



## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 6 SEPTEMBER 2017

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

1. That the council's licensing sub-committee, having considered an application made under Section 53C of the Licensing Act 2003 by the Metropolitan Police Service for the review of the premises licence issued in respect of the premises known as Afrikiko Bar, Restaurant and Night Club 871 Old Kent Road, London, SE15 1NX, and having had regard to all other relevant representations, has decided that it is appropriate, necessary and proportionate in order to promote the licensing objectives to:
  1. Suspend the licence for a period of 9 weeks.
  2. Modify the conditions of the licence by adding the following conditions:
    - i. That the hours of operation will be:  
Sunday to Thursday from 11:00 to 00:00  
Friday and Saturday from 11:00 to 01:00
    - ii. That all staff are trained in their responsibilities under the Licensing Act 2003 in addition to the terms and conditions of the premises licence in addition to training specific to premises licence terms and conditions and training records should be kept and signed, these records shall be updated every six months and shall, upon request, be made immediately available to officers of the police and the council.
    - iii. That alcohol shall be served ancillary to food, excluding snacks.
    - iv. That there are no externally promoted DJ events at any time, including when the premises operate under a temporary event notice.
    - v. That the premises licence holder operates according to a comprehensive written dispersal policy and staff training pertaining to it. The dispersal policy must include provisions regarding the car park at the premises (e.g when the premises are shut that vehicles are made to vacate the car park). The dispersal policy is to be submitted to the licensing authority prior to the premises operating.

- vi. That all event bookings and full details are to be logged and made known to all staff. The booking log is to be kept at the premises and made available for inspection immediately upon request by police and/or council officers.
- vii. That when events take place, the premises shall carry out pre-opening security checks of the premises and car park for both drugs and weapons to ensure that these items are not brought inside.
- viii. That condition 291 be amended to read: "Any events operating after 22:00 hours shall have two SIA registered door supervisors, one of whom shall be female, until the terminal hour that the premises are in use under the licence including any temporary event notice. Hand held search wands will be used to assist in searching all persons entering the premises. All persons to include staff, performers, guests and members of the public. Counting devices shall be used to ensure that the accommodation capacity is not exceeded. The number of attendees shall be recorded periodically whilst the premises is in operation. This information will be made available to the Police and officers of the council and any other authorised persons immediately upon request.
- ix. That conditions 347, 348 and 349 be removed from the licence.

## 2. **Reasons**

The reasons for this decision are as follows:

The licensing sub-committee heard from Metropolitan Police Service, the applicant for the review. They advised that on 9 August 2017 they applied to the licensing authority for a summary review of the premises licence in respect of the premises known as Afrikiko Bar, Restaurant and Nightclub, 871 Old Kent Road, London SE15 1NX after a Superintendent for the Metropolitan Police Service certified that in his opinion the premises are associated with serious crime or serious disorder or both.

The application related to a very serious fatal incident that took place on the previous day, Tuesday 8 August 2017 at approximately 02:00 when an emergency call was made to the police reporting that a large fight, including the use of a knife, and involving approximately 34 persons who had previously been in the premises was taking place outside of the premises. Police attended the premises and found a male unresponsive on the floor. A large number of people were still in the vicinity of the premises.

Police officers viewed CCTV of the incident which showed a large group of people outside the premises at 02:00. The closing time of the premises on 8 August 2017 was 01:30. The CCTV showed a fight involving weapons. The victim was stabbed and died as a result of the injuries the victim received.

The police stated, and we accept, that the premises were being operated on 8 August in breach of various conditions on the premises licence, namely condition 303 (completion of Form 696/venue hire agreement), condition 336 (personal licence holder to be on premises when alcohol is supplied) and condition 347 (only over 21s to be admitted to the basement area). They stated further that there was a significant history of non-compliance at the premises with regards to the terms and conditions of the premises licence issued in respect of the premises. They informed the sub-committee that four Section 19 closure notices had been issued and recommended that the premises licence be revoked. In our view the Police acted very properly in instigating this summary review.

The licensing sub-committee heard from the representative for the premises who accepted that there had been failings at the premises in the past. The incident took place some distance from the premises, most of which could not be seen on the CCTV footage as it occurred behind a tree/car.

The licensing sub-committee noted a representation from the other person, a resident, that over the course of the previous 2years, there were often fights outside the premises, loud disturbing music and patrons loitering outside the premises. There was a suggestion that there had been a stabbing outside the premises in November 2015.

The sub-committee considered very carefully whether to revoke the premises licence as requested by the police, particularly in light of the admitted breaches of the licence. Considerable weight was given to the fact that the fatal incident took place some distance away from the premises and after those involved in the violence had already left the premises.

The sub-committee took the view that the appropriate and proportionate steps to be taken should be specifically directed at the cause of the serious incident and should not exceed those steps that were appropriate to promote the licensing objectives.

The sub-committee, on balance, took the view that a significant reduction in operating hours as well as a condition that alcohol must now be provided as ancillary to food, taken together with all the other conditions imposed, was the appropriate and proportionate response on this occasion. These steps were likely to significantly reduce the risk of the licensing objectives being undermined in the future.

Therefore, the sub-committee concluded that revocation of the premises licence was not appropriate at this stage. The premises licence holder is expected to fully comply with all of the imposed conditions without fail. If further breaches occur in the future that have the effect of undermining the licensing objectives then the police would be well within their rights to instigate a further review of the premises licence and, without binding the hands of a future licensing sub-committee, it is likely that more severe action would be taken on that occasion.

### **3. 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.

#### 4. **Review of interim steps pending appeal**

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
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

At the conclusion of the review hearing the licensing sub-committee reviewed the interim steps to determine which interim steps were appropriate for the promotion of the licensing objectives, pursuant to section 53D of the Licensing Act 2003. The sub-committee concluded that these interim steps were appropriate:

- To suspend the premises licence.

The interim steps is open to appeal by:

- a) The chief officer of police for the police area in which the premises is situated; or
- b) The holder of the premises licence

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.

Issued by the Constitutional Team on behalf of the Director of Legal Services

Date: 6 September 2017

## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 27 OCTOBER 2020

#### **SECTION 53C LICENSING ACT 2003: AFRIKIKO RESTAURANT & NIGHT CLUB LTD (t/a “AFRIKIKO” 871 Old Kent Road, London SE15 1NX)**

#### **1. Decision**

That the council's licensing sub-committee, having considered an application made under Section 53C of the Licensing Act 2003 by the Metropolitan Police Service for the review of the premises licence issued in respect of the premises known as Afrikiko Restaurant & Night Club Ltd (t/a “Afrikiko” 871 Old Kent Road, London SE15 1NX) and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

- Revoke the premises licence.

#### **2. Reasons for the decision**

This was an application for a review of the premises licence in respect of Afrikiko Restaurant & Night Club Ltd (t/a “Afrikiko” 871 Old Kent Road, London SE15 1NX) brought under Section 53C of the Licensing Act 2003.

A preliminary issue was raised by the representative for the premises. They advised that the breach of COVID-19 regulations and guidance was not a legitimate basis for a premises licence review or a summary review and therefore should not be brought to the sub-committee. This application was brought using the expedited process under Section 53A of the Licensing Act 2003, based on the fact that a superintendent of the Metropolitan Police Service was of the opinion that the premises was associated with serious crime and/or serious disorder. This review process was not the correct mechanism to address the COVID-19 compliance of a premises. Alternative and specific powers should be used by authorities to address the premises operating in a COVID-19 secure manner.

The representative for the Metropolitan Police Service responded by informing members that the time had passed to question the superintendent's certificate. If the basis of the certificate was in question, it should have been challenged in the High Court.

The licensing sub-committee was not persuaded by the argument submitted by the premises' representative. All relevant case law was considered and accepted as to why this case fell under the expedited process on 2 October 2020. Those are set out in the notice of decision of the same date. Furthermore, the licensing sub-committee were directed to Section 53C of the Licensing Act 2003 which provides:

“The licensing authority must:

- a. hold a hearing to consider the application for the review and any relevant representations; and
- b. take such steps as it considers appropriate for the promotion of the licensing objectives”.

The premises representative’s legal argument was therefore rejected and the hearing then moved on to the parties presentations. The legal representative for the police advised that the police and responsible authorities had attempted to engage with the premises since July 2020 and that the police have tried hard to engage with the operator in line with the “4Es” approach to policing during the COVID-19 pandemic namely: engage, explain, encourage, enforce. The premises had previously been the subject of a review in 2017 after a customer had died on the premises steps. More recently, the police cited a number of incidents that justified the police’s request to revoke the premises licence.

On Friday 31 July 2020 police attended the premises at 23:45. Officers met with the manager. The ground floor restaurant area of the premises was quiet but loud music could be heard coming from the basement nightclub area.

When the police entered the basement they saw approximately 20 persons sitting together. A DJ was behind a DJ booth adjacent to the dancefloor area. Music was so loud officers had to shout to make themselves heard. Social distancing measures were not apparent and masks were not being used. Dancing was not witnessed, but the facility for dancing was apparent. On this basis, the police concluded that the premises was operating as a nightclub.

When questioned, the manager confirmed no risk assessment was in place but was “in the pipeline”. The manager was advised to correct this before re-opening to the public. The police officer also recommended that the operator should put tables and chairs on the dancefloor so people would not be tempted to dance. He was also advised to read the guidance before re-opening. This was in breach of the Health and Safety Act 1974 and associated guidelines, in addition to “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services” (3 July 2020).

The police also attended the premises on Saturday 15 August 2020. Loud club-style music could be easily heard from outside the premises. Approximately 30 patrons were present in the basement. Flashing strobe nightclub style lighting was in operation, a DJ in a DJ booth and patrons dancing on the dancefloor were also observed.

Officers again concluded that the basement area was operating as nightclub. Social distancing measures were not apparent and masks were not being used. When spoken to, the manager denied people had been dancing regardless of what the officers had witnessed. Officers reminded the manager that the premises could operate as a bar, but not a nightclub. This was contrary to the “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services” (3 July 2020).

Additionally, nobody at the premises was able to operate the CCTV system. The manager was also unable to produce either the premises licence or a summary of it. A formal notification of offences was served on the operator for Licensing Act 2003 breaches relating to Section 57(4) (failure to secure a premises licence or a certified copy at the premises or to prominently display a summary of the licence) and Section 57(7) (failure to produce a premises licence or a certified copy). The notification also included breaches in relation to conditions 288 and 289 concerning the installation of a CCTV system and retention of CCTV.

The police attended the premises again on 19 August 2020 to serve a formal notification warning notice on the venue regarding the visit on 15 August 2020. The ground floor restaurant was open, but no personal licence holder was present, in breach of the premises licence conditions. A formal notification relating to this offence of breaching condition 101, contrary to Section 137 of the Licensing Act 2003 (exposing alcohol for retail without an authorisation) was also served. As a result a Section 19 Criminal Justice and Police Act 2001 closure notice was served.

The police once again attended the premises on Friday 29 August 2020 at 01:00. The police were informed by the door supervisor present on the door they would need to wait for the manager before carrying a licensing inspection of the premises. The officers entered the premises to carry out their inspection.

When the police were wading down the staircase to the basement area, a male saw the officers and shouted "Shut the door! Shut the door.!" The door to the basement area was promptly closed and blocked from the inside. Others also attempted to stop the officers entering the basement area.

When the police managed to open the door, a female was found to be pushing the door shut with both her hands. Despite what the police witnessed, it was denied that the door was held shut, with one male stating "No one was holding the door, you just pushed the door when she was leaning against it". Approximately 47 to 60 men and women, aged between 18 and 30, were standing around. Social-distancing measures were not observed and no face masks were worn. Nightclub style neon lighting was on and a DJ was present.

The officers again concluded that the premises had been operating as a night club. An amplified male voice said "Sit down, sit in your seats" and "No dancing... just look at each other" and the DJ announced "I'm going to play music in the background". The patrons were dressed in party attire. Police again spoke with the manager who denied that the premises were operating as a nightclub. The officers therefore warned the manager that enforcement action could follow.

Reference was also made to 4 September 2020 when council officers and police attended the premises. Trading standards attended on this occasion and gave direct evidence regarding their attendance as part of their representation.

On 17 September 2020 police officers attended the premises to obtain CCTV footage of incidents when it was believed a prohibited nightclub had been in operation. The manager complained that he was being persecuted and that the police should visit other premises who were "packing people in like sardines". The

manager refused to identify the other premises, stating “I’m not giving you the names, I’m not a snitch”. The manager did not agree to show officers the CCTV footage, so instead, the officers left him with a USB memory stick and instructed that the manager download the relevant CCTV footage from 29 August 2020. It later transpired that the USB stick returned to the police was blank.

The police attended the premises again on Saturday 26 September 2020 at 22:49 to ensure that it was complying with the 22:00 curfew regulations that had been introduced by way of an amendment to The Health Protection (Coronavirus, Restrictions) (No.2)(England) Regulations 2020 (“the No.2 Regs”) on 24 September.

Officers knocked on the front door and entry was initially refused by the manager. Upon entry, officers witnessed 8 to 10 patrons seated or standing with bottles of beer sitting at tables eating and drinking. None of the staff were wearing facemasks. Officers attempted to gain entry to the basement club area, but the door was locked. They asked the manager to unlock it. The manager, who was with another male, feigned surprise and advised the officers “I think the key is with the cleaner and she has gone home”. The manager then denied anyone was in the basement. One of the police officers requested to view the CCTV monitors but the monitor feeds for all the cameras in the basement area were not working. The manager stated that there was “a problem with the CCTV”, despite the fact that the police had witnessed the CCTV working only two hours earlier.

The police officers went to the basement and pushed the basement door open, which opened ajar and was then swiftly slammed shut with people inside the basement holding it shut. The lighting to the whole of the basement area was then shut off. A smartly dressed male came out of the basement and the door was locked behind him. He refused to open the basement door for officers, until the police moved away. The male obstructed officers in the execution of their duties and had to be threatened with arrest.

When the door finally opened, some 47 to 60 patrons in party and evening attire exited the basement area, using threatening language and posturing. The manager was asked to put on the lights for safety reasons but he ignored the request. Most of the patrons were carrying alcoholic drinks. On entry to the basement area the director and licensee of Afrikiko Restaurant & Night Club Ltd, Zeona Ankrah, emerged with a baby. She claimed that she was cleaning despite wearing full make-up and evening dress. Electric shisha pipes were found on the basement tables, in addition to beer bottles and buckets containing bottles of wine.

The sub-committee then viewed body worn video footage. Members could clearly see people dancing on the 15 August 2020. The footage from 26 September 2020 the sub-committee saw the 47+ people filing out from the premises all of whom appeared of typical clubbing age rather the usual variation in age typical for a family gathering. It was note from the various footage that there were also the breaches in terms of SIA, ID scanning.

The officer for trading standards advised the licensing sub-committee that on Friday 4 September 2020, at approximately 20:00, officers from the council’s trading standards, licensing, health and safety and noise teams attended the premises with

two police officers from the night time economy team. The officers were visiting the premises following complains about the basement being used as an unlawful nightclub, contrary to the Public Health (Coronavirus, Restrictions) (No 2) (England) Regulations 2020, and to serve a prohibition notice under the same regulations. Following the prohibition notice being served, lights from the basement and two speaker cables were seized to prevent the premises from re-opening as a nightclub until the law permitted it. When asked, the manager stated that he didn't know how to bring up the requested CCTV footage in breach of condition 288 and 289 of the premises licence.

The legal representative for the premises accepted that he could not hold the premises out to be a good example of a premises compliant with the COVID-19 legislation but the premises did have the following in place: a reduced capacity, hand sanitiser, a temperature control gun, track and trace and a risk assessment.

The representative also made reference to the incident in 2017 that instigated the summary review and said it should not now prejudice the premises. They advised that since the 2017 review, a variation application had been approved in November 2019, when the operating hours had been extended to the current hours, despite objection from the police and licensing as a responsible authority. The premises' position was that a nightclub had not been in operation at the basement of the premises. Since July 2020 the basement had been repurposed, as permitted by the COVID-19 legislation and had been trading as a bar and a "lounge".

Regarding the dates highlighted by the police, the premises contended:

- i. On 31 July 2020 there were only 20 people present and whilst there was music being played, no one was dancing.
- ii. Contrary to the police evidence, there was not a window to the basement area, so no dancing could have been seen be viewed, on 15 August 2020.
- iii. Whilst there was no personal licence holder on the premises 19 August 2020, no sales of alcohol were made.
- iv. It was accepted that on 29 August 2020 someone did say "sit down", but no dancing took place.
- v. The issues with the premises CCTV and producing the footage to the police and council officers had only come to light during the course of the review proceedings. This had now been replaced.
- vi. Concerning 27 September 2020 the premises were closed and a family meeting was taking place in the restaurant on the ground floor, after the manager's son had been stabbed. The family guests present, raised concern that perpetrators of the stabbing were at the door. Because of this, the guests to the premises all made their way to the basement area. No one looked out to see who was on the other side of the door and would chose not to open the door until it was safe to do so. This was the reason for the delay in opening the door to the police. As the premises were closed, there was no security on the door. It was accepted that when the police did enter the premises, were

shisha pipes on the tables were electronic and therefore did not breach the Health Act 2006.

The licensing sub-committee were only too aware that over 44,000 deaths have occurred in the UK as a result of the COVID-19. The requirements in the COVID-19 regulations and guidance were introduced by the government to secure the health and safety of the premises staff, customers and the wider community by reducing the infection to spread.

The premises licence holder of Afrikiko, its management and staff, have demonstrated that they are either unwilling or incapable to abide by the law and implement COVID-secure measures in the premises and between 31 July 2020 and 26 September 2020 operated a prohibited nightclub.

This licensing sub-committee were satisfied that customers have been ordered to stop dancing and to sit down by the management and staff of the premises. CCTV footage was deliberately not provided when requested, to cover up the operation of this prohibited nightclub. The police have been physically and verbally obstructed in the course of their duties by the operators, staff and customers of the premises. The management of the premises clearly did not wish to engage with the police, despite the best efforts of the police. It was also noted that the premises have been found to be in breach of a number of conditions on its premises licence during these visits.

The sub-committee considered the argument put forward by the premises to be unsustainable and that the actions of the premises had been deliberate. On 26 September, the premises were operating well beyond the 22:00 curfew, in spite of extensive national publicity. On this occasion between 47 and 60 persons were barricaded into a basement room, by the management of the premises, with the power, lights and ventilation cut off to avoid police detection and putting members of the public at significant risk. An experienced police officer described the premises on this date as “the most dangerous premises I have ever visited”

Whilst claiming to be fully aware of the COVID-19 regulations and restrictions at the interim hearing on 2 October, the premises flouted the “rule of six”. If the family were so anxious of the perpetrator to the manager’s son stabbing, the alleged family would not have made their way to the basement with their drinks. The alleged family also appear homogenous in nature, appearing to be mainly between 18 and 30 years old.

The representative for the premises urged the sub-committee that the events leading to the 2017 should not prejudice the premises. It is accepted that due to the passage of time, those events have not been taken into account. However, the sub-committee is mindful of the following comments in the decision of the licensing sub-committee of 6 September 201: “The premises licence holder is expected to fully comply with all of the imposed conditions without fail. If further breaches occur in the future that have the effect of undermining the licensing objectives then the police would be well within their rights to instigate a further review of the premises licence and, without binding the hands of a future licensing sub-committee, it is likely that more severe actions would be taken on that occasion”. This should have

been sufficient warning that the failure to operate compliantly opened them to the very real possibility of the premises licence being revoked.

The licensing sub-committee have no confidence in the premises promoting the licensing objectives and there is no alternative but to revoke the 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.

### **3. 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.

### **4. Review of interim steps pending appeal**

At the conclusion of the review hearing the licensing sub-committee reviewed the interim steps to determine which interim steps were appropriate for the promotion of the licensing objectives, pursuant to section 53D of the Licensing Act 2003. The sub-committee concluded that these interim steps were appropriate:

- To suspend the premises licence.

The licensing sub-committee were satisfied that these modified interim steps are more appropriate and proportionate to promote the licensing objectives to modify the interim steps, as detailed above

The interim steps are open to appeal by:

- a) The chief officer of police for the police area in which the premises is situated;  
or
- b) The holder of the premises licence

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.

Issued by the Constitutional Team on behalf of the Director of Law and Democracy.

Date: 27 October 2020.

## NOTICE OF DECISION

### LICENSING SUB-COMMITTEE – 1 JULY 2021

#### SECTION 17 LICENSING ACT 2003: AFRIKIKO BAR, RESTAURANT AND CLUB, 871 OLD KENT ROAD, LONDON SE15 1NX

##### 1. Decision

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

##### 2. Reasons

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

The licensing sub-committee heard from the applicant. The application was originally for a nightclub/bar. The applicant advised that there had been a misunderstanding by the responsible authorities, in that the applicant had nothing to do with the previous owners/licencee.

They advised that there would be a lease in place. The lease would not be finalised and signed until he had acquired an alcohol licence. The applicant stated that he would agree to shut off any entrance to the first floor restaurant and would also agree to any other conditions the sub-committee felt necessary.

The applicant could not agree to the reduction in hours as this would mean the business would not be financially viable. He had previously ran two other licensed premises in Leicester Square and would ensure that he would increase security inside the premises and work with the police and the council.

The business would be a lounge, with a minimal number of people being able to stand. There would be a maximum capacity of 75 patrons. There would be events from time to time, but these would be based on occasions including Halloween. There would be no externally promoted events.

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

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

The licensing sub-committee heard from licensing as a responsible authority who advised that their representation was in relation to the prevention of crime and disorder; the prevention of public nuisance, public safety and the protection of children from harm licensing objectives. They further advised that their representation also had regard to Southwark's statement of licensing policy ("SoLP") 2021 – 2026.

They informed the sub-committee that the premises was situated within a residential area and the closing times appropriate for public houses, wine bars or other drinking establishments and restaurants and cafes was 23:00 daily. Night clubs (with sui generis planning classification) was not considered appropriate for the area. The hours applied for were in excess of what is appropriate for a bar or restaurant in the area and the premises was also very close to local residents who could be disturbed by patrons leaving the premises late at night.

The officer mentioned that the previous premises licence had been subject to expedited reviews by the Metropolitan Police. Whilst this was a new premises licence application there were concerns that the previous licensee and/or designated premises supervisor may be the controlling mind of the business and the applicant had not provided a lease to demonstrate that he was the new business owner.

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

The licensing sub-committee heard from the environmental protection team (EPT) officer whose objection was based on the prevention of public nuisance licensing objective. The officer advised that under Southwark's SoLP the premises were located in a residential area where it was deemed inappropriate for nightclubs. They also advised that there were residential properties directly adjacent to the premises and an additional 250 bed student accommodation and 258 residential homes due to be constructed all of which risked being adversely affected by music and patrons dispersal to the hours proposed which significantly exceeded those recommended in Southwark's SoLP.

Whilst the applicant had agreed some conditions with EPT, the officer still objected to the application and was not satisfied that there was sufficient detail in the application to promote the prevention of public nuisance licensing objective.

In the application, the applicant described the premises as a nightclub/bar. The hours applied for were based on the original Afrikiko licence. In correspondence with the responsible authorities, the applicant described the premises as a cocktail bar. During the meeting, the premises was further described as a lounge bar. The applicant

accepted that the plans he submitted with the application were based on the premises as it currently was. Further plans were produced during the course of the meeting which contained three options for premises being a bar, a restaurant or a lounge. The plans appeared to be for a totally different premises. The sub-committee was concerned that the style of operation had not been finalised and the current premises licence application had not been tailored for the proposed operation.

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

- “94. This Authority is concerned over the frequently observed practice of an application for a transfer of a premises licence being made following an application for a review of that same licence being lodged.
95. Where, such applications are made, this Authority will require documented proof of transfer of the business / lawful occupancy of the premises (such as a lease), to the new proposed licence holder to support the contention that the business is now under new management control.”

Whilst this is new application and not a transfer, the principle is the same. The previous premises licence was revoked and had a poor licence history. The previous licence holder continues to operate the ground floor of the premises.

To ensure the two businesses operated completely independently, the applicant stated that if food was served, he would use the kitchens on the second floor of the building and over-ride the fire alarm allowing only his staff access to the basement. The applicant then suggested that if the premises was a lounge bar, then he could block the fire door off.

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

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

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

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

### **3. 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 desires to contend:

- a) That the licence ought not to have been granted; or
- b) That, on granting the licence, the licensing authority ought not 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.

Issued by the Constitutional Team on behalf of the Director of Law and Governance.

Date: 2 July 2021