

Item No.	Classification: Open	Date: 2 October 2020	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 Ward	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION:

1. That the licensing sub-committee considers whether it is appropriate to take interim steps pending the determination of an application made under Section 53A of the Licensing Act 2003 by the chief of police for the metropolitan police area for a summary review of the premises licences in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX.

Notes

2. 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.
3. A copy of the full application is attached as Appendix B.

BACKGROUND INFORMATION

The Licensing Act 2003

4. 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.
5. Within Southwark, the licensing responsibility is wholly administered by this council.
6. 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.
7. 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.

8. 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

9. 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:
 - Sunday to Thursday 11:00 to 00:00 (midnight)
 - Friday & Saturday 11:00 to 01:30
 - Late night refreshment (indoors):
 - Sunday to Thursday 23:00 to 00:00
 - Friday & Saturday 23:00 to 01:30
 - Opening Hours:
 - Sunday to Thursday 11:00 to 00:30
 - Friday & Saturday 11:00 to 02:00
10. A copy of the current premises licence is attached as Appendix A.

Designated premises supervisor

11. The designated premises supervisor (DPS) of the premises is Phillip Kwasi Asare.

The review application

12. On 1 October 2020 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 the Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London, SE15 1NX.
13. On 1 October 2020 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.
14. In the summary review application the police state the following:
15. "Following the outbreak of the Covid-19 virus pandemic in the UK, which has to date, led to the deaths of over 40,000 people, the government has announced a series of lockdown measures and restrictions on licensed premises and those that operate in the hospitality industry. These restrictions are primarily contained in the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020 (as amended). Since March there has been a constant in that nightclubs are not permitted to open. This is well known to everyone.
16. Covid-19 is a potentially fatal infectious disease which is spread as a result of activities carried out by people, and in particular those in close contact.

17. For this reason it is essential for the regulations to be abided by and social-distancing measures to be implemented by licensed operators. A breach of recommended guidelines and regulations risks human health and life and leads to an increased chance of further lockdown measures being imposed in London that may have a catastrophic further impact on the UK economy and legitimate businesses.
18. If certain premises, such as Afrikiko, chose to operate in deliberate and flagrant breach of regulations and guidelines they imperil others. If this type of behaviour is not deterred by a robust police and Council response then other licensed premises may be tempted to follow suit.
19. It is the belief of the Metropolitan Police that this premises has knowingly (or at the very least recklessly) decided to ignore not only the Government's advice and legislation regarding the prevention of spreading this infection, but also the efforts of Metropolitan Police Officers that have tried, without success, to positively engage with the premises and provide the operator with warnings to improve.
20. The operator's actions has put its staff and patrons at risk of contracting and spreading this infection, and increases the risk to London's wider communities.
21. The above venue has been observed on numerous occasions operating as a prohibited nightclub in contravention of these and other regulation. The premises has also permitted vertical drinking, and allowed and encouraged patrons to dance whilst playing amplified music with a DJ and music decks.
22. On several of these occasions staff at the venue have been deliberately obstructive by physically preventing officer's entry and intentionally or recklessly creating dangerous conditions whilst officers are investigating potential offences. The venue has shown complete disregard to the above legislation as well as the Licensing Act and Health and Safety at Work Act and its regulations.
23. The continued association of this premises with serious crime and disorder from 2017 until today justifies the police instigating a summary review.
24. A Superintendent has certified that this premises is associated with serious crime and/serious disorder."
25. The police recommend that the licence is suspended until the full review hearing.
26. The licensing sub-committee is not restricted to just considering this step.
27. Copies of the review application, a timeline of events leading to the submission of the review application and evidence in support of the review application are attached to this report as Appendix B.

The review procedure

28. The current hearing is for the purpose of considering if interim steps are needed as a result of the summary review application submitted by the police, prior to the pending full review hearing that will be held on 29 October 2020.
29. 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.
30. 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 Licensing Sub-Committee hearing regarding this matter.

31. 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

32. A premises licence was issued in respect of the premises on 4 October 2005.
33. 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.
34. 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.
35. 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.
36. On 4 October 2015 a licensing inspection of the premises was undertaken. The premises were found to be being operated compliantly.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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.

43. 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 was to be held on 6 September 2017.
44. Further to the expedited review hearing of 11 August 2017 a full review hearing was held on 6 September 2017. At the full review hearing the licensing sub-committee decided to suspend the premises licence issued in respect of the premises for 9 weeks, to reduce the hours permitted for licensable activities and to add various conditions to the premises licence. A copy of the Notice of Decision pertaining to the full review hearing of 6 September 2017 is attached as Appendix C.
45. On 11 December 2017 an application, to have immediate effect, was submitted to specify Mr Phillip Kwasi Asare as the DPS of the premises. Mr Asare has remained the DPS of the premises since that date.
46. On 30 September 2019 an application to vary the premises licence issued in respect of the premises was submitted. The application sought to extend the hours permitted for licensable activities at the premises. The application was objected to by responsible authorities. Following a licensing sub-committee hearing on 28 November 2019 the council's licensing sub committee granted the application, but with operating hours reduced from those applied for. The premises licence issued subsequent to this application is the current premises licence (licence number 870250). A copy of the Notice of Decision pertaining to the licensing sub-committee hearing of 28 November 2019 to determine the variation application referred to in this paragraph is attached as Appendix D.
47. Mr Emmanuel Koku Dodzi Kpakpah had an interest in the premises between 2011 (as per paragraph 33 above) until 2 June 2017, when he resigned as a director of the company that holds the premises licence (Afrikiko Bar, Restaurant and Nightclub Limited). It is not known if Mr Kpakpah still has any interest at all in the operation of the premises.
48. The current director of Afrikiko Bar, Restaurant and Nightclub Limited is Zeona Naa Densuah Ankrah. Zeona Ankrah has been the director of Afrikiko Bar, Restaurant and Nightclub Limited since 1 June 2017.
49. On recent visits to the premises council officers have encountered a man named Daniel Dornoo Dornor and who has identified himself variously as the premises manager, business owner or as a director of Afrikiko Bar, Restaurant and Nightclub Limited. Mr Dornor appears to be in charge of the day to day operation of the premises, but is not the premises' DPS and is not a director of Afrikiko Bar, Restaurant and Nightclub Limited. As per council officer notes attached to this report as Appendix E, Mr Dornor has had an interest in the premises since at least 2014.
50. Details of visits to the premises by council officers are attached as appendix E.

The local area

51. A map showing the location of the premises is attached at Appendix F.

Southwark Council Statement of Licensing Policy

52. 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.
53. 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.
54. Within Southwark's statement of licensing policy, the premises is not situated in a cumulative impact policy area. However, the premises is situated within a residential area. Under the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Restaurants:
 - Monday to Sunday: 23:00
 - Public houses, wine bars, or other drinking establishments and bars in other types of premises:
 - Monday to Sunday: 23:00
 - Night Clubs (with sui generis planning classification) are not considered appropriate for this area

Resource implications

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

Consultation

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

Community impact statement

57. 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

58. 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.

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

Principles for making the determination

60. 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.

61. 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.

62. 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.

63. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.

64. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.

65. 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.

66. 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

67. 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

68. 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.
69. 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

70. 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.
71. 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.

72. 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.
73. 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.
74. 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.
75. 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.
76. 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.
77. 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

78. 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

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

REASONS FOR LATENESS

80. 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

81. 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 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
Appendix B	Copies of the review application, a timeline of events leading to the submission of the review application and evidence in support of the review application
Appendix C	Copy of the Notice of Decision pertaining to the full review hearing of 6 September 2017
Appendix D	Copy of the Notice of Decision pertaining to the licensing sub committee hearing of 28 November 2019
Appendix E	Details of visits to the premises by council officers
Appendix F	Map showing the location of the premises

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	1 October 2020	
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		2 October 2020