

Item No. 5.	Classification: Open	Date: 19 January 2024	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003: Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA	
Ward(s) or groups affected:		Old Kent Road	
From:		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATIONS

1. That the licensing sub-committee considers whether it is appropriate to take interim steps pending the determination of an application for a summary review, made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area, of the premises licences issued in respect of the premises known as Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA.
2. **Notes:**
 - a) Under section 53A(2) of the licensing act 2003 the licensing authority must consider interim steps within 48-hours following the submission of an application under Section 53A of the licensing act 2003.
 - b) A copy of the full application and certificate is attached as Appendix B.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.

6. In carrying out its licensing functions, a licensing authority must also have regard to
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

KEY ISSUES FOR CONSIDERATION

The premises licence

8. The premises licence issued in respect of the premises known as Club 701, Basement and Ground Floors, 516 Old Kent Road, London, SE1 5BA allows licensable activities as follows:
 - Plays, films, live music, recorded music, performances of dance, entertainment similar to live or recorded music, the sale of alcohol to be consumed on the premises:
 - Wednesday: 22:00 to 02:00
 - Thursday to Saturday: 22:00 to 04:00
 - Sunday: 22:00 to 01:00
 - Late night refreshment (indoors):
 - Wednesday: 23:00 to 02:00
 - Thursday to Saturday: 23:00 to 04:00
 - Sunday: 23:00 to 01:00
 - Opening hours:
 - Wednesday: 22:00 – 03:00
 - Thursday to Saturday: 22:00 – 05:00
 - Sunday: 22:00 – 02:00.
9. A copy of the current premises licence is attached as Appendix A.

Designated premises supervisor

10. The designated premises supervisor (DPS) of the premises is Mr George Omozejele

The review application and certificate

11. On 17 January 2024, the Metropolitan Police Service applied to this licensing authority for a summary review of the premises licence issued in respect of the premises known as Club 701, Basement and Ground Floors, 516 Old Kent Road, London SE1 5BA.
12. On 17 January 2024, a Superintendent for the Metropolitan Police Service certified that in their opinion the premises are associated with serious crime, serious disorder or both.
13. The application is concerned with allegations of a serious incident that took place at the premises on 2 January 2024 between 02:15 and 02:45 when the premises should have been closed.
14. Police state that they will provide details of the report Ref: 3001447/24 if requested by the licensing sub-committee. The investigation into this offence is ongoing and at the time of submitting this report no arrests have been made.
15. At the time of the alleged offence police say that the premise was open to the public and here is no provision on licence 870760 that permits this premises to be open and providing licensable activities on a Tuesday. There was no other authorisation in place such a temporary event notice or non-standard timings.
16. The police add that in November 2019 there was a serious assault inside the premises. At the time of this offence the premises was again operating without the correct authorisation and was in breach of the premises licence conditions. As a result of a summary review the premises licence was suspended. Following the full review hearing the premises licence was suspended for a period of three months and modifications made including a change of DPS and additional control measures.
17. In December 2022 the premises was again found to be operating without any authorisation provided by way of a premises licence or temporary event notice. A notification of offences was issued by the Police.
18. On the 3 January 2024 the police received credible information that an event being held at Club 701 would be attended 'by individuals associated with gangs and would commit serious violence. After a number of conversations with the premises licence holder the event was cancelled on voluntary basis although a closure notice was also issued at the time.
19. The police contend that the incident, which has triggered this review, took place at a time when the premises were not being operated in accordance with an authorisation permitted by the Licensing Act 2003. They state that if the premises had been closed in accordance with the conditions of the premises licence issued in respect of the premises, the incident could have been avoided.
20. The police state that they have no confidence in the management of the premises and recommend that the following interim step is taken prior to the full review hearing in respect of the premises:

- That the licence is suspended until such time that the full licensing review is determined.
21. The licensing sub-committee is not restricted to just considering this step.
 22. Copies of the review application and the review certificate are attached to this report as Appendix B.

The review procedure

23. The current hearing is for the purpose of considering if interim steps are needed as a result of the summary review submitted by the police, prior to the pending full review hearing that will be held online on 8 February 2024.
24. The licensing sub-committee is not obliged to hear evidence from other parties at this stage of the procedure. However the premises licence holder and DPS have been invited to attend the hearing.
25. The review is currently being consulted on and a public notice is advertised at the premises for 10 days. Responsible authorities and any other persons may make representations that will then be considered at the full hearing of the licensing sub-committee at Southwark Council's Offices, 160 Tooley Street, London SE1 2QH.
26. Any interim steps made by the licensing sub-committee at this hearing will cease to have effect once the review has been determined.

Operating history

27. A premises licence was issued in respect of the premises to Erico Entertainment Limited on 19 February 2016. The licence number was 851424. For reference, a copy of the licence is attached to this report at Appendix C.
28. On 8 July 2016 a licensing induction was undertaken with the DPS of the premises. At the induction, the terms and conditions of the licence were explained, as were the role and remit of the licensing unit. A copy of an induction checklist, signed by the DPS, is attached to the report at Appendix D.
29. On 13 August 2016 the Metropolitan Police Service issued a closure notice under Section 19 of the Criminal Justice and Police Act 2001. This related to alleged breaches of licence conditions 297, 341, 342 and 297. A copy of the closure notice is attached at Appendix D.
30. On 10 September 2016 the Metropolitan Police Service issued a closure notice under Section 19 of the Criminal Justice and Police Act 2001 regarding alleged breaches of licence conditions 289, 341 and 342. A copy of the closure notice is attached at Appendix D.
31. On 23 October 2016 the Metropolitan Police Service issued a closure notice under Section 19 of the Criminal Justice and Police Act 2001 regarding an alleged breach of licence condition 359. A copy of the closure notice is attached at Appendix D.

32. On 26 November 2016 a second licensing induction was undertaken with the DPS of the premises. At the induction the terms and conditions of the licence were explained, as were the role and remit of the licensing unit. A copy of an induction checklist signed by the DPS is attached in Appendix D.
33. On 2 September 2017 a licensing inspection of the premises was undertaken. The premises were found to be being operated in breach of conditions 288, 307, 344, 345, 349, 353, 357, 379, 392, 4AI & 793 of the premises licence issued in respect of the premises.
34. On 14 October 2017 an application to vary the premises licence was submitted.
35. On 11 November 2017 a licensing re-inspection of the premises was undertaken. The premises were operating in breach of conditions 289, 307, 341, 342, 364, 377 and 793.
36. On 19 November 2017 the Metropolitan Police Service visited the premises. The premises were operating in breach of conditions 289 and 373 of the premises licence issued in respect of the premises.
37. On 11 January 2018 subsequent to the application to vary the premises licence submitted on 14 October 2017, and following a licensing sub-committee hearing, an amended premises licence was issued to Erico Entertainment Limited. For reference a copy of this licence number 860699 is attached to this report at Appendix C.
38. On 6 July 2018 the DPS of the premises accepted a simple caution regarding offences under the Licensing Act 2003 that occurred at the premises on 2 September 2017 and 11 and 19 November 2017. A copy of the caution is attached at Appendix D.
39. On 28 August 2018 the Metropolitan Police Service issued a Notification of Alleged Offence under the Licensing Act 2003 relating to the unauthorised operation of the premises on 28 August 2018. A copy of the notification is attached at Appendix D.
40. On 11 June 2019 the DPS of the premises accepted a simple caution regarding offences under the Licensing Act 2003 that occurred at the premises on 28 August 2018. A copy of the caution is attached at Appendix D.
41. On 11 June 2019 a third licensing induction was undertaken with the DPS of the premises. At the induction the terms and conditions of the licence were explained, as were the role and remit of the licensing unit. A copy of an induction checklist signed by the DPS is attached at Appendix D.
42. On 5 November 2019 an application for a summary review was made under Section 53A of the Licensing Act 2003 by a Superintendent for the Metropolitan Police Service. A copy of the application is attached to the report at Appendix E.
43. The licensing sub-committee hearing to consider interim measures was held on 7 November 2019. A copy of the notice of decision for interim measures is attached at Appendix E.

44. The final licensing sub-committee hearing, to consider the review of the premises, was held on 28 November 2019. A copy of the notice of decision from that hearing is attached at Appendix E.
45. Details of any complaints received since the existing licence (870760) was issued are attached at Appendix F
46. Details of night time visits to the premises by council licensing officers since the existing licence was issued are provided at Appendix G.
47. Details of temporary event notices (TENs) submitted in respect of the premises from the date of the existing licence are attached at Appendix H.

The local area

48. A map of the local area is attached at Appendix I.

Southwark Council statement of licensing policy

49. Council Assembly approved Southwark's statement of licensing Policy 2021 - 2026 on 25 November 2020. The policy came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
 - Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
 - Section 5 - Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
 - Section 6 - Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.
 - Section 7 - Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
 - Section 8 - The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
 - Section 9 - Public safety. This provides general guidance on the promotion of the second licensing objective.
 - Section 10 - The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
 - Section 11 - The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.

50. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.
51. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links for these are below:
- Southwark Policy:
<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>
 - Section 182 Guidance:
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

Community, equalities (including socio-economic) and health impacts

Community impact statement

52. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

Equalities (including socio-economic) impact statement

53. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions.
54. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people who have protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.
55. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing Policy 2021 – 2026 at:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

56. The equalities impact assessment is available at:

<https://modern.gov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf>

Health impact statement

57. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

Resource implications

58. There is no fee associated with this type of application.

Consultation

59. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

60. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003.

61. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

62. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where.

- The application is properly made in accordance with Section 53A of the Act.
- The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.

63. The four licensing objectives are:

- The prevention of crime and disorder
- The protection of public safety
- The prevention of nuisance
- The protection of children from harm.

64. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Modify the conditions of the licence by altering, omitting or adding any condition
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the premises licence.

65. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
66. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
67. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
68. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

69. Where the authority takes interim steps an application for review it must notify the determination and reasons why for making it to:
 - The holder of the licence
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

70. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that
 - The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations.
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing.
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant:
 - To the particular application before the committee
 - To the licensing objectives.
 - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest

in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.

- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

71. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

Council's multiple roles and the role of the licensing sub-committee

72. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

73. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.

74. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.

75. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

76. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.

77. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible

authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.

78. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
79. There is no right of appeal to a Magistrates' Court against the licensing authority's decision regarding the setting of interim steps at this stage.

Guidance

80. Members are required to have regard to the Home Office revised guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

81. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

REASONS FOR LATENESS

82. When an application for an expedited summary review is received from the police under section 53a of the Licensing Act 2003 the council's licensing authority has a statutory duty hold a hearing within 48 hours from receipt of the application to consider interim steps that may be placed on the premises licence until such time as the application can be fully determined.

REASONS FOR URGENCY

83. The council has a statutory duty under section 53a to hold an interim hearing within 48 hours of receipt of a summary review.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003	Southwark Licensing, C/O	Mrs Kirty Read Tel: 020 7525 5748
Home Office Revised Guidance to the Act	Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH	
Secondary Regulations		
Southwark statement of licensing policy		
Case file		

APPENDICES

Name	Title
Appendix A	Copy of current premises licence (licence number 870760)
Appendix B	Copies of the review application and review certificate
Appendix C	Copy of the previous premises licence issued in respect of the premises (licence numbers 851424 & 860699)
Appendix D	Copies of documents relating to the operating history of the premises
Appendix E	Copies of previous summary review and notice of decisions
Appendix F	Complaints log
Appendix G	Night time economy team visits log
Appendix H	Details of temporary event notices submitted in respect of the premises
Appendix I	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
Report Author	Jayne Tear, Principal Licensing Officer	
Version	Final	
Dated	18 January 2024	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	18 January 2024	