

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Friday 2 October 2020 at 10.00 am at Online/Virtual: please contact andrew.weir@southwark.gov.uk for a link to the meeting and the instructions for joining the online meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Adele Morris
Councillor Kath Whittam

OFFICER SUPPORT: Debra Allday, legal officer
Charlotte Precious, legal officer (observing)
Toyin Calfos, legal officer (observing)
Wesley McArthur, licensing officer
P.C. Ian Clements Metropolitan Police Service
P.C. Peter Holley, Metropolitan Police Service
Andrew Wei, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting.

The chair explained to the participants and observers how the virtual meeting would run. Everyone then introduced themselves.

There were no apologies for absence.

2. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

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: Afrikiko, 871 Old Kent Road, London SE15 1NX (expedited review).

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 questions for the licensing officer.

The legal representative for the Metropolitan Police Service addressed the sub-committee. Members had questions for the legal representative for the police and the Metropolitan Police Service officers, in attendance.

The premises licence holder addressed the sub-committee. They advised that they were not going to give a statement to the sub-committee, as per their solicitor's instruction.

The premises licence holder advised that she had some questions for the police. The chair advised that the premises licence holder could have five minutes for questions.

At 11.20am the premises licence holder left the meeting due to technical issues. The meeting adjourned from 11.20am until 11.25am, at which time the premises licence holder returned.

Members had questions for the premises licence holder.

Both parties were given up to five minutes for summing up.

The meeting adjourned at 11.52am for the sub-committee to consider its decision.

The meeting reconvened at 12.26pm and the chair advised both parties of the decision.

RESOLVED:

That as an interim step to promote the licensing objectives, pending the

determination of the review application in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London, SE15 1NX at the full hearing, to be held on 27 October 2020, the licence be suspended.

Reasons

The representative for the police outlined the legal basis of the application to the licensing sub-committee. The police, in considering whether serious crime and/or serious disorder had taken place at the premises, took into account that there had been a murder in 2017. Which demonstrated serious crime. Since the outbreak of the COVID-19 pandemic in March 2020, it has been public knowledge that premises must not operate as nightclubs. Knowingly and deliberately putting the public at serious risk of contracting a potentially fatal respiratory illness COVID-19, at a time of a pandemic in the UK, can amount to the criminal offence of causing a public nuisance, which carries a maximum sentence of life imprisonment (R v Rimmington & Goldstein [2005] 3 W.L.R. 982). A number of examples of this were provided by the police:

- a. On 31 July 2020, at approximately 23:45 hours, the police visited the premises due to information that the premises had loud music coming from the basement area of the venue, which is known to operate as a nightclub. In the basement, approximately 20 persons were sitting together. The music was being played so loudly that officers had to shout to make themselves heard. A DJ was standing behind the DJ booth, adjacent to the dancefloor area. Although no dancing was witnessed, the facilities for dancing were obvious. When the police spoke with the manager at the time they were advised that the premises had not completed a COVID-19 risk assessment.
- b. On 15 August 2020, at approximately 23:00 hours, the police attended the premises and witnessed the premises operating as a nightclub. Patrons were standing amongst the tables, dancing to amplified music. A DJ was behind the decks playing music. Officers also observed breaches of Section 57(4) - failure to secure a premises licence or a certified copy at the premises or to prominently display a summary of the licence, and Section 57(7) - failure to produce a premises licence or a certified copy the Licensing Act 2003, in addition to conditions 288 and 289 of the premises licence in respect of CCTV.
- c. On 19 August 2020, at approximately 15:38 hours, PC Holley and other officers attended the venue to issue the prohibition notice for offences from the 15 September 2020 visit. Again, breaches of Section 57(4) and Section 57(7) were observed, in addition to breaches of condition 100 (No DPS or holder of a personal licence holder present at the time of visit when alcohol is for sale or is exposed for sale). The premises were subsequently issued with a closure notice.
- d. On 29 August 2020, at approximately 01:00 hours, the police attended the venue to conduct a Licensing Act 2003 inspection and to confirm compliance

with the closure notice issued on 19 August 2020. Police attempted to gain access to the basement area but were physically obstructed by staff. The door to the basement was being braced from the other side. A person was heard by police calling "Krissy shut the door!". Entry was forced and officers found the premise operating as a nightclub. An amplified voice was heard, stating to the patrons "Sit down, sit in your seats!" and "no dancing...just look at each other."

- e. On 4 September 2020 officers from Southwark council and the police attended the premises. The basement was not in use due to flood damage. A council officer seized some disco lighting equipment and based on CCTV evidence issued a prohibition notice. The owner, who identified himself as Daniel Dormer was unable to operate the CCTV in breach of condition 289 of the premises licence.
- f. On 27 September 2020 police attended the premises to obtain CCTV. The USB sticks provided by Mr Dormer were returned to the police blank, in breach if condition 289 of the premises licence.
- g. On 27 September 2020, at approximately 22:49 hours, police again attended the venue to inspect the premises and to check compliance with the Health Protection (Coronavirus, Restrictions)(No.2) (England)(Amendment) (No.5) Regulations 2020 that as a restricted business, they must not carry on or provide service between 22:00 and 05:00 hours. Police witnessed numerous cars parked in the venue's parking spaces and numerous people gathered outside smoking and vaping, dressed in evening attire.

PC O'Mahoney witnessed up to 30 patrons inside the premises sitting at tables and drinking after the time the venue should have been closed. Patrons were witnessed to move hurriedly out of sight. The premises took approximately three minutes to open the door and allow police entry. Entry to the basement was refused, doors to the basement area were locked, being held shut from the other side. CCTV camera feeds covering the downstairs area were cut and showed no footage. Mr Dormer claimed the CCTV must have been broken. Both Mr Dormer and other staff refused to open the doors to the basement, claiming the key was with the cleaner. Upon more police attending, the front basement door opened and a large number of patrons wearing evening wear holding filled drinks filed out of the venue.

Prior to this the power was cut to the basement and its adjoining stairwell. Requests made to Mr Dormer to re-engage the power were refused which created a dangerous environment for both police and patrons. Several persons claimed to be cleaning staff, however they were in full evening attire, one with a six month old child. On the tables were discarded paper cups and bottles filled with alcohol and used glassware.

The licensee, Ms Zeona Naa Densuah, addressed the sub-committee. She advised the licensing sub-committee that, on the advice of her solicitor, at this

stage she did not want to give any statement to the members, having only received the application the day before and had not had the opportunity to fully digest the content of it.

She did however, respond to the members' questions, saying she was fully aware of the coronavirus regulations and knew that her premises could not operate as a nightclub. She also understood the restrictions on serving alcohol without food. Concerning the police attendance on 27 September, she advised that a family meeting had taken place at the premises as her brother had been stabbed in the chest and the family had met to discuss the event. It was for this reason she had her baby with her in the basement. Finally, she advised that CCTV had specifically been handed over to the police on 16 August 2020 and on 28 August 2020 and in the case of the latter, it had been handed over to PC Lynch.

The licensing sub-committee was sympathetic to the premises licence holder of Afrikiko, insofar as she had only just received the application and bundle of papers in respect of this expedited review the previous day and was without legal representation. However, it was quite apparent from the evidence provided by the police that she had opened the premises as a nightclub on a number of occasions in deliberate and flagrant breaches of regulations and guidelines and endangered others by potentially spreading the virus.

It also appears that the premises also failed to positively engage with the Metropolitan Police officers. On the oral representations from the police, management and staff at Afrikiko have been physically and verbally obstructive to police officers by intentionally or recklessly creating dangerous conditions during the course of their investigations. The premises has shown complete disregard to the above legislation in addition to the Licensing Act and Health and Safety at Work Act and its regulations. In the circumstances, the licensing sub-committee felt that it had no other option but to suspend the premises licence.

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 representations 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 12.30pm.

CHAIR:

DATED: