

LICENSING SUB-COMMITTEE

MINUTES of the Licensing Sub-Committee held on Thursday 8 August 2024 at 10.00 am at Ground Floor Meeting Room G02A - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Jane Salmon
Councillor Charlie Smith

**OTHER
AUTHORITIES
PRESENT:** PC Mark Lynch
Armin Solimani, police counsel
PC Walter Mika Agyeman

**OFFICER
SUPPORT:** Debra Allday, legal officer
Jayne Tear, licensing
Andrew Heron, licensing
Raymond Binye, Environmental protection team
Wesley McArthur, licensing
Virginia Wynn-Jones, constitutional team

1. APOLOGIES

The chair explained to the participants and observers how the meeting would run.

Everyone then introduced themselves.

There were no apologies.

2. CONFIRMATION OF VOTING MEMBERS

The members present were confirmed as the voting members.

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: CLUB 701, BASEMENT AND GROUND FLOORS, 516 OLD KENT ROAD, LONDON SE1 5BA - TRANSFER OF PREMISES LICENCE

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

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

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

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

The meeting adjourned at 11.15am for the sub-committee to consider its decision.

The meeting reconvened at 11.40am and the chair advised everyone of the decision.

RESOLVED:

The Licensing Sub-Committee having considered the objection notice submitted by the Southwark Police Licensing Office relating to the application submitted by Eddie Hanson to transfer a premises licence under section 42 of the Licensing Act 2003 in respect of the premises known Club 701 Basement & Ground Floors, 516 Old Kent Road, London SE1 5BA has refused the transfer application.

Reasons

This was an application for the transfer of the premises licence in respect of Club 701 Basement & Ground Floors, 516 Old Kent Road, London SE1 5BA to the Applicant.

The Licensing Sub-Committee heard from the legal representative for the Applicant who summarised the background of the premises. Following an allegation of rape on 2 January 2024 the Metropolitan Police submitted a summary review application and the premises licence was suspended as an interim step on 19 January 2024. The final review of the licence was considered on 8 February 2024 when the decision was made to revoke premises licence. The suspension of the licence continued as interim steps.

Both the decision to revoke and the interim steps were appealed to the Magistrates' Court. The basis of the Appeal was that the premises were in the process of being sold to a third party. At the Appeal of the interim steps on 18 April 2024, it was suggested by Southwark's Counsel that the appeal in relation to the suspension as interim steps should be withdrawn due to the dissatisfaction of the documentation presented about the sale of

the premises, and a transfer application, a DPS variation and review of the interim steps be submitted.

Since 19 January 2024 the premises has not traded and until the premises licence is transferred (and licence suspension lifted), the Applicant is unable to trade. Despite this, the Applicant was responsible for the Club's utilities. The Applicant was keen to commence trading. The police were not against a nightclub in the location and the allegation of 2 January 2024 had been a standalone incident, coupled with non-compliance of the licence by Eric Doe (the current licensee). The premises did not have a history of violence.

The Applicant was a councillor for the London Borough of Camden, who was also the Chair of Licensing Sub-Committee D. He was a regulator, aware of his duties and obligations, with ten years' experience as an operator. He was a champion of the community and who interacted easily with the relevant responsible authorities, neighbourhood groups and faith groups, and was of impeccable character.

The representative for the Applicant stated that an undertaking could be given to the sub-committee of Eric Doe having no future involvement, having no role in the management of the premises, and that he be excluded from them. A minor variation to the license could then be made in the future to confirm this undertaking.

The Applicant addressed the sub-committee and stated that he would be running the premises himself and did not want the current licensee to have any involvement in Club 701. The current licensee was the owner and licensee of the Kent Restaurant and Lounge, which was upstairs from the Club. The two would only come into contact outside, regarding queue management, the smoking area or security patrol. The current licensee would not have any part in the Club's business. The Applicant had a solid experience of running licensed premises that operated. He worked well and collaboratively with local authorities to ensure premises as safe and sustainable. Any variations that needed to be added to give reassurance to the Police would be made. The Applicant wanted the premises to be a model venue, to be an example venue in Southwark; providing internships, apprenticeships etc. In return, he would ensure the premises was well run, welcoming to everyone and a place people could feel safe. Anyone who had ever worked at the premises previously would not be employed, including marketeers, promoters and the like.

There would be renovations/refit of the premises that would take approximately a month and until they were completed the venue would be closed.

The Applicant confirmed to members that he had paid a £5,000 "up front" and the balance would be paid over 30 months. Members noted that it was unusual for a seller to agree such a small deposit, with the rest to be paid over a two and a half year period, in view of the current position with the climate of the hospitality industry.

Members enquired whether the premises could revert to the current licensee if the

balance of the purchase price could not be made. To this, the Applicant stated that the premises would not revert to him based on his projected revenue and the conditions put in place.

The legal representative for the Applicant explained that it would be easier to apply for the transfer of the old licence (rather than wait for the outcome of the Appeal) because only the Police needed to be consulted; the conditions on the current license contained good conditions, they just need to be complied with.

The Applicant had not envisaged it would take until August for the transfer to be determined. Notwithstanding his ownership of the neighbouring premises, the current licensee was unable to pay for legal representation, which had delayed matters.

There was discussion of the access between Club 701 and the neighbouring premises, Kent Restaurant and Lounge which was operated by the current licensee, it was clarified that there was no way that one could leave Kent Restaurant and Lounge to reach Club 701. The club had one entry and two emergency exits on the Old Kent Road side with an exit into the courtyard; there were two staircases into the Kent Restaurant and Lounge with, one emergency exit, with a shutter locked all the time.

The Applicant stated that he would look at the Club's existing database in terms of the local community and ensure patrons were well behaved, and if individuals fit the right criteria they would be allowed into the premises. An ID scanner was already a condition on the licence and would be used.

The Licensing Sub-Committee then heard from the legal representative for the Metropolitan Police Service who advised that the Police opposed the transfer application. The Police were less concerned with the current licensee purchasing the premises back, but more worried that the terms of the lease meant that the lease would revert back to him in default of payment. It was unclear how the balance of the purchase price would be raised over 30 months.

The Police also disagreed that the transfer application of a revoked premises license route would be easier than applying for a fresh premises licence.

It was the position of the Police that it was more appropriate to wait for the Magistrates' Court hearing (on 24 September 2024), which would allow the Applicant more time to ensure his financial projections were in place so the current licensee was not put back in ownership by default (as per clause 3.1 of the Contract for Sale). If that should occur, then the sub-committee may inadvertently permit the premises licence to revert back to the current licensee by default, thus undermining the 8 February 2024 Licensing Sub-Committee's decision. The current licensee was not a fit and proper person to hold the premises licence to Club 701, after repeatedly breached the licence conditions. This was pertinent since there were on-going issues with the current licensee interfering with the on-going police investigation (into the allegation from 2 January 2024), but also allegations of intimidating witnesses by accessing witness details from the

premises ID scanner.

The legal representative for the Police confirmed that the Applicant was clearly a man of good character. The bone of contention for the Police was the terms of the lease and the possibility of the current licensee obtaining control of the premises again. If the 30 month proviso was not in the contract of sale, there would be no objection from the Police. It was felt that the transfer application had also been made prematurely. There was still six weeks before the Appeal hearing at the Magistrates' Court, so there was no commercial urgency for the transfer. The Applicant had stated he required a month for renovations/refit before the premises reopen, leaving only two weeks at best that the premises could trade.

This was an application for the transfer of a premises licence, submitted under Section 42 of the Licensing Act 2003 in respect of Club 701, Basement & Ground Floors, 516 Old Kent Road, London SE1 5BA.

In considering the application, the Licensing Sub-Committee noted paragraphs 8.100 and 8.101 of the Revised Home Office guidance issued under s.182 of the Licensing Act 2003 that in the majority of cases, transfer applications should be a simple administrative process. Unless the Police raise an objection, a licensing authority must transfer the premises licence. As provided for in paragraph 8.101 of the Guidance, objections from the Police should only be made in exceptional circumstances where the Police believes the transfer may undermine the crime prevention objective.

Southwark's Statement of Licensing Policy 2021-2026 (SoLP) details one such exceptional circumstance that would undermine the crime prevention objective:

- "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".*

The premises has a history in terms of violence and compliance, notably, the incidents that resulted in the Police instigating summary reviews on 5 November 2019 and 17 January 2024.

Members were extremely concerned that the Contract for Sale allowed for the Applicant to pay "to the seller within thirty (30) months of the alcohol licence being secured, and otherwise this agreement/contract becomes invalid" (clauses 2.5 and 3.1). In view of the many different types of funding for the start-up of nightclub (business loans, merchant cash advances, crowdfunding, angel investors) coupled with the sentiment within paragraphs 94 and 95 of the SoLP, the sub-committee's serious concerns should be of no surprise to the Applicant.

In addition, the Contract for Sale provides:

“7.1 For the purpose of assuring to the Buyer the full benefit of the Business the Seller shall not:

- a.*
- b.*
- c. for a period of two years after the Completion Date, either on its own account or through any other person directly or indirectly operate or take part in the management of a business which competes with the Business within a radius of one mile of the Property”. (clause 7.1.c)*

The members of the sub-committee were also of the view that the current licensee would be in breach of this non-competing clause given that he already owns a licensed premises next door.

Although the two licensed premises would be operating the same building, namely, Club701 and Kent Restaurant and Lounge, it was suggested that there would be limited contact between the Applicant and the current licensee. The Chair of the Licensing Sub-Committee for this application also chaired the Licensing Sub-Committee when the Kent Restaurant Lounge was determined. On that occasion, the current licensee stated that despite there being no immediate access between the premises, due to the limited size of the kitchen in the Kent Restaurant and Lounge, the Club 701 kitchen would be utilised. In the absence of any evidence to the contrary, this arrangement would likely continue.

The sub-committee are aware that each licensing application should be considered on its own merits. However, on this occasion, it has found evidence from the Police compelling.

The skeleton argument produced by the legal representative for the Applicant makes reference to the DPS variation. It is understood that the application was put on hold pending the outcome of the transfer application. In light of sub-committee’s decision to refuse the premises licence the DPS variation falls away. However, this sub-committee wish to stress the Applicant’s credentials as being faultless.

The Licensing Sub-Committee is satisfied that the evidence presented provides sufficient exceptional circumstances to reject this application and consider it necessary for the promotion of the crime prevention objective to do so. It is on this basis the application was refused.

In making this decision the sub-committee had regard to the relevant notice and considered this decision was appropriate for the promotion of crime prevention objective.

Appeal Rights

The applicant may appeal against any decision:

- a) To refuse the application to transfer the premises licence
- b) To refuse the application to specify a person as premises supervisor.

Any person who submitted a relevant objection in relation to the application who desire to contend that:

- a) That the application to transfer the premises licence ought not to be been granted or
- b) That the application specify a person as premises supervisor ought not to be been granted

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.

Following this resolution, the applicant requested that the licensing sub-committee lift the interim steps on the premises. It was

RESOLVED:

That the interim steps imposed on 19 January 2024 in respect of the premises licence to Club 701 Basement & Ground Floors, 516 Old Kent Road, London SE1 5BA to suspend the premises licence continues.

It is not appropriate for the promotion of the licensing objectives to lift the suspension.

Reasons

At the conclusion of the transfer application (the Notice of Decision for which is attached to this decision), an application was made for the review of the interim steps imposed in respect of the premises licence in respect of Club 701 Basement & Ground Floors, 516 Old Kent Road, London SE1 5BA.

The detail of the application for the review of the interim steps was identical to the transfer application.

Following an allegation of rape on 2 January 2024 the Metropolitan Police submitted a summary review application and the premises licence was suspended as an interim step on 19 January 2024. The final review of the licence was considered on 8 February when the decision was made to revoke the premises licence. The interim steps were reviewed and the Licensing Sub-Committee determined that to promote all of the licensing objectives, it was in the public interest that the suspension of the licence continue as an interim step.

The decision to revoke the premises licence and the interim steps were appealed to the Magistrates' Court. The basis of both Appeals were that the premises were in the process of being sold to a third party, namely, Eddie Hanson. The interim steps Appeal was listed at the Magistrates' Court hearing on 18 April 2024. That Appeal was withdrawn, due to dissatisfaction concerning the sale of the premises.

The Appeal of the interim steps was also withdrawn to allow Mr Hanson to submit a transfer application and a DPS variation.

The premises has not traded since 19 January 2024 when the licence was initially suspended.

The Licensing Sub-Committee was not satisfied with the documentation produced as part of the transfer application which showed a payment of £5,000 had been made “up front” and the balance would be paid to Enrico Entertainment Limited over 30 months. Members noted that it was unusual for a seller to agree such a small deposit, with the rest to be paid over a two and a half year period, in view of the current position with climate in the hospitality industry.

Non-payment of balance meant in default ownership of the premises would revert back to current owner of the premises Enrico Entertainment Limited (clauses 2.5 and 3.1 of the Contract for Sale). This clause undermined paragraphs 94 and 95 of Southwark’s Statement of Licensing Policy 2021-2026 (SoLP).

If that should occur, then the sub-committee may inadvertently permit the premises licence to revert back to the current licensee by default, thus undermining the 8 February Licensing Sub-Committee’s decision.

The operational history of the Club 701 licence argued that the current licensee was not a fit and proper person to hold the premises licence to Club 701 with repeated breaches of the licence conditions and the incidents of violence that resulted in the Police submitting summary reviews on 5 November 2019 and 17 January 2024. There were also on-going issues with the current licensee interfering with the on-going police investigation (into the allegation from 2 January), with allegations of intimidating witnesses by accessing witness details from the premises ID scanner.

In light of the Licensing Sub-Committee’s decision on 8 February to revoke the premises licence and its previous decision to refuse the transfer of premises licence to Mr Hanson, to lift the suspension at this stage would allow Enrico Entertainment Limited to trade, thus subverting the sub-committee’s previous decisions.

On this basis, the application is refused and the Licensing Sub-Committee were satisfied that the interim steps to suspend the premises licence was necessary and proportionate to promote the crime prevention licensing objective.

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

An appeal against this decision may be made by:

- a. the chief officer of police for the police area (or each police area) in which the premises are situated, or
- b. the holder of the premises licence.
- c. Any other person who made relevant representations in relation to the application

Any appeal must be heard by the magistrates' court within the period of 28 days beginning with the day on which the appellant commenced the appeal.

The holder of the premises licence may only make further representations if there has been a material change in circumstances since the authority made its determination. Any representation should be in writing and cannot be received outside of normal office hours.

6. LICENSING ACT 2003: WAZOBIA RESTAURANT, 670 OLD KENT ROAD, LONDON SE15 1JF

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

The representative for the applicant for the review addressed the sub-committee and presented witnesses. Members had questions for the applicant's representative and the witnesses.

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

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

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

The representatives for the premises addressed the sub-committee. Members had questions for the representatives for the premises.

The sub-committee noted the written representations from the other persons presented in the agenda.

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

The meeting adjourned at 4.20pm for the sub-committee to consider its decision.

The meeting reconvened at 4.50pm 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 by the Space Investments Limited for the review of the premises licence issued in respect of the premises known as Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF 1JF having had regard to all relevant representations has decided to modify the licence.

Conditions

1. 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.
2. That a dispersal policy to assist with patrons leaving the premises in an orderly and safe manner shall be devised and maintained regarding the premises. A copy of the dispersal policy shall be accessible at the premises at all times that the premises are in operation.

The policy should include (but not limited to):

- i. Details of customer/staff egress at the premises shall be managed to minimise causing nuisance.
- ii. Details of public transport and taxis in the vicinity and how customers will be advised in respect of it.
- iii. The management of the "winding down" period at the premises.
- iv. Details of the use of security/stewarding in respect of managing customer dispersal from the premises.
- v. The management of ejections from the premises.
- vi. How any physical altercations at the premises are to be managed

All staff shall be trained in the latest version of the dispersal policy. Details of which will be recorded in the staff training logs at the premises. The dispersal policy shall be made immediately available to responsible authority officers on request

3. That clearly legible signage stating a dedicated contact telephone number for the premises will be prominently displayed where it can easily be seen read by passers-by. The signage will state that the phone number shown can be used to contact the premises in respect of any complaints regarding the operation of the premises. Such signage will be free from obstructions at all times. The telephone in respect of this number, if a mobile phone, must be on the duty manager's person at all times.
4. That a sound limiting device (or similar equipment) shall be installed at the premises, be maintained in full working order and be in use at all times that the premises are in operation under this licence. All amplification equipment, entertainment devices and amplified instruments shall be routed through the

sound limiting device (or similar equipment) which shall be calibrated so that the level of amplified sound at the premises does not cause a statutory or public nuisance. Particular regard must be given to the attenuation of bass frequencies. Only management staff shall have access to the sound limiting device (or similar equipment) and shall be able to demonstrate that it is in use at the immediate request of responsible authority officers.

5. The sound limiter shall be of a multiband type that can attenuate bass frequencies specifically in addition to other bands of frequencies.
6. A qualified professional acoustic consultant shall be employed to calibrate the sound limiter at the premises and to arrange the layout, installation and orientation of the speakers at the premises so that sound transmission is minimised.
7. A signed and dated report from the acoustic consultant regarding the calibration of the sound limiter and any amendments to the speaker installation at the premises report shall be kept at the premises and provided to authorised officers immediately on request.
8. Once the sound limiter has been calibrated, its control settings shall not be altered at any time, except for when altered by a qualified professional acoustic consultant or the premises' sound engineer.
9. The operational panel of the noise limiter shall be secured by key or password and access shall only be by persons authorised in writing by the Premises Licence Holder. A log of such authorised persons shall be kept at the premises and be made immediately available to authorised officers.
10. That all external doors and windows at the premises shall be kept closed except to allow ingress and egress to and from the premises.
11. That condition 842 is re removed from the premises licence.
12. That Condition 845 to be amended to include that the SIA registered door supervisors shall remain at the premises until all patrons have vacated the premises and until at least 30 minutes after the premises close.
13. That party walls, floors and ceilings between the commercial premises and residential dwellings shall be designed to achieve the following minimum airborne insulation weighted standardized level difference:

55db DnTw+Ctr

Proof of the insulation installation, including all details of the installation and any reports as to effectiveness of the insulation to prove that the above standard has been met, signed off and dated by a qualified acoustic consultant, shall be kept at the premises and be made immediately available to authorised officers on request.

The insulations acoustic performance shall be maintained thereafter.

Reasons for the decision

This was an application for a review of the premises licence known as Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF 1JF (the premises).

The licensing sub-committee heard from the legal representative for the applicant

who advised that the applicant company (Space Investments Limited) managed the properties above Wazobia Restaurant. From the planning history, the flats were established before the premises and when the planning permission for the restaurant was given in 2008, it was subject to a condition that the premises closes at 23:00 hours for the residents amenity.

Similarly there was a need for the residents to be protected from any noise pollution from the premises. A significant number of complaints had been made by the residents that consisted of loud music, loud bass, shouting and disorderly behaviour. The disturbance caused by the premises had resulted in a number of tenants to ask to be released from their tenancies early and move out.

The sub-committee heard from one of the tenants who advised that the music appeared to get louder at 03:00 hours and although they wore earplugs in bed, the noise from the bass still penetrated through pillows held over the tenant's ears. The tenant had moved their bed to escape from the walls to escape the vibrating. The floor also vibrated from the music in the premises. The tenant advised whenever the DJs turn the music down, they scream into the microphone, making it impossible to sleep; the noise was continuous and vibrated through her body.

The sub-committee was advised by the legal representative for the Applicant that nothing had changed since the previous sub-committee decision on 31 October 2023 and the position had been consistent since 2021. The sub-committee was reminded that the noise and nuisance team (NNT) had witnessed statutory noise nuisance on two occasions from the premises, in May and June 2023.

Richard Vivian, a noise specialist, had been instructed by the applicant, who had attended the flats above the premises on Friday 8 March 2024 and measured the noise from the premises between 23:00 until 02:00 the following morning. Noise was clearly audible, with the lyrics of songs intelligible. The music witnessed was intrusive in the flats directly above the premises.

Although there was a serious problem with noise breakout in Flat 1, Flats 4 and 5 were equally disturbed, demonstrating a wider issue involving all of the flats. The premises response had two answers. First, the issue could be fixed with a sound limiter. However, the expert for the premises didn't specify the type/model of sound limiter and speaker used. The data in front of the sub-committee was therefore, misrepresenting the day to day process of the restaurant.

The testing by the expert for the premises, Richard Wilding, had been carried out at 14:00-15:00 when there was more traffic on the road that would mask the music played, thus underestimating the effects of the music played at 02:00 to 03:00. Sound checks undertaken Mr Wilding did not play a representative type of music, so when the premises were open the effect was much worse than when the tests were carried out.

Sound insulation works had also only been done over the previous two weeks and the applicant's expert was not informed of this to enable his attendance or supervision. Despite this, being done on Wednesday 31 July 2024, on Friday 2

and Saturday 3 August complaints had been received from Flat 1 of the floor vibrating with the bass. It was unreasonable to expect the residents to have to go to bed after 03:00 when the premises closed and still be able to get up for work at 05:00 . It was the view of the expert for the Applicant that a sound limiter on its own would not work.

Given that the evidence showed that the problems generally started after 23:00, the applicant stated it was an appropriate and proportionate response that the premises operating hours be reduced to 23:00. It was also in line with Southwark's statement of licensing policy (SoLP) because the area was defined as being residential.

The environmental protection team (EPT) also recommend that the hours should be back to this time. Finally, the premises was not permitted to operate until 03:30 as this was a breach of planning permission. Conditions on their own would not solve the problem. A reduction in hours was sought.

The licensing sub-committee heard from the officer from the EPT who stated that he supported the review application. There had been a history of complaints leading to warning letters being issued.

A statutory noise nuisance was witnessed 2 May 2022 which resulted in a noise abatement notice being issued. This abatement notice was contravened on 4 June 2022. Ordinarily, this would result in a prosecution. This did not happen because the premises licence holder was cooperative and agreed to resolve the matter amicably. Since this time, only one noise complaint had been received. Because of this, NNT officers have not been able to witness it.

The officer recommended that the hours for the premises be reduced, but if the hours were reduced to have an additional noise limiter condition would be disproportionate. If the sub-committee were to maintain the hours, then a noise limiter would not solve issues without further insulation being installed. It was an either/or situation. The officer recommended an (amended) condition in respect of the sound limiter device (condition 4 above).

The licensing sub-committee heard an officer from the Metropolitan Police Service who confirmed that there had been one reported incident from the early hours of Christmas Day 2023, where there was a fight outside of the premises, although there was no information if the fight came from inside the premises. There were no reports specifically attributed to the premises itself.

The licensing sub-committee heard from licensing as a responsible authority officer (LRA) who stated that a balance of the needs of local residents needed to be weighed against the needs of the premises. Reducing the hours of the premises to 23:00 would likely kill the business. At a minimum the conditions imposed at the previous hearing on 31 October 2023 needed to be imposed again. It was vital that sound insulation be implemented, and a practical and enforceable condition was required in respect of it. The officer for LRA stated that it was an either/or situation. It would be disproportionate to impose robust conditions and also

significantly reduce the hours.

The licensing sub-committee heard from the representative for the premises who stated that because the application was for a review of the premises licence, it was a matter for the sub-committee to look at the issues arising after the grant of the licence unlike a new application when looking the committee looks at SoLP. The sub-committee were charged to look at the causes of concern only, not statements of licensing or planning policy. It was the view of the legal representative for the premises that the issues complained of amounted to a private nuisance. The complaints came from one building only and there was recourse via other council departments or by way of a private action in court.

It was the view of the premises that the planning issues raised by the applicant were a red herring. The premises had operated in its current form for in excess of ten years and as such, was now immune from prosecution. The applicant could have insulation on their side, but they chose not to. The applicant failed to inform prospective tenants that the premises was open until 03:00 . Also, the applicant informing its tenants not to tell the council about any noise issues would need to be disclosed in any future conveyancing.

At present, the complaints predominantly came from Flat 1. When the review application was considered on 31 October 2023, the then tenant in Flat 1 wrote a letter of support of the premises, saying they were happy. Immediately after that hearing, the applicant served notice on them. When the current tenancy commenced in January 2024, the tenants started complaining almost immediately.

None of the conditions imposed at the 31 October 2023 hearing were implemented because the decision did not take effect until the conclusion of the appeal. Because of the risk that the appeal could result in different condition requirements, requiring alternative/additional works to be undertaken, commercially, it was sensible to wait.

The premises had spent nearly £20,000 to implement the recent works to the premises in addition to instructing Richard Wilding to the test of the noise limiter. This had required bringing in a new owner to invest money. The report from Richard Wilding demonstrated that at least 55dB was achieved in three out of four tests. Where 55dB was not achieved, it reached 54dB. Prior to the recent reset of the noise limiter, noise was at 41dB. Furthermore, the restaurant now had two layers of ceiling tiles and dampening in the void. Regardless, the premises advised that they were agreeable to set the noise limiter at 55db, in line with council policy. The premises was also content with the proposed conditions.

The licensing sub-committee noted the representations of the other persons both in support of the review the review application and also, those supporting the premises.

The licensing sub-committee also considered the video footage that had been submitted by the applicant.

This was a review application of a premises licence submitted under Section 51 of the Licensing Act 2003 (LA2003) in respect of Wazobia Restaurant, 670 Old Kent Road, London SE15 1JF. The review application is dated 7 August 2023.

The premises is located on the ground floor of a four storey building on Old Kent Road, a major arterial road with a high volume of traffic both day and night. The premises has the benefit of a licence with opening hours: Sunday to Thursday until midnight and Friday and Saturday until 03:30 with licensable activities until 30 minutes prior to closing.

The sub-committee were advised that the premises was largely was a food led restaurant with dancing after.

The primary cause of concern that has driven this review application has been complaints of noise nuisance from the premises that has literally driven out tenants from the flats above.

There has been a lengthy history of regarding to this application. The application originally came before the licensing sub-committee on 31 October 2023 and it was decided that the premises licence should be modified with conditions.

The applicant appealed the decision, which is their right to do. On the 10 June 2024, District Judge Benjamin remitted the review application back to the sub-committee to consider the application afresh. This, the sub-committee has done and has considered very carefully all of the written, verbal and visual submissions before it.

A considerable amount of the evidence before the sub-committee is dated 2022 and 2023. The NNT witnessed a statutory noise nuisance on 2 May 2022, after which a noise abatement notice was issued. A contravention of the noise abatement notice was witnessed on 4 June 2022 and a caution was issued in respect of this. It is understood that a statutory noise nuisance was also witnessed in March 2018.

Although the premises was not obliged to implement the conditions imposed by the sub-committee on 31 October 2023 until any appeal was finally determined, it is unfortunate that it chose not to do so until very recently. This would have assisted this sub-committee the extent of the issues complained of to date.

The sub-committee were informed that since the 31 October 2023 hearing, the NTT received only one complaint. The sub-committee also heard that over the weekend of the 2 and 3 August 2024 the residents in Flat 1 experienced considerable disturbance of noise, after the premises reset the noise limiter.

The sub-committee acknowledges that the applicant submitted complaints on their tenant's behalf. The applicant may have felt it would be more convenient to their tenants to do this.

The sub-committee recognises the burden on residents is immense and extremely

time consuming. Residents want immediate an immediate resolution when they are disturbed at acutely anti-social hours.

Residents are required to call the council late at night/early morning and wait for an investigating officer from the out of hours NNT, where often, there can be a delay in an officer returning the call to the resident and the noise disturbance could have ended. In the event that the noise nuisance has not ended, an officer would need to attend the resident complainant's home to assess whether the noise is a statutory noise nuisance, which residents understandably find intrusive and exhausting.

However, because complaints have not been submitted to the council in "real time" has meant that the council has no way of identifying whether a statutory noise nuisance was committed.

The sub-committee urges the applicant that in respect of noise complaints, they encourage their tenants of the importance to make complaints of noise disturbance to the council in real time.

It is a positive duty of the licensing authority to promote the licensing objectives:

- “(a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm”.
- (Section 4(2) Licensing Act 2003)

The Section 182 guidance speaks of the promotion of the prevention of public nuisance and that:

“..through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences...”. (Paragraph 2.20)

In determining the review application, it must promote the licensing objectives having regard to the application, relevant representations, Southwark's statement of licensing policy 2021-2026 (published under Section 5 of the Licensing Act 2023 and the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (December 2023) (the Section182 guidance).

The options available to this sub-committee are:

- i. Take no action
 - ii. Modify the premises licence
 - iii. Exclude a licensable activity
 - iv. Remove the designated premises supervisor
 - v. Suspend the licence
 - vi. Revoke the licence.
- (Section 52(4) Licensing Act 2003)

In view of the options available to the sub-committee, taking no action is not appropriate and would undermine the licensing objectives, which this sub-committee is under a duty to promote. The sub-committee also feel that having heard and considered all of the evidence available before it, that it would be wholly disproportionate to impose options iii, iv, v and vi.

The licensing sub-committee has decided it would be appropriate and proportionate to modify the premises licence. Consideration was given whether to reduce the operating hours of the premises. However, having heard from the experts for both the Applicant and the premises, and the opinions from EPT and LRA, it was decided that it would be disproportionate and excessive to reduce the premises hours and impose conditions, in particular the detailed condition concerning the noise limiter.

In reaching this decision the sub-committee had regard to all the relevant considerations, the four licensing objectives and the public sector equality duty and determined that this decision was appropriate and proportionate.

In making this decision the sub-committee had regard to the relevant notice and considered this decision was appropriate for the promotion of crime prevention objective.

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 District Judge's 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.

Meeting ended at 5.00 pm

CHAIR:

DATED: