

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 5 March 2020 at 10.00 am at Room G06 - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Dora Dixon-Fyle MBE
Councillor Eliza Mann

OFFICER SUPPORT: Debra Allday, legal officer
Wesley McArthur, licensing officer
Andrew Heron, licensing officer
David Franklin, licensing responsible authority officer
Ray Moore, trading standards officer
David Williams, planning enforcement officer
Andrew Weir, constitutional officer

1. APOLOGIES

There were none.

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

The chair accepted the following item as late and urgent:

Licensing Act 2003: K-CHE VIP Latin Club, First Floor, 512-516 Old Kent Road, London SE1 5BA

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: KY DELITE RESTAURANT, 66 EAST STREET, LONDON SE17 2DQ

The licensing officer presented their report. The licensing officer advised that they had received apologies from the planning enforcement officer who had made a representation in relation to this application. Members had questions for the licensing officer.

The applicants addressed the sub-committee. They also called a witness. Members had questions for the applicants and their witness.

The meeting adjourned at 10.43am in order for the licensing officer to request that a planning enforcement officer attend the sub-committee to give their advice.

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

The Metropolitan Police representative addressed the sub-committee. Members had no questions for the police.

The trading standards officer addressed the sub-committee. Members had no questions for the trading standards officer.

The licensing officer representing the council as a responsible authority addressed the sub-committee. Members had no questions for the licensing officer.

All parties were given five minutes for summing up.

The meeting adjourned at 12.21pm for the sub-committee to consider its decision.

The meeting reconvened at 12.30pm and the chair advised all parties of the decision.

RESOLVED:

That the application made by Mr Osagie Omoruyi and Miss Shelia Omoruyi for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as KY Delite Restaurant , 66 East Street, London SE17 2DQ be refused.

Reasons

The licensing sub-committee heard from the applicants who advised they proposed the premises being an eatery that would cater for customers until 03:00 hours as a lot of prefer to eat after shift work in the very early hours of the day. The premises would primarily be food led and that there was little chance of people getting drunk as they would be eating "food and snacks". In discussion, the applicants said that they would be amenable to closing the premises at 02:00 hours. However, it would not be feasible to close the premises any earlier than this time.

The applicants called an officer from Southwark's Property Division (Portfolio Management Team) who attended in his personal capacity and who supported the application and claimed that East Street was effectively a 24 hours a day location as there is a loading and unloading for the six day market and stores constantly during the small hours. They advised that the applicant's proposed restaurant would provide fresh

investment to East Street and that it would also add sustainability to the area. They further advised that the restaurant would not operate without full planning permission and a nuisance clause in the lease relating to noise, litter and security issues.

The licensing sub-committee raised concerns that the officer appeared to be saying things which were contrary to the representation submitted by planning as a responsible authority. The representative from planning informed the sub-committee that the premises had previously operated as a grocers shop. The officer also advised that the noise from the flue and extraction system would disturb residents above the premises. The application sought to operate until 03:00 hours when residents would be trying to sleep. The applicant had failed to provide any detail of sound insulation or any controls that would protect residents in the flats above from disturbance from the proposed use.

The officer from planning confirmed that the standard closing for restaurants was 23:00 hours and a premises operating until 03:00 hours could not be classed as a restaurant. More specifically enforcement of such hybrid premises are difficult to enforce against in cases where the premises were to stop serving food as 23:00 hours (as per potential planning hours) and continue operating between 23:00 to 03:00 hours serving alcohol and playing recorded music (as a nightclub). In restaurants, music should be complimentary (i.e. background music early).

The licensing sub-committee then heard from the Metropolitan Police Service representative who objected to the application under the prevention of crime and disorder licensing objective. The officer from the police advised the committee that the premises were situated within a residential area as defined by Southwark's statement of licensing policy which recommended the closing times for restaurants as being 23:00 hours and the recommended hours for public houses, wine bars and other drinking establishments also being 23:00 hours.

The hours sought by the applicants were considerably longer than those recommended for in the policy. In addition, the applicants also sought regulated entertainment by way of recorded music and late night refreshment until 03:00 hours. However, there was insufficient detail in the operating schedule with regard to the steps intended to promote the licensing objectives. The police concluded, regardless of any control measures, the application was unsuitable for within a residential area.

The licensing sub-committee then heard from the officer for trading standards who objected to the application under the prevention of crime and disorder and protection of children from harm licensing objectives. The officer also referred to the proposed hours exceeding those as specified in the statement of licensing policy, but also the applicants' failure to put systems in place that would prevent minors being served alcohol.

The licensing sub-committee then heard from the officer representing the licensing authority who opposed the application based on the prevention of crime and disorder, prevention of public nuisance and the protection of children from harm licensing objectives. Again, the officer also had regard to Southwark's statement of licensing policy 2019-2021. Under the statement of licensing policy, the premises fell within a residential area and the appropriate closing times for restaurants, cafes, public houses, wine bars and other drinking establishments in the is 23:00 hours. The premise is surrounded by residential properties and the officer asked the applicant to bring the closing hours in line with the licensing policy.

The licensing sub-committee were concerned that neither of the applicants had properly

researched the application or prepared themselves for the hearing. The operating schedule failed to sufficiently address the licensing objectives and when specifically what the objectives were, the applicant cited: "compliance with trading standards, food hygiene, comply with the hours, security, nuisance and waste disposal". The applicants have never run licensed premises nor did they understand the relationship of being a restaurant and the consumption of alcohol. Members are aware of a number of problem premises that hold such hybrid restaurant/nightclub premises licences which require considerable input and resources from both the licensing team and the Metropolitan Police Service. Such premises are challenging to operate, even for the more experienced. The applicants in this case have demonstrated that such inexperience that this licensing sub-committee have no confidence in granting a premises licence in this instance.

Appeal rights

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a) The licence ought not to be been granted; or
- b) That on granting the licence, the licensing authority ought to have imposed different or additional conditions to 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: K-CHE VIP LATIN CLUB, FIRST FLOOR, 512-516 OLD KENT ROAD, LONDON SE1 5BA

The sub-committee adjourned for lunch at 12.32pm and reconvened at 1.15pm.

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 representatives from the premises addressed the sub-committee. Members had questions for the representatives from the premises.

All parties were given five minutes for summing up.

The meeting adjourned at 2.45pm for the sub-committee to consider its decision.

The meeting reconvened at 2.53pm and the chair advised all parties of the decision.

RESOLVED:

That the premises licence to K-CHE VIP Latin Club, First Floor, 523-516 Old Kent Road, London SE1 5BA be suspended with immediate effect as interim steps to promote the licensing objectives pending the determination of the review application at the full hearing, to be held on 26 March 2020.

Reasons

This was an application from the Metropolitan Police Service to consider whether or not to impose interim steps in respect of the premises licence to K-CHE VIP Latin Club, First Floor, 523-516 Old Kent Road, SE1 5BA a result of the summary review under section 53A of the Licensing Act 2003 prior to the pending full review which is due to be heard on 26 March 2020.

The licensing sub-committee heard from the representative from the Metropolitan Police Service who advised the members that the expedited review application was submitted following a serious incident that took place on Saturday 29 February 2020 at approximately 03:35 hours when fighting started inside the premises. The premises were required to stop trading as the premises' security operatives (SIA) were unable to gain control of the premises. As a result, the police were called. On arrival, police officers witnessed fighting in the premises' yard area and a police officer was required to deploy their Taser after a customer attacked a police officer.

Members of the licensing sub-committee were disturbed with the level of violence when they viewed video footage from officer's body worn cameras and noted a number of other customers were attempting to attack officers, requiring the officers to call for urgent assistance and use batons and CS gas in an attempt to restore order and defend themselves. CCTV taken within the premises showed a male armed with a brandy bottle attempting to hit people. An officer was assaulted on the dance floor area by a customer who attempted to strangle him while the officer was trying to clear the premises. After being dispersed from the premises, customers congregated outside a nearby McDonald's where further fighting and disturbance, requiring the McDonald's to close.

The police also provided history of violent incidents that were associated with the premises in particular, since December 2018 including: four grievous bodily harm (GBH), four actual bodily harm (ABH), one assault on police, one common assault, one robbery and a crime related incident for a fight inside the premises.

In late 2019 the premises had been subject to a further expedited review, which was finally determined on 2 January 2020. At that time, the premises licence was modified. In the notice of decision (dated 2 January 2020) it states:

“Overall, the sub-committee decided that although there remain concerns about the premises, in particular the risk of violence associated with heavy drinking the licence holder should be given a chance to demonstrate that the premises can be responsibly managed and the risks reduced whilst maintaining the current practice of serving half-bottles of spirits and bottles of wine or beer” (thus giving the licence holder an opportunity to work with the responsible authorities to put matters right before any review takes place (paragraph 11:10 of the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)).

The licensing sub-committee then heard from the management of the premises who did not deny the incident and accepted that they lost control of that evening. The event that evening was a new externally promoted event. The primary reason why the incident had occurred was due to issue they were experiencing with their contracted SIA officer company; they did however have 100% confidence with the head of the security the company had provided. The management for the premises had lost confidence with the company, for failing to send the correct number of SIA (and failing to send replacement SIA) and sending those unfamiliar with the premises (issues and procedures).

Despite the additional conditions being placed on the premises licence as a result of the last review, the premises does not appear to be restricting the crime and disorder associated with the premises and continued violent incidents inside and outside of the premises put both members of the public and police officers at risk.

This licensing sub-committee agree that to modify the licence with further conditions as an interim steps is not appropriate considering the seriousness of the disorder witnessed at the premises. In the circumstances, the licensing sub-committee is satisfied that interim steps are necessary and in promoting the licensing objectives it is appropriate and proportionate to suspend the premises licence as an interim steps.

Appeal rights

There is no right of appeal to a Magistrates' Court against the licensing authority's decision at this stage.

The premises licence holder may make representation against any interim steps imposed and a hearing to consider the representation will be held within 48 hours of receipt of the representation.

The holder of the premises licence may only make further representations if there has been a material change in circumstances since the authority made its determination

Any representation should be in writing and cannot be received outside of normal office hours.

The meeting ended at 2.58pm.

CHAIR:

DATED: