

<b>Meeting Name:</b>	Licensing Sub-Committee
<b>Date:</b>	25 April 2024
<b>Report title:</b>	Licensing Act 2003: The Empire Lounge, Units 1 and 2, 777 Old Kent Road, London SE15 1NZ
<b>Ward(s) or groups affected:</b>	Old Kent Road
<b>Classification:</b>	Open
<b>Reason for lateness (if applicable):</b>	No

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Speedlink Services Ltd for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as The Empire Lounge Executive Lounge), Units 1 and 2, 777 Old Kent Road, London SE15 1NZ
2. Notes:
  - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from three responsible authorities and three other persons and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
  - c) Paragraphs 12 to 28 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted are attached as Appendix B and C of this report. A map showing the location of the premises is attached to this report as Appendix H.
  - 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 procedure, 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 premises licence application 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 under the Act. 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.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence application**

8. On 29 February 2024, Speedlink Services Ltd applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as The Empire Lounge, Units 1 and 2, 777 Old Kent Road, London SE15 1NZ. The premises and purpose is described as follows:
  - 'Licensed Restaurant'.
9. The hours applied for are summarised as follows:
  - Recorded music (indoors):
    - Sunday to Thursday from 11:00 to 00:00

- Friday and Saturday from 11:00 to 02:00
  - Late night refreshment (indoors):
    - Sunday to Thursday from 23:00 to 00:00
    - Friday and Saturday from 23:00 to 02:00
  - The sale by retail of alcohol (on and off the premises):
    - Sunday to Thursday from 11:00 to 00:00
    - Friday and Saturday from 11:00 to 02:00
  - Opening hours:
    - Sunday to Thursday from 11:00 to 00:30
    - Friday and Saturday from 11:00 to 02:30
  - Non Standard Timings: on the following days, the permitted opening hours and hours permitted for licensable activities may be extended for an additional hour:
    - (a) Thursday, Friday, Saturday and Sunday of the Easter weekend.
    - (b) Friday, Saturday and Sunday of both May Bank Holidays and the August Bank Holiday, Christmas Eve and Boxing Day.
    - (c) On the trading day on which the clocks go forward (i.e. the start of British Summer Time
    - From the end of permitted hours on New Year's Eve to the start of permitted hours on the following day;
10. The premises licence application form provides the applicant's operating schedule. Parts F, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached to this report as Appendix A.

### **Designated premises supervisor**

11. The proposed designated premises supervisor is Temple Ubazue who holds a personal licence issued by Lewisham Council.

### **Representations from responsible authorities**

12. Representations have been submitted by the Metropolitan Police Service, the council's environmental protection team (EPT) and the councils licensing authority as a responsible authority.
13. The representation from the police states that the hours applied for are outside of that recommended in this area for a restaurant in the Southwark statement of licensing policy.

14. The police object to this application as the control measures offered are not sufficiently robust for such late opening hours in a residential area. It is highly likely that if granted in its current format this will have a negative effect on local residents, by means of an increase in anti-social behaviour in particular at closing when they leave to collect their cars and transport which are parked in residential streets. The police believe that if the license is granted in its current form it would have a negative impact on all of the licensing objectives in particular that of the prevention of crime and disorder.
15. The police however ask the applicant to consider more robust conditions (38) to address the licensing objectives in particular that of prevention of crime and disorder.
16. The representation from the environmental protection team (EPT) states that the proposed hours of operation fall outside of the recommended hours for this location in the council's statement of licensing policy which recommends that drinking establishments in this area should close at 23:00 daily.
17. The EPT representation notes that complaints regarding noise nuisance have been made regarding the premises since it has operated as Empire Lounge. It is also noted that numerous breaches of the conditions of the existing premises licence issued in respect of the premises have been observed by council officers and that the premises has been observed operating outside of the hours permitted by the premises licence issued in respect of the premises.
18. In light of the history of complaints from existing operations, including two verified Statutory Nuisances and verified instances of failure to comply with license conditions, the EPT contend that granting additional hours of opening and playing of recorded music is likely to fail to meet the Licensing Objective of 'Prevention of Public Nuisance'. The EPT have limited confidence in the current management of the premises to ensure compliance with licensing conditions and licensed hours designed to ensure the licensing objective.
19. The EPT recommends that the application be refused.
20. The representation from the licensing authority as a responsible authority relates to the promotion of the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives.
21. Licensing notes that premises already benefits from a premises licence that allows closing times later than those suggested in the Southwark statement of licensing policy.
22. Licensing contend that the late night / early morning sale of alcohol and provision of entertainment is likely to have a negative effect on the promotion the crime and disorder, public safety and the prevention of public nuisance licensing objectives, and be detrimental to the quality of life for local residents.
23. Licensing have received numerous, and continual allegations from local residents that the premises do, in fact operate as a late night bar / night club on the weekends causing considerable disturbance in the locale. Licensing have also received numerous allegations of the premises customers engaging in anti-social behavior and crime and disorder in the locale, and also that noise escape form the premises cause significant noise nuisance in the locale.

24. The licensing authority as a responsible authority recommends that the applicant is refused.
25. The representations from responsible authorities are attached as Appendix B.

### **Representations from other persons.**

26. Representations have been received from three other persons. The representations refer to the prior operation of the premises which has led to alleged noise nuisance, crime and disorder and anti-social behaviour in the local area.
27. Copies of the representations submitted by other persons are attached to this report as Appendix C.
28. Other person 3 has included Metropolitan Police Service crime statistics for the area, as extra supporting evidence to their representation. This supporting evidence is attached as Appendix C1 to this report.

### **Application history**

29. A premises licence for The Empire Lounge Unit 2, 777 Old Kent Road, London SE15 1NZ was issued to Mr George Nwachukwu in respect of the premises on 25 September 2016. On the licence Mr Nwachukwu was specified as the premises' DPS.
30. On 20 June 2017 an application to vary the premises licence in respect of the premises was submitted. The application sought to extend the hours permitted for licensable activities at the premises and extend the premises' opening hours. The application was subject to representations submitted by responsible authorities and four 'other persons' and so the application was referred to the Licensing Sub-Committee for determination.
31. A licensing sub-committee hearing in respect of the variation application submitted on 20 June 2017 was held on 6 September 2017. At the hearing the application was granted with hours that were reduced from the hours applied for.
32. On 12 July 2017 an application was submitted by an 'other person', under Section 51 of the Licensing Act 2003, for the review of the premises licence held by George Nwachukwu in respect of the premises known as The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ.
33. On 2 October 2017 a licensing sub-committee hearing in respect of the review application submitted on 12 July 2017 was held. At the hearing condition 852, requiring that a dispersal policy be devised in respect of the premises, was imposed on the premises licence issued in respect of the premises.
34. On 6 April 2020 an application to for a premises licence in respect of the premises was submitted. The application was refused by the licensing sub-committee on 4 June 2020.

35. On 8 February 2022 an application for a minor variation in respect of the premises was submitted. This application was rejected on 17 February 2022. Due to a representation being received against the application.
36. On 21 September 2021 an application for a premises licence was received in respect of the premises known as The Executive Lounge Unit 1, 777 Old Kent Road, SE15 1NZ. The application was granted by the licensing sub-committee on 9 December 2021.
37. On 28 March 2022 an application for a premises licence was received from Speedlink Services Ltd in respect of the premises known as The Empire Lounge, Units 1 and 2, 777 Old Kent Road, London SE15 1NZ. The licence was issue on 25 May 2022. The designated premises supervisor attached to the licence is Temple Ubazue.
38. The existing premises licence (877124) issued in respect of the premises allows the following licensable activities:
  - Recorded music (indoors):
    - Sunday to Thursday from 11:00 to 23.30
    - Friday and Saturday from 11:00 to 00:30
  - Late night refreshment (indoors):
    - Sunday to Thursday from 23:00 to 23:30
    - Friday and Saturday from 23:00 to 00:30
  - The sale by retail of alcohol (on and off the premises):
    - Sunday to Thursday from 11:00 to 23.30
    - Friday and Saturday from 11:00 to 00:30
  - Opening hours:
    - Sunday to Thursday from 11:00 to 00:00
    - Friday and Saturday from 11:00 to 01.00.
39. A copy of the existing premises licence is attached to this report as Appendix D.

### **Temporary event notices (TENS)**

40. There have been 13 temporary event notices (TENS) submitted in respect of the premises since August 2022. A table of TENS is attached to this report as Appendix E.

### **Complaints**

41. The council have received 19 complaints regarding the premises, dating from 6 June 2021 to 16 November 2023. Consisting of three complaints to the licensing unit and 16 complaints to the noise team. A log of complaints received is attached to this report as Appendix F.

## **Compliance visits**

42. Details of compliance visits to the premises by council licensing officers/police working on the night time economy within the last year are provided in Appendix G.

## **Map**

43. A map showing the location of the premises is attached to this report as Appendix H. The following are a list of licensed premises shown on the map:

### **Lidl, 760 Old Kent Road, London SE15 1NJ, licensed for:**

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday: 07:00 to 23:00
- Opening hours:
  - Monday to Sunday: 06:00 to 23:00

### **Iceland, 789-799 Old Kent Road, London SE15 1NZ, licensed for:**

- The sale of alcohol to be consumed off the premises:
  - Monday to Saturday 08:00 to 23:00
  - Sunday 10:00 to 22:30
- Opening hours
  - Monday to Saturday 08:00 to 23:00
  - Sunday 10:00 to 22:30.

## **Southwark Council statement of licensing policy**

44. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
45. 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 licenses 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.
46. 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.
47. 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:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

### **Cumulative impact area (CIA)**

48. The premises does not fall within a cumulative impact area (CIA).
49. The premises are situated in a residential area.
50. Under the Southwark’s statement of licensing policy 2021 - 2026 the following closing times are recommended as appropriate within a residential area:
- Restaurants and cafes:
    - Monday to Sunday: 23:00



- Public houses, wine bars, or other drinking establishments and bars in other types of premises:
    - Monday to Sunday: 23:00
  - Nightclubs (with 'sui generis' planning permission):
    - Not considered appropriate for residential areas.
51. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
52. 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.
53. 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.
54. 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**

55. 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**

56. 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.
57. 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.

58. 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>.

59. The equalities impact assessment is available at:

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

### **Health impact statement**

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

### **Resource implications**

61. A fee of £315.00 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value C.

### **Consultation**

62. 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 a similar notice was exhibited outside of the premises for a period of 28 consecutive days.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Assistant Chief Executive – Governance and Assurance**

63. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
64. The principles which sub-committee members must apply are set out below.

### **Principles for making the determination**

65. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.
66. The principles which sub-committee members must apply are set out below.
67. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

68. Relevant representations are those which:
- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
  - Are made by an interested party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
69. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- To grant the licence subject to:
    - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
    - Any condition which must under section 19, 20 or 21 be included in the licence.
  - To exclude from the scope of the licence any of the licensable activities to which the application relates.
  - To refuse to specify a person in the licence as the premises supervisor.
  - To reject the application.

## **Conditions**

70. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
71. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
72. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
73. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
74. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

## **Reasons**

75. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

## **Hearing procedures**

76. 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.
77. This matter relates to the determination of an application for a premises licence under Section 17 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**

78. 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.

79. 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.
80. 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.
81. 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.
82. 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.
83. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
84. 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.
85. 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**

86. 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 of Finance**

87. 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**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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 and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

### **APPENDICES**

<b>Name</b>	<b>Title</b>
Appendix A	Application for a premises licence
Appendix B	Representations submitted by responsible authorities
Appendix C	Representations submitted by other persons
Appendix C1	Supporting evidence for other person 3's representation
Appendix D	Copy of existing licence
Appendix E	Table of temporary event notices
Appendix F	Table of complaints
Appendix G	Log of compliance visits
Appendix H	Map of the locality

## AUDIT TRAIL

<b>Lead Officer</b>	Toni Ainge, Strategic Director of Environment, Neighbourhoods and Growth	
<b>Report Author</b>	Jayne Tear, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	9 April 2024	
<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	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		10 April 2024