

Item No. 6.	Classification: Open	Date: 28 November 2019	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 and Leisure	

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 Service area for the 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.
2. **Notes:**
 - a) The grounds for the review are stated in paragraphs 13 to 19 of this report. A copy of review application is attached as Appendix B.
 - b) 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.
 - c) 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 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 – 02:00
 - Thursday to Saturday: 22:00 – 04:00
 - Sunday: 22:00 – 01:00
 - Late night refreshment (indoors):
 - Wednesday: 23:00 – 02:00
 - Thursday to Saturday: 23:00 – 04:00
 - Sunday: 23:00 – 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 Alfred Mansaray.

The review application and certificate

11. On 5 November 2019 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 5 November 2019 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 a serious incident that took place on 31 October 2019. A male victim was found in the smoking area to the rear of club. He was unconscious, unresponsive and bleeding from the head. The London Ambulance Service arrived at the scene and administered treatment for approximately 45 minutes and subsequently had to put the victim into an induced coma.

14. Police officers viewed CCTV footage of the incident. According to the time stamp on the CCTV footage the incident took place at 02:17, however this is inconsistent with calls made to the emergency services meaning that the premises was possibly open past its permitted closing time, or that calls made to the emergency services were not made until an hour after the incident.
15. Police investigations also indicate that the identification scanning system at the premises was not working at the time of the incident. This constitutes a possible breach of condition 342 of the premises licence issued in respect of the premises.
16. CCTV footage shows that some of the people involved in the incident either had hoods up or were wearing hats. Condition 373 of the premises licence issued in respect of the premises states: "That customers shall not be permitted to wear hats or hoods whilst inside the venue."
17. The police state that the incident mainly took place in the smoking area to the rear of club and that this area is used as a shisha smoking area. The smoking of shisha using shisha coals is not permitted at the premises. The crime report in respect of the incident indicates that the use of shisha coals was taking place at the time of the incident.
18. The police contend that the incident took place at a time when the premises were not being operated in accordance with an authorisation permitted by the Licensing Act 2003 and that, if the premises had been closed on time and also operating in accordance with the conditions of the premises licence issued in respect of the premises, the incident could have been avoided.
19. The police state that they have no confidence in the management of the premises.
20. Other evidence may become available at the hearing.
21. Copies of the review application, review certificate and a witness statement from the police in support of the review application are attached to this report as Appendix B.
22. Any evidence submitted in addition to this report will be made available at the hearing.

Representations from responsible authorities

23. At the time of the writing of this report (13 November 2019) no representations in respect of the review have been submitted by responsible authorities, however the consultation period during which representations can be submitted finishes on 19 November 2019. If any relevant representations are received during the consultation period they will be distributed to the licensing sub-committee and all relevant parties prior to the hearing to determine this review application.

Representations from other persons

24. At the time of the writing of this report (13 November 2019) no representations in respect of the review have been submitted by other persons, however the consultation period during which representations can be submitted finishes on 19 November 2019. If any relevant representations are received during the consultation period they will be distributed to the licensing sub-committee and all relevant parties prior to the hearing to determine this review application.

Operating history

25. 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 as Appendix C.

26. 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 in Appendix D.
27. On 13 August 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 297, 341, 342 and 297. A copy of the closure notice is attached in Appendix D.
28. 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 in Appendix D.
29. 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 in Appendix D.
30. 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.
31. 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.
32. On 14 October 2017 an application to vary the premises licence was submitted.
33. On 11 November 2017 a licensing re-inspection of the premises was undertaken. The premises were found to be being operated in breach of conditions 289, 307, 341, 342, 364, 377 and 793.
34. On 19 November 2017 the Metropolitan Police Service visited the premises. The premises were found to be being operated in breach of conditions 289 and 373 of the premises licence issued in respect of the premises.
35. 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. The new licence number is 860699. Licence number 860699 is the current premises licence issued in respect of the premises and is attached to this report as Appendix A.
36. 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 in Appendix D.
37. 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 in Appendix D.
38. 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 in Appendix D.

39. 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 in Appendix D.
40. On 5 November 2019 the Metropolitan Police Service applied to this licensing authority for the 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. In the review application the Metropolitan Police Service suggested that, as an interim step prior to the full review hearing to take place on 28 November 2019, the premises licence issued in respect of the premises should be suspended until the full review hearing of 28 November 2019.
41. On 5 November 2019 a Superintendent for the Metropolitan Police Service certified that in the Superintendent's opinion the premises are associated with serious crime, serious disorder or both.
42. An expedited review hearing was held on 7 November 2019 to decide whether to implement the interim step suggested by the Metropolitan Police Service in their summary review application of 5 November 2019. The licensing sub-committee decided to implement the interim step suggested by the Metropolitan Police Service and suspended the premises licence until the full review hearing is held on 28 November 2019. A copy of the Notice of Decision pertaining to the expedited review is included in Appendix D.
43. Details of night time visits to the premises by council licensing officers are provided in Appendix E.
44. Details of temporary event notices (TENs) submitted in respect of the premises are attached as Appendix F.

The local area

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

Southwark Council statement of licensing policy

46. 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.
47. 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.

Resource implications

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

Consultation

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

Community impact statement

50. 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

51. 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.
52. The principles, which sub-committee members must apply, are set out below.

Principles for making the determination

53. 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.
54. 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.

55. 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.
56. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
57. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
58. 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.
59. 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

60. 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

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

- 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.

62. 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

63. 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.
64. 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.
65. 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.
66. 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.
67. 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.
68. 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.

69. 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.
70. 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

71. 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

72. 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 Tel:02075255748

APPENDICES

Name	Title
Appendix A	Copy of current premises licence (licence number 860699)
Appendix B	Copies of the review application, review certificate and witness statement in support of the review application
Appendix C	Copy of the previous premises licence issued in respect of the premises (licence number 851424)
Appendix D	Copies of documents relating to the operating history of the premises
Appendix E	Details of licensing unit night time visits to the premises
Appendix F	Details of temporary event notices submitted in respect of the premises
Appendix G	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	15 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
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