

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Tuesday 27 October 2020 at 10.00 am at Online/Virtual: please contact andrew.weir@southwark.gov.uk for a link to the meeting and the instructions for joining the online meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Sunil Chopra
Councillor Charlie Smith

OFFICER SUPPORT: Debra Allday, legal officer
Toyin Calfos, legal officer (observing)
Charlotte Precious, legal officer (observing)
David Franklin, licensing officer
Ray Moore, trading standards officer
P.C. Ian Clements, Metropolitan Police Service
P.C Keith Dempster, Metropolitan Police Service
P.C. Peter Holley, Metropolitan Police Service
P.C. Mark Lynch, Metropolitan Police Service
P.C. Maria O'Mahoney, Metropolitan Police Service
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting.

The chair explained to the participants and observers how the virtual meeting would run. Everyone then introduced themselves.

There were no apologies for absence.

2. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

3. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were none.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: AFRIKIKO BAR, RESTAURANT AND NIGHTCLUB, 871 OLD KENT ROAD, LONDON SE15 1NX

The legal advisor for the Metropolitan Police Service requested additional time to make their submissions.

The legal advisor for the premises responded.

The chair agreed to allow all parties 25 minutes each to make their submissions.

A preliminary issue was raised by the representative for the premises. They advised that the breach of COVID-19 regulations and guidance was not a legitimate basis for a premises licence review or a summary review and therefore should not be brought to the sub-committee.

The representative for the Metropolitan Police Service responded by informing members that the time had passed to question the superintendent's certificate. If the basis of the certificate was in question, it should have been challenged in the High Court.

The meeting adjourned at 10.55am for the sub-committee to consider the legal submissions. The meeting reconvened at 11.08am and the chair advised that having considered the legal submissions, the sub-committee had decided continue with the proceedings.

The licensing officer presented their report. They advised that there was a representation from the licensing officer representing the council as a responsible authority in the supplemental agenda. Members had no questions for the licensing officer.

The legal representative for the Metropolitan Police Service addressed the sub-committee. Members had questions for the legal representative for the police and the Metropolitan Police Service officers, who were in attendance to give evidence.

The licensing sub-committee then viewed body worn video footage from the Metropolitan Police Service.

The trading standards officer addressed the sub-committee. Members had questions for the trading standards officer. The legal advisor for the premises also had questions for the trading standards officer.

The written representations from the health and safety officer and the licensing responsible authority officer were noted by the sub-committee.

The legal advisor for the premises addressed the sub-committee.

During the presentation Councillor Charlie Smith dropped out of the meeting. Once this came to the attention of the sub-committee the clerk ensured that Councillor Smith re-joined the meeting. It was agreed by all parties that the legal advisor to the sub-committee and the clerk would summarise any points that Councillor Smith may have missed. Members then asked questions of the legal advisor for the premise and the premises licence holder and the manager of the premises.

All parties were given up to five minutes for summing up.

The meeting adjourned at 2.06pm for the sub-committee to consider its decision.

The meeting reconvened at 3.00pm and the chair advised both parties of the decision.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 53C of the Licensing Act 2003 by the Metropolitan Police Service for the review of the premises licence issued in respect of the premises known as Afrikiko Restaurant & Night Club Ltd (t/a "Afrikiko" 871 Old Kent Road, London SE15 1NX) and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

- Revoke the premises licence.

Reasons for the decision

This was an application for a review of the premises licence in respect of Afrikiko Restaurant & Night Club Ltd (t/a "Afrikiko" 871 Old Kent Road, London SE15 1NX) brought under Section 53C of the Licensing Act 2003.

A preliminary issue was raised by the representative for the premises. They advised that the breach of COVID-19 regulations and guidance was not a legitimate basis for a premises licence review or a summary review and therefore should not be brought to the sub-committee. This application was brought using the expedited process under Section 53A of the Licensing Act 2003, based on the fact that a superintendent of the Metropolitan Police Service was of the opinion that the premises was associated with serious crime and/or serious disorder. This review process was not the correct mechanism to address the COVID-19 compliance of a premises. Alternative and specific powers should be used by authorities to address the premises operating in a COVID-19 secure manner.

The representative for the Metropolitan Police Service responded by informing members that the time had passed to question the superintendent's certificate. If the basis of the certificate was in question, it should have been challenged in the High Court.

The licensing sub-committee was not persuaded by the argument submitted by the premises' representative. All relevant case law was considered and accepted as to why this case fell under the expedited process on 2 October 2020. Those are set out in the notice of decision of the same date. Furthermore, the licensing sub-committee were directed to Section 53C of the Licensing Act 2003 which provides:

“The licensing authority must:

- a. hold a hearing to consider the application for the review and any relevant representations; and
- b. take such steps as it considers appropriate for the promotion of the licensing objectives”.

The premises representative’s legal argument was therefore rejected and the hearing then moved on to the parties presentations. The legal representative for the police advised that the police and responsible authorities had attempted to engage with the premises since July 2020 and that the police have tried hard to engage with the operator in line with the “4Es” approach to policing during the COVID-19 pandemic namely: engage, explain, encourage, enforce. The premises had previously been the subject of a review in 2017 after a customer had died on the premises steps. More recently, the police cited a number of incidents that justified the police’s request to revoke the premises licence.

On Friday 31 July 2020 police attended the premises at 23:45. Officers met with the manager. The ground floor restaurant area of the premises was quiet but loud music could be heard coming from the basement nightclub area.

When the police entered the basement they saw approximately 20 persons sitting together. A DJ was behind a DJ booth adjacent to the dancefloor area. Music was so loud officers had to shout to make themselves heard. Social distancing measures were not apparent and masks were not being used. Dancing was not witnessed, but the facility for dancing was apparent. On this basis, the police concluded that the premises was operating as a nightclub.

When questioned, the manager confirmed no risk assessment was in place but was “in the pipeline”. The manager was advised to correct this before re-opening to the public. The police officer also recommended that the operator should put tables and chairs on the dancefloor so people would not be tempted to dance. He was also advised to read the guidance before re-opening. This was in breach of the Health and Safety Act 1974 and associated guidelines, in addition to “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services” (3 July 2020).

The police also attended the premises on Saturday 15 August 2020. Loud club-style music could be easily heard from outside the premises. Approximately 30 patrons were present in the basement. Flashing strobe nightclub style lighting was in operation, a DJ in a DJ booth and patrons dancing on the dancefloor were also observed.

Officers again concluded that the basement area was operating as nightclub. Social distancing measures were not apparent and masks were not being used. When spoken to, the manager denied people had been dancing regardless of what the officers had witnessed. Officers reminded the manager that the premises could operate as a bar, but not a nightclub. This was contrary to the “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services” (3 July 2020).

Additionally, nobody at the premises was able to operate the CCTV system. The manager

was also unable to produce either the premises licence or a summary of it. A formal notification of offences was served on the operator for Licensing Act 2003 breaches relating to Section 57(4) (failure to secure a premises licence or a certified copy at the premises or to prominently display a summary of the licence) and Section 57(7) (failure to produce a premises licence or a certified copy). The notification also included breaches in relation to conditions 288 and 289 concerning the installation off a CCTV system and retention of CCTV.

The police attended the premises again on 19 August 2020 to serve a formal notification warning notice on the venue regarding the visit on 15 August 2020. The ground floor restaurant was open, but no personal licence holder was present, in breach of the premises licence conditions. A formal notification relating to this offence of breaching condition 101, contrary to Section 137 of the Licensing Act 2003 (exposing alcohol for retail without an authorisation) was also served. As a result a Section 19 Criminal Justice and Police Act 2001 closure notice was served.

The police once again attended the premises on Friday 29 August 2020 at 01:00. The police were informed by the door supervisor present on the door they would need to wait for the manager before carrying a licensing inspection of the premises. The officers entered the premises to carry out their inspection.

When the police were waking down the staircase to the basement area, a male saw the officers and shouted "Shut the door! Shut the door.!" The door to the basement area was promptly closed and blocked from the inside. Others also attempted to stop the officers entering the basement area.

When the police managed to open the door, a female was found to be pushing the door shut with both her hands. Despite what the police witnessed, it was denied that the door was held shut, with one male stating "No one was holding the door, you just pushed the door when she was leaning against it". Approximately 47 to 60 men and women, aged between 18 and 30, were standing around. Social-distancing measures were not observed and no face masks were worn. Nightclub style neon lighting was on and a DJ was present.

The officers again concluded that the premises had been operating as a night club. An amplified male voice said "Sit down, sit in your seats" and "No dancing... just look at each other" and the DJ announced "I'm going to play music in the background". The patrons were dressed in party attire. Police again spoke with the manager who denied that the premises were operating as a nightclub. The officers therefore warned the manager that enforcement action could follow.

Reference was also made to 4 September 2020 when council officers and police attended the premises. Trading standards attended on this occasion and gave direct evidence regarding there attendance as part of their representation.

On 17 September 2020 police officers attended the premises to obtain CCTV footage of incidents when it was believed a prohibited nightclub had been in operation. The manager complained that he was being persecuted and that the police should visit other premises who were "packing people in like sardines". The manager refused to identify the other premises, stating "I'm not giving you the names, I'm not a snitch". The manager did not agree to show officers the CCTV footage, so instead, the officers left him with a USB memory stick and instructed that the manager download the relevant CCTV footage from

29 August 2020. It later transpired that the USB stick returned to the police was blank.

The police attended the premises again on Saturday 26 September 2020 at 22:49 to ensure that it was complying with the 22:00 curfew regulations that had been introduced by way of an amendment to The Health Protection (Coronavirus, Restrictions) (No.2)(England) Regulations 2020 (“the No.2 Regs”) on 24 September.

Officers knocked on the front door and entry was initially refused by the manager. Upon entry, officers witnessed 8 to 10 patrons seated or standing with bottles of beer sitting at tables eating and drinking. None of the staff were wearing facemasks. Officers attempted to gain entry to the basement club area, but the door was locked. They asked the manager to unlock it. The manager, who was with another male, feigned surprise and advised the officers “I think the key is with the cleaner and she has gone home”. The manager then denied anyone was in the basement. One of the police officers requested to view the CCTV monitors but the monitor feeds for all the cameras in the basement area were not working. The manager stated that there was “a problem with the CCTV”, despite the fact that the police had witnessed the CCTV working only two hours earlier.

The police officers went to the basement and pushed the basement door open, which opened ajar and was then swiftly slammed shut with people inside the basement holding it shut. The lighting to the whole of the basement area was then shut off. A smartly dressed male came out of the basement and the door was locked behind him. He refused to open the basement door for officers, until the police moved away. The male obstructed officers in the execution of their duties and had to be threatened with arrest.

When the door finally opened, some 47 to 60 patrons in party and evening attire exited the basement area, using threatening language and posturing. The manager was asked to put on the lights for safety reasons but he ignored the request. Most of the patrons were carrying alcoholic drinks. On entry to the basement area the director and licensee of Afrikiko Restaurant & Night Club Ltd, Zeona Ankrah, emerged with a baby. She claimed that she was cleaning despite wearing full make-up and evening dress. Electric shisha pipes were found on the basement tables, in addition to beer bottles and buckets containing bottles of wine.

The sub-committee then viewed body worn video footage. Members could clearly see people dancing on the 15 August 2020. The footage from 26 September 2020 the sub-committee saw the 47+ people filing out from the premises all of whom appeared of typical clubbing age rather than the usual variation in age typical for a family gathering. It was noted from the various footage that there were also the breaches in terms of SIA, ID scanning.

The officer for trading standards advised the licensing sub-committee that on Friday 4 September 2020, at approximately 20:00, officers from the council’s trading standards, licensing, health and safety and noise teams attended the premises with two police officers from the night time economy team. The officers were visiting the premises following complaints about the basement being used as an unlawful nightclub, contrary to the Public Health (Coronavirus, Restrictions) (No 2) (England) Regulations 2020, and to serve a prohibition notice under the same regulations. Following the prohibition notice being served, lights from the basement and two speaker cables were seized to prevent the premises from re-opening as a nightclub until the law permitted it. When asked, the manager stated that he didn’t know how to bring up the requested CCTV footage in breach of condition 288 and 289 of the premises licence.

The legal representative for the premises accepted that he could not hold the premises out

to be a good example of a premises compliant with the COVID-19 legislation but the premises did have the following in place: a reduced capacity, hand sanitiser, a temperature control gun, track and trace and a risk assessment.

The representative also made reference to the incident in 2017 that instigated the summary review and said it should not now prejudice the premises. They advised that since the 2017 review, a variation application had been approved in November 2019, when the operating hours had been extended to the current hours, despite objection from the police and licensing as a responsible authority. The premises' position was that a nightclub had not been in operation at the basement of the premises. Since July 2020 the basement had been repurposed, as permitted by the COVID-19 legislation and had been trading as a bar and a "lounge".

Regarding the dates highlighted by the police, the premises contended:

- i. On 31 July 2020 there were only 20 people present and whilst there was music being played, no one was dancing.
- ii. Contrary to the police evidence, there was not a window to the basement area, so no dancing could have been seen be viewed, on 15 August 2020.
- iii. Whilst there was no personal licence holder on the premises 19 August 2020, no sales of alcohol were made.
- iv. It was accepted that on 29 August 2020 someone did say "sit down", but no dancing took place.
- v. The issues with the premises CCTV and producing the footage to the police and council officers had only came to light during the course of the review proceedings. This had now been replaced.
- vi. Concerning 27 September 2020 the premises were closed and a family meeting was taking place in the restaurant on the ground floor, after the manager's son had been stabbed. The family guests present, raised concern that perpetrators of the stabbing were at the door. Because of this, the guests to the premises all made their way to the basement area. No one looked out to see who was on the other side of the door and would chose not to open the door until it was safe to do so. This was the reason for the delay in opening the door to the police. As the premises were closed, there was no security on the door. It was accepted that when the police did enter the premises, were shisha pipes on the tables were electronic and therefore did not breach the Health Act 2006.

