

Item No. 5.	Classification: Open	Date: 6 September 2017	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX	
Ward(s) or groups affected:		Livesey	
From:		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 53C of the Licensing Act 2003 by the chief of police for the Metropolitan Police area for the review of the premises licence in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX.
2. **Notes:**
 - a) The grounds for the review are stated in paragraphs 13 to 16 of this report. A copy of review application is attached as Appendix B.
 - b) The application for review of the premises licence is supported by a representation submitted by an 'other person'. A copy of the representation is attached as Appendix C. Details of the representation are provided in paragraph 20 of this report.
 - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix A. A map of the local area is attached as Appendix G.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

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 Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX allows licensable activities as follows

- Live music, recorded music, performances of dance, entertainment similar to live or recorded music, the sale of alcohol to be consumed on and off the premises:

Monday to Thursday	11:00 to 01:00 the following day
Friday to Sunday	11:00 to 04:00 the following day

- Late night refreshment (indoors):

Monday to Thursday	23:00 to 01:00 the following day
Friday to Sunday	23:00 to 04:00 the following day

- Opening hours:

Monday to Thursday	11:00 to 01:30 the following day
Friday to Sunday	11:00 to 04:30 the following day

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 Emmanuel Koku Dodzi Kpakpah. Mr Kpakpah has been the DPS of the premises since 31 August 2011.

The review application and certificate

11. On 9 August 2017 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 Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX.

12. On 9 August 2017 a Superintendent for the Metropolitan Police Service certified that in her opinion the premises are associated with serious crime, serious disorder or both.
13. The application is concerned with a serious incident that took place on Tuesday 8 August 2017 at approximately 02:00 hours. An emergency call was made to the police at 02:02 hours reporting that a large fight including the use of a knife, and involving approximately 34 persons (both male and female), was taking place outside of the premises. The police attended the premises at 02:08 hours and established that a male was unresponsive on the floor. When the police arrived a large number of people were still in the vicinity of the premises.
14. Police officers viewed CCTV of the incident. The CCTV showed a large group of people outside the premises at 02:00 hours. The closing time of the premises on Tuesday 8 August 2017 was 01:30 hours. The CCTV showed a fight involving weapons. The victim was punched and stabbed. The victim died as a result of the injuries received.
15. The police contend that they have established that on the night of Tuesday 8 August 2017 the premises were being operated in breach of various of the conditions of the premises licence issued in respect of the premises, namely condition 303 (relating to the completion of a venue hire agreement), condition 336 (relating to the requirement for a personal licence holder to be on premises when alcohol is supplied) and condition 347 (requiring that only persons over 21 years old are to be admitted to the basement area).
16. The police further contend that there is a history of non-compliance at the premises with regards to the terms and conditions of the premises licence issued in respect of the premises. Other evidence may become available at the hearing.
17. Copies of the review application, review certificate and a response from the licensee to the review application are attached to this report as Appendix B.
18. Any evidence submitted in addition to this report will be made available at the hearing.

Representations from responsible authorities

19. No representations in respect of the review application were submitted by responsible authorities.

Representations from other persons

20. One representation has been submitted by a local resident. The representation alleges that there are often fights outside of the premises, that noise nuisance arises as a consequence of the premises' operation, that large groups of people loiter in the vicinity of the premises and that a person was the victim of a stabbing in the vicinity of the premises in November 2015. A copy of the representation is attached as Appendix C.

Operating history

21. A premises licence was issued in respect of the premises on 4 October 2005.
22. Various transfers and / or amendments to the licence have taken place. On 31 August 2011 a further application was submitted to transfer the licence to Afrikiko Limited and an application was also submitted to specify Emmanuel Koku Dodzi

Kpakpah as the DPS of the premises. The premises name was also changed on this date to Afrikiko Bar, Restaurant and Nightclub.

23. On 29 June 2012 a licensing inspection of the premises was undertaken. The premises were found to be being operated in breach of licence conditions 289, 308 and 336 of the premises licence issued in respect of the premises. A warning letter was sent to the premises in regards to the breached conditions. On 8 December 2012 a re-visit of the premises was undertaken and the premises were found to be being operated compliantly.
24. On 21 March 2014 a licensing inspection of the premises was undertaken. The premises were found to be being operated in breach of conditions 291 and 303 of the premises licence issued in respect of the premises. A warning letter was sent to the premises in regards to the breached conditions.
25. On 4 October 2015 a licensing inspection of the premises was undertaken. The premises were found to be being operated compliantly.
26. On 27 February 2016 the Metropolitan Police Service visited the premises. As a result of the visit they served a closure notice in regards to the premises under s.19 of the Criminal and Justice Police Act 2001 in respect of breaches of various conditions of the premises licence issued in respect of the premises.
27. On 30 July 2016 the Metropolitan Police Service visited the premises. As a result of the visit they served a closure notice in regards to the premises under s.19 of the Criminal and Justice Police Act 2001 in respect of the breach of condition 344 of the premises licence issued in respect of the premises.
28. On 13 August 2016 the Metropolitan Police Service visited the premises. As a result of the visit they served a closure notice in regards to the premises under s.19 of the Criminal and Justice Police Act 2001 in respect of the breach of condition 291 of the premises licence issued in respect of the premises.
29. On 14 August 2016 the Metropolitan Police Service visited the premises. As a result of the visit they served a closure notice in regards to the premises under s.19 of the Criminal and Justice Police Act 2001 in respect of the breach of conditions 302 and 344 of the premises licence issued in respect of the premises.
30. On 13 December 2016 an application, to have immediate effect, was submitted to transfer the licence to the current licensee – Afrikiko Restaurant and Night Club Limited. The DPS remained Emmanuel Koku Dodzi Kpakpah.
31. On 9 August 2017 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 Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London, SE15 1NX.
32. On 9 August 2017 a superintendent for the Metropolitan Police Service certified that in her opinion the premises are associated with serious crime, serious disorder or both.
33. An expedited review hearing was held on 11 August 2017 to decide whether to implement the interim step suggested by the police in their review application of 9 August 2017. The licensing sub-committee decided to implement the interim step suggested by the police and suspended the premises licence until the full review hearing is held on 6 September 2017. A copy of the Notice of Decision pertaining to the expedited review is attached as Appendix D.

34. Details of visits to the premises by council licensing officers working on the night-time are provided in Appendix E.
35. A list of temporary event notices (TENs) submitted in respect of the premises is attached as appendix F

The local area

36. A map of the local area is attached at Appendix G.

Southwark Council statement of licensing policy

37. Council assembly approved Southwark's statement of licensing policy 2016 to 20 on 25 November 2015. The policy came into effect on 1 January 2016. 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.
38. 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.
39. The statement of licensing policy states that the premises fall within a residential area. The statement of licensing policy states the following closing times are recommended as appropriate within this area for the categories of premises indicated:

- Restaurants and Cafes: 23:00 hours daily
- Public Houses, wine bars or other drinking establishments: 23:00 hours daily
- Night Clubs (with sui generis planning classification) are not considered appropriate for this area.

Resource implications

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

Consultation

41. A suitable public notice as required by the Licensing Act 2003 has been properly displayed at the premises for a period of 28 consecutive days.

Community impact statement

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

43. 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.

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

Principles for making the determination

45. 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.

46. 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.

47. 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.

48. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
49. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
50. 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.
51. 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

52. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
 - The holder of the licence
 - The applicant
 - Any person who made relevant representations
 - The chief officer of police for the area (or each police area) in which the premises are situated.

Hearing procedures

53. 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.
54. 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

55. 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.
56. 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.
57. 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.
58. 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.
59. 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.
60. 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.
61. 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.

62. 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

63. 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

64. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of current premises licence
Appendix B	Copies of the review application & certificate and a reply from the licensee
Appendix C	Copy of the representation submitted by an other person
Appendix D	Copy of the Notice of Decision in respect of 11 August 2017
Appendix E	Details of night time economy team visits to the premises
Appendix F	Details of TENs submitted in respect of the premises
Appendix G	Map of local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	21 August 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
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