

<b>Meeting name:</b>	Licensing Sub-Committee
<b>Date:</b>	8 August 2024
<b>Report Title</b>	Licensing Act 2003: Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA - Transfer of Premises Licence
<b>Ward(s) or groups affected:</b>	Old Kent Road
<b>Classification:</b>	Open
<b>Reasons for lateness (if applicable):</b>	N/a

## RECOMMENDATION

1. That the licensing sub-committee consider an objection notice served by the Metropolitan Police Service in regards to an application submitted by Eddie Hanson to transfer the premises licence, submitted under Section 42 of the Licensing Act 2003 in respect of the premises known as Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA.
2. Notes:
  - a) The application is subject to an objection notice from the Metropolitan Police Service and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 9 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the application is attached as Appendix A.
  - c) Paragraphs 12 to 16 of this report deal with the police objection notice received to the transfer application. A copy of the relevant police objection notice is attached as Appendix B.
  - 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 application to transfer a premises licence involves the provision of all relevant information required under the Act to the licensing authority. If the licensing authority receives a police objection notice that is not withdrawn, it must hold a hearing to consider the objection notice (unless all parties agree that this is unnecessary).
8. The police may submit an objection notice to an application to transfer a premises licence when relevant to the promotion of the four licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **Premises licence transfer**

9. On 4 April 2024 a premises licence transfer application was submitted by Eddie Hanson to transfer the premises licence issued in respect of the premises known as Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA from Erico Entertainment Limited to Eddie Hanson. Consent to the transfer from Erico Entertainment Limited was submitted with the application.
10. The transfer application was applied for with immediate interim effect.
11. A copy of the transfer application is attached as Appendix A

### **Objection notice**

12. On 12 April 2024 the Metropolitan Police Service submitted an objection notice in respect of the application.
13. The police state this premises licence was subject of a summary review under Section 53a of the Licensing Act 2003 following a serious incident that occurred whilst the premises was in operation under this premise licence. On 8 February 2024 the licensing sub-committee decided that after hearing evidence from all parties concerned that it was appropriate to revoke the premises licence.
14. The police contend that this matter is now subject to an ongoing appeal to be heard at the magistrate's court. The practice of transferring a premises licence following applications to review premises licenses has become a concern for the police and the licensing authority. It has been used as a method to circumvent the review process and subsequent appeals process. It has become such a concern that it was included in the latest version of Southwark's statement of licensing policy. Paragraphs 94 & 95 of the policy state:

'Applications for transfer of a premises licence following application for a Review

94. This Authority is concerned over the frequently observed practice of an application for a transfer of a premises licence being made following an application for a review of that same licence being lodged.

95. Where, such applications are made, this Authority will require documented proof of transfer of the business / lawful occupancy of the premises (such as a lease), to the new proposed licence holder to

support the contention that the business is now under new management control'.

15. The police take no issue with the applicant as an individual. They state that the applicant has failed to submit any documented proof of the true transfer of the business, lawful occupancy of the premises or anything similar to support the inference that this premises is now under new management control. It could be considered at this time that the premises known as Club 701 is still under the overall control of Erico Entertainment Ltd. Police object to the transfer of this premises licence on the grounds that it would undermine the review/appeal process and therefore undermine the original review application made under the prevention of crime and disorder
16. A copy of the objection notice is attached to this report as Appendix B.

### **Premises licence**

17. The premises licence issued to Erico Entertainment Limited on 19 March 2020 in respect of the premises known as Club 701, Basement and Ground Floors, 516 Old Kent Road, London, SE1 5BA allows licensable activities as follows:
  - Plays, films, live music, recorded music, performances of dance, entertainment similar to live or recorded music, the sale of alcohol to be consumed on the premises:
    - Wednesday: 22:00 to 02:00
    - Thursday to Saturday; 22:00 to 04:00
    - Sunday: 22:00 to 01:00
  - Late night refreshment (indoors):
    - Wednesday: 23:00 to 02:00
    - Thursday to Saturday: 23:00 to 04:00
    - Sunday: 23:00 to 01:00
  - Opening hours:
    - Wednesday: 22:00 to 03:00
    - Thursday to Saturday: 22:00 to 05:00
    - Sunday: 22:00 to 02:00.

### **Designated premises supervisor**

18. The designated premises supervisor (DPS) stated on that licence is Mr George Omozejele.

19. A copy of the current premises licence is attached as Appendix C to this report.

### **Premises history**

20. A premises licence was issued in respect of the premises to Erico Entertainment Limited on 19 February 2016.
21. On 8 July 2016 a licensing induction was undertaken with the DPS of the premises. At the induction the terms and conditions of the licence were explained, as were the role and remit of the licensing unit.
22. On 13 August 2016 the Metropolitan Police Service issued a closure notice under Section 19 of the Criminal Justice and Police Act 2001 regarding alleged breaches of licence conditions 297, 341, 342 and 297.
23. On 10 September 2016 the Metropolitan Police Service issued a closure notice under Section 19 of the Criminal Justice and Police Act 2001 regarding alleged breaches of licence conditions 289, 341 and 342,
24. On 23 October 2016 the Metropolitan Police Service issued a closure notice under Section 19 of the Criminal Justice and Police Act 2001 regarding an alleged breach of licence condition 359.
25. On 26 November 2016 a second licensing induction was undertaken with the DPS of the premises. At the induction the terms and conditions of the licence were explained, as were the role and remit of the licensing unit.
26. On 2 September 2017 a licensing inspection of the premises was undertaken. The premises were found to be being operated in breach of conditions 288, 307, 344, 345, 349, 353, 357, 379, 392, 4A1 & 793 of the premises licence issued in respect of the premises.
27. On 14 October 2017 an application to vary the premises licence was submitted.
28. On 11 November 2017 a licensing re-inspection of the premises was undertaken. The premises were found to be being operated in breach of conditions 289, 307, 341, 342, 364, 377 and 793.
29. On 19 November 2017 the Metropolitan Police Service visited the premises. The premises were found to be being operated in breach of conditions 289 and 373 of the premises licence issued in respect of the premises.
30. On 11 January 2018 subsequent to the application to vary the premises licence submitted on 14 October 2017, and following a licensing sub-

committee hearing, an amended premises licence was issued to Erico Entertainment Limited.

31. On 6 July 2018 the DPS of the premises accepted a simple caution regarding offences under the Licensing Act 2003 that occurred at the premises on 2 September 2017 and 11 and 19 November 2017
32. On 28 August 2018 the Metropolitan Police Service issued a Notification of Alleged Offence under the Licensing Act 2003 relating to the unauthorised operation of the premises on 28 August 2018.
33. On 11 June 2019 the DPS of the premises accepted a simple caution regarding offences under the Licensing Act 2003 that occurred at the premises on 28 August 2018.
34. On 11 June 2019 a third licensing induction was undertaken with the DPS of the premises. At the induction the terms and conditions of the licence were explained, as were the role and remit of the Licensing Unit.
35. On 5 November 2019 an application for a summary review was made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police.
36. On 7 November 2019 the licensing sub-committee took the interim steps decision to suspend the premises licence until the full review hearing on 28 November 2019.
37. On 28 November 2019 at the full review licensing sub-committee hearing, it was the decision of the licensing sub-committee to suspend the premises licence for 3 months.
38. On 17 January 2024 an application for a summary review was made under Section 53A of the Licensing Act 2003 by the chief of police for the Metropolitan Police Service.
39. The licensing sub-committee hearing to consider interim steps took place on 19 January 2024 whereby the licensing sub-committee took the decision to suspend the licence until the full hearing on 8 February 2024.
40. On 8 February 2024 at the licensing sub-committee hearing for the full review it was the decision of the licensing sub-committee to revoke the premises licence. The licensing sub-committee also continued the interim steps imposed on 19 January 2024, to suspend the licence,
41. Copies of the licensing sub-committee notices of decision from 19 January 2024 and 8 February 2024 to this report are attached as Appendix D.

42. On 23 February 2024, appeals were lodged at Croydon Magistrates' Court appealing both the interim steps suspension of the premises licence and the revocation of the licence at the full hearing.
43. On 4 April 2024 this application to transfer the premises licence was received by the council licensing unit.
44. On 18 April 2024 the appeal against the interim steps was withdrawn at Croydon Magistrates' Court. On the same day the appeal for the revocation of the premises licence was set to be heard at Croydon Magistrates' Court for 24 September 2024.
45. On 18 April 2024 an application to vary the designated premises supervisor (DPS) was submitted by Eddie Hanson to vary the DPS from George Omozejele to himself. At the time of writing this report there has been no objection notice received against the application.

### **Consideration by the sub-committee**

46. Members are advised that under the Act, the only matter to which consideration may be given in this instance is the pursuit of the crime and disorder licensing objective.

### **Map**

47. A map showing the location of the premises is attached to this report as Appendix E.

### **Southwark council statement of licensing policy**

48. Council assembly approved Southwark's statement of licensing policy 2021 - 2026 on 25 November 2020. The policy 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 of 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.
49. 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.
50. 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>



## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

51. 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**

52. 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.
53. 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.
54. 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>.

55. The equalities impact assessment is available at:

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

### **Health impact statement**

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

### **Resource implications**

57. A fee of £23.00 has been paid by the applicant in respect of this application being the statutory fee payable for the transfer of a premises licence.

## **Consultation**

58. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

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

59. The sub-committee is asked to determine the application for the transfer of a premises licence under Section 42 of the Licensing Act 2003.
60. The principles which sub-committee members must apply are set out below.

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

61. The general principle is that applications for the transfer of a premises licence must be granted unless a police objection notice is received. This is subject to the proviso that the applicant has complied with regulations in submitting the application.
62. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in the application and accompanied by the prescribed fee.
63. If a relevant police objection notice is received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives.

### **Reasons**

64. If the sub-committee determines that it is necessary to refuse the application to transfer the premises licence, it must give reasons for its decision.

### **Hearing procedures**

65. Subject to the licensing hearing regulations, the licensing sub-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.
66. This matter relates to the determination of an application for a premises licence under section 42 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**

67. 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.
68. 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.

69. 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.
70. 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.
71. The sub-committee can only consider matters within the application that have been raised through the objection notice submitted by the police. This will be decided on a case to case basis.
72. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making 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.
73. All interested parties 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**

74. 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

75. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance 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 Tel: 020 7525 5748

### APPENDICES

No.	Title
Appendix A	Copy of the transfer application
Appendix B	Copy of the police objection notice
Appendix C	Copy of the premises licence
Appendix D	Copies of notices of decision from 19 January 2024 and 8 February 2024
Appendix E	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Toni Ainge, Strategic Director Environment, Neighbourhoods and Growth	
<b>Report Author</b>	Jayne Tear, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	2 May 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>	2 May 2024	