

Item No. 6.	Classification: Open	Date: 30 September 2016	Meeting Name: Licensing sub-committee
Report title:		Licensing Act 2003: Luxford Bar Limited, 610 Old Kent Road, London SE15 1JB	
Ward(s) or groups affected:		Livesey	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the sub-committee decide whether or not to issue a counter notice in respect of a temporary event notice (TEN) served by Miss Melodie Mavoungou, in regards to an event to be held at the Luxford Bar, 610 Old Kent Road, London SE15 1JB between 21:00 on 8 October 2016 and 02:00 the following day.

BACKGROUND INFORMATION

The Licensing Act 2003

2. On 24 November 2005 the Licensing Act 2003 came into effect establishing a new licensing regime for the following licensable activities:
 - a) The retail sale of alcohol
 - b) The supply of alcohol to club members or on behalf of a club
 - c) The provision of regulated entertainment
 - d) The provision of late night refreshments.
3. The Act establishes a process for the giving of "temporary event notices" (TENs).
4. Amendments to the Licensing Act 2003 were brought about by way of the Police Reform and Social Responsibility Act 2011 as of 25 April 2012.
5. A premises user may serve a TEN, where it is proposed to use the premises concerned to provide one or more licensable activities for a period not exceeding 168 hours for less than 500 persons.
6. A person holding a personal license issued under the Act may serve up to 50 TENs in a calendar year. Non personal licence holders may serve up to 5 TENs in the same period. No premises may be used for more than 12 TENs in a calendar year or for more than 21 days in a calendar year.
7. No premises may be used for temporary events that are less than 24 hours apart.
8. The police or environmental health authority may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their intervention may in some cases result in the licensing authority imposing conditions on a TEN.

9. If the police or environmental health team believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. This must be given within three working days of the receipt of the TEN.
10. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
11. The police or environmental health may contact the premises user to discuss their objections and attempt to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified. If there is no agreement, the licensing authority must hold a hearing to consider the notice.
12. If the licensing authority receives an objection notice from the police or environmental health that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions, and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and give a counter notice. This prohibits the event from taking place.

KEY ISSUES FOR CONSIDERATION

The temporary event notice

13. On 18 September 2016 a TEN was served by Miss Melodie Mavoungou in regards to an event to be held at the Luxford Bar Limited, 610 Old Kent Road, London SE15 1JB between 21:00 on 8 October 2016 and 02:00 the following day. A copy of the TEN is attached to this report as Appendix A.
14. The TEN is summarised as follows:
 - To permit the sale of alcohol and the provision of regulated entertainment between 21:00 on 8 October 2016 and 02:00 the following day. The maximum number of people expected at any one time at the premises is 200. The supply of alcohol is in respect of consumption on the premises only.

The objection notice

15. On 19 September 2016 this council's environmental protection team (EPT) served an objection notice in respect of the TEN. A noise abatement notice was issued against these premises on 6 May 2016, a breach was witnessed by noise team on 22 May and there were further complaints of loud music since. The Noise team are putting in a prosecution for breach of the abatement notice and the case is still in progress. EPT previously objected to some late TEN's, the notice giver appears to

have ignored previous requests by serving this TEN without an event plan. The EPT contend that allowing the event to go ahead would undermine the prevention of public nuisance licensing objectives. A copy of the EPT's objection notice and supporting documents are attached to this report in Appendix B.

TENs History

16. Below is the recent history of TENs this year in respect of the premises.

No.	Premises user	Date of event	Time of event
1	Melodie Mavoungou	31 Dec 201215 to 6 Jan 2016	31 Dec 12.00 to 02.00 1 Jan 12.00 to 02.00 2 Jan 12.00 to 23.00.

17. Melodie Mavoungou served notices for events scheduled for 13 August 2016 and 10 September 2016. The EPT submitted objection notices and counter notices were served.

Premises history

18. A licence was issued to the premises on 30 December 2015 and the named DPS is Melodie Mavoungou. The current premises licence is attached as Appendix C.

Complaint and visit history

19. There have been 11 complaints of loud music and public nuisance recorded against the premises.

Map of the area.

20. A map showing the location of the premises is attached to this report as Appendix D. The premises are identified at the center of the map by a black diamond.

Policy considerations

21. Section 4 of the Southwark statement of licensing policy on "administration, exercise and delegation of function" deals with the parameters under which TENs may be considered.

Consideration by the sub-committee

22. The sub-committee is asked to consider whether the issue of a counter notice is necessary for the promotion of the prevention of public nuisance and protection of public safety licensing objectives.

Community impact statement

23. Members are advised that under the Act, the matters to which consideration may be given in this instance are the crime and disorder and public nuisance objectives.

24. In considering the TEN in terms of community impact the sub-committee must restrict its considerations to this matter.

Resource implications

25. A fee of £21.00 has been paid by the applicant in respect of the TEN, this being the statutory fee payable.

Consultation

26. The Act provides for no consultations to take place other than the process outlined in this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

27. The sub-committee is asked to determine the notification of this temporary event under Section 105 of the Licensing Act 2003 and to consider whether or not counter notice should be issued in the circumstance. It must only issue a counter notice if they believe the event would undermine the crime prevention objective set out in the Act
28. The principles which sub-committee members must apply are set out below.

Principles for making the determination

29. The general principle is that temporary event notices must be accepted unless a relevant objection is received from the police. This is subject to the proviso that the premises user has complied with regulations and submitted the notice within a prescribed time.
30. A relevant objection is that which:
- Is about the likely effect of the TEN on the promotion of the crime prevention of the licensing objectives
 - Is made by the metropolitan police
 - Has not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
31. If a relevant objection notice is received then the sub-committee must have regard to it in determining whether it is necessary for the promotion of the prevention of crime prevention and the prevention of public nuisance licensing objectives of the Licensing Act to:
- Issue a counter notice by adding to, omit, and/or alter the conditions of the licence or
 - Reject the whole or part of the application for TEN.

Conditions

32. The sub-committee may attach conditions on the carrying on of permitted licensable activities. The sub-committee's function is to determine whether a counter notice should be issued
33. Members are also referred to the Department for Culture, Media and Sport (DCMS) guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

34. The sub-committee must give reasons for its decision to issue or not to issue a counter notice.

Hearing procedures

35. 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 objection.
 - 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 submission.
 - The committee shall disregard any information given by a party which is not relevant:
 - To the particular submission before the committee
 - To the licensing objectives prevention of crime and disorder.
 - 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 the objection and notice the authority may take into account documentary or other information produced by a party in support of their objection or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

36. This matter relates to the determination of a notification for a temporary event notice under section 105 of the Licensing Act 2003. Regulation 26(1) (c) requires the sub-committee to make its determination at the conclusion of the hearing.
37. 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.
38. As a quasi-judicial body the licensing sub-committee is required to consider the temporary event notice 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 the police objection.
39. 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.
40. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making the 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.
41. Where the relevant counter notice under section 105(3) is given the premises user may appeal against that decision. Where a counter notice is not given, the chief officer of police may appeal against that decision. The appeal must be made 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. No appeal may be brought later than five working days before the day on which the event begins.

Guidance

42. 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 and Governance

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

REASONS FOR URGENCY

44. The TENs process is time limited, and due to legislative time constraints it would not be possible to wait for a further meeting to be held to consider this report.

REASONS FOR LATENESS

45. This report was not available for circulation within five clear days before the meeting due to legislative time constraints.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	Licensing Unit Hub 2 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read (020 7525 5748)

APPENDICES

No.	Title
Appendix A	The temporary event notice
Appendix B	The environmental protection team representation
Appendix C	Current premises licence
Appendix D	Map of the area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Natasha O'Donoghue Licensing Enforcement Officer	
Version	Final	
Dated	23 September 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	23 September 2016	