

Item No. 5.	Classification: Open	Date: 28 November 2019	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:		Old Kent Road	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Afrikiko Bar, Restaurant and Nightclub Limited to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX.
2. Notes:
 - The application seeks to vary the premises licence held under the Licensing Act 2003 in respect of the premises known as: Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London, SE15 1NX under section 34 of the Act. Existing permitted licensable activities are not under consideration at this meeting. The variation application is subject to representations submitted by responsible authorities and / or other persons and is therefore referred to the sub-committee for determination. The premises licence is attached as Appendix A.
 - Paragraphs 10 to 12 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.
 - Paragraphs 14 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached as Appendix C.
 - A map showing the location of the premises is attached as Appendix F.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a new licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, this council wholly administers the licensing responsibility.
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 premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other interested parties within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current premises licence

8. The current premises licence in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX allows the following licensable activities:
- 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: 11:00 – 00:00 (midnight)
 - Friday and Saturday: 11:00 – 01:00
 - Late night refreshment:
 - Sunday to Thursday: 23:00 – 00:00
 - Friday and Saturday: 23:00 – 01:00
 - Opening hours:
 - Sunday to Thursday: 11:00 – 00:00
 - Friday and Saturday: 11:00 – 01:00
 - Mr Phillip Kwasi Asare is the designated premises supervisor (DPS) in respect of the premises.
9. A copy of the existing premises licence is attached as Appendix A.

The variation application

10. On 30 September 2019 Afrikiko Bar, Restaurant and Nightclub Limited applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX.
11. The application is summarised as follows:
 - To amend the terminal hours in respect of all licensable activities and the closing times of the premises to:
 - Monday to Thursday: 00:00
 - Friday to Sunday: 03:00
 - To amend conditions appended to the existing premises licence and to add additional conditions to the premises licence, should the application be granted.
12. The application form provides the applicant's operating schedule. Parts E, F, G, H, I, J, K, L and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should an amended premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be included in the licence.
13. A copy of the application is attached as Appendix B.

Representations from responsible authorities

14. Representations have been submitted by this council's planning enforcement team, the Metropolitan Police Service, and this council's licensing responsible authority.
15. The planning enforcement team's representation has been submitted in respect of the prevention of crime and disorder and the protection of public safety licensing objectives. The representation notes that the premises has been used as a night club in the past, that the premises has not operated as a night club recently and that the premises do not have permission to operate as a night club. The planning service has no objection to the use of the premises as a public house and restaurant. The planning service contends that the building and its location are not suited to the use of the building as a night club. The representation notes the premises' location and orientation. The planning service note that when the premises were previously being operated as a night club an incident occurred in August 2017 that resulted in a man dying. The planning service contends that the premises' layout, location and orientation contribute to a lack of security in the immediate area and that the area is vulnerable to crime. The planning service object to any extension of the premises' operating hours.
16. The Metropolitan Police Service's representation notes that, according to this council's statement of licensing policy, the premises are located in a residential area and that the statement of licensing policy recommends that residential areas are not suitable locations for night clubs. The Metropolitan Police Service states that the application clearly indicates that the licensee intends to operate the premises as a night club. The representation contends that any extension of the premises'

operating hours is likely to have a detrimental effect on local residents. The Metropolitan Police Service states that the premises were subject to a summary review following a serious incident at the premises during which a person died and as a result of the review the licence was suspended for three months, the operating hours of the premises were drastically reduced, and it was instructed that the premises should only be operated as a restaurant. The Metropolitan Police Service contends that, since the reduction in hours and restriction of the use of the venue to that of a restaurant, they have seen a reduction in the violent incidents and crime associated with the premises operation. The Metropolitan Police Service further contend that any return to the premises' previous operation as a nightclub would have a negative impact on the crime and disorder licensing objective and likely lead to an increase in violent incidents. The Metropolitan Police Service object to any extension of the premises' operating hours and for the operation of the premises to move away from that of a restaurant to that of a nightclub.

17. The licensing responsible authority's representation has been submitted in regards to the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The representation notes that, according to this council's statement of licensing policy, the premises are located in a residential area, that the statement of licensing policy recommends that residential areas are not suitable locations for night clubs and that the existing permitted operating hours are in excess of what is recommended in the statement of licensing policy for a bar (or public house) in a residential area. The licensing responsible authority object to any extension of the premises' operating hours. The licensing responsible authority also note that in the application no time has been left between the last sale of alcohol 'on sales' and the closing time of the premises and that this could lead to conflict between staff and the customers if customers who have purchased an alcoholic drink for consumption on the premises minutes before closing time are then asked to either finish the drink or hand it back to staff before leaving the premises.
18. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as Appendix C

Conciliation

19. The applicant was sent copies of the representations and was advised to directly contact the responsible authorities should the applicant wish to attempt to conciliate the responsible authorities.
20. At the time of the writing of this report all of the representations remain outstanding and so must be considered by the licensing sub-committee.
21. At the hearing to determine the application the licensing sub-committee will be apprised as to the conciliation, whether partial or full, of any responsible authority that submitted a representation in respect of the application.

Representations from other persons

22. No representations were submitted by other persons.

Operating history

23. A premises licence was issued in respect of the premises on 4 October 2005.

24. 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. Mr Kpakpah was a director of Afrikiko Limited at this time and remained so until the company went into liquidation. Mr Daniel Dornor was also a director of Afrikiko Limited and remained so until 9 May 2012.
25. 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.
26. 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.
27. On 4 October 2015 a licensing inspection of the premises was undertaken. The premises were found to be being operated compliantly.
28. 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.
29. 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.
30. 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.
31. 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.
32. On 6 January 2017 an application, to have immediate effect, was submitted to transfer the licence to the current licensee, namely Afrikiko Restaurant and Night Club Limited. The DPS remained Emmanuel Koku Dodzi Kpakpah. Mr Emmanuel Kpakpah was a director of Afrikiko Restaurant and Night Club Limited at this time and remained so until 2 June 2017.
33. 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.

34. 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.
35. 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.
36. At the full review hearing of 6 September 2017 the licensing sub-committee decided to suspend the licence for a period of 9 weeks, impose additional conditions on the premises licence and to reduce the operating hours of the premises to the current operating hours. A copy of the notice of decision pertaining to this hearing is attached as Appendix D.
37. On 11 December 2017 an application, to have immediate effect, was submitted to specify Mr Daniel Dornor as the DPS in respect of the premises.

Deregulation of entertainment

38. On 6 April 2015 entertainment became deregulated and as a result:
 - Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
 - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
 - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
 - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
39. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
40. The showing of films has not been de-regulated.

Map

41. A map of the area is attached to this report as Appendix G. The premises are identified at the centre of the map. The following premises are in the area displayed on the map and are licensed as stated:

The Empire, 777 Unit 2 Old Kent Road, London SE15 1NZ licensed for:

- The sale of alcohol to be consumed on & off the premises:
 - Sunday to Thursday: 11:00 - 23:30
 - Friday and Saturday: 11:00 - 00:30

- Late night refreshment:
 - Sunday to Thursday; 23:00 - 23:30
 - Friday & Saturday: 23:00 - 00:30

Iceland, 789-799 Old Kent Road, London SE15 1NZ licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Saturday: 08:00 - 23:00
 - Sunday: 10:00 - 22:30

805 Restaurant, 805-809 Old Kent Road, London SE15 1NX licensed for:

- The sale of alcohol to be consumed on the premises & recorded music:
 - Monday to Sunday: 14:00 - 00:30
- Late night refreshment:
 - Monday to Sunday: 23:00 - 00:30
- Live music:
 - Monday to Sunday: 21:00 - 00:00

ESQ Bar & Grill, 817 Old Kent Road, London SE15 1NX licensed for:

- The sale of alcohol to be consumed on the premises:
 - Sunday to Thursday: 10:00 - 00:00
 - Friday and Saturday: 10:00 - 03:00
- Late night refreshment:
 - Sunday to Thursday: 23:00 - 00:00
 - Friday & Saturday: 23:00 - 03:00

Nisa Local, 813 Old Kent Road, London SE15 1NX licensed for:

- The Sale of alcohol to be consumed off the premises:
 - Monday to Saturday: 08:00 - 23:00
 - Sunday: 10:00 - 22:30

Lidl, 760 Old Kent Road, London SE15 1NJ licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday 07:00 - 23:00

Aldi, 840 Old Kent Road, London SE15 1NQ licensed for:

- The Sale of alcohol to be consumed off the premises:

- Monday to Saturday 08:00 - 23:00
- Sunday 10:00 - 22:30

The Windsor Hotel, 888 Old Kent Road, London SE15 1NQ licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Monday to Saturday 10:00 - 23:00
 - Sunday 12:00 - 22:30
- Late night refreshment:
 - Monday to Saturday 23:00 - 23:30

Southwark council statement of licensing policy

42. Council Assembly approved Southwark's statement of licensing policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. 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.

43. 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.

44. According to the statement of licensing policy the premises are located in a residential area. In residential areas the statement of licensing policy recommends the following closing times in respect of the types of premises stated:

- Night clubs (with 'sui generis' planning classification):
 - Not recommended for residential areas
- Restaurants and cafes:
 - 23:00 daily
- Public houses, wine bars or other drinking establishments:
 - 23:00 daily

Resource implications

45. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band B has been paid by the applicant company in respect of this application.

Consultation

46. Consultation has been carried out in respect of this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notice exhibited at the premises for a period of 28 consecutive days.

Community impact statement

47. 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

48. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.

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

Principles for making the determination

50. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.

51. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

52. Relevant representations are those which
- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
 - Are made by an other party or responsible authority
 - Have not been withdrawn
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
53. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:
- Add to, omit, and/or alter the conditions of the licence or,
 - Reject the whole or part of the application for variation.

Conditions

54. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
55. The four licensing objectives are
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
56. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
57. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
58. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced three new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional two conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
59. Members are also referred to the Home Office revised guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

60. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

Hearing procedures

61. 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 and 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
 - This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

62. 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.
63. 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.

64. 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.
65. 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.
66. 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.
67. 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.
68. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

69. 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

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

BACKGROUND DOCUMENTS

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

BACKGROUND DOCUMENTS

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

APPENDICES

Name	Title
Appendix A	Copy of the premises licence
Appendix B	Copy of the application
Appendix C	Copies of the representations submitted by the responsible authorities
Appendix D	Copy of the notice of decision pertaining to the review hearing of 6 September 2017
Appendix E	Details of licensing night time visits to the premises
Appendix F	List of TENs submitted in respect of the premises
Appendix G	Map

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	13 November 2019	
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
Date final report sent to Constitutional Team	15 November 2019	