

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 1 July 2021 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 Margy Newens
Councillor Jane Salmon

OFFICER SUPPORT: PC Ian Clemens, Metropolitan Police Service
PC Mark Lynch, Metropolitan Police Service (observing)
David Franklin, licensing responsible authority officer
Richard Earis, environmental protection officer
Debra Allday, legal officer
Wesley McArthur, licensing officer
Chidilim Agada, 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.

Apologies for absence were received from Councillor Sunny Lambe, who had technical difficulties logging into the meeting. Councillor Jane Salmon attended as the reserve member.

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.

It was noted that item 5 had been conciliated prior to the meeting.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: PRETTY UNICORN, UNIT 21 AND 22, 2ND FLOOR CASTLE SQUARE, 40 ELEPHANT ROAD, LONDON SE17 1EU

It was noted that this item had been conciliated prior to the meeting.

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

The licensing officer presented their report. Members had questions for the licensing officer.

The applicant addressed the sub-committee. He advised the sub-committee that his legal representative was unable to attend the meeting and that he was happy to represent himself. Members had questions for the applicant.

The licensing officer representing the council as a responsible authority addressed the sub-committee. Members had no questions for the licensing responsible authority officer.

The environmental protection officer addressed the sub-committee. Members had no questions for the environmental protection officer.

The Metropolitan Police Service representative addressed the sub-committee. Members had questions for the police.

The parties had nothing to add for summing up.

The meeting had a five minute break at 10.43am and at 11.33am.

The meeting adjourned at 12.10pm for the sub-committee to consider its decision.

The meeting reconvened at 12.52pm and the chair advised all parties of the decision.

RESOLVED:

That the application made by Mr. Jabulani Jabangwe for a premises licence under s.17 of the Licensing Act 2003 in respect of the premises known as Afrikiko Bar, Restaurant and Club, 871 Old Kent Road, London SE15 1NX is refused.

Reasons

This was an application made by Mr. Jabulani Jabangwe for a premises licence in respect of the premises known as Afrikiko Bar, Restaurant and Club, 871 Old Kent Road, London SE15 1NX.

The licensing sub-committee heard from the applicant. He had previously ran two other licensed premises in Leicester Square. The application was originally for a nightclub/bar. There had been a misunderstanding by the responsible authorities in that the applicant had nothing to do with the previous owners/licencee, and there would be a lease in place. The lease would not been finalised and signed until he had acquired a premises licence.

The applicant stated that he would agree to shut off any entrance to the first floor restaurant and would also agree to any other conditions the sub-committee felt necessary. The applicant could not however, agree to the reduction in hours as this would mean his business would become financially unviable. He stated that he would ensure that he would increase security inside the premises and work with the police and the council. The business would be a lounge, with a minimal number of people being able to stand; there would be a maximum capacity of 75 patrons. There would be events from time to time, but these would be based on occasions such as Halloween. There would be no externally promoted events.

The applicant also produced three different plans during the hearing, which varied depending on the style of business he operated. The sub-committee raised concern that the plans did not relate to the premises or the application being considered. The Applicant also mentioned that live music would only take place during the day. He stated that he was unaware of the Live Music Act, but advised to include live music in the application for "the just in case".

The applicant intended on refurbishing the premises which would cost approximately £4-6,000. Currently there was no kitchen in the basement so would use the kitchen on the second floor and food would be provided via the fire exit behind the bar. The public would not be able to access this fire exit, nor would the previous owner/licence holder.

The licensing sub-committee heard from licensing s a responsible authority who advised that their representation was submitted under the prevention of crime and disorder; the prevention of public nuisance, public safety and the protection of children from harm licensing objectives and has regard to Southwark's Statement of Licensing Policy ("SoLP") 2021 – 2026.

