

NOTICE OF DECISION**LICENSING SUB-COMMITTEE – 15 MARCH 2023****SECTION 34 LICENSING ACT 2003: L'ATTITUDE, 18 CHOUMERT ROAD, LONDON SE15 4SE****1. Decision**

That the application made by Mr Martin Ekeocha-Kamara to vary the premises licence under S34 of the Licensing Act 2003 in respect of the premises known as L'Attitude, 18 Choumert Road, London SE15 4SE be refused.

2. Reasons

This case concerns an application made by Mr Martin Ekeocha-Kamara, the applicant, to vary the premises licence in respect of the premises known as L'Attitude, 18 Choumert Road, London SE15 4SE. This premises is presently licenced to operate as a restaurant.

The licensing subcommittee heard from the licensing officer who outlined the nature of the application. She stated, the premises licence was issued on 29 September 2022. The licence allowed for the sale of alcohol to be consumed on the premises Monday to Sunday between 11:00 and 22:30 and, opening hours of 11:00 to 23:00.

On 17 January 2023, the applicant applied to vary the premises licence in the following ways:

- By adding recorded music (indoors): Monday to Thursday from 17:00 to 23:00, Friday from 17:00 to 03:00, Saturday from 12:00 to 03:00 and Sunday 12:00 to 23:00
- To vary the sale by retail of alcohol (on the premises) to: Monday to Thursday from 17:00 to 23:00, Friday 17:00 to 02:30, Saturday from 12:00 to 02:30 and Sunday from 12:00 to 23:00
- To vary the opening hours to: Monday to Thursday from 17:00 to 23:00, Friday 17:00 to 03:00, Saturday 12:00 to 03:00 and Sunday 12:00 to 23:00.

The licensing officer pointed out, the premises is described as a cocktail bar in the application.

The application was the subject of 13 representations. Three of these were from responsible authorities namely, the Metropolitan Police Service, the environmental protection team and the licensing responsible authority. The officer confirmed that the licensing responsible authority had withdrawn its representation after the applicant agreed to a number of conditions and agreed to reduce some of the hours applied for in the variation.

The day before the meeting, details of the conciliation agreement were sent to all relevant parties.

Of the remaining 10 objectors, one was a ward councillor and the others were local residents. The officer went on to say, the applicant and the police had provided additional supporting material which was circulated to all relevant parties the day before the meeting. In addition, the licensing officer confirmed Appendix G, which should have been submitted with the map documenting nearby premises was also circulated the day before the meeting.

The sub-committee adjourned for a short break so all parties could have the opportunity to look at the additional documents.

Upon return, the licensing officer confirmed the applicant had not applied for non-standard hours or extended the provisions for late night refreshment. The licensing officer went on to say there was no standard definition for a table meal.

The sub-committee heard from the applicant. He stated that he started operations under the licence in November 2022. He said, he had agreed to reduce the hours applied for in the application as he was mindful the premises was in a cumulative impact area and wanted to restrict activities.

He said the business serves food and drink and the food style is akin to tapas. He stated patrons order food incrementally throughout their stay. The applicant explained, he operates a wide variety of events which have been financially beneficial to the business. The more popular events mainly consists of poetry shows and salsa classes. He said, the activities/events he puts on, are championed by the wider community and therefore are run in collaboration with the community he serves and, other stakeholders. He believed his business is embedded within the community by virtue of the events he runs.

He stated, the closing time of 23:00 presently meant his patrons went elsewhere seeking entertainment at 23:00. He found the timings to be restrictive especially on the weekends.

He acknowledge the concerns raised in relation to the premises calling itself a bar and condition 344 of the licence which states:

- That intoxicating liquor shall not be sold or supplied for consumption on the premises otherwise than to persons taking table meals there and as an ancillary to that person's meal.

The applicant confirmed that food was always served with drinks but opined there was no current definition of "table meal". He said he felt he has always complied with this condition. The applicant believed there should be scope for flexibility and a wider definition for what a restaurant is. He stated, since the pandemic, hospitality venues have struggled to survive. In order to thrive, the hospitality industry will need to be innovative. He stated, his business is trying to keep up with changing trends and is constantly adapting to maintain and bring in patrons.

He stated that ideally, he would like his business to run more like the TENs nights he had previously applied for.

In addressing the representations put mainly by the other persons, which related to crime and disorder and noise nuisance, in March, he stated that he had installed sound proofing and speaker sound limiter. The sound limiter is kept behind the bar and controlled by staff. He said he would welcome residents speaking with him in order to find the middle ground as to acceptable levels of noise. He confirmed there has not been face to face dialogue with any of the residents. In relation to crime and disorder, he said he works with the police and the wider community to improve the reputation of the area.

He believed having his licenced premises improved the area as it gave young locals a welcome space to go. He went on to state, behaviour improved once inside the venue as they had an interest in seeing the premises thrive. In turn, this has led to less crime and disorder in the street.

The applicant confirmed he had conciliated with the licensing unit and had sent a risk assessment and operating schedule to all of the responsible authorities with the hope that an agreement could be reached.

In relation to condition 344, the applicant understood there were concerns he would not be able to operate without being in breach as he had not applied for extended service of late night refreshment. He said he intended to make another variation application to rectify condition 344 and the non-standard hours. He went on to say, the condition can still be met if the variation is granted.

The sub-committee heard from the applicant's witness. She stated that she had lived and worked in the area and now, works with young people engaging in violence. She stated she had worked with a young female from Southwark who puts on the spoken word event at the premises. The young person is supported by L'Attitude, other concerned key workers and organisations. This support enabled her to run the event which has been a resounding success.

The witness stated that the premises promotes events around arts and culture and is not a traditional bar. The premises provides activities such as interactive games and performances. Whilst an activity is running, the patrons would normally pause their alcohol consumption to engage in the activity and then, resume eating and drinking thereafter.

One of the reasons the applicant applied to extend the hours was so young people could engage in social activities after an event. She went on to state, the premises had been proactive in providing activities to young people who form part of the community. The activities provided, centred around the community and what they had asked the applicant to provide. She went on to describe the business as aspirational for its young patrons and the wider community.

The applicant then answered questions put by members of the sub-committee.

The sub-committee explained that condition 344 could not be set aside, as the removal of the condition had not been consulted on. The sub-committee member asked the applicant how, in light of condition 344, he reconciled varying from a restaurant to cocktail bar and how he intended to satisfy condition 344 when he had not applied for an extension of late night refreshment.

The applicant accepted the presentation was different to the application before the sub-committee and stated he now understands the process better. He said that whilst the application refers to a cocktail bar the premises is compliant with condition 344 as they serve drinks with a meal and they will continue to do so, until the condition is set aside.

The applicant explained, food served is a fusion between Dominican and Latin American foods which consisted of hot smaller plates or large meals. The applicant stated he had a big kitchen within the premises with three chefs. The premises could seat approximately 50 people and depending on the event, could accommodate up to 70 people if some tables are removed.

The chair noted an issue with the hours. The chair explained, the application to vary had asked for opening hours Monday to Thursday from 17:00 to 23:00 but he had conciliated a closing time for that period of 00:00. The chair explained that the sub-committee would not be able to extend opening hours beyond what had been applied for in the application as it had not been consulted on. He responded by saying he intended to finish alcohol service at 22:30 and close the business at 23:00.

The chair questioned the applicant as he had not applied to extend the late night refreshment service. The applicant stated this would be rectified this in his next application but, in the meantime, the premises can provide cold tapas such as plantain and nachos made from plantain served with a red bean side. He went on to say, the cold menu would be enhanced should the application be granted.

The applicant explained that whilst he had worked in premises where alcohol had been served, this was the first time he had owned and managed a premises which served alcohol

The applicant concluded, he would endeavour to not use single use plastics wherever possible.

The sub-committee heard from the police. The objections from the police related to the premises being a cocktail bar and noted its incompatibility with condition 344. The officer said, after liaising with the applicant the view is, the venue is no longer operating exclusively as a restaurant. The officer also noted the hours applied for were outside those recommended by Southwark's statement of licensing policy for bars and was more in line with the operation of a night club.

The officer said if condition 344 was removed, the premises should be conditioned as a bar to address the licensing objectives but, the area would be left with a new cocktail bar with no operating history. The officer went on to say, the police were unable to distinguish whether the premises is a bar or a

restaurant and so could not offer conditions to assist the sub-committee. He suggested, the best way forward would have been for the applicant to withdraw this application and apply for a new premises licence operating as a bar and then it could be conditioned appropriately.

The premises is within the Peckham major town centre area and falls within the Peckham cumulative impact area. He went on to say, the premises has been subject over a number of years to alcohol related anti-social behaviour and; to extend the hours to that of a nightclub/bar would only add to the problems in the area. He also noted the applicant's relative inexperience operating a premises of that type.

The officer stated there had been breaches to the existing licence following a visit to the premises by the night time economy team the previous weekend. He stated the breaches related to CCTV not operating, no training records available and there was no signage directing patrons to leave.

The officer confirmed that there were complaints related to noise when the premises operated under TENs, but no complaints relating to violence were received.

The sub-committee heard from the environmental protection team officer. The officer started by acknowledging all the work that had been done by the applicant to minimise noise nuisance, but went on to say further work was required to address noise break out, as that remained an ongoing issue and it was not clear at this time whether the agreed conciliated conditions would allay that issue.

The officer stated he anticipated issues complying with condition 344 under the variation applied for, as alcohol can only be served ancillary to a table meal.

The officer voiced concerned that the proposed licensable activities for Fridays into Saturdays and Saturdays into Sundays are outside of suggested closing times for licensed premises of the type as stated within Southwark statement of licensing policy 2021-2026 and noted that the hours applied for were also outside the planning consent for the premises.

The officer went on to concede that the sub-committee could make an exception to the policy hours under the Equalities Act 2010, on the grounds that the applicant catered to a particular group within the borough, making the premises unique.

The sub-committee then heard from the ward councillor. She stated she had attended on behalf of a resident who wished to remain anonymous. Due to the lateness of conciliation, the councillor had not had an opportunity to speak with the resident to confirm the objection remained. She did not feel she could not add anything further. She confirmed that she had not received any complaints about the premises.

In summing up, the applicant stated all breaches found following the inspection had now been rectified and that applications to planning would be made separately.

The sub-committee, being mindful of the Equalities Act 2010, recognised that the premises made a space for people who may not ordinarily have a place to go and in that respect, the premises catered to a minority section within Southwark. In that regard, the sub-committee felt that the Act had been engaged and in turn, would mitigate an extension of hours outside the policy and, the premises being situated in the CIA.

When considering the conciliated conditions, the sub-committee took the view that allowing the application with the conciliated conditions would set the applicant up to fail as condition 344 made the variation unworkable.

The sub-committee were very concerned that the application to vary the premises from a restaurant to a bar had not been properly consulted on, as the applicant did not apply for the removal of 344 nor did he apply for extended hours for late night refreshment.

The sub-committee were impressed by the business concept, however, it felt the business concept when considered as a whole, was at odds with the application that had been consulted on due to the aforementioned failures.

Upon considering the business concept further, the sub-committee took the view the applicant should have applied for a new premises licence and not a variation as the application is seeking to change the premises from restaurant to bar. The sub-committee were mindful that it did not have the power make such a change under this application but would have the power to consider all conditions anew under a new application for a premises licence.

In reaching this decision the sub-committee considered all of the oral and written representations put before it, and having had regard to all the relevant considerations and the four licensing objectives 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 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.

Issued by the Constitutional Team on behalf of the Assistant Chief Executive - Governance and Assurance

Date: 15 March 2023