

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 1 September 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 Natasha Ennin
Councillor Kath Whittam

OTHER MEMBERS PRESENT: Councillor Suzanne Abachor (observing)

OTHERS PRESENT: P.C. Ian Clements, Metropolitan Police Service

OFFICER SUPPORT: Debra Allday, legal officer
Steve Warby, legal officer (observing)
Andrew Heron, licensing officer
Wesley McArthur, licensing officer
Paul Newman, environmental protection team officer
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 no late and urgent items.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: POLLO, 2 DATCHELOR PLACE, LONDON SE5 7AP

It was noted that this application had been withdrawn by the applicant.

6. LICENSING ACT 2003: KENT RESTAURANT AND LOUNGE, FIRST FLOOR, 516 OLD KENT ROAD, LONDON SE1 5BA

The licensing officer presented their report. Members had no questions for the licensing officer.

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

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

The environmental protection team officer addressed the sub-committee. Members had questions for the environmental protection team officer.

The sub-committee heard from one other person and their witness, objecting to the application. Members had questions for the other person and their witness.

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

The meeting adjourned at 12.27pm for the sub-committee to consider its decision.

The meeting reconvened at 1.33pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Erico Entertainment Limited for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Kent Restaurant and Lounge, First Floor, 516 Old Kent Road, London SE1 5BA be granted as follows:

Hours

Licensable Activities:

Monday to Sunday: 11:00 to 22:30

Friday and Saturday: 11:00 to 23:30

Opening Hours

Monday to Thursday: 11:00 to 23:00

Friday and Saturday: 11:00 to 00:00

Non-standard timings for licensable activities:

Sunday before a Bank Holiday Monday: 11:00 to 23:30

New Year's Eve: 23:00 to 03:30

Non-standard opening hours:

Sunday before a Bank Holiday Monday: 11:00 to 00:00

New Year's Eve: 11:00 to 04:00.

Conditions

- 1) That there will be an accommodation limit to be risk assessed by the premises.
- 2) That a comprehensive dispersal policy shall be produced and implemented at the premises, with all staff trained on the most up to date policy. A record of staff training on the dispersal policy shall be kept at the premises and a copy of the policy and such training records shall be made available to the council or police on request.
- 3) That whenever premises open after 00:00 there will be at least two SIA registered door supervisors on the premises from 22:00 until one hour after closing.
- 4) That there shall be a clearly displayed telephone number for residents.
- 5) That all promotional advertising material for the premises will encourage patrons to use public transport.
- 6) That there shall be no externally promoted DJ events.
- 7) That during any licensed entertainment on the premises all doors and

windows leading out to external areas shall remain closed with the exception of ingress and egress after 22:00.

- 8) That no drinks shall be permitted outside at any time.
- 9) That staff shall remove drinks receptacles from patrons who are attempting to leave the premises.
- 10) That there be no more than 10 smokers at any one time in the terrace area.
- 11) That external waste handling and cleaning of external areas, collections and deliveries shall only occur between the hours of 08.00 and 23.00.
- 12) That clearly legible signage will be prominently displayed at all patron exits, where it can easily be seen and read, requesting that patrons leave the premises in a quiet and orderly manner that is respectful to neighbours.

Reasons

This was an application for an application made by Erico Entertainment Limited for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of Kent Restaurant and Lounge, First Floor, 516 Old Kent Road, London SE1 5BA

The licensing sub-committee heard from the legal representative for the applicant who advised that the application originally submitted included errors in the proposed operational hours of the premises. This had been corrected as detailed in the conciliation statement in the timings (page 152-155 of the agenda) and summarised in paragraph 10 of the report.

The members of the sub-committee were reminded that this was an application for a premises and the applicant was very alert to the historical problems associated with this particular premises, which was previously the K-Che nightclub. The K-Che operation ran under a totally different management and there was no connection whatsoever with proposed Kent Restaurant and Lounge.

The sub-committee were also advised to avoid visiting the sins of the K-Che nightclub when considering the application by Kent Restaurant and Lounge, which had yet to open and operate. It was hoped that the legitimate concerns raised by the residents in respect of the previous operators would not prove to come to pass with the new the applicant.

