

LICENSING SUB-COMMITTEE 8 APRIL 2021

Consideration of objection to Temporary Event Notice:

1. Cattivo, 201-207 Ferndale Road, SW9 8BA (Ferndale)
2. Canova Hall, 248-250 Ferndale Road, SW9 8BQ (Ferndale)

Wards: Ferndale

Portfolio: Deputy Leader of the Council (Sustainable Transport, Environment and Clean Air)
Councillor Claire Holland

Report Authorised by: Bayo Dosunmu: Strategic Director of Resident Services

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EXECUTIVE SUMMARY

This report sets out details of a temporary event notice which has been given to the licensing authority, in respect of which the Police and Environmental Health (Community Safety) have submitted an objection notice.

RECOMMENDATION

1. That the notice(s) set out in the Appendix to this report be considered having regard to the Council's Licensing Policy, the Licensing Objectives and the objection notice(s) received.

CONSULTATION

Name of consultee	Directorate or Organisation	Date sent to consultee	Date response received from consultee	Comments appear in report (paragraph(s))
J-M Moocarme	Legal and Governance	24/03/21	24/03/21	N/A

REPORT HISTORY

Authorised by Executive Member	Date report drafted	Report deadline	Date report sent
	24/03/21	24/03/21	24/03/21

APPENDICES

1. Report for Cattivo, 201-207 Ferndale Road, SW9 8BA (Ferndale)
2. Report for Canova Hall, 248-250 Ferndale Road, SW9 8BQ (Ferndale)

1. CONTEXT

- 1.1 Authorisation from the Council is required for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment.
- 1.2 While most large-scale or permanent businesses will hold Premises Licences to authorise their activities, the Act also provides a light-touch mechanism for smaller, infrequent events, known as Temporary Event Notices.
- 1.3 An individual (known as the “premises user”) may give notice of a proposal to use premises for a temporary event, engaging in one or more licensable activities for a period of no more than 168 consecutive hours. The Licensing Sub-Committee is required to consider any objection notice received and must give the premises user a counter-notice under section 105 of the Licensing Act 2003 if it considers it appropriate for the promotion of a licensing objective to do so. The temporary event may not proceed if a counter-notice has been issued.

2. PROPOSALS AND REASONS

- 2.1 The Licensing Sub-Committee has responsibility for exercising many of the Council's powers in respect of the Licensing Act 2003. Consideration by the Committee of the notice appended to this report is required because the notice have attracted an objection from the Police and the Council's Community Safety Team.
- 2.2 Details of the notice are set out in the Appendix to this report. The statutory consultation requirement set out in paragraph 3 below has been complied with by the premises user(s), and has resulted in the Noise Team and/or the Police giving an objection notice to the licensing authority.
- 2.3 The premises user, the Police and the Community Safety Team have been invited to attend the hearing.
- 2.4 The fee for giving a temporary event notice is prescribed within the Licensing Act 2003.

3. CONSULTATION REQUIREMENTS

- 3.1 The premises user is required to give a copy of any temporary event notice to the Police and the Council's Environmental Health (Community Safety Team) no later than 10 working days before the first day of the proposed event. If either body is satisfied that allowing the premises to be used in accordance with the notice would undermine any of the licensing objectives, they must give an

objection notice to the licensing authority and to the premises user within three working days of receiving the copy of the notice. It is also possible to give a late TEN with between 5 and 10 working days' notice, however if an objection notice is given the event cannot proceed.

- 3.2 An applicants' failure to comply with the above consultation requirements would invalidate the notice. All notices set out in the appendix of this report have complied with the consultation requirements.
- 3.3 The Act does not make provision for further consultation with any other responsible authorities nor interested parties, and there is no requirement for the premises user to publicise their notice.

4. FINANCE

- 4.1 There are no direct financial implications arising from this report.

5. LEGAL AND DEMOCRACY

- 5.1 The authorisation of premises for the supply of alcohol, regulated entertainment and late night refreshment fall within the provisions of the Licensing Act 2003.
- 5.2 When carrying out its licensing functions, the Sub-Committee shall act with regard to the Council's Licensing Policy, Statutory Guidance, and with a view to promoting the Licensing Objectives. The objectives are:
 - a. the prevention of crime and disorder;
 - b. public safety;
 - c. the prevention of public nuisance; and,
 - d. the protection of children from harm.
- 5.3 The Sub-Committee must ensure that all licensing decisions have:
 - a. a direct relationship to the promotion of one or more of the four licensing objectives;
 - b. regard to the statement of licensing policy;
 - c. regard to the Secretary of State's Guidance; and,
 - d. there must not be a 'blanket policy' to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.
- 5.4 Applications must be considered with regard to the principles of fair process and the Human Rights Act.
- 5.5 The purpose of Lambeth's Statement of Licensing Policy is to make clear to applicants and relevant representatives the considerations that will be taken into account when determining applications. It is also intended to guide the Licensing Committee when considering licensing applications; however the Licensing Committee must consider each application on its own merit and only allow exceptions to its own policy where the circumstances of the application justify it.
- 5.6 Subject to both the Council's Statement of Licensing Policy and Statutory Guidance having been properly considered, a Sub Committee may depart from them if there are good reasons for doing so. Full reasons must be given and Sub-Committees should be aware that such departures could give rise to an appeal or judicial review.

- 5.7 Section 105(2)(b) of the Act requires that the licensing authority must, having regard to the objection notice, give the premises user a counter notice under this section if it considers it, “appropriate for the promotion of a licensing objective to do so.” The temporary event may not proceed if a counter-notice has been given.
- 5.8 Section 106A(2) of the Act provides that the licensing authority may impose one or more conditions on the standard TEN if:
- a. it considers it appropriate for the promotion of the licensing objectives to do so;
 - b. the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of or in any part of the same premises as the TEN; or,
 - c. the conditions would not be inconsistent with the carrying out of licensable activities under the TEN.
- 5.9 It is considered inappropriate for officers involved in the administration of notices to make recommendations. However, the Committee may choose whether to have regard to any representations made by police officers or Council’s Noise and Pollution Team if they believe that using the premises in accordance with the TEN will undermine the licensing objectives.
- 5.10 At any time prior to the hearing, the police or the Council’s Noise and Pollution Team may, with the agreement of the premise’s user, modify the temporary event notice by making changes to the notice. The objection notice shall be treated as having been withdrawn from the time the temporary event notice is modified. The premises user may also withdraw the notice completely at any time up until 24 hours prior to the proposed start time of the notice.
- 5.11 In accordance with the provisions of Part 3 of Schedule 5 of the Act, where the licensing authority gives a counter-notice under section 105, the premises user may appeal against the decision. Where the authority does not give a counter-notice, the person giving the objection notice may appeal against the decision. In both cases, appeals must be made to a Magistrates Court within 21 days of receiving notification of the decision - however, no appeal can be brought less than 5 working days prior to the first proposed event day.