

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 26 May 2021	<b>Meeting Name:</b> Licensing sub-committee
<b>Report title:</b>		Licensing Act 2003: Euro Traveller Hotel, 18 Amelia Street SE17 3PY – Temporary Event Notice	
<b>Ward(s) or groups affected:</b>		North Walworth Ward	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee decide whether or not to issue a counter notice in respect of temporary event notice (TENs) 874778, served by Mr Jonathan Giraldo, with regards to event to be held at Euro Traveller Hotel, 18 Amelia Street London, SE17 3PY on 29 May from 12:00 to 23:30 and 30 May 2021 from 12:00 to 23:30.

## BACKGROUND INFORMATION

### The Licensing Act 2003

2. On 24 November 2005 the Licensing Act 2003 came into effect establishing a 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 established 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

five 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 13 May 2021 a TEN was served by Mr Jonathan Giraldo in respect of an event intended to be held at Euro Traveller 18 Amelia Street London, SE17 3PY 29 May 2021 between 12:00 to 23:30 and 30 May 2021 between 12:00

to 23:30. A copy of the TEN application is attached to this report as Appendix A.

14. The TEN is summarised as follows:

- To permit the sale of alcohol, regulated entertainment and late night refreshment on 29 May 2021 to 30 May 2021 between 11:00 to 23:30 daily. The maximum number of people expected at any one time at the premises is 39. The supply of alcohol is in respect of consumption on the premises only.

### **The objection notice**

15. On 14 May 2021 the Metropolitan Police Service served an objection in respect of the TEN on the grounds of the prevention of crime and disorder.
16. The police state that the premises were the subject of a premises licence review submitted by Southwark's trading standards team on 15 January 2021.
17. The review was submitted on the grounds of prevention of crime and disorder, public nuisance and public safety. In summary the premises were found on a number of occasions to be operating in contravention of the Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 (SI 2020 No 1104).
18. The basement of the hotel was being run as a nightclub by a male by the name of Rajal Valencia, another person present at the time of the contravention was a male by the name of Jonathan Giraldo, the applicant for this TEN.
19. Through lengthy discussions, the application for the review of the premises licence was conciliated. It was agreed by the premises licence holder that the above two named persons would no longer be running events in the basement and that they would be removed. One of those individuals is the applicant for the TENs Mr Jonathan Giraldo. It was also agreed that the basement would not be used for such events, a condition was added to the premises licence that the basement would be for hotel guests and for restaurant purposes only.
20. A Copy of the police objection is attached to this report in Appendix B.

## TENs History

21. Below is the history of TENs for the last year in respect of the premises.

<b>Applicant</b>	<b>Date of event</b>	<b>Time of event and activities</b>	<b>Counter Notice Issued?</b>
Jonathan Giraldo	26/08/2019 – 26/08/2019	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30	No
Jonathan Giraldo	22/09/2019 – 22/09/2019	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30	No
Jonathan Giraldo	20/10/2019 – 20/10/2019	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30	No
Jonathan Giraldo	03/11/2019 – 03/11/2019	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30	No
Jonathan Giraldo	17/11/2019 – 17/11/2019	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30	No
Jonathan Giraldo	07/12/2019 – 08/12/2019	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30 and 00:01-06:30	No
Jonathan Giraldo	15/02/2020 – 16/02/2020	Sale of alcohol on the premises, Regulated Entertainment & Late Night Refreshment between 00:01 – 06:30 and 00:01- 06:30	No

## **Premises history**

22. A premises licence was issued in respect of the premises on the 31 July 2005. Mr Jayesh Patel is the licence holder and DPS. Please see Appendix C.
23. On 16 October 2020, following complaints received that a nightclub was operating at the basement of Euro traveller 18 Amelia Street SE17 3PY, officers from trading standards and the Metropolitan Police Service night time economy team attended the premises.
24. At the time of the visit regulations relating to restrictions during the Coronavirus pandemic was in force. There was a restriction on licensed premises as they were not permitted to be open after 10pm and licensed premises were not allowed to operate as nightclubs. During this visit, at 22:02, the officers witnessed a few people leaving the premises. The officers entered the premises and witnessed that the basement room was packed with people who were not seated but up and dancing.
25. On Saturday 17 October 2020, the officer from trading standards and a police officer returned to the premises at 20:45 hours and gained access to the basement club. During the course of the visit the officers witnessed that the premises was packed, contrary to the Covid regulations. A seated service and a Covid risk assessment should have been in place. The trading standards officer counted 48 people in the premises. A prohibition notice was served on Mr Rajal Valencia.
26. On Friday 23 October 2020 the trading standards officer, accompanied by a police officer from the night time economy team and a health and safety officer attended the premises. During the course of the visit it was witnessed that the music emitting from the premises was loud. At the time of the visit music and dancing was prohibited under the Health Protection (Coronavirus, Local Covid-19 Alert Level)(High) (England) Regulations 2020.
27. On 15 January 2021 a premises licensing review was submitted by the trading standards officer following the breaches that were witnessed during the previous visits.
28. The review was submitted on the grounds of the prevention of crime and disorder, public nuisance and public safety. In summary the premises were found on a number of occasions to be operating in contravention of the Health Protection (Coronavirus, Local COVID-19 Alert Level) (High) (England) Regulations 2020 (SI 2020 No 1104). The premises licence review was withdrawn following conciliation between the police, trading

standards and the premises licence holder. The licensing review application is attached as Appendix D.

## **Premises licence**

### 29. Details of current premises licence:

- Entertainment Similar to live/recorded music - Indoors:

- Monday: 17:00 - 01:00
- Tuesday: 17:00 - 01:00
- Wednesday 17:00 - 01:00
- Thursday 17:00 - 01:30
- Friday 16:00 - 02:30
- Saturday 16:00 - 02:30
- Sunday 15:00 - 01:00

- Recorded Music – Indoors:

- Monday 12:00 - 01:30
- Tuesday 12:00 - 01:30
- Wednesday 12:00 - 01:30
- Thursday 12:00 - 01:30
- Friday 12:00 - 03:00
- Saturday 12:00 - 03:00
- Sunday 12:00 - 01:00

- Facilities for Dancing – Indoors:

- Monday 12:00 - 01:00
- Tuesday 12:00 - 01:00
- Wednesday 12:00 - 01:00
- Thursday 12:00 - 01:00
- Friday 12:00 - 03:00
- Saturday 12:00 - 03:00
- Sunday 12:00 - 01:00

- Late Night Refreshment – Indoors:

- Monday 23:00 - 01:00
- Tuesday 23:00 - 01:00
- Wednesday 23:00 - 01:00
- Thursday 23:00 - 01:00
- Friday 23:00 - 02:30
- Saturday 23:00 - 02:30

- Sunday 23:00 - 01:00
- Sale by retail of alcohol to be consumed on premises:
  - Monday 12:00 - 01:00
  - Tuesday 12:00 - 01:00
  - Wednesday 12:00 - 01:00
  - Thursday 12:00 - 01:00
  - Friday 12:00 - 03:00
  - Saturday 12:00 - 03:00
  - Sunday 11:00 - 01:30

30. The current premises licence is attached as Appendix E.

### **Licensing visit history**

31. Four night time economy (NTE) team visits have been made since 25 January 2019. One of the visits was following the Covid contraventions that was witnessed that the premises. The dates of the visits were 25 January 2019, 7 June 2019, 23 October 2020 and 12 February 2021.

### **The local area**

32. A map of the local area is attached as Appendix F. There are other licensed premises in the immediate vicinity:

### **Policy considerations**

33. 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**

34. The sub-committee is asked to consider whether then 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**

35. 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.

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

## **Resource implications**

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

## **Consultation**

38. 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 Governance**

39. 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
40. The principles which sub-committee members must apply are set out below.

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

41. 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.
42. 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.
43. 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**

44. The sub-committee may only attach conditions on the carrying on of permitted licensable activities on TENs where they premises is already in subject to a premises licence and the conditions are carried over from that premises licence. The sub-committee's function is to determine whether a counter notice should be issued

### **Reasons**

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

### **Hearing procedures**

46. 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.
47. 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.
  48. 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.
  49. 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.
  50. 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.
  51. 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.
  52. 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

53. Members are required to have regard to the Home Office revised 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

54. 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

55. 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

56. Due to the time limited nature of TENs there was not sufficient time to prepare and clear the report in time for the main agenda dispatch.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office revised 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	Temporary events notice
Appendix B	Police objection to temporary events notice
Appendix C	Original Premises licence
Appendix D	Application to review premises licence
Appendix E	Current Premises licence
Appendix F	Map

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Justin Williams, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	19 May 2021	
<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>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	20 May 2021	