The premises was situated within a residential area and the closing times appropriate for public houses, wine bars or other drinking establishments and restaurants and cafes was 23:00 hours daily. Night clubs (with sui generis planning classification) was not considered appropriate for the area. The hours applied for were in excess of what is appropriate for a bar or restaurant in the area and the premises was also very close to local residents who could be disturbed by patrons leaving the premises late at night. The officer mentioned that the previous premises licence had been subject to expedited reviews by the Metropolitan Police. Whilst this was a new premises licence application there were concerns that the previous licensee and/or designated premises supervisor may be the controlling mind of the business and the Applicant had not provided a lease to demonstrate he was the new business owner.

The licensing sub-committee heard from the Metropolitan Police Service who objected to the application based on the prevention of crime and disorder licensing objective. The venue was located in a residential area with a large number of dwellings in close proximity. Historically there had been a number of complaints from residents with regard to noises and public nuisance and this location was not suitable for a nightclub. The premises had also been the subject of two summary reviews, the last of which resulted in the licence being revoked.

The licensing sub-committee heard from the environmental protection team ("EPT") whose objection was based on the prevention of public nuisance licensing objective. The officer advised that under Southwark's SoLP the premises were located in a residential area where it was deemed inappropriate for nightclubs; there were residential properties directly adjacent to the premises and an additional 250 bed student accommodation and 258 residential homes due to be constructed all of which risked being adversely affected by music and patrons dispersal to the hours proposed which significantly exceeded those recommended in Southwark's SoLP. Whilst the applicant had agreed some conditions with EPT, the officer still objected to the application and was not satisfied that there was sufficient detail in the application to promote the prevention of public nuisance licensing objective.

In the application, the applicant described the premises as a nightclub/bar. The hours applied for were based on the original Afrikiko licence. In correspondence with the responsible authorities, the applicant described the premises as a cocktail bar. During the meeting, the premises were further described as a lounge bar. The applicant accepted that the plans he submitted with the application was based on the premises as it currently was. Further plans were produced during the course of the meeting which contained three options for premises being a bar, a restaurant and a lounge. The sub-committee was concerned that the style of operation had not been finalised and the current premises licence application had not been tailored for the proposed operation.

There was discussion of the relationship between the previous operators and the Applicant. Paragraph 94 and 95 of Southwark's SoLP provides:

“94. This Authority is concerned over the frequently observed practice of an application for a transfer of a premises licence being made following an application for a review of that same licence being lodged.

95. Where, such applications are made, this Authority will require documented proof of transfer of the business / lawful occupancy of the premises (such as a lease), to the new proposed licence holder to support the contention that the business is now under new management control”.

Whilst this is new application and not a transfer, the principle is the same. The previous premises licence was revoked and had a poor licence history. The previous licence holder continues to operate the ground floor of the premises. To ensure the two businesses operated completely independently, the applicant stated that if food was served, he would use the kitchens on the second floor of the building and over-ride the fire alarm allowing only his staff access to the basement. The Applicant then suggested if the premises was a lounge bar, then he could block the fire door off.

The licensing sub-committee was extremely concerned of both these options. At a time when fire and building safety is paramount, the sub-committee could never approve the Applicant over-riding a fire alarm system. Similarly, the option of blocking off the fire exit was also unattractive and the sub-committee would want positive confirmation from the Fire Service that the premises had sufficient fire exits. Ultimately, the sub-committee would be undermining the promotion of public safety licensing objective if approved either option.

The licensing sub-committee accepts that the only relationship between the applicant and the previous licence holder would be a business relationship as a sub-tenant. However, the sub-committee was concerned that the Applicant was agreeable to include terms in his lease concerning the blocking off of the fire exit and not permitting the previous licence holder access to the basement. This would bind both the leaseholder (Afrikiko) and the freeholder so could not be imposed by the sub-committee.

Being in a residential area, the licensing sub-committee is of the view that the premises is not suitable for any late night operation and there is no reason to divert from Southwark’s SoLP.

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

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises

supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

The licence ought not to be been granted; or that on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 1.05pm.

CHAIR:

DATED: