

NOTICE OF DECISION**LICENSING SUB-COMMITTEE – 26 AUGUST 2016****LICENSING ACT 2003: SECTION 53A: Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE****1. Decision**

That the premises licence be suspended as an interim step to promote the licensing objectives pending the determination of the review application at the full hearing on 22 September 2016.

2. Reasons

This was a hearing to consider if it is appropriate to take interim steps to promote the licensing objectives upon receipt of an application by the Metropolitan Police Service for an expedited summary review of the premises.

The licensing sub-committee have considered the application made by the Metropolitan Police Service and supplementary evidence from the police presented at this hearing. The police advised that on 21 August 2016 they received a call at approximately 03.00. A male patron pushed a female to the floor and then threw a glass bottle, hitting the head of another male patron, causing injuries consistent with grievous bodily harm. When the police arrived they were confronted by what they described as a hostile crowd of around 60-70 people, trying to prevent the police from making the arrest. As a result more police units were required involving almost the entire night shift on duty which resulted in leaving the rest of the borough virtually unmanned.

The police advised that the ID scanner at the premises was not being used in line with condition 369 of the licence. Furthermore, in inspecting the ID scan, it revealed that 15 people were admitted after 02.00 (with last entry shown as 02.57), which is a breach of condition 364 of the licence that there shall be no new entries after 02.00. The police provided further evidence showing a history of non-compliance of the ID scan condition. They referred to breaches of this condition on 31 January 2015, 25 April 2015 and 10 January 2016.

The licensing sub-committee have also considered evidence submitted by the premises licence holder in relation to the application. The premises licence holder explained the events of 21 August 2016.

Following the assault on the male victim, he instructed the suspect not to leave the premises and then called the police and ambulance. In the meantime the female victim had called the police from outside the premises. The suspect apologised for the incident and the premises licence holder advised that the atmosphere had not been hostile and that 90% of the patrons were his friends. Concerning the use of the ID scanner, this was carried out by SIA security staff and he could not explain why ID scanner had not been used correctly. He accepted that he had major problems with his SIA staff, who were not following his instructions, despite regularly training them.

On questioning, he admitted that the premises was being run as a nightclub and that it was a struggle for him to manage it. He proposed several modifications that could be applied to the licence as interim steps including; change of security team, a specific named person operating the ID scanner system and no glassware to be used in the premises.

The licensing sub-committee were not convinced by the premises licence holder's account of events, in particular the failure in the use of the ID scanner and allowing patrons to enter the premises after 02.00. Given the number of occasions of non-compliance, with condition 369, the licensing sub-committee has no confidence in the premises licence holder being able to comply with the licence. If this condition had been complied with, this incident would not have occurred. This incident had an unacceptable impact on the emergency services in the borough. Finally, the premises licence is in respect of a bar/restaurant but yet in evidence the premises licence holder called the premises a nightclub. Under the Southwark statement of licensing policy 2016-20, nightclubs are not considered appropriate for this area and the recommended closing time for restaurants in this area is 23.00. The sub-committee were of the opinion that in order to promote the licensing objectives they had no alternative but to suspend the licence.

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

There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

The premises licence holder may make representation against any interim steps imposed and a hearing to consider the representation will be held within 48 hours of receipt of the representation.

Any representation should be in writing and cannot be received outside of normal office hours.

Issued by the Constitutional Team on behalf of the Director of Law and Democracy

Date: 26 August 2016

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 18 JANUARY 2016

LICENSING ACT 2003: LUSH BAR & RESTAURANT, 280 OLD KENT ROAD, LONDON SE1 5UE

1. Decision

That the application by Douglas Otunyo for a variation of a Premises Licence issued under the Licensing Act 2003 in respect of Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE is granted as follows:

- Recorded Music (indoors):
Friday & Saturday until 03.30
- Late night refreshments:
Friday & Saturday until 03.30
- Sale and Supply of alcohol (on the premises)
Friday & Saturday until 03.30
- Operating hours of premises
Monday to Sunday from 06.00 to 12.00 (to operate a coffee bar)
Friday & Saturday until 04.00.
- Seasonal Variations and non - standard timings:

That the to premises licensable activities be extended on the following days Sunday preceding a Bank holiday; Easter Sunday, 24 December, 25 December, 26 December, 31 December, 1 January until 03.30 and extend the operating hours till 04.00 on the day following .

That on each 2 October (Nigerian independence Day) to extend licensable activities to 03.30 and extend the operating hours till 04.00 on the day following.

- That condition 370 be removed from the licence.
- That condition 341 be varied to read "That 2 SIA registered door supervisors, at least one of whom shall be a female, shall be employed at all times after 22.00 when the terminal hour is after 00.30."

- That condition 364 be varied to read “That there shall be no new entry or re-entry to the premises after 02.00 when the terminal hour is 04.00 other than those who temporarily leave to smoke a cigarette in accordance with condition 346 of the licence”.
- That condition 369 be varied to read “That an ID scanning system to the reasonable satisfaction of police be installed and maintained and operational after 22.00 until the terminal hour when licensable activities continue after mid-night. The system should be capable of sharing information about banned customers with other venues, identify the hologram of an ID and read both passports and ID cards, able to identify fake or forged ID documents to a reasonable standard. All persons that enter the premises including all SIA registered door supervisors, patrons, DJs and associated staff will be scanned and have their details recorded on the system. The details shall be stored and made available on request for a period of no less than 31 days”
- That condition 348 be varied to read “That a sound limiting device shall be installed to the ground floor and maximum volume and bass levels set in conjunction with a qualified sound engineer, to ensure any music, speech or song from licensed entertainment is not audible in nearby residential premises nor will cause a public nuisance in the vicinity of the premises. Once set, should there be any change to the equipment involved in the broadcast or limiting of sound from licensed entertainment that the sound limiters be re-set in conjunction with a qualified sound engineer, to ensure that any music, speech or song from licensed entertainment is not audible in nearby residential premises nor will cause a public nuisance in the vicinity of the premises.

2. Reasons

The reasons for the decision are, as follows:

The licensing sub-committee heard evidence from the applicant who advised that it was necessary for him to apply for this variation in order to ensure the continued success of his business. He advised that he had plans to sell coffees and pastries in the mornings. He stated that his customers often arrived later in the evening and that an extension in the terminal hour was required to cater for this.

He referred to correspondence with the environmental protection team, in relation to setting an appropriate noise level and explained that failures in relation to his ID scanning system were the result of his SIA staff not following proper procedures. He took responsibility for this and explained that he had instituted measures to rectify these issues.

The licensing sub-committee noted that the Metropolitan Police Service had conciliated with the applicant.

The licensing sub-committee heard from the licensing officer representing the council as a responsible authority who called a witness from the Metropolitan Police Service. The licensing officer remarked on a number of breaches at the premises concerning the ID scanning system and the noise limiting device. The police evidence supported this.

The licensing sub-committee noted that the health and safety team had conciliated with the applicant on the basis that the premises operate a maximum capacity of 150.

The licensing sub-committee heard from the public health representative who raised concerns about early morning terminal hours. They stated that they had concerns relating to the later entry/re-entry time that the applicant had requested.

The sub-committee carefully considered all representations and decided on balance that a half hour extension of the last entry/re-entry time and terminal hour would promote the licensing objectives whilst also allowing the applicant to continue to run his business. The sub-committee found no reason to refuse the applicant's request for extra breakfast hours.

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.

4. Appeal rights

The applicant may appeal against any decision to modify the conditions of the licence; and

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

- a) That variation ought not to have been made; or
- b) That, when varying the licence, the licensing authority ought not to have modified the conditions of 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 Democracy.

Date: 18 January 2016

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 6 NOVEMBER 2014

LICENSING ACT 2003: LUSH BAR & RESTAURANT, 280 OLD KENT ROAD, LONDON SE1 5UE

1. That the application by Douglas Otunyo for a variation of a premises licence issued under the Licensing Act 2003 in respect of Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE is granted as follows:

Licensable activity	Monday to Wednesday	Thursday	Friday and Saturday	Sunday
Live music (Indoors)	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00
Recorded music (Indoors)	12.00 to 23.30	12.00 to 00.00	12.00 to 03.00	12.00 to 00.00
Late Night Refreshment	23.00 to 23.30	23.00 to 00.00	23.00 to 03.00	23.00 to 00.00
Supply of alcohol (on) the premises	12.00 to 23.30	12.00 to 00.00	12.00 to 03.00	12.00 to 00.00
Opening Hours of premises	12.00 to 00.00	12.00 to 00.30	12.00 to 03.30	12.00 to 00.30
Seasonal variations	To grant the application for extension of hours of the premises license activities and operating hours on the following days; 24 December, 25 December, 31 December, for the following licensable activities till 03.30 on the days following.			

That condition 135 of the premises licence which states: "That intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals, the premises will operate as a restaurant where the sale of alcohol is ancillary to the consumption of food. Service to table meals will be by waiting staff only" be removed from the licence.

2. Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions and conditions derived from the operation schedule in Section M of the application form and shall be subject to the following additional conditions agreed by the sub-committee:

1. That there shall be no new entry or re-entry to the premises after 01.30 when the terminal hour is 03.30 or later other than those who temporarily leave to smoke a cigarette in accordance with condition 346 of the licence.
2. That at no time are patrons permitted to use the rear door for access or egress (accessed via the kitchen), except only in emergency.

3. Reasons

The licensing sub-committee heard evidence from the applicant who informed the sub-committee that he has operated the premises for the previous four months without issues. He referred to several recent temporary event notices which had proved to be successful events without complaints. He highlighted that the temporary events had operated over the weekends with similar operating hours to that of the variation application.

He stated that he maintains a good relationship with his neighbours and the responsible authorities. He also stated that his intention was to operate the premises as a wine bar/restaurant.

The sub-committee also heard from a local resident in support of the application, who stated that he had never personally been disturbed by the operation of the premises and provided his support in respect of the variation application.

The applicant submitted that his recent successful operation of the premises under the several temporary event notices illustrates his ability to manage the premises responsibly and in accordance with his current licence.

The environmental protection officer addressed the sub-committee and stated that whilst they initially had concerns in relation to public nuisance, following the recent operating history, he was satisfied that the conditions on the licence appeared to address these concerns.

The officer proposed a reduction in the hours applied for in order to further address any potential concerns of the residents. The officer also stated that he had not received any complaints in respect of any of the recent temporary event notices.

The officer proposed additional conditions to be added to the licence in order to address concerns raised by residents and these were agreed by the applicant.

The licensing sub-committee noted the written objections raised by the three local residents and an accompanying petition signed by 12 residents who expressed concerns with the variation application, in particular concerns in respect of potential noise disturbance and potential crime and disorder caused by large groups of people gathering in the area and potential public safety issues.

The residents also referred to the previous management, who caused disturbance to the residents due to poor management of the premises. However, the current applicant has assured the sub-committee that he is not connected to the previous management and sought to assure that he would operate the premises responsibly and in consideration of his neighbours.

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.

4. Appeal rights

The applicant may appeal against any decision to modify the conditions of the licence; and

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

- a) That the variation ought not to have been made or
- b) That, when varying the licence, the licensing authority ought not to have modified the conditions of 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 petty sessions 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 Legal Services.

Date: 6 November 2014

DRAFT NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 20 JUNE 2014

LICENSING ACT 2003: LUSH BAR & RESTAURANT, 280 OLD KENT ROAD, LONDON SE1 5UE

1. Decision

That the application submitted by Douglas Otunyo for the grant of a premises licence issued under the Licensing Act 2003 in respect of Lush Bar & Restaurant, 280 Old Kent Road, London SE1 5UE_ is granted as follows:

Licensable Activity	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Live Music - indoors	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 00.30	12.00 to 00.30	12.00 to 23.00
Recorded Music - indoors	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 00.30	12.00 to 00.30	12.00 to 23.00
Latenight refreshment	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 00.30	12.00 to 00.30	12.00 to 23.00
Sale and supply of alcohol (on the premises)	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 23.00	12.00 to 00.30	12.00 to 00.30	12.00 to 23.00
Hours premises are open to the public	12.00 to 23.30	12.00 to 23.30	12.00 to 23.30	12.00 to 23.30	12.00 to 01.00	12.00 to 01.00	12.00 to 23.30

2. Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions and conditions derived from the operation schedule in Section M of the application form and shall be subject to the following additional conditions:

1. That intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals, the premises will operate as a restaurant where the sale of alcohol is ancillary to the consumption of food. Service to tables will be by waiting staff only.
2. That all licensable activities to cease 30 minutes prior to the terminal hour.
3. That two SIA registered door supervisors, at least one of whom shall be a female, shall be employed at all times after 20.00 hours and the terminal hour.
4. That the premises shall install and maintain a comprehensive CCTV system as per the minimum requirement to the Metropolitan Police Licensing Officer. All entry and exit points will be covered

enabling a clear facial image of every person entering in any light conditions.

5. That the CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be made available immediately upon request of police or authorised officer throughout the proceeding 31 day period. The premises shall have the facility on the system to transfer the images to another data device.
6. That a personal licence holder is on the premises and on duty at all times that intoxicating liquor is supplied.
7. That all staff are trained in their responsibilities under the Licensing Act 2003 and training records to be kept and updated every six months and shall, upon request, be made immediately available to officers of the Metropolitan Police Service and Southwark Council.
8. That all house speakers shall be isolated from the structure of the building, either by rubber acoustic matting, anti vibration hangers or chained.
9. That clearly legible signage will be prominently displayed at the exit where it can easily be seen and read requesting to the effect that customers do not take drinks outside.
10. That clearly legible signage will be prominently displayed at the exit where it can easily be seen and read requesting to the effect that customers leave the premises in a quiet and orderly manner.
11. That customers shall use no outside area after 23.00 other than those who temporarily leave the premises to smoke a cigarette on to the Old Kent road frontage and the number of customers who are permitted to leave the premises to smoke after 23.00 on to the Old Kent road frontage shall not exceed five persons.
12. That no food or drinks obtained from the premises will be permitted to be consumed outside of the premises at anytime.
13. That a compressor sound limiting device (SLD) shall be installed at the premises and shall be calibrated to the satisfaction of the council's environmental protection team (EPT). All amplification equipment in regards to both live and recorded sound must be routed through the SLD. At no time shall any amplification equipment be operated independently of the SLD. The SLD shall be calibrated to the satisfaction of the EPT prior to any recorded or amplified live music being provided at the premises. Once calibrated, the control settings of the SLD shall not to be altered at any time except with the prior consent of the EPT. The SLD shall be accessible to the licensee and/or manager of the premises only, and its installation be such that its control panel cannot be accessed by any other staff.
14. That suitable acoustic double glazing shall be installed on the Old Kent road window frontage to ensure that internal noise from patrons and from licensable entertainment is not audible externally at the closest noise sensitive property.
15. That the depositing of waste glass/earthenware into external waste receptacles shall not take place between 23.00 and 07.00 the following day.
16. That all deliveries and collections of waste shall be made between the hours of 07.00 and 23.00.
17. That the premises will be adequately mechanically ventilated.
18. That a lobby entrance will be installed at the premises. The doors in the lobby entrance will be

fitted with door bottom and perimeter acoustic seals.

19. That the details of a local cab company shall be kept at the premises and shall be provided to customers on request. If staff at the premises order a cab for a customer then those staff shall request that the cab controller instructs the cab-driver not to sound their vehicle horn to attract attention, but to approach a staff member and let the staff member know that they are the driver of a cab that has been ordered by the premises.
20. That all doors and windows at the premises shall be kept closed when licensable activities are taking place at the premises (except for access or egress).
21. That no additional amplification equipment may be used at the premises by performers of any description. Only the installed in house amplification equipment may be used in regards to any performance.
22. That any member of staff receiving a complaint from a patron or neighbour shall complete a premises complaint form.
23. That the licensee shall ensure all entertainers performing at the premises read a copy of the premises licence before they commence their act/performance.
24. That all staff shall receive training on the contents of the premises licence and their roles and responsibilities to uphold the premises licence conditions.
25. That all findings of both premises risk assessments and event risk assessments shall be put in writing and made available at the request of the council or other authority.
26. That a comprehensive dispersal policy shall be produced, maintained and updated and all staff needs to be trained and made aware of any changes, a copy of the dispersal policy shall be made available to the council or police on request.
27. That all premises staff shall be trained in evacuation procedures including wheelchair users and this shall be documented. Documents detailing the training undertaken by staff shall be made available on request to officers of the council.
28. That all equipment, devices and systems used in the premises shall be maintained in good state of repair and effective working order. Documents detailing the maintenance regime shall be made available on request to officers of the council.
29. That any devices brought in the premises by third parties, needs to be inspected by a competent person before use to ensure they are in safe working order.
30. That the premises shall operate an agecheck 'challenge 25' policy whereby customers purchasing alcohol who look or appear to be under 25 years of age will be asked for an approved form of proof of age to verify their age. Approved forms shall include a driving licence, passport or a PASS approved proof of age card such as the Southwark Proof of Age (SPA) card.
31. That all staff involved in the sale of alcohol shall attend a recognised training scheme which will include training in the agecheck 'challenge 25' policy. They must obtain a certificate of competence. A record of their training, including the dates that each member of staff is trained, shall be available for inspection at the premises on request by the council's authorised officers or the police.
32. That agecheck or 'challenge 25' signage shall be displayed at entrances to the premises, areas where alcohol is displayed for sale and at points of sale to inform customers that an agecheck

'challenge 25' policy applies and proof of age may be required

33. That a register of refused sales of alcohol and if applicable, cigarette sales which is clearly marked with details of the premises, address and name of licence holder shall be maintained in order to demonstrate effective operation of the policy. The register shall be available for inspection at the premises on request by the council's authorised officers or the police.
34. That between 12.00 noon and 21.00 no children shall be on the premises where alcohol can be consumed unless accompanied by a responsible adult.
35. That no children shall be on the premises where alcohol can be consumed after 9.00pm.

3. **Reasons**

The licensing sub-committee heard from the applicant who advised that he had taken on the lease of the premises from March 2014 for a period of seven years. He assured the sub-committee that he had no connection with the previous management of the premises. He stated that this was a completely new business. He stated that he was a DJ by profession but that he wanted to embark on running a new business by way of a restaurant with a very different clientele and operation to the previous premises. He also confirmed that there would be no entrance fee for patrons entering the premises.

He confirmed that he had employed a professional chef and that the primary purpose of the premises was to operate as a restaurant. He further stated that he had liaised with all the responsible authorities and local residents and had sought to conciliate and accepted the proposed conditions in order to work with the authorities and the residents. He stated that he wanted the business to operate for a long period of time and therefore was willing to work in conjunction with the authorities and local residents to ensure this.

In addressing the residents concerns he agreed to install lighting at the front and the back of the premises and to provide a telephone number in order to address any issues.

The licensing sub-committee heard from the representative from the Metropolitan Police Service who advised that they had visited the premises the previous week and produced photographs showing tables and chairs situated in the premises. The police further confirmed that the kitchen equipment was witnessed on site during their visit, suggesting that the premises was properly equipped to be run as a restaurant.

Following discussions with the applicant, the police confirmed that as far as they were concerned this was a new operator who had no connections with the previous management and that they would be happy for the premises licence to be granted taking into account the proposed conditions and a reduction in the proposed hours.

The licensing sub-committee heard from the environmental protection officer who also stated that in view of the proposed primary operation being a restaurant that they would propose further reduced hours in order to address the public nuisance licensing objective. The environmental protection officer also proposed conditions which were accepted as appropriate and were adopted by the licensing sub-committee.

The licensing sub-committee heard from the licensing officer representing the council as a responsible authority who suggested further enquiries should be made of the applicant in relation to the operation of the premises. Following this the sub-committee made further enquiries of the applicant.

The licensing sub-committee heard from the health and safety officer who referred to their written representations and stated that they were satisfied with the crowd dispersal policy provided by the

applicant. He further stated that he could deal with the remaining points raised in his written representation in accordance with health and safety legislation.

The licensing sub-committee noted that the trading standards representation had been withdrawn following conciliation.

The licensing sub-committee heard from a local resident who advised following the signing of a petition by 12 other residents that she was representing ten of the residents. The local resident raised concerns in relation to the previous premises known as Pardis specifically relating to noise nuisance caused by music and people loitering outside which had an effect on the residents and families living in the area.

The local resident stated that a significant reduction in hours, along with sufficient CCTV and lighting would assist in alleviating the residents concerns in relation to public nuisance and disorder.

The sub-committee accepted the evidence put forward by the applicant that they would operate a completely separate business from Pardis and accepted that the conciliated conditions would address the concerns in relation to the previous premises raised by the representations.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives.

The licensing sub-committee considered that it was appropriate and proportionate to attach these conditions in order to address the licensing objectives.

4. **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

- a) That the licence ought not to be granted; or
- b) That on granting the licence, the Licensing Authority ought to have imposed different or additional conditions the conditions of 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 petty sessions 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 Legal Services

Date: 20 June 2014