The applicant, Enrico Entertainment Limited already operated the premises Club 701 on the lower and ground floor of the building at 516 Old Kent Road which had operated without undue incident(s) following the summary review in 2019, when the licensing sub-committee suspended

and modified the licence which among other things, prohibited the director (Mr Eric Doe) of Enrico Entertainment Limited from the day to day management of the

premises. The applicant was content for the same condition to be attached to any licence the sub-committee may grant in this application.

The applicant had identified a serious gap in the market for event spaces catering for members of their community and other ethnic minority communities. They advised that there was a lack of available event space that can be hired for weddings, christenings, parties etc and their plan was to provide such a space .

They advised that it would be a food led operation and that they would operate pre-booked functions. The operation would only be commercially viable with late hours. The management of Club 701 would extend their team, working together under effectively the same management. The applicant was confident that the Kent Restaurant and Lounge would operate in an entirely different way from its predecessor (K-Che) and would in no way compromise the licensing objectives.

The applicant had already spent £25,000 for a refit and a total renovation of the premises. The immediate area was largely an industrial area abutting the A2, with a 24 hour McDonalds on one side and a 24 hour Asda on the other side.

The designated premises supervisor (DPS) would be available to deal with any concerns raised by the neighbours. There were certain matters that were beyond the Applicant's control. For example, the barbeque man who stood outside on Old Kent Road could only be asked to move from outside the premises by the security team. The security team would police the outside area and deal with any parking issues, essentially imposing a no go zone around the neighbours for parking, which included placing traffic cones and no parking signs for the immediate neighbours and also having two marshals between 22:00 and 05:00 when patrons are not allowed to park in the immediate vicinity. Since lockdown, there hadn't been any parking issues in relation to Club 701 (operated by the applicant).

Kent Restaurant would be a completely different operation for the African community, offering a restaurant service. The applicant had already met the police and had made it clear that there was no intention of running a nightclub and the late hours would be utilized for private parties, weddings and other such functions; it would not be run as a nightclub.

There would be an accommodation limit for 250 people with some standing by the bar area, but mostly seated, doing something different other than a nightclub where people could relax after work and entertain themselves in different ways.

The members queried the pre-booked events and restaurant facility that would be available. The operation was primarily a restaurant. People would be allowed to come in off the street to eat in the restaurant, but large functions such as a wedding would be pre-booked. Such events would not be an everyday occurrence. The daily operation would be a restaurant. The police would be advised in advance of any private functions. The restaurant would operate to 00:00 as normal restaurants do and only pre-booked events would occur during the late hours. There had only been one temporary event notice (TEN) which

was used as a test trial. No others had been submitted due to on-going refurbishment works.

Concerning the private events, the applicant confirmed that there would be no externally promoted DJ led events.

The applicant confirmed that there was a dispersal policy, but although this had not been included in the agenda papers.

The applicant stated that catering would be provided in-house, but when questioned by members of the diverse range that would be attracted to hiring the premises (for the private events), the applicant would likely have catering initially sourced externally, hiring chefs specific from that community. Members also queried the proposed hours.

At present, there was seating only for 150 people. The applicant would source additional chairs and tables for the private functions. There would also be space to accommodate 30 people to dance.

It was clarified that only pre-booked events would run until 03:00 or 04:00, with the restaurant running during through the week, potentially Monday to Sunday.

There would be two full time chefs employed at the premises with waiter/waitress staff for lunchtimes and evening meals. Those members of staff had yet to be engaged.

The restaurant would be walk-in, with pre-booked events from 00:00. It would not be financially viable to operate the late night venues under TENs only. The TENs regime would be not provide the flexibility for last minute events. In the absence of a pre-book function, there would be no use of the late hours. The late hours would be contingent for pre-booked functions only.

The licensing officer provided members with the plan of the premises and it was noted by members that the kitchen was extremely small for a restaurant (approximately three metres by three metres), particularly if the premises were catering for 250 people. There also did not appear to be any storage available, nor disabled facilities in terms of access or toilets.

The applicant advised that £25,000 had been spent on renovation works and additional works would be undertaken depending on the outcome of the licensing sub-committee's decision. In the meantime, the applicant would tap into the African and Asian businesses for the catering, despite previously saying that he would recruit two different chefs for two different cuisines on the same day. The applicant also advised that since he owned the whole building, the kitchen in Club 701 would also be used, despite there being no immediate access between the premises and no lift. Members noted that it was unusual for a food led restaurant, whilst being revamped, did not focus on providing a suitably sized kitchen.

Concerning storage, the applicant advised that the tables and chairs would be stored in the attic area that was accessed by a ladder. It was also noted that from the plans that there was two DJ booths, although the applicant only wanted to use one.

The officer from the Metropolitan Police Service questioned whether the venue would be hired for a 21st birthday party without the provision of food. The applicant stated that he did not want to encourage under 35s who were possibly more of a nuisance and problem, but foresaw less risk with a 35th birthday party, without food even if they had their own DJ. When probed, the applicant stated he would use his discretion. This, the members felt fell foul of the Equalities Act.

In respect of the plans, the applicant was informed that separate building control and planning permission would be needed. Whilst these were not matters that could be considered by the licensing sub-committee, any further changes to the premises plans would be subject to a future variation application.

The applicant confirmed that he was aware of the single use plastics policy as provided for in Southwark's statement of licensing policy (2021-2026) and confirmed that this would be complied with fully.

The licensing sub-committee heard from the Metropolitan Police Service (pages 123 and 124 of the agenda). The police noted that the applicant had clarified the application timings. The officer questioned the sale and consumption of alcohol by persons on the premises between the hours of 11:00 and 03:00 when there would be a bona fide pre-booked event.

Essentially the premises would run as a restaurant until 23:00 and the pre-booked events would be from 23:00 to 04:00 at the weekends. A restaurant condition (that alcohol could only be supplied to people taking table meals) did not assist with the proposed operation of the premises, with pre-booked functions and events.

Furthermore, for the pre-booked events, individuals attending an event and the premises itself would have no control who would be attending, as there would be no open guest available to them, could advertise them on social media. The police would therefore not be able to vet the type of event being held, particularly given that the old Form 696 was no longer being used, so the venue could be open Thursday, Friday and Saturday nights until 04:00 each week of the year, so that the premises could essentially run as a DJ led nightclub type venue. The location was not suitable for such a venue, there had been a significant disturbance to local residents in the past not from such venues at this location that run at similar times as per this application.

The officer reminded the sub-committee that Club 701 had its premises licence suspended following a serious assault inside the premises, which also resulted in the licensing sub-committee prohibiting the Eric Doe from the day to day management of the premises. The same Mr Doe would have overall control of the Kent Restaurant and Lounge. For those reasons, the police took issue with the

application. When asked, the officer stated that he no objection for the premises operating as a restaurant/bar with hours as detailed in Southwark's statement of licensing policy.

The licensing sub-committee heard from an officer from the council's environmental protection Team (EPT) (page 121-122 of the Agenda). The officer reiterated the representation submitted and stated that the very late hours would not be compatible with the premises running as a restaurant. If it the premises were to run as a public house or other drinking establishment without the restaurant conditions, then according to the licensing policy the recommended closing time would be 23:00. The officer reminded members that a nightclub type operation was not considered appropriate for the area under the statement of licensing policy.

In terms of the character of the area, the applicant's representative referred to as industrial. The licensing policy identified the area residential, with a mix of commercial and residential, but with residential premises close by. There was also further residential development planned. There was also concern raised in relation to the structural integrity of the building in terms of its ability to resist the transmission of sound from the inside to the outside. It was not a purpose built

development which may be suitable for a restaurant, but certainly not suitable for the likes of DJ parties. Such pre-booked events would best be trialed under the TENs regime.

The officer then explained that on 3 March 2022 the noise and nuisance team attended the premises when excess noise was caused by testing the capabilities of the sound system in the absence of a sound limiter as part of installing a sound limiter. It was noted that from the noise transmission there was little resistance in the passage of sound between the inside and the outside of the building so a sound limiter would be relied on to do the control.

It was also noted by officer in attendance that the level reached statutory nuisance noise nuisance levels but it was unlikely that there would be a recurrence to public nuisance or suffering because it was a one off testing of the system. Members asked whether EPT would object to a licence if the standard bar hours or restaurant hours were granted, to which the EPT officer stated EPT would be less concerned about such a proposal.

The licensing sub-committee then heard from a resident objector, other person 3, who lived for six years in Houston court, which is opposite the premises. The residents had submitted many representations concerning the significant issues with the venues at 516 Old Kent Road over the previous six years.

They advised that they recognised that this was a new application that needed to be considered on its own merits but said that there were long standing issues in the venues. There may be a change in management and structure with Club 701 who would operate the Kent Restaurant and Lounge but the change in such

management was unlikely to have an effect to the on-going problems the residents experienced which they endured every week and every weekend.

Although the Kent Restaurant and Lounge application had to be considered on its own merits, there would always be generic problems that an additional licensed premise would contribute to. Examples were given relating to the barbeque man on Old Kent Road around the premises, cars being parked on the curb and on the street of Houston Court, which would be an obstruction if the emergency services needed to attend to one of the properties. There was also a new development less than 100 metres away from the premises.

The statement of licensing policy was clear that the recommended closing time should be 23:00. Other person 3 also referred to other matters that had been raised during the course of the meeting, that there was a dance floor, insufficient seats for people at full capacity, having a three metre by three metre kitchen, there was two DJ booths. The applicant had not given other party three confidence that the premises would be used as anything other than a nightclub. The application as it is stood, with the plans meant the application could not be reflective of what was being articulated by the applicant.

The noise complaint on 3 March was at approximately 22:11 when the applicant was testing the music system. The time of 22:11 hours was correct, as it had been other party three who made the complaint. Other person 3 then called a witness who was another resident in the same block of flats. The witness was reminded that she was called to support other part 3 and could expand on that representation, but could not provide anything new, as she had not submitted her own representation.

The witness stated that the block of flats was located in a residential area and the hours applied for were excessive. Operating to the policy hours would make the premises tolerable. Having christenings until 03:00 was unheard of and suspicious.

Other person 3 was of the view that the change in operator (from K-Che) would not result in a change in patron behaviour as the issues appeared systemic. Ultimately, the problems at the location were due to the premises operating with late night hours. Other person 3 stated that a restaurant with restaurant hours would however, be welcomed even if the premises were to have up to 20 times a year. In summary, other person three stated that the application was not fit for purpose for the type of venue that's on paper.

The members considered the application carefully and recognised the premises located at 516 Old Kent Road, London SE1 5BA have caused significant disturbance to residents.

Both the applicant and their legal representative repeatedly informed the sub-committee that the premises would not operate as a nightclub, but as a restaurant and a venue that could be hired out for private events. Despite this, there were

two bars at least equal in size to the entire kitchen, if not bigger. When asked Mr Doe confirmed that the plans were what was being put into place for the premises and was part of the premises redesign. The new layout looked decidedly more akin to a lounge/nightclub like than restaurant. It was suggested that the kitchen in Club 701 would be used and from would be brought upstairs. It was also confusing as to what would happen to patrons who are in the premises for a meal when a late night event was booked. Members were of the view it was clear from the plans that this is not a food led venue.

The applicant's legal advisor advised that the previous premises and the issues at the first floor of 516 Old Kent Road (K-Che) should not play no part in this the licensing sub-committee's consideration of this application. This the sub-committee agree with, albeit its operation as a nightclub caused significant issues for the residents and the responsible authorities. In view of this, the sub-committee are in agreement that the premises should not be used as a nightclub.

Southwark's Statement of Licensing Policy 2021-2026 provides that this the premises is in a residential area and that nightclubs are not considered appropriate. The sub-committee were of the view that at the highest, the area should be considered as mixed use with a considerable amount of the residential units. It is also noted that there has been concern raised of Club 701, of which the applicant is also the premises licence holder.

Club 701 was subject to an expedited review in 2019 when the licence was suspended and modified, with Mr Doe being prohibited from having day-to-day management responsibility. Club 701 would have been unable to operate due to the COVID restrictions. It is possible this played a part in the lack of complaints.

Mr Doe was still prohibited from day-to-day management responsibility under the modified licence conditions and the sub-committee are of the view that this has also had a positive impact on the running of that premises. Coupled with, Southwark's statement of licensing policy specifying nightclubs are not considered appropriate, the sub-committee are of the view that the Kent Restaurant and Lounge, should operate with restricted hours and late night events are trialed further under the TENs regime so proper evidence can be considered by a licensing sub-committee as to whether a permanent premises licence for late night activities are appropriate for 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 1.40pm.

CHAIR:

DATED: