

Item No. 6.	Classification: Open	Date: 6 July 2023	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: The Planet Nollywood / The Bike, 319 Camberwell Road, London SE5 0HQ	
Ward(s) or groups affected:		Camberwell Green	
From: Matt Tucker		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by another person under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Mr Adekunle Adejumo in respect of the premises known as The Planet Nollywood / The Bike, 319 Camberwell Road, London SE5 0HQ.
2. Notes:
 - a) The grounds for the review are stated in paragraphs 12 to 14 of this report. A copy of the premises licence review application is attached as Appendix A.
 - b) The review application is supported by representations submitted by licensing as a responsible authority (Appendix B) and by other persons in support of the review application (Appendix D). Details of the representations are provided in paragraphs 15 to 19.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix E. A map of the area that the premises are located in is attached as Appendix G.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:

- The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm
6. In carrying out its licensing functions, a licensing authority must also have regard to:
- The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations
7. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any Responsible Authority or other person to apply to the local Licensing Authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises licence allows the provision of licensable activities as follows:
- The sale of alcohol to be consumed on the premises:
 - Monday to Thursday: 10:00 to 03:00
 - Friday to Sunday: 10:00 to 05:00
 - The sale of alcohol to be consumed off the premises:
 - Monday to Thursday: 10:00 to 02:00
 - Friday to Sunday: 10:00 to 05:00
 - The provision of late night refreshment (indoors only):
 - Monday to Thursday: 23:00 to 03:00
 - Friday to Sunday: 10:00 to 05:00

- Aside from plays (indoors) and boxing or wrestling indoors (below), the provision of regulated entertainment in the form of films, live music, recorded music, performances of dance and anything similar(indoors):
 - Monday to Thursday: 10:00 to 03:00
 - Friday to Sunday: 10:00 to 05:00
- Plays (indoors):
 - Monday to Thursday: 02:00 to 03:00
- Boxing or Wrestling (Indoors):
 - Monday to Saturday: 09:00 to 23:00
 - Sunday: 12:00 to 22:30
- Opening hours:
 - Monday to Thursday: 10:00 to 03:30
 - Friday to Sunday: 10:00 to 05:30.

10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix E.

Designated premises supervisor (DPS)

11. The current designated premises supervisor (DPS) named on the licence is Mr Adekunle Adejumo, who holds a personal licence with the London Borough of Lewisham and is also the premises licence holder.

The review application

12. On 15 May 2023, an application was submitted by another person under Section 51 of the Licensing Act 2003, for the review of the premises known as The Planet Nollywood / The Bike, 319 Camberwell Road, London SE5 0HQ.

13. The review application was submitted in respect of the prevention of public nuisance, on the grounds of excessive noise from patrons and loud music from the premises

“primarily during [the] late hours of the night and frequently continues into the early morning”.

14. Full details of the grounds for the review are provided within review the application. A copy of the review application is shown in Appendix A.

Representations from responsible authorities

15. There is one supporting representation submitted in relation to the review application by the licensing authority in their role as a responsible authority.
16. The representation from the licensing authority is made under the licensing objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance. It evidences disturbance incidents that have arisen at the premises and a breach of COVID Regulations. This representation is available in Appendix B.
17. Comments have been received from the environmental protection team stating that while noise complaints have been received, despite attending, the noise team have not been able to establish a statutory nuisance. Some residents have declined access to their properties to make an assessment. Therefore they are unable to support the review. The comments are available in Appendix C.

Representations from other persons

18. Five supporting representations have been received from other residents in the vicinity, citing excessive noise from patrons and music, crowds of patrons on the street causing antisocial behaviour and spreading into neighbouring streets, drunken behaviour and the subsequent impact on neighbouring residents. Their representations are attached as Appendix D.
19. There are no representations in support of the licence holder.

Operating History

20. On 12 February 2009, the premises changed hands by way of a transfer application from Redstar to The Planet Nollywood.
21. Since the above transfer, there have been various events having taken place (minor variations, reviews and DPS variations). However, the latest minor variation (20 September 2019) and vary DPS (22 July 20-21) application bring us to the current set of premises licence conditions (Appendix D) and our current DPS.
22. On 15 May 2023, an application was submitted by another person under Section 51 of the Licensing Act 2003, for the review of the premises known as The Planet Nollywood / The Blke, 319 Camberwell Road, London SE5 0HQ.
23. Also on 15 May 2023, a second review application was received from another local resident. However, at the point it was received it was not deemed full and proper and upon learning of the earlier review application that day, the applicant withdrew.
24. There is no recent history of temporary events notices for the premises.
25. The following is a table of most recent complaints regarding the premises, received by the licensing authority, over the past 24 months:

Date	Complainant	Complaint	Outcome
30 August 2021	Local Resident	Complaint of noise (sometime in the night of 29 August 2021) with amplified noise and noise from outside patrons disturbing neighbouring properties.	Written warning to the premises
6 May 2022	Local Resident Formal complaint to Call Centre	The club Planet Nollywood on the corner of the green. Every Sunday they are open and run really late, until about 4/5am, the bass is very loud and interrupts his sleep every week. After it closes there is people outside shouting at 5am, every week without fail. They are running over the noise limit. It is majorly antisocial and causing a lot of disruption. Regardless of whether they have a license, it is causing a lot of disruption and is affecting their sleep and health. On a separate note they were operating during lockdown. He wants to know if he can/how to start a petition against it. He wants their license to be reviewed.	Complainant contacted and provided with advice and details on how to initiate a resident review.
30 May 2022	Local resident	Complaint about 'Salsa City' on Sundays – noise and music especially 4/5am	Contact to premises
13 June 2022	Local resident	Complaint of noise especially on egress – screaming and fighting.	Advice to complainant on noise/reviews.
1 September 2022	Complaint via Noise Team	Noise from patrons on egress at 5am	NTE visited, but closed ATOV
3 October 2022	Local Resident	Music from the premises and noise from patrons especially on Saturday and Sunday nights.	Premises written to, see Appendix F. Police visited premises and met with PLH 07/10/2022
15 May 2023	Complaint via Noise Team	Complaint of noise and premises operating beyond hours.	Residents spoken to and advice given on reporting noise issues.
6 June 2023	Local resident	Complaint of ongoing issues of noise from the premise.	Advice given to resident.

The local area

26. A map of the local area is attached as Appendix G. It may be noted that there are a large number of licensed premises in the Camberwell area, however, there are only the following licensed premises in the immediate vicinity (100 metres):

Arc Club, Unit B, 288 Camberwell Road, London SE5 0DL:

- The sale by retail of alcohol (on sales):
 - Monday to Sunday from 12:00 to 22:00

Mozah Anx, 278 Camberwell Road, London SE5 0DL:

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

Southwark Council statement of licensing policy

27. Council assembly approved Southwark's statement of licensing policy 2021-2026 received assent on 25 November 2020 and came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this Authority relies in determining licence applications
- Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
- Section 6 – Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
- Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.

- Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
 - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
28. The purpose of Southwark’s statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.
29. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links for these are below.

Southwark policy:

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

Section 182 Guidance:

[Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/revised-guidance-issued-under-section-182-of-licensing-act-2003)

Cumulative Impact Area (CIA)

30. As per Southwark’s statement of licensing policy, the premises is located within the Camberwell Cumulative Impact Area (CIA), which states the following:
- Closing time for public houses is houses, wine bars or other drinking establishments: Sunday to Thursday is 23:00 hours and for Friday and Saturday 00:00 hours.
 - Closing time for night clubs (with 'sui generis' planning classification): Sunday to Thursday is 00:00hrs and for Friday and Saturday 01:00hrs

Climate change implications

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

32. 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.
33. Examples of such an agreement may be:
- Not to 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.
34. 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

35. 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

36. 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.
37. 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.
38. 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>.

39. The equalities impact assessment is available at:

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

Health impact statement

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

Resource implications

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

Consultation

42. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive - Governance and Assurance

43. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
44. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

45. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
46. The four licensing objectives are:
- The prevention of crime and disorder
 - The protection of public safety
 - The prevention of nuisance
 - The protection of children from harm.
47. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
- Modify the conditions of the licence by altering, omitting or adding any condition
 - Exclude a licensable activity from the scope of the licence
 - Remove the designated premises supervisor
 - Suspend the licence for a period not exceeding three months
 - Revoke the licence.

48. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
 - Are made by the holder of the premises licence, a responsible authority or another person within the prescribed period
 - Have not been withdrawn
 - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
49. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
50. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
51. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
52. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

53. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

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 representations.
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing.

- The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
- The committee shall disregard any information given by a party which is not relevant:
 - To the particular application before the committee, and
 - The licensing objectives.
- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

55. This matter relates to the review of the premises licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

56. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
57. 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.
58. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.

59. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
60. 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.
61. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
62. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
63. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the magistrates' court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

64. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director, Finance

65. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Representation from licensing as a responsible authority
Appendix C	Comments from the environmental protection team
Appendix D	Representations from other persons supporting the review
Appendix E	Copy of the current premises licence
Appendix F	Warning letter sent to premises
Appendix G	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment, Neighborhoods and Growth	
Report Author	Matt Tucker, Principal Licensing Officer	
Version	Final	
Dated	22 June 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 June 2023