

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 6 July 2023 at 10.00 am at Ground Floor Meeting Room G01C - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Barrie Hargrove (Reserve)
Councillor Charlie Smith

OTHER AUTHORITIES PRESENT: P.C. Mark Lynch, Metropolitan Police Service (observing)

OFFICER SUPPORT: Debra Allday, legal officer
Wesley McArthur, licensing responsible authority officer
Jayne Tear, licensing officer
Matt Tucker, licensing officer
Nick Stabeler, Neighbourhood Nuisance Service Manager (observing)
Andrew Weir, constitutional officer

1. APOLOGIES

The meeting opened at 10.27am.

The chair explained to the participants and observers how the 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.

The sub-committee agreed to vary the order of business to hear item 6 first.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

The chair advised that a ward councillor had contacted her regarding item 5 on the agenda, but she had disregarded the email.

5. LICENSING ACT 2003: L'ATTITUDE, 18 CHOUMERT ROAD, LONDON SE15 4SE

As the applicant for this item had not been present at the beginning of the meeting, the chair asked everyone to introduce themselves.

The chair then explained how the proceedings would run.

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

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

The sub-committee noted the written representations from other persons (local residents) objecting to the application.

The applicant was given up to five minutes for summing up.

The meeting adjourned at 3.30pm for the sub-committee to consider its decision.

The meeting reconvened at 4.01pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Martin Ekeocha-Kamara for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as L'Attitude, 18 Choumert Road, London, SE15 4SE be granted.

Hours

Films (indoors):	Sunday to Thursday: 12:00 to 22:30 Friday and Saturday: 12:00 to 23:00
Live music (indoors):	Sunday to Thursday: 12:00 to 22:30 Friday and Saturday: 12:00 to 01:00 the following day
Recorded music (indoors):	Sunday to Thursday: 12:00 to 23:00 Friday and Saturday: 12:00 to 01:00 the following day
Performance of dance (indoors):	Sunday to Thursday: 12:00 to 23:00 Friday and Saturday: 12:00 to 01:00 the following day
Anything similar to live music, recorded music and performance of dance:	Sunday to Thursday: 12:00 to 22:30 Friday and Saturday: 12:00 to 01:00 the following day
Late night refreshment (indoors):	Friday and Saturday: 23:00 to 00:30 the following day
The sale by retail of alcohol (on the premises):	Sunday to Thursday: 12:00 to 22:30 Friday and Saturday: 12:00 to 00:30 the following day
Opening hours:	Sunday to Thursday: 12:00 to 23:00 Friday and Saturday: 12:00 to 01:00 the following day
Seasonal and non-standard timings requested as follows:	
Live music (indoors):	Day prior to bank holiday: 12:00 to 00:00 Bank holiday: 00:00 to 00:30 New Year's Eve: 12:00 to 00:00 New Year's Day: 00:00 to 02:30
Recorded music (indoors):	Day prior to bank holiday: 12:00 to 00:00 Bank holiday: 00:00 to 00:30 New Year's Eve: 12:00 to 00:00 New Year's Day: 00:00 to 02:30
Performance of dance (indoors):	Day prior to bank holiday: 12:00 to 00:30 Bank Holiday: 00:00 to 00:30 New Year's Eve: 12:00 to 00:00 New Year's Day: 00:00 to 02:30

Anything similar to live music, recorded music and performance of dance:	Day prior to bank holiday: 12:00 to 00:30 Bank holiday: 00:00 to 00:30 New Year's Eve: 12:00 to 00:00 New Year's Day: 00:00 to 02:30
The sale by retail of alcohol (on the premises):	Day prior to bank holiday: 12:00 - 00:00 Bank holiday: 00:00 to 00:30 New Year's Eve: 12:00 to 02:30
Opening hours:	Day prior to bank holiday: 12:00 to 00:30 on bank holiday Bank holiday: 00:00 to 01:00 New Year's Day: 00:00 to 03:00

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, conditions derived from the operation schedule highlighted in section M of the application form and the conditions agreed with the Metropolitan Police Service and environmental protection team as a responsible authority and the following additional conditions agreed by the sub-committee:

1. That whenever the premises is open after 00:00 there shall be 1 SIA from 22:00.
2. That on all literature and on the website of the premises, patrons shall be encouraged to use public transport when travelling to and from the premises.

Reasons

This was an application made by Martin Ekeocha-Kamara for a premises licence in respect of the premises known as L'Attitude, 18 Choumert Road, London SE15 4SE.

The licensing sub-committee heard from the applicant who advised that the premises was currently a ground floor restaurant. There was a small porch at the front of the premises used as a smoking area and also for extra seating. The applicant explained that he intended to operate the premises as a creative event space for the community to use.

The applicant stated that he was more than happy to work with the residents, but believed that the concerns that were raised in representations were historical and related to a different operator. The residents directly behind the premises had the applicant's telephone number should there be any concerns or issues relating to the premises. To date he had received no calls from the residents.

The applicant stated that it was their intention that the premises would primarily operate as a restaurant (between Sundays to Wednesdays). It would be possible to order food up to 22:00 and all food orders would be served by 23:00. He proposed having a book club running midweek and on Thursdays to Saturdays the premises would be more of a bar in the evening. There were bi-folding doors that were the width of the building and these would be closed after 22:00.

The applicant confirmed that he would endeavour not to use single use plastics wherever possible.

The licensing sub-committee noted that the representations submitted by both the Metropolitan police and the environmental protection team had been conciliated and the applicant had agreed further conditions/control measures to be added to the operating schedule.

The licensing sub-committee also noted the written representations from six other persons (local residents), who were not in attendance at the hearing.

There was some discussion about the planning status of the premises and whilst not a consideration for the sub-committee, the licensing officer advised that planning consent had been refused, but the decision was subject to appeal until November 2023.

The sub-committee noted that there had been 17 temporary event notices (TENs) in respect of the premises within the previous 12 months and that neither the Metropolitan Police Service nor the environmental protection team had objected to any of these.

The licensing sub-committee was satisfied with the business model proposed by the applicant and the conditions agreed with the responsible authorities (31 conditions agreed with the Metropolitan Police Service and two conditions agreed with the environmental protection team). The sub-committee was satisfied that these conditions together with the two additional conditions detailed in this notice of decision sufficiently addressed the residents' concerns and promoted all of the licensing objectives.

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 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.

6. LICENSING ACT 2003: THE PLANET NOLLYWOOD / THE BIKE, 319 CAMBERWELL ROAD, LONDON SE5 0HQ

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

The legal representative for the premises made some preliminary procedural points regarding witnesses being called to speak and police evidence in the licensing responsible authority officer's representation.

The sub-committee adjourned at 10.50am to allow the licensing officer to consult with the legal officer.

The meeting reconvened at 11.39 am.

The sub-committee agreed the best course of action was that the evidence of the witnesses must be strictly limited to the representations submitted and the witnesses could only be allowed to elaborate on the representation. Concerning the police CRIS reports, the police officer would be limited to confirm the data contained in them and prohibited to make any personal comment or recommendation to the sub-committee. This approach was accepted by all parties.

The representative for the applicant for the review addressed the sub-committee. Members had questions for the representative for the applicant.

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

The chair allowed the legal representative for the premises to ask questions of the licensing responsible authority officer.

The sub-committee heard from one other person (a local resident), supporting the review. They also called a witness. Members had questions for the other person and their witness.

The chair allowed the legal representative for the premises to ask questions of the other person supporting the review and their witness.

The sub-committee noted the written representations of other persons (local residents supporting the review) who were not present at the meeting.

The legal representative for the premises and the premises licence holder addressed the sub-committee. Members had questions for the legal representative and the premises licence holder.

The meeting adjourned at 12.47pm to allow the legal representative for the premises to discuss the proposed amendments to the licence, from the licensing responsible authority officer, with the premises licence holder.

The meeting reconvened at 1.07pm and the legal representative for the premises confirmed which of the proposed amendments that the premises licence holder could accept.

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

The meeting adjourned at 1.38pm for the sub-committee to consider its decision.

The meeting reconvened at 2.30pm and the chair advised everyone of the decision.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 submitted by another person for the review of the premises licence issued in respect of The Planet Nollywood/The Bike, 319 Camberwell Road, London SE5 0HQ having had regard to all relevant representations has decided to modify the premises licence.

Conditions

1. That an updated dispersal policy shall be held at the premises.
2. That all relevant staff shall be trained in their responsibilities under the Licensing Act 2003, the promotion of the licensing objectives and the terms and conditions of this licence. Records pertaining to such training ('the staff training logs') shall be kept at the premises, shall be updated every 12 months and shall be made immediately available to responsible authority officers on request. The training logs shall include the trainee's name (in

block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received and understood by the trainee.

3. Condition 8AD be amended to read "That at least two SIA registered door supervisors, at least one of whom shall be female, shall be employed at all times after 22:00 on Friday, Saturday and Sunday nights until 30 minutes after the terminal hour as detailed on the premises licence. They must be provided with hand held metal detection units in order to ensure searches are carried out in respect of all admissions to the premises, whether members of the public or performers and their assistants. One door supervisor will be supplied with a mechanical counting device to ensure the maximum accommodation limit is not exceeded and to monitor the number of persons on the premises at any one time".
4. That condition 293 be amended to read: "That an incident log shall be kept at the premises to record details of any of the following occurrences at the premises:
 - i. Instances of anti-social or disorderly behaviour
 - ii. Calls to the police by the premises' staff
 - iii. Any complaints received
 - iv. Ejections of people from the premises
 - v. Visits to the premises by the local authority or emergency services
 - vi. Any malfunction in respect of the CCTV system
 - vii. All crimes reported to the venue
 - viii. All seizures of drugs or offensive weapons
 - ix. Any other relevant incidents

The incident log shall contemporaneously record the time, date, location in the premises and description of each incident, the printed and, if possible, signed name of the person reporting the incident and any action taken in respect of the incident. The incident log shall be available / be accessible at the premises at all times that the premises are in use, and shall be made immediately available to responsible authority officers on request. All relevant staff employed at the premises shall be trained in the use of the incident log. Details of such training, including the printed name(s) of the trainee(s) and the date(s) that the training was given, shall be recorded in the staff training logs at the premises."

5. That licence condition 298 be amended to read: "That clearly legible signage shall be prominently displayed at the entrance to the premises where it can easily be seen and read by customers stating: 'Drugs Free Zone', 'NO SEARCH - NO ENTRY' and 'The management reserve the right to refuse entry'. Such signage shall be kept free from obstructions at all times".

6. That licence condition 302 be replaced with:
 - “That clearly legible signage shall be prominently displayed where it can easily be seen and read by customers in the premises main floor areas and toilets advising to the effect that the taking of illegal drugs will not be tolerated at the premises. These notices shall be kept free from obstructions at all times.
 - That a zero tolerance policy to illegal drug use will be implemented and maintained at the premises. All staff shall be trained in respect of the premises’ drug policy. A record of such training shall be kept in the staff training logs at the premises which shall include the printed name of the trainee and the date that the training was received”.
7. That licence condition 307 be amended to read: “That the total number of persons that may be accommodated at any one time within the premises excluding staff (the ‘accommodation limit’) shall not exceed a maximum of four hundred & sixty (460) persons in total; comprising of a maximum of three hundred & fifty (350) persons in the ground floor and one hundred & ten (110) persons in the first floor”.
8. That licence condition 311 be replaced with:
 - “That clearly legible signage shall be prominently displayed where it can easily be seen and read by customers, at all exits from the premises and in any external areas, requesting to the effect that customers leave the premises and locale in a quiet and orderly manner with respect to local residents. Such signage shall be kept free from obstructions at all times.
 - That staff shall be trained to, and shall request if and when required, that customers behave at and/or leave the premises and locale in a quiet and orderly manner. Customers deemed by staff to be engaging in anti-social behaviour shall be asked to leave the premises. The details of such training, including the printed name(s) of the trainee(s) and the date(s) that the training was given, shall be recorded in the staff training logs at the premises”.
9. That licence condition 319 be replaced with:
 - “That external doors at the premises shall be kept closed except to allow immediate, and emergency, access and egress to and from the premises.
 - That windows at the premises shall be kept closed at all times that the premise are in use”.

10. That licence conditions 325 and 332 be replaced with:
- That after 22:00 children under the age of eighteen shall not be permitted on the premises.
 - That children under the age of 18 must be accompanied on the premises by a responsible adult at all times.
11. That licence conditions 326 – 329, 333, 8AB, 8AC & 8AI to be replaced with:
- That a challenge 25 scheme shall be maintained requiring that staff selling or delivering alcohol request that any customer who looks under 25 years old, and who is attempting to purchase or take receipt of alcohol, provides valid photographic identification proving that the customer is at least 18 years old. Valid photographic identification is composed of a photo driving licence, passport, UK armed services photo ID card, any Proof of Age Standards Scheme (PASS) accredited card (such as the Proof of Age London (PAL) card) or any age verification card accredited by the Secretary of State.
 - That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons (including the prevention of 'proxy sales') and the challenge 25 scheme in operation at the premises. The details of such training, including the printed name(s) of the trainee(s) and the date(s) that the training was given, shall be recorded in the staff training logs at the premises.
 - That clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating to the effect that a challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and stating what the acceptable forms of proof of age are. Such signage shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale. The signage shall be kept free from obstructions at all times.
 - That a register of refused sales of alcohol shall be maintained in order to demonstrate effective operation of the challenge 25 policy. The register shall be clearly and legibly marked on the front cover as a register of refused alcohol sales, with the address of the premises and the name of the licence holder. The register shall be used to record details of all refused sales of alcohol. The register shall be kept / be accessible at the premises at all times. The register shall be made immediately available for inspection at the premises to responsible authority officers on request.

Reasons

The representative to the premises raised two preliminary issues that the sub-committee needed to rule on:

- i. The premises licence holder had a right under regulation 8 of the Licensing Act 2003 (Hearing) Regulations 2005 concerning the notification of witnesses. Licensing as a responsible authority intended to call a police officer as a witness. Furthermore, other person E intended to call a witness.
- ii. The representation submitted by Licensing as a responsible authority had been amended after the consultation date, to include police evidence, when the police had failed to submit a representation in its own right.

The representative for the premises had not received notification, nor did he know the evidence that was going to be given. Furthermore, he wanted to investigate if the Licensing representation had been amended to include the police evidence, when the police had neglected to submit a representation. He therefore sought an adjournment of the hearing.

Although Regulation 8 of the Licensing Act 2003 (Hearing) Regulations 2005 only makes reference to notice being given to the licensing authority, it was accepted that the rules of natural justice dictated that the parties were required to be on an equal footing.

After the legal advisor established that there was no wrongdoing on the part of the officer for licensing, the sub-committee agreed the best course of action was that the evidence of the witnesses must be strictly limited to the representations submitted and the witnesses could only be allowed to elaborate on the representation. Concerning the police CRIS reports, the police officer would be limited to confirm the data contained in them and prohibited to make any personal comment or recommendation to the sub-committee. This approach was accepted by all parties.

The licensing sub-committee heard from the representative for the applicant, who was also her sister and had shared a flat with the applicant. It was suggested that the premises had been causing considerable disturbances through excessive noise, which was disturbing the applicant's peace, but also impacting the quality of life for the residents in the surrounding area.

They advised that noise regularly emanated from the premises late at night and continued into the early morning, making it difficult for residents to sleep or enjoy their homes. Music and bass penetrated the surrounding residential homes. Despite having double glazing and wearing earplugs, the noise could not be dampened. The music was very loud and after the club closed, the streets would become full of people who continue to make a noise and to play music. The premises regularly breached licence conditions and the licensable hours which resulted in stress, sleep deprivation, and a general deterioration in the quality of life

for the local residents.

The licensing sub-committee heard from licensing as a responsible authority who outlined its support of the review application. The officer confirmed that he would not recommend a revocation or suspension of the premises licence.

It was stated that since 2019 the licensing unit had received 12 complaints from nine different local residents regarding noise nuisance, anti-social behaviour and disorder arising as a result of the premises' operation, which indicated that residents did perceive problems arising directly as a result of the premises' operation. The officer also recommended that the sub-committee modify the premises licence because many of the existing licence conditions required amending to make them more robust and enforceable. Such amendments were likely to address the concerns of the applicant and local residents and would ensure the premises operated in an orderly fashion.

The licensing sub-committee heard from other person E and their witness who advised that they had lived with the applicant for a number of years, in a flat opposite the Green. Over this time they had called the council's noise team to log noise complaints multiple times.

Other person E stated that they could hear the music and bass from the premises in their home and felt that it was as if the music was being played in their bedroom. Other person E said that they were being kept awake until 05:00 and that the noise was ruining the quality of their life.

The licensing sub-committee then heard from the representative for the premises who advised that there were a considerable number of residential premises closer than the applicant and other persons who supported the application.

The representative agreed with the chair's explanation to those supporting the review application of the agent of change principle that placed the responsibility for mitigating impacts from existing noise-generating activities or uses on the proposed new noise-sensitive development. In view of this, the complaints of noise were akin to a private nuisance. The residents had also been afforded the protection of an air conditioning system and was only when residents opened their windows that noise could be heard. Notwithstanding this, the premises had a noise limiting device installed. Because of this, the noise could not have come from the premises and arguably it could have come from the food vendor that had been operating on the Green since March 2023.

In support of the premises, it was highlighted to the sub-committee that there had been no independent observations made that suggested that any of the licensing objectives had been undermined.

The Metropolitan Police Service was the main source of advice on crime and disorder and they had failed to submit a representation.

The environmental protection team (EPT) did not support the application having said that they were unable to establish any noise nuisance.

Concerning the representation from licensing as a responsible, it was asserted that the officer's recommendations of modifications were outside of their field of expertise.

Although planning is a separate regulatory regime and not considerations for a licensing sub-committee, the Revised Guidance issued by the Home Office under Section 182 Licensing Act 2003 (issued December 2022) paragraph 14.66 makes reference to the agent of change principle:

“Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required by the local planning authority to provide suitable mitigation before the development has been completed”.

Since the premises existed prior to the construction of the residents' homes, the sub-committee were satisfied that the agent of change principle is relevant in this case. Developers would have mitigated the impact from existing noise-generating activities on the development as a whole (e.g. via the installation of an air vent system), residents have complained of disturbance from the premises.

The licensing sub-committee was also mindful of the case of *Thwaites* [2008] EWHC 838 (Admin) that a decision was to be based on evidence rather than speculation. Although the sub-committee did not doubt that the residents had been disturbed, there was a lack of independent evidence to assist them. This has limited the action that the sub-committee could take.

Although the premises did not accept that it was responsible to the allegations provided by the applicant and other persons, it recognised that the licence was granted in 2009 and that the conditions could be reworded more robustly. The sub-committee is grateful to the representative for the premises indicating the conditions it would agree to and these modifications should be made to the premises 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.

The meeting ended at 4.03pm.

CHAIR:

DATED: