

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Wednesday 6 September 2017 at 10.00 am at Ground Floor Meeting Room G01A - 160 Tooley Street, London SE1 2QH

PRESENT:	Councillor Renata Hamvas (Chair) Councillor Sunil Chopra Councillor Sunny Lambe (Reserve)
OTHER S PRESENT:	David Dadds, legal representative, Unit 2, 777 Old Kent Road George Nwachukwu, applicant, Unit 2, 777 Old Kent Road Matthew Phipps, legal representative, Afrikiko Daniel Dornor, owner, Afrikiko Joyce Ampadu, manager, Afrikiko Ian Clements, Metropolitan Police Service Mark Lynch, Metropolitan Police Service
OFFICER SUPPORT:	Debra Allday, legal officer Joanne Shilton, legal officer Helena Crossley, legal officer Wesley McArthur, licensing officer Jayne Tear, licensing officer as a responsible authority Paul Newman, environmental protection officer Gavin Blackburn, planning enforcement officer Andrew Weir, constitutional officer

1. APOLOGIES

Apologies were received from Councillor Maria Linforth-Hall. Councillor Sunny Lambe was in attendance as the reserve member.

2. CONFIRMATION OF VOTING MEMBERS

The members present were confirmed as the voting members.

3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were none.

The chair advised that the order of business would be varied to hear item 6 first.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: AFRIKIKO BAR, RESTAURANT AND NIGHTCLUB, 871 OLD KENT ROAD, LONDON SE15 1NX

The licensing officer presented their report. Members had no questions for the licensing officer.

The Metropolitan Police Service, the applicant for the review addressed the sub-committee. Members had questions for the police.

The licensee of the premises and their legal representative addressed the sub-committee. Members had questions for the licensee and their legal representative.

Both parties were given five minutes for summing up.

The meeting went into closed session at 4.32pm.

The meeting resumed at 5.37pm and the legal officer read out the decision of the sub-committee.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 53C of the Licensing Act 2003 by the Metropolitan Police Service for the review of the premises licence issued in respect of the premises known as Afrikiko Bar, Restaurant and Night Club 871 Old Kent Road, London, SE15 1NX, and having had regard to all other relevant representations, has decided that it is appropriate, necessary and proportionate in order to promote the licensing objectives to:

1. Suspend the licence for a period of 9 weeks.
2. Modify the conditions of the licence by adding the following conditions:
 - i. That the hours of operation will be:
 - Sunday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 01:00
 - ii. That all staff are trained in their responsibilities under the Licensing Act 2003 in addition to the terms and conditions of the premises licence in addition to training specific to premises licence terms and conditions and training records should be kept and signed, these records shall be updated every six months and shall, upon request, be made immediately available to officers of the police and the council.
 - iii. That alcohol shall be served ancillary to food, excluding snacks.

- iv. That there are no externally promoted DJ events at any time, including when the premises operate under a temporary event notice.
- v. That the premises licence holder operates according to a comprehensive written dispersal policy and staff training pertaining to it. The dispersal policy must include provisions regarding the car park at the premises (e.g when the premises are shut that vehicles are made to vacate the car park). The dispersal policy is to be submitted to the licensing authority prior to the premises operating.
- vi. That all event bookings and full details are to be logged and made known to all staff. The booking log is to be kept at the premises and made available for inspection immediately upon request by police and/or council officers.
- vii. That when events take place, the premises shall carry out pre-opening security checks of the premises and car park for both drugs and weapons to ensure that these items are not brought inside.
- viii. That condition 291 be amended to read: "Any events operating after 22:00 hours shall have two SIA registered door supervisors, one of whom shall be female, until the terminal hour that the premises are in use under the licence including any temporary event notice. Hand held search wands will be used to assist in searching all persons entering the premises. All persons to include staff, performers, guests and members of the public. Counting devices shall be used to ensure that the accommodation capacity is not exceeded. The number of attendees shall be recorded periodically whilst the premises is in operation. This information will be made available to the Police and officers of the council and any other authorised persons immediately upon request.
- ix. That conditions 347, 348 and 349 be removed from the licence.

Reasons

The reasons for the decision are as follows:

The licensing sub-committee heard from Metropolitan Police Service, the applicant for the review. They advised that on 9 August 2017 they applied to the licensing authority for a summary review of the premises licence in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX after a Superintendent for the Metropolitan Police Service certified that in his opinion the premises are associated with serious crime or serious disorder or both.

The application related to a very serious fatal incident that took place on the previous day, Tuesday 8 August 2017 at approximately 02:00 when an emergency call was made to the police reporting that a large fight, including the use of a knife, and involving approximately 34 persons who had previously been in the premises was taking place outside of the premises. Police attended the premises and found a male unresponsive on the floor. A large number of people were still in the vicinity of the premises.

Police officers viewed CCTV of the incident which showed a large group of people outside the premises at 02:00. The closing time of the premises on 8 August 2017 was 01:30. The CCTV showed a fight involving weapons. The victim was stabbed and died as a result of

the injuries the victim received.

The police stated, and we accept, that the premises were being operated on 8 August in breach of various conditions on the premises licence, namely condition 303 (completion of Form 696/venue hire agreement), condition 336 (personal licence holder to be on premises when alcohol is supplied) and condition 347 (only over 21s to be admitted to the basement area). They stated further that there was a significant history of non-compliance at the premises with regards to the terms and conditions of the premises licence issued in respect of the premises. They informed the sub-committee that four Section 19 closure notices had been issued and recommended that the premises licence be revoked. In our view the Police acted very properly in instigating this summary review.

The licensing sub-committee heard from the representative for the premises who accepted that there had been failings at the premises in the past. The incident took place some distance from the premises, most of which could not be seen on the CCTV footage as it occurred behind a tree/car.

The licensing sub-committee noted a representation from the other person, a resident, that over the course of the previous two years, there were often fights outside the premises, loud disturbing music and patrons loitering outside the premises. There was a suggestion that there had been a stabbing outside the premises in November 2015.

The sub-committee considered very carefully whether to revoke the premises licence as requested by the police, particularly in light of the admitted breaches of the licence. Considerable weight was given to the fact that the fatal incident took place some distance away from the premises and after those involved in the violence had already left the premises.

The sub-committee took the view that the appropriate and proportionate steps to be taken should be specifically directed at the cause of the serious incident and should not exceed those steps that were appropriate to promote the licensing objectives.

The sub-committee, on balance, took the view that a significant reduction in operating hours as well as a condition that alcohol must now be provided as ancillary to food, taken together with all the other conditions imposed, was the appropriate and proportionate response on this occasion. These steps were likely to significantly reduce the risk of the licensing objectives being undermined in the future.

Therefore, the sub-committee concluded that revocation of the premises licence was not appropriate at this stage. The premises licence holder is expected to fully comply with all of the imposed conditions without fail. If further breaches occur in the future that have the effect of undermining the licensing objectives then the police would be well within their rights to instigate a further review of the premises licence and, without binding the hands of a future licensing sub-committee, it is likely that more severe action would be taken on that occasion.

Appeal rights

This decision is open to appeal by either:

- a) The applicant for the review
- b) The premises licence holder

- c) Any other person who made relevant representations in relation to the application

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

This decision does not have effect until either

- a) The end of the period for appealing against this decision; or
 b) In the event of any notice of appeal being given, until the appeal is disposed of.

6. LICENSING ACT 2003: UNIT 2, 777 OLD KENT ROAD, LONDON SE15 1NZ

The licensing officer presented their report. Members had no questions for the licensing officer.

The applicant and their legal representative addressed the sub-committee. Members had questions for the applicant and their legal representative.

The licensing sub-committee heard from the licensing officer representing the council as a responsible authority. Members had questions for the licensing officer.

The licensing sub-committee heard from the Metropolitan Police Service. Members had questions for the police.

The licensing sub-committee heard from the environmental protection officer. Members had no questions for the environmental protection officer.

The licensing sub-committee heard from the planning enforcement officer. Members had questions for the planning enforcement officer.

All parties were given five minutes for summing up.

The meeting adjourned at 10.58am for the members to consider their decision.

The meeting resumed at 11.22am and the chair read out the decision of the sub-committee.

RESOLVED:

That the application by George Nwachukwu for a variation of a premises licence issued under the Licensing Act 2003 in respect of the premises known as Unit 2, 777 Old Kent Road, London SE15 1NZ be granted as follows:

Licensable Activities	Days	Hours
Sale of alcohol	Sunday to Thursday	11:00 to 23:30
	Friday, Saturday & Bank Holidays	11:00 to 00:30
Late night refreshment	Sunday to Thursday	11:00 to 23:30
	Friday, Saturday & Bank Holidays	11:00 to 00:30

Opening	Sunday to Thursday Friday, Saturday & Bank Holidays	11:00 to 00:00 11:00 to 01:00
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Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, any conditions derived from the operating schedule in Section M of the application for and the following conditions imposed by the licensing sub-committee:

1. That the premises licence holder shall visibly display signage stating that entry will not be permitted to patrons who use Sylvan Road to either park, drop off or collect by private or hackney carriage vehicles.
2. That suitably qualified SIA persons shall be employed at all times where the premises is operating beyond 23:00 hours and shall take all reasonable steps to ensure that patrons do not cause a nuisance in the vicinity of the premises.
3. That there shall be no entry or re entry permitted after 00:00 hours.
4. That there shall be no sales for consumption of food off the premises after 23:00 hours.
5. That there shall be no off sales of alcohol after 23:00 hours.
6. That the maximum number of persons permitted to be on the premises is 90.
7. That a sound limiting device shall be installed and be set at an appropriate level by a professionally certified acoustic engineer.
8. That a permanent sound limiting device (or other similar sound limiting equipment) shall be installed at the premises and shall be in use at all times that amplified sound is provided at the premises. The sound limiting device (or other similar sound limiting equipment) shall be calibrated by a professionally certified sound / acoustic engineer so that amplified sound at the premises does not give rise to public or statutory nuisance at any time. Any temporary or permanent amplification system(s), amplified instrument(s) and microphone(s) in use at the premises shall be routed through the sound limiting device (or other similar sound limiting equipment) at all times.

Reasons

The reasons for the decision are as follows:

The licensing sub-committee heard from the applicant's representative who advised that the premises operate as a restaurant. They further stated that the extended hours were required to cater for the clientele who prefer to eat later in the evening than the current hours permit.

The applicant's representative submitted that, although Southwark Council's statement of licensing policy defines the area that the premises are located in as a residential area, in the applicant's opinion the area that the premises are located is a mixed use area.

Reference was made to a previous planning appeal decision which referred to the area as small scale residential.

The applicant's representative stated that they believed at least one of representations from other persons to be vexatious.

The applicant's representative advised the sub committee that the premises has operated 12 TENS and only one complaint appears to be have been made as a direct result of a TEN following the event in December 2016.

The applicant's representative advised that they are prepared to work with residents to minimise risk of nuisance and they would be willing to ensure that the refuse bin remains locked and is emptied on a regular basis. They also advised that customers disperse on a gradual basis reducing the risk of nuisance.

The applicant's representative also stated that they would ensure on SIA doorman monitored the use of Sylvan road by the premises patron's and will inform patrons that they will not be permitted to enter the premises if they choose to use Sylvan road for parking, dropping off or picking up patrons of the premises. Thereby minimising the risk of nuisance to local residents.

With a view to assist in reducing any potential noise nuisance the applicant is also strongly advised by the sub committee to encourage patrons to use public transport where possible.

The applicant's representative agreed to adopt additional conditions in order to reduce the risk on nuisance in the area and stated that they would be submitting a further application to the planning department addressing the issues raised and believe that this application will be successful.

The licensing sub-committee heard from the council's planning department who submitted a representation in respect of the prevention of public nuisance. They advised that previous events which have taken place at the premises have resulted in complaints of noise nuisance from local residents.

The planning department also stated that a temporary stop notice was served to ensure that the premises adhered to a closing time of 23:00 hours as per planning permission in respect of the premises. They further stated that 2 planning applications to extend the hours of operation in respect of the premises have been refused on the grounds of potential harm to residential amenity by the proposed extended hours of operation and further pointed out that there has been no change of circumstance to lead to a different conclusion in respect of the potential impact of extending the operating hours.

They further stated that they had concerns that the premises operated as a late night drinking venue rather than a restaurant. One of the reasons for this being the fact that the filter in the extraction system had not been changed, indicating that the kitchen was not being used as much as they would expect.

The applicant stated that the kitchen was not being used as often as they would like due to the reduced demand as a result of the restricted hours. In addition the extraction system was new and was not therefore required to be changed yet.

The licensing sub-committee considered the written representation from the council's Director of Public Health in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of public safety licensing objectives. The representation stated that research shows increased hours of alcohol sales are associated with increased alcohol consumption, increased alcohol related injuries and increased

alcohol related harm. In addition reference was made to the Southwark's statement of licensing policy which recommends that restaurants in the premises location should close at 23:00.

The sub committee noted that whilst a representative from the public health authority did not attend the hearing, the sub committee took into account the written representation. It noted that more weight could have been attached had a representative attended the sub-committee but nonetheless the representation carried weight.

The licensing sub-committee heard from the council's licensing responsible authority who submitted representations under the prevention of crime and disorder and the prevention of public nuisance licensing objective. The officer advised that Southwark's statement of licensing policy recommends that in the premises' location restaurants should close at 23:00.

The representation also notes that current planning permission in regards to the premises stipulates that the premises close at 23:00.

The officer also referred to the complaints received by three local residents and whilst stating that there was no issued with the current operation of the premises within the current permitted hours, she expressed concern that later hours as requested could result in increased crime and disorder in the area.

The licensing sub-committee heard from the Metropolitan Police Service who also advised that the current planning permission stipulates that the premises close at 23:00. The police also highlighted that previous events at the premises have resulted in complaints from local residents of public nuisance and noise nuisance caused by customers. The police also stated that the hours applied for exceed those recommended in Southwark's statement of licensing policy.

The police stated that they had concerns the extended hours applied for may lead to an increase in public nuisance and crime and disorder in the area.

The licensing sub-committee heard from the council's environmental protection team who submitted a representation in respect of the prevention of public nuisance licensing objective. The officer advised that previous events at the premises have resulted in complaints of noise nuisance from local residents.

The officer also referred to the current planning permission which requires the premises to close at 23:00 and the fact that applications to extend the premises' hours have been refused.

The licensing sub-committee considered four representations from other persons who stated that the existing operation of the premises causes noise nuisance and anti social behaviour including littering, public urination and fights and sounding their car horns.

The representations from the residents also highlighted that the planning applications to extend the hours have been refused.

The residents stated that the premises operated as a nightclub and not a restaurant and that the residents felt intimidated by the patrons of the premises.

The residents express concern that all of the existing problems would be exacerbated and

crime and disorder will increase if the hours of operation are extended.

The sub committee noted that whilst the residents did not attend the hearing, the sub committee took into account the written representations.

It was noted that more weight could have been attached had a representative attended the sub-committee but nonetheless the representation carried weight.

The licensing sub-committee considered all of the oral and written representations before it and considered Southwark's Statement of Licensing Policy 2016 which sets out recommended hours of operation and requires the sub committee to give consideration to the premises' location and its likelihood to impact on the licensing objectives.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and on balance considered that this decision was appropriate and proportionate.

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.

7. LICENSING ACT 2003: 133 COPELAND ROAD, LONDON SE15 3SN

It was noted that this item had been deferred to the licensing sub-committee meeting on 11 September 2017.

The meeting ended at 5.55 pm

CHAIR:

DATED: