

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 28 November 2019 at 10.00 am at Ground Floor Meeting Room G01C - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sunny Lambe
Councillor Charlie Smith

**OTHER MEMBERS
PRESENT:**

**OFFICER
SUPPORT:**

1. APOLOGIES

There were none.

1. 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.

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

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

The Metropolitan Police Service representative addressed the sub-committee. Members had questions for the police.

The planning enforcement officer addressed the sub-committee. Members had questions for the planning enforcement officer.

All parties were given five minutes for summing up.

The meeting adjourned at 12.54pm for the sub-committee to consider its decision.

The meeting reconvened at 1.33pm and the chair advised all parties of the decision.

RESOLVED:

That the application made by Afrikiko Bar, Restaurant and Nightclub Limited for the premises licence to be varied under section 34 of the Licensing Act 2003 in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX be granted in part as follows:

Live music, recorded music, performances of dance, entertainment similar to live & recorded music and the sale of alcohol to be consumed on or off the premises	Sunday to Thursday from 11:00 to 00:00 Friday and Saturday from 11.00 to 01.30
Late night refreshment	Sunday to Thursday from 11:00 to 00:00 Friday and Saturday from 11.00 to 01.30
Opening Hours	Sunday to Thursday from 11:00 to 00:30 Friday and Saturday from 11.00 to 02.00

Reasons

The sub-committee heard from the applicant's representative, who stressed that there have been no problems at the premises for over two years following the previous review and the changes made to the licence as a result. He reminded the sub-committee that each application must be considered on its own merits and submitted that the previous, admittedly serious, incident should not now be used as a stick to beat the applicant with.

The applicant had made demonstrable and significant changes. It was now reasonable to look at the licence again. The proposal was to retain the use of the ground floor as a restaurant, but the applicant wished to extend the use of the basement area, which currently has a lounge bar atmosphere with music and games. The applicant wants to make a better offer to his patrons and attract others, who tend to go out later in the evening and would wish to stay longer. The applicant acknowledged that the premises are

in a residential area and currently benefit from longer opening hours than are indicated by the council's statement of licensing policy. However, as the planning officer himself pointed out, the premises are not overlooked, are relatively isolated and the risk of noise nuisance is therefore minor.

In support of the application, a very comprehensive operating schedule was being proposed, with 61 conditions designed to ensure proper management. The proposed capacity was being reduced from 200 to 150 for the whole premises. Alcohol would be ancillary to food on the ground floor (as now) and available at all times in the basement area. The conditions offered included effective soundproofing, ID scanning and a dispersal policy.

Clearly, there is always a risk when the use of premises changes, but that cannot be determinative of the application. The sub-committee must not base its decision on conjecture, but on the evidence of the last two years of effective management.

The sub-committee heard from the representative of the licensing authority, who reminded them that the premises is in a residential area and already benefits from longer than usual opening hours. The proposal now was clearly for a nightclub use, which is unsuitable for a premises in this area. The licensing authority were not reassured by the limited changes and conditions proposed. The reduction in hours and change of use as a result of the review had prevented a repetition of problems at the premises. There were concerns that the applicant had continued trading and ignored warnings after it was discovered that the layout of the premises was inconsistent with the plan attached to the licence. The licensing authority recommended that the application be refused.

The sub-committee heard from the representative of the Metropolitan Police Service, who reiterated that the changes made following the review had successfully prevented incidents of violence at the premises, which were in any event located in an area where nightclubs are discouraged by the licensing policy. He too requested that the application be refused.

The sub-committee heard from the representative of the council's planning department, who referred them to a series of photographs. He observed that the premises did not have large windows offering a good view of what is going on outside. They were not surveilled or closely overlooked. They were not in the town centre, but were relatively isolated. These factors tend to make premises more prone to incidents of anti-social behavior, though he accepted that noise nuisance was less likely to present a problem. He too emphasised that when the premises had been permitted to open later, there had been a problem with crime.

The sub-committee shared the concerns of the responsible authorities that there was a significant risk of further incidents of crime and anti-social behavior if the application was granted. Further, it was clear from the council's own statement of licensing policy that premises in residential areas are considered unsuitable for nightclub use and the longer opening hours sought. However, the sub-committee also acknowledged that the premises has been operating without problems since the review and noted that the applicant's clientele, who are largely from the African or Hispanic community, tend to eat later in the evening. The sub-committee therefore decided that it would be appropriate to grant the application in part, by permitting slightly longer hours for licensable activities on Friday and Saturday, and adding 30 minutes drinking-up time all week.

The sub-committee noted with approval the applicant's willingness actively to promote the

use of public transport to and from the premises, to retain the current use of paper straws and to eliminate the use of single-use plastics.

In reaching its decision, the sub-committee had regard both to the revised guidance and to its own statement of licensing policy, and considered that its decision was appropriate and proportionate in order to promote the licensing objectives, in particular the prevention of crime and disorder and the prevention of public nuisance.

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 desires to contend:

- 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 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.

6. LICENSING ACT 2003: CLUB 701, BASEMENT AND GROUND FLOORS, 516 OLD KENT ROAD, LONDON SE1 5BA

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

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

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

The legal representative for the premises and the premises licence holder addressed the sub-committee. Members had questions for the legal representative and the premises licence holder.

All parties were given five minutes for summing up.

The meeting adjourned at 3.28pm for the sub-committee to consider its decision.

The meeting reconvened at 4.10pm and the chair advised all parties of the

decision.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under section 53A of the Licensing Act 2003 by the Metropolitan Police Service for the review of the premises licence in respect of Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA and having had regard to all relevant representations decided to suspend the licence for a period of three months, to remove Alfred Manseray as the designated premises supervisor and to modify the conditions of the licence as follows:

1. That the premises will be closed on Wednesdays.
2. That the measures set out in the licensing compliance plan attached to the premises licence as annex 5 shall be implemented in full prior to the reopening of the premises.
3. That there shall be no shisha smoking equipment on the premises at any time.
4. That all security staff at the premises shall be supplied by an SIA approved contractor.
5. That condition 288 of the licence shall be amended by the addition of the following: "The premises shall not be open at any time when the CCTV is not operating correctly."
6. That condition 342 of the license shall be reworded as follows:

"That an ID scanning system of a specification to the reasonable satisfaction of the Police shall be installed and maintained at the premises. The system should be capable of sharing information about banned customers with other venues, identify the hologram on ID, read both passports and ID cards and be able to identify fake or forged ID documents to a reasonable standard. **The system must be operating correctly at all times when the premises are open** and will be used to record the details of all persons entering the premises including staff, members of the public, performers and their assistants. Entry to the premises will not be permitted without the production of the relevant ID document and / or if the person's details are already stored on the system and they are identified using a biometric identification system."

7. That Eric Doe shall play no part in the day-to-day management or operation of the premises.

Reasons

The licensing sub-committee heard from the representative of the Metropolitan Police Service, the applicant for the review, who referred to his previous representations (considered at the interim steps hearing on 7th November 2019) and to his further witness statement dated 22nd November 2019, in which he exhibits CCTV stills from the night of the incident showing the licence holder Eric Doe behind the bar in the outside shisha area where the assault occurred. In his view, this undermined Mr Doe's assertion that the incident had been the fault of others, in particular the designated premises supervisor, who

had let him down. Mr Doe had been in that area of the premises himself that night, yet had allowed multiple breaches of licence conditions to occur. It was clarified that the CCTV appeared to be 1 hour behind actual time, so that the incident had occurred after 3.00 a.m. by which time the premises should have been closed. In the view of the police, Mr Doe had shown a disregard for the licensing objectives and they had no confidence that he could manage the premises safely in future. The licence should therefore be revoked. If the sub-committee did not agree with that, the licence should be suspended for 3 months, the designated premises supervisor changed and an SIA approved contract team appointed.

The sub-committee heard from the representative of the licensing authority, who referred to written representations submitted on her behalf. These traced the chronology of previous interventions by licensing officers attempting to secure compliance at the premises. It was clear that despite three separate licensing induction visits breaches of licence conditions had continued to occur, eventually leading to police cautions being issued for licensing offences. She urged the sub-committee to revoke the licence or, at the least, suspend the licence for 3 months while all the remedial measures proposed by the licence holder were put in place.

The representative of the licence holder entirely accepted that a serious incident had occurred. However, the sub-committee had to distinguish between a history of long-running minor non-compliance at the premises and this serious incident of violence, which was a one-off and could not in itself justify revocation of the licence, particularly where – as here – it was possible for the premises to be run in future in a compliant way. The proposal was for Mr Doe to play no further part in managing the premises. A new designated premises supervisor had been identified. A comprehensive licensing compliance plan had been devised and would be implemented. The premises could cease trading on a Wednesday, as this had attracted an unfamiliar crowd. There would be no shisha smoking henceforth. The premises would be closed if either the CCTV or ID scanning system were not working. A 6 week suspension was volunteered, which would allow time for the new regime to bed in.

The sub-committee took account of the fact that a serious assault had taken place on the premises which had been caused or contributed to by multiple breaches of premises licence conditions. The premises should have been closed before the incident took place, the ID scanner was not working, no drinks or glassware should have been in the shisha area and no patrons should have been allowed to wear hats or hoods.

Revocation was considered, but on balance the sub-committee took the view that a 3 month suspension of the licence, the removal of the designated premises supervisor and the additional conditions set out above would be sufficient in this case to promote the licensing objectives, in particular the prevention of crime and disorder. The sub-committee considered that other measures short of suspension were insufficient given the seriousness of the incident, the multiple breaches of licence conditions and the previous operating history of the premises.

The sub-committee noted with approval the applicant's willingness to eliminate single-use plastics in glasses and straws.

In reaching its decision, the sub-committee had regard both to the revised guidance and to its own statement of licensing policy, and considered that its decision was appropriate and proportionate in order to promote the licensing objectives, in particular the prevention of crime and disorder.

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.

Review of interim steps pending appeal

At the conclusion of the review hearing the licensing sub-committee reviewed the interim steps to determine which interim steps were appropriate for the promotion of the licensing objectives, pursuant to section 53D of the Licensing Act 2003. The sub-committee concluded that these interim steps were appropriate:

- To suspend the premises licence.

The interim steps are open to appeal by:

- a) The chief officer of police for the police area in which the premises is situated; or
- b) The holder of the premises licence

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.

Meeting ended at 4.16 pm

CHAIR:

DATED:

[CABINET ONLY]

DEADLINE FOR NOTIFICATION OF CALL-IN UNDER SECTION 17 OF THE OVERVIEW AND SCRUTINY PROCEDURE RULES IS MIDNIGHT, [DATE].

THE ABOVE DECISIONS WILL NOT BE IMPLEMENTABLE UNTIL AFTER THAT DATE. SHOULD A DECISION OF THE CABINET BE CALLED-IN FOR SCRUTINY, THEN THE RELEVANT DECISION WILL BE HELD IN ABEYANCE PENDING THE OUTCOME OF SCRUTINY CONSIDERATION.