

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 3 March 2022 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 Dora Dixon-Fyle MBE

**OTHER
AUTHORITIES
PRESENT:** P.C. Graham White, Metropolitan Police Service
P.C. Maria O'Mahoney, Metropolitan Police Service

**OFFICER
SUPPORT:** Debra Allday, legal officer
Wesley McArthur, licensing officer
Jayne Tear, licensing responsible authority officer
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting, reconvened from 20 January 2022.

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 no late and urgent items of business.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: S&F PRIVATE EVENTS LTD, THE CANTERBURY ARMS, 871 OLD KENT ROAD, LONDON SE15 1NX

The licensing officer presented their report. They advised that the environmental protection team had withdrawn their representation, following conciliation with the applicant. They also advised that the applicant had supplied a lease and a dispersal policy to the authorities. Members had no questions for the licensing officer.

The applicant and their agent addressed the sub-committee. Members had questions for the applicant and their agent.

The licensing responsible authority officer addressed the sub-committee. Members had questions for the licensing responsible authority officer.

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

The meeting adjourned at 11.35am for the sub-committee to consider its decision.

The meeting reconvened at 12.09pm and the chair advised all parties of the decision.

RESOLVED:

That the application made by S & F Private Events Ltd for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Canterbury Arms, 871 Old Kent Road, London SE15 1NX be refused.

Reasons

This was an application made by S&F Private Events Ltd for a new premises licence to be granted under Section 17 Licensing Act 2003 in respect of the premises known as The Canterbury Arms, 871 Old Kent Road, London SE15 1NX

The licensing sub-committee heard from the applicant and his representative who advised that the basement was being rented from the owner of the premises ("the

landlord”) to organise private events in the basement area of the premises. The applicant had approximately 5 to 6 years running private event venues in Portugal, but this would be his first business venture in the UK. When he did not run events, he would work at DHL. A friend at DHL advised the applicant that the owner of the premises was looking to rent the basement.

The applicant stated that he was not aware of the history and problems that had previously occurred at the premises. He had applied for several temporary event notices, without no objection notices being served and all of the events had proceeded smoothly, without any problems.

The applicant had no links with either the landlord or the management team of Afrikiko, apart from a landlord and tenant relationship with the commercial agreement. Afrikiko was a separate business to S&F Private Events Limited and the two business were properly separated within the premises.

It was the applicant’s preference to have a six month commercial lease; he did not want to commit himself to a longer period as there was no guarantee that a premises licence would be granted.

The licensing sub-committee then heard from the Metropolitan Police Service who objected to the application in its entirety and argued that the application should be refused as it fails to address the licensing objectives, in particular the prevention of crime and disorder. The premises licence for Afrikiko Restaurant & Night Club operated at the venue and had been subject of two summary reviews. In 2017 a male was murdered outside the venue when the premises were operating in breach of the licence. In 2020 the premises were subject to a second summary review where the premises were operating unlawfully, operating in breach of the government Covid regulations and the licence. The premises licence was subsequently revoked.

The venue was located in a residential area with a large number of residential dwellings in close proximity. A number of complaints from local residents concerning noise and public nuisance had been received in the past. The operating schedule of the application failed to detail any precise conditions to promote the licensing objectives.

The police stated that although the application states that it would be a restaurant/bar, the reality was it would be an event space and private events tended to be for eating drinking and dancing; this would ultimately lead to night club activities. The application also exceeded the framework hours detailed in the Southwark statement of licensing policy framework for premises in residential areas. Night clubs (with sui generis planning classification) were not considered appropriate for the area. The venue was not suitable for any type of licensed premises, particularly one with such an operating history.

The officer also refuted the applicant’s argument that the ground floor and the basement could be suitably blocked off. When entering the premises through the

main entrance, on the immediate right was a door to the restaurant on the ground floor and a door in front was to the basement area.

A witness who worked with the Night Time Economy Team was also called. They informed the committee that on 17 December 2021 police attended the premises and were immediately approached by the landlord who was aggressive and agitated and was required to be calmed down by fellow customers.

Due to the level of aggression displayed by the landlord, police officers have been directed to only visit in pairs. The landlord also lived above the premises, which adds to the risk if officers were required to attend the venue. The witness also informed the sub-committee that in January 2022 police had reason to attend the premises and after a verbal altercation with the landlord, she went to the basement and was then followed by customers from the ground floor restaurant. It was the officer's opinion that the customers from both the ground floor and basement would "mingle".

