

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 9 FEBRUARY 2023

SECTION 17 LICENSING ACT 2003: COOL AND COZZY LOUNGE (NEE FLYING DUTCHMAN), 156 WELLS WAY, LONDON SE5 7SY

1. **Decision**

That the application made by Cool and Cozzy Restaurant Limited for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Cool and Cozzy Lounge (nee Flying Dutchman), 156 Wells Way, London SE5 7SY be refused.

2. **Reasons**

This was an application for a premises licence made by Cool and Cozzy Restaurant Limited in respect of the premises Cool and Cozzy Lounge (nee Flying Dutchman), 156 Wells Way, London SE5 7SY.

It was noted that the representative for the Applicant had submitted an additional bundle of documents received at 21:38 hours on 8 February 2023. As such, agreement from all parties was required from all parties in accordance with regulation 18, Licensing Act 2003 (Hearings) Regulations 2005. Since not all other persons were present at the hearing, agreement could not be obtained, therefore it was not agreed to admit the bundle of documents as evidence. The representative for the Applicant was however, advised that it could be referred to in verbal submissions.

The representative for the Applicant advised that the premises licence had previously been revoked by the Licensing Sub-Committee at a hearing on 13 October 2022, but no finding of fact had been made against the Applicant. It was not disputed that the area was residential, but with the exception of the owner of the building, there was a lack of immediate residential neighbours. The proposed hours had been curtailed Sunday through to Thursday until 23:00 hours and only Fridays and Saturdays did the Applicant now seek as late nights until 03:30 hours.

The Applicant had listened to local residents concerning driving and parking and had now placed cones on the road, preventing customers from blocking neighbours from parking. This had been included in a dispersal policy. A noise management policy had also been submitted. The Applicant had volunteered extensive measures to address the concerns detailed in the objections which had been welcomed by the police, Environmental Protection Team and Licensing, but were not willing to withdraw their representations in view of the previous revocation.

Concerning the noise, the Applicant's representative stated that it was not disputed that this was much to do with patrons entering and exiting the premises. When the premises were operating under temporary event notices (TENs), no formal complaints had been received about noise. Videos had been submitted, but none of the incidents referred to took place when TENs were

operating. It was therefore, unfair to suggest that that anything that caused a public nuisance was automatically due to the premises.

It was the licence holder's responsibility to ensure a proper dispersal. But patrons would not disturb neighbours. A noise management policy would ensure there was a winding down time where lights come on and the volume of music being reduced. There was no karaoke in the early hours to not disturb sleeping people. The back garden would be used purely for those wishing to smoke, which would be limited to 10. No drinks could be taken outside.

The suitability of the Applicant had been raised in the objections. However, the sub-committee was reminded that the Applicant was a company. If the objections were directed to the DPS and questioned the DPS' suitability, the sub-committee was then reminded that the DPS was a personal licence holder who did not have a criminal record. He had all requisite training and had certifications in first aid, manual handling and fire and safety. The DPS also ensured that each member of his staff had the same certificates.

It was the Applicant's intention for the premises to be a restaurant/lounge bar. 50% of the patrons were Colombians/Latinos, 5% Caribbean, 20% African Sierra Leone. The premises had a very different menu, compared to the other premises in the locality. It also had a different genre of music depending on the patrons the premises attracted for a particular week/event.

The Cool and Cozy Lounge was a community and family hub for people of certain ethnic minorities. It was where people could go to enjoy food and listen to music of a certain nature. The premises would order food from the Cool and Cozy Restaurant, which had the same management and kitchen team. The Cool and Cozy Lounge would have a pre-order system where patrons call and order their food which was supplied by the restaurant then served at the Lounge. The pre-order system was due to the landlord of the Cool and Cozy Lounge not permitting the Applicant to having a kitchen there, but only facilities for storing and reheating food. The Cool and Cozy Lounge could then cater for up to 128 covers.

The Licensing Sub-Committee heard from the Metropolitan Police Service who advised that the premises licence previously held in respect of the premises had been revoked. The DPS and manager at the time of the revocation was the proposed DPS to the current application. At the previous Licensing Sub-Committee hearing, the sub-committee indicated that had the licence not been revoked then, they would have removed the DPS, Francis Kpandeh as the DPS of the premises. This suggested, allowing him to now be the DPS would undermine the promotion of the licensing objectives. The premises was also located in a residential area, with residential dwellings in very close proximity to the premises. Under Southwark's Statement of Licensing Policy 2021-2026 the closing times recommended for public house and wine bars (etc.) was 23:00 hours daily at Night clubs (with sui generis planning classification) was not considered appropriate. The premises licence application stated that the premises was to operate as a bar/nightclub. It was the Police view that it was entirely inappropriate for the premises given its sensitive location and the intended operation of the premises was highly likely to undermine the prevention of public nuisance licensing objective. The potential for anti-social behaviour and crime was a cause for police concern. The Applicants had provided a number of conditions that would suffice

for an average public house. However, they would not suffice for a venue opening beyond 00:00 hours. The Police concluded that the licensing objectives had not been sufficiently addressed, to justify any extended hours and that the location was not suitable for a bar nightclub, regardless how it has been run in the previous years.

The police accepted it had not issued objection notices to TENs. In the officer's view, TENs were not evidence of a good running business. The police objected outright to the current application because the area was not suitable for a late night bar/nightclub.

The Licensing Sub-Committee heard from Licensing as a responsible authority who informed members that its concerns did not relate to the previous revocation or the circumstances under which that revocation came, simply that the area is not suitable for a nightclub. The premises licence application clearly stated that the application was for a bar/nightclub. The applicant amended the closing times, but the amended times still remained more applicable for a nightclub. The Statement of Licensing Policy clearly indicated that nightclubs were not suitable for a residential areas and the premises were located in a densely residential area.

The officer raised concern that the premises was being touted as a restaurant, with food being prepared at the Cool and Cozy Restaurant. The licence to the Cool and Cozy Restaurant had been suspended due to the non-payment of annual fees since November 2021. The DPS had been written to and visited about the matter, but the premises licence remained suspended. Even if the premises licence was not suspended, it would only have late night refreshment until 00:00 hours midnight on Fridays and Saturdays.

Licensing as a responsible authority maintained that the application be rejected in its entirety. Even with a reduction in operating hours, the Applicant had indicated there the premises was to be operated as a nightclub, hosting club style events such as with DJs and even potential for live music. Nightclub style events could still lead to an overall club style operation. There had been genuine problems for local residents and this continued to be of genuine concern to them as demonstrated by the multiple residents that had objected to the application. Although statutory noise nuisance had not been witnessed by Council officers, public nuisance by way of intermittent loud voices screaming, shouting, music continued; complaints had been received even when the temporary event notices were operating. The residents' concerns in such a high densely residential area should be given full weight in the determination of the application.

The Licensing Sub-Committee then heard from the officer from the Environmental Protection Team (EPT) who representation was based on the prevention of public nuisance licensing objective. Reference was made to the premises licence review hearing and that although the decision was based on the premises licence holder agreeing with the revocation of the licence rather than consider the residents' complaints of noise nuisance, they were primarily based on the impact caused by early morning activities (Fridays and Saturdays), as a result of loud music and patron noise. Since this time, further complaints had been received when TENs had been in operation. The Applicant had added some conditions and proposed changes the time on weekdays,

which were welcome. However, the application was still for 03:30 hours finish on Fridays and Saturdays. For this reason, EPT still objected to the application. The officer concluded, that the premises was liable to be run as nightclub. The Statement of Licensing Policy stated that nightclubs were not acceptable in residential areas. EPT therefore, maintained that the application should be rejected; the EPT officer accepted that the biggest concern was the breakout from amplified noise to the premises immediate neighbours in addition to localised nuisance caused by patrons outside.

The Licensing Sub-Committee heard from the representative other person Q who advised that his client, other party Q, was the landlord of the building where the premises was located. Other party Q was also the previous operator and lived directly above the premises. In recent history the premises had caused disturbance to local residents for which, other party Q regretted. It was in his financial interest for the premises to operate, but because he lived directly above the premises, the proposed model, as a nightclub was unworkable. The sub-committee were urged to follow its Statement of Licensing Policy and the presumption was nightclubs as being unsuitable in residential areas. In accordance with the policy, bars and other licensed premises had a recommended terminal hour of 23:00 hours. The Applicant sought hours well beyond the recommended hours. It was submitted that local residents had a legitimate expectation the Council would follow its own policy, unless there was a good reason to depart from it. The Applicant had not however, provided any good reason to vary from it.

Contrary to the suggestion that no finding was made against the DPS, towards the end of the Notice of Decision the local residents had to “endure the significant disturbance from the premises”. This was a finding that the premises had caused substantial problems. The representative for other party Q then referred to a number of extracts of noise complains as a result of the premises, which demonstrated typical noise problems. The Landlord to the premises, stated that the building could not structurally cope with loud amplified music being played on the ground floor level, whether karaoke or singing or whatever it may be. It was potentially possible to have amplified music in the basement, provided consideration was given to a properly designed sound system with appropriate mitigation and noise isolating, none of which was available at the hearing.

With a capacity of 300, it would be impossible for noise not to be emitted via ingress/egress, of patrons. This, smokers and voices all contributing to late night nuisance outside someone's bedroom window; more so, in the summer time to when windows are more likely to be open.

The Applicant had mentioned the placing cones in the highway and barriers blocking a cycle lane. Although not the major concern for other party Q, it was an offence under s.137 Highways Act 1980 to obstruct a highway, thus undermining the prevention of crime and disorder licensing objective.

The Licensing Sub-Committee then heard from other person R who advised the members that the application sought hours until 03:30 hours. Under both the previous licence and the recent TENs the noise from the premises was worse between 02:00 and 06:00 hours: hearing loud noises, loud music,

screaming/shouting from the premises and cars illegally parked. When the doors to the premises were open they would stay open for a prolonged period, meaning local residents could also hear the amplified music. If the premises licence application was granted, other person R had no confidence that they would not be disturbed. The premises was being referred by the Applicant as a “community hub”, which appeared an untruth, given the community the premises claimed to attract arrived by car and drove away very late at night/early morning.

The application was for a bar/restaurant, but this business model had changed to a restaurant, serviced by another restaurant. The change in business model appeared disingenuous, thought up only as a result of the level of opposition the application had attracted.

The Licensing Sub-Committee then heard from other person B who stated that they lived on Wells Way, a few houses away from the venue. Although they did not get disturbed so much by music noise as badly as other local residents, the real issue was the patrons coming in and out of the premises which was extremely noisy. It was difficult to get the Noise Team to investigate a complaint because the noise was so sporadic. Other person B also stated that blocking the cycle lanes to prevent people parking was a real hazard.

The Licensing Sub-Committee finally heard from other persons B and C supporting the application, both of whom spoke highly of what the premises bring to the local community. Both stated that the premises did not cause a public nuisance via noise. The sub-committee were somewhat reticent of the weight it should give to both since other person B stated in his written representation of his “close relationship with Francis” and other person C in his verbal submission referred to his being a DJ who had previously been hired by the Applicant.

The Licensing Sub-Committee noted the representations from the 22 other persons objecting to the application and the other one person who supported the application, none of whom attended the meeting.

The premises licence number 848709 to the Cool and Cozy Lounge was revoked by the Licensing Sub-Committee at a review of the premises licence on 13 October 2022. The review application was brought due to complaints of public nuisance made by residents. During the course of the hearing, the premises licence holder agreed to its revocation. Since the revocation of the licence the premises has operated under TENs. On each occasion Francis Kpandeh was the named premises user. Numerous residents complained of noise when the premises operated under recent TENs; each of those TENs was over a weekend.

The Applicant’s representative stated that the intention was now to operate as restaurant/lounge bar. It was accepted by both the Applicant and other party Q, the Applicant is prohibited from operating a kitchen in the premises under the terms of his lease. As a result, the Applicant proposed food being supplied by its sister premises, the Cool and Cozy Restaurant. Francis Kpandeh is the DPS to this premises, albeit, the premises licence is currently suspended; this troubled the sub-committee.

The Licensing Sub-Committee noted that on 1 February 2023 the Applicant's representative submitted a change to the operating hours and a change in conditions for the premises. No mention was made on 1 February to change in the business model, from a bar/nightclub to restaurant/bar. If there was any change to the real change to the business model, this would have been clearly communicated to the many objectors. If the changes were legitimate, the Applicant would have made a suggestion of a restaurant condition, but this was forthcoming in either the supplementary material from the Applicant or the representative in verbal submissions.

Other party Q informed the sub-committee that the premises was not structurally able to contain amplified music/sound. Other party Q resides in the nearest noise sensitive residential property to the premises and is also the landlord to the premises. The premises is flanked by residential buildings. The original operating schedule contained no conditions relating noise insulation and virtually none in the Applicant's amended conditions. The Applicant demonstrated little regard to any of the suggested measures detailed in paragraphs 272 and 273 of Southwark's Statement of Licensing Policy 2021-2026 in preventing nuisance from the premises. Works that might need to be undertaken to limit the outbreak of music and noise were not within the scope of the application and it was not for this sub-committee to identify what works would be required or the precise measures could be imposed, when expert evidence has not been provided.

The proposed hours were amended to Sunday to Thursday until 23:00 hours and Friday and Saturday until 03:30 hours. Fridays and Saturdays far exceed the recommended hours provided in Statement of Licensing Policy. The members each noted that the premises is relatively poorly serviced by public transport. The 343 night bus runs every hour between 01:00 to 05:00 hours. The 136 bus route does not run a night service. This would mean that patrons would generally arrive by car, particularly in the evening or late at night. The sub-committee is of the view that the Applicant's intentions is for the Cool and Cozy Lounge to be a nightclub.

The sub-committee recognises Southwark's diversity as one of its strengths and is committed to creating a more inclusive community. The sub-committee is satisfied that its Statement of Licensing Policy discriminates against any group within the community and will pursue any opportunity to promote equality of opportunity and good community relations, in compliance with the Equality Act 2010 and paragraphs 14.67 and 14.68 of the s.182 Guidance (December 2022).

The sub-committee were in agreement that the application as it stood was for a nightclub and it has generated such significant discontent from local residents and responsible authorities. For these reasons, this application is refused. 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**

The applicant may appeal against any decision:

- a. To impose conditions on the licence
- b. To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- i. The licence ought not to be been granted; or
- ii. That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

Issued by the Constitutional Team on behalf of the Director of Law and Governance.

Date 09 February 2023