The licensing sub-committee were only too aware that over 44,000 deaths have occurred in the UK as a result of the COVID-19. The requirements in the COVID-19 regulations and guidance were introduced by the government to secure the health and safety of the premises staff, customers and the wider community by reducing the infection to spread.

The premises licence holder of Afrikiko, its management and staff, have demonstrated that they are either unwilling or incapable to abide by the law and implement COVID-secure measures in the premises and between 31 July 2020 and 26 September 2020 operated a prohibited nightclub.

This licensing sub-committee were satisfied that customers have been ordered to stop dancing and to sit down by the management and staff of the premises. CCTV footage was deliberately not provided when requested, to cover up the operation of this prohibited nightclub. The police have been physically and verbally obstructed in the course of their duties by the operators, staff and customers of the premises. The management of the premises clearly did not wish to engage with the police, despite the best efforts of the police. It was also noted that the premises have been found to be in breach of a number of conditions on its premises licence during these visits.

The sub-committee considered the argument put forward by the premises to be unsustainable and that the actions of the premises had been deliberate. On 26 September, the premises were operating well beyond the 22:00 curfew, in spite of extensive national publicity. On this occasion between 47 and 60 persons were barricaded into a basement room, by the management of the premises, with the power, lights and ventilation cut off to avoid police detection and putting members of the public at significant risk. An experienced police officer described the premises on this date as “the most dangerous premises I have ever visited”

Whilst claiming to be fully aware of the COVID-19 regulations and restrictions at the interim hearing on 2 October, the premises flouted the “rule of six”. If the family were so anxious of the perpetrator to the manager’s son stabbing, the alleged family would not have made their way to the basement with their drinks. The alleged family also appear homogenous in nature, appearing to be mainly between 18 and 30 years old.

The representative for the premises urged the sub-committee that the events leading to the 2017 should not prejudice the premises. It is accepted that due to the passage of time, those events have not been taken into account. However, the sub-committee is mindful of the following comments in the decision of the licensing sub-committee of 6 September 201: “The premises licence holder is expected to fully comply with all of the imposed conditions without fail. If further breaches occur in the future that have the effect of undermining the licensing objectives then the police would be well within their rights to instigate a further review of the premises licence and, without binding the hands of a future licensing sub-committee, it is likely that more severe actions would be taken on that occasion”. This should have been sufficient warning that the failure to operate compliantly opened them to the very real possibility of the premises licence being revoked.

The licensing sub-committee have no confidence in the premises promoting the licensing objectives and there is no alternative but to revoke the licence.

In reaching this decision the sub-committee had regard to all the relevant

considerations and the four licensing objectives and considered that this decision was appropriate, and proportionate.

Appeal rights

This decision is open to appeal by either:

- a) The applicant for the review
- b) The premises licence holder
- c) Any other person who made relevant representations in relation to the application

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

This decision does not have effect until either

- a) The end of the period for appealing against this decision; or
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

Review of interim steps pending appeal

At the conclusion of the review hearing the licensing sub-committee reviewed the interim steps to determine which interim steps were appropriate for the promotion of the licensing objectives, pursuant to section 53D of the Licensing Act 2003. The sub-committee concluded that these interim steps were appropriate:

- To suspend the premises licence.

The licensing sub-committee were satisfied that these modified interim steps are more appropriate and proportionate to promote the licensing objectives to modify the interim steps, as detailed above

The interim steps are open to appeal by:

- a) The chief officer of police for the police area in which the premises is situated; or
- b) The holder of the premises licence

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates Court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

Meeting ended at 3.06 pm

CHAIR:

DATED:

[CABINET ONLY]

DEADLINE FOR NOTIFICATION OF CALL-IN UNDER SECTION 17 OF THE OVERVIEW AND SCRUTINY PROCEDURE RULES IS MIDNIGHT, [DATE].

THE ABOVE DECISIONS WILL NOT BE IMPLEMENTABLE UNTIL AFTER THAT DATE. SHOULD A DECISION OF THE CABINET BE CALLED-IN FOR SCRUTINY, THEN THE RELEVANT DECISION WILL BE HELD IN ABEYANCE PENDING THE OUTCOME OF SCRUTINY CONSIDERATION.