The police's primary concern was that the previous licensee, designated premises supervisor (DPS) or management team still have a controlling interest in the premises. The granting of a premises licence would cause damage and harm to the local community.

The licensing sub-committee then heard from the officer representing licensing as a responsible authority, whose representation was based on Southwark's statement of licensing policy 2021–2026 and related to the licensing objectives for the prevention of crime and disorder and the prevention of public nuisance.

The officer referred to the description of the premises within the application was "Restaurant with Bar Facilities", yet no kitchen area was highlighted on the premises plan (page 33 of the Agenda papers). The premises was situated within a residential area and the hours sought exceeded those in Southwark's statement of licensing policy. Night clubs (with sui generis planning classification) are not considered appropriate for this area. The officer also raised the operating history of the premises and the two previous summary reviews submitted by the police. The officer's primary concern, like the police, was that either the previous licensee, DPS or management team still having a controlling interest in the premises

The licensing sub-committee noted that the environmental protection team's representation was conciliated.

The licensing sub-committee also noted that although the application was for a restaurant with bar facilities, there was no kitchen area; catering companies could be hired by customers or the customers could bring their own food. The application was not a restaurant in the original sense of the word, It was in fact an application for an event space. The sub-committee shared the police's concerns of private events resulting in "eating, drinking and dancing". This would be akin to a nightclub which was not considered appropriate for this residential area under Southwark's statement of licensing policy.

While the applicant had good intentions, the sub-committee felt he had placed himself in a very vulnerable position in terms of his business. As an experienced committee, it has too often seen premises licence and/or transfers applications following the revocation of licence at a review hearing. It is for this reason the licensing committee added the following to its statement of licensing policy.

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

90. Where, such applications are made, this authority will require documented proof of transfer of the business / lawful occupancy of the premises, to the new proposed licence holder to support the contention that the business is now under new management control”.

The commercial lease agreement signed by the landlord and the applicant expires on 20 March 2022. The applicant advised that a one year lease would be signed that afternoon if a premises licence were granted. However, the landlord was under no obligation to enter into a further lease agreement. The licensing sub-committee believe regardless of the position with the lease, there was a risk of the landlord taking control of the basement premises.

The landlord was operating an unlicensed premises on the ground floor, and resides in the premises above it. The risk that the applicant would be ousted from the premises and a transfer submitted (potentially by a ‘ghost company’) was too great. The police would only have 14 days to object to such a transfer and any such objection would need to be supported by evidence. The police would be unable to stop any changes of directorship (i.e. preventing the landlord being added as a director) to such a company or make any representations concerning the licence, apart from submitting a review application. If the applicant were ousted from the premises, the transferee consent of the transfer application would not need to be obtained. Only that “all reasonable steps” were taken to obtain that consent would be required.

Furthermore, the Afrikiko website (www.afrikikorestaurant.co.uk) refers to the premises as “Bar. Restaurant. Club” and boasts of a “full bar available”, despite it being unlicensed. The landlord continues to have an active and ongoing interest in the premises. It is this sub-committee’s view that if a premises licence were granted for the basement, it would be used as a feeder bar to Afrikiko. Despite stating that the businesses were separate, the police informed the sub-committee that even though Afrikiko is unlicensed, on two occasions when police attended the venue they were subjected to verbal attacks from the landlord. As a result, the police now only attend the venue in pairs.

The licensing sub-committee were also not convinced that the businesses could be properly physically separated. In addition to physical separation meaning that the

customers from each premises could not access the other, evidence was given of Afrikiko customers following and attempting to intimidate the police down the stairs towards the basement premises. This also raised the sub-committee's concerns that any enforcement would become extremely problematic in that officers would need to identify which premises and which customers, the ground floor or the basement, that were causing problems.

The licensing sub-committee were advised that the applicant had gained a wealth of experience over 5 to 6 years when he ran similar events in Portugal. He had been resident in the UK for 9 years. It is felt that a significant period of time had lapsed since he last operated and, given the history of the premises and the landlord's continued interest in the premises operating an unlicensed premises on the Old Kent Road, there is a heightened risk whether compliance with a premises licence could be achieved. An alternative location for the applicant's business would be better suited.

Until the landlord no longer has any interest in the premises be it business or proprietary, this licensing sub-committee recommends that no premises licence should be granted in respect of this venue.

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:

- a) The licence ought not to be been granted; or
- b) 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 12.13pm.

CHAIR:

DATED: