surrounded by houses full of</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>young families. In it's previous guise of the Flying Dutchman pre-2018, the venue was used as an events venue and would cause a disturbance once every couple of months. Nobody really minded that and we all got on with it. Now their patrons wake up everybody this end of the street from 3-6am every Friday and Saturday night. They routinely park all the way along the double yellow lines near the venue and shout, fight, and slam car doors every Friday and Saturday.</p> <p>The long and short of it is that this venue has somehow been given the wrong alcohol licence and it's negatively impacting a significant number of local residents. This is totally not the right location for Southwark's only 6am nightclub.</p> <p>Could you look into this again for us and help us please? Somehow we need this licence to be reviewed and changed to 11pm as would be appropriate for its location.</p> <p>Now it's time for me to get ready to take my sons to football training after the standard 3-6am wake up this morning.</p> <p>Anything you could do to help would be very much appreciated as your help was back in 2019.</p> <p>Regards,</p>
20/09/2022	Local Resident	Licensing	SASBU (ASB): Large verbal fight in the venues garden that has been going on for hours. Extremely loud music and litter all over the street. No indication that this will stop.
22/09/2022	Local Resident	Police referral	<p>Good Afternoon,</p> <p>I am writing to complain about the poor running of Cool &amp; Cozy Lounge, 156 Wells Way, SE5 7SY. This ineffective management has resulted in a customer suffering a GBH assault on</p>

Date	Complainant	Complaint sent to / referred from	Details
			<p>18th September 2022 where he was hit by a bottle of drink causing a gash to the head.</p> <p>This customer had been out drinking with a female friend elsewhere &amp; they then came to Cool &amp; Cozy. When they were about to leave at 05:00, an argument over the ownership of jacket ignited between the victim &amp; his female friend. This female struck the victim over the head with a bottle, causing a deep gash to his head around 2 inches long that required hospital treatment. The victim called 999. Police &amp; LAS attended. Crime report XXXXXXXX/XX &amp; CAD XXXX refer.</p> <p>DPS Francis Kpandeh told police that the victim was drunk when he arrived &amp; been trying to eat food off other people's tables when he stepped in to try &amp; give him some water to sober him up. Despite this, the victim &amp; his friend were allowed to continue dancing &amp; drinking. The crime report states "Staff were disgruntled that the victim called police, so when police were on scene staff were reluctant to give their details as well as incident information."</p> <p>The area where the assault took place was covered bottles, glass, liquid &amp; tissues, so no opportunity for any forensic evidence to be secured.</p> <p>According to the victim, his friend he arrived with is called "XXXX" &amp; she has been she is a regular at the this venue for a long time.</p> <p>Staff were also asked for further details on RUGI. They confirmed she was a regular but they would not provide any details. She left immediately after assault.</p> <p>CCTV was checked. It was found not to cover the location where the assault happened &amp; was of poor quality.</p>

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			<p>In summary, this venue has completely failed to meet the licensing objectives of prevention of Prevention Of Crime &amp; Disorder and Public Safety for the following reasons –</p> <ul style="list-style-type: none"> <li>• They permitted drunk victim &amp; suspect into the venue.</li> <li>• They served alcohol to the drunk victim &amp; suspect.</li> <li>• Once the assault took place, they did not attempt detain the suspect &amp; she was permitted to leave (despite having SIA door staff).</li> <li>• They did not provide any first aid to the victim.</li> <li>• They did not contact police or ambulance after the assault.</li> <li>• Further to this, the victim informed police that staff were actually telling him &amp; putting him under pressure not to contact police.</li> <li>• Staff were unhelpful &amp; obstructive towards police. Despite the fact that suspect XXXX is a regular there, they were not willing provide any details for her, plus the SIA door staff initially refused to provide his details to police until he was reminded that he is obliged to share these details with us.</li> <li>• The CCTV at the venue, which is a requirement on their license is of poor quality.</li> <li>• By permitting entry &amp; serving alcohol to two drunk people, they have created the situation for violence to occur. Once the assault happened, DPS Francis &amp; other staff there have shown no regard for the welfare of the victim, placed the victim under duress to not contact police &amp; been obstructive towards police. Their only concern was for the potential implications the GBH may have on their license.</li> </ul>



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			<p>Very poor indeed.</p> <p>Regards,</p> <p>PC Ross Kennedy 2222AS Night Time Economy Team</p>
29/11/2022	Local Resident	Licensing	Complaint of a verbal altercation with the Manager, Francis. Ongoing issues with noise.

### Premises licence

35. The premises does not currently have a premises licence.

### Licensing visit history

36. A licensing officer conducted a programmed inspection at the premises on 5 February 2019 to check on compliance and the premises was found to be operating in full compliance with the terms and conditions of the premises licence.

37. A licensing officer conducted a programmed inspection at the premises on 20 October 2019 at 23:05 hours. The officer witnessed 4 breaches of the premises licence conditions and a warning letter was sent to Francis Kpandeh the DPS.

38. Copies of the warning letter and compliance letter are attached as Appendix G

### The local area

39. A map showing the location of the premises is attached as Appendix F. The following licensed premises are within the locality of the premises (100m):

**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.

## **Policy considerations**

40. 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**

41. 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.

## **Community impact statement**

42. 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.
43. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

## **Climate change implications**

44. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
45. 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.
46. 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.

47. 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**

48. 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**

49. 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.

50. 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.
51. 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>.

52. The equalities impact assessment is available at:

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

### **Health impact statement**

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

### **Resource implications**

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

### **Consultation**

55. 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**

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

## **Principles for making the determination**

58. 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.
59. 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.
60. 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**

61. 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**

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

## **Hearing procedures**

63. 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.
64. 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.
65. 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.
66. 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.
67. 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.
68. 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.
69. 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**

70. 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**

71. 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**

72. 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**

73. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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	Premises licence
Appendix D	Notice of decision from 13 October 2022
Appendix E	Application for a new premises licence
Appendix F	Notice of decision from 9 February 2023
Appendix G	Inspection letters
Appendix F	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
<b>Report Author</b>	Jamie Stubbs, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	8 March 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>
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		10 March 2023