

Item No. 6.	Classification: Open	Date: 1 July 2021	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Afrikiko Bar, Restaurant and Club, 871 Old Kent Road, London SE15 1NX	
Ward(s) of group(s) affected		Old Kent Road	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application made by Mr. Jabulani Jabangwe for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Afrikiko Bar, Restaurant and Club, 871 Old Kent Road, London SE15 1NX.
2. Notes:
 - a) This application is submitted under Section 17 of the Licensing Act 2003. The application is subject to representations submitted by responsible authorities and is therefore referred to the licensing sub-committee for determination.
 - b) Paragraphs 9 to 12 of this report provide a summary of the application. Copies of the full application and the application plan are attached as Appendix A.
 - c) Paragraphs 13 to 18 of this report deal with the representations submitted in respect of the application. Copies of the representations, and related correspondence, are attached to this report in Appendix B. A map showing the location of the premises is attached as Appendix E.
 - d) A copy of the council's approved procedure for hearings of the sub-committee in relation to an application made under the Licensing Act 2003, along with a copy of the hearing regulations, has been circulated to all parties to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.

4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence application

8. On 5 April 2021 Mr. Jabulani Jabangwe applied to this council for the grant of a premises licence in respect of Afrikiko Bar, Restaurant and Club, 871 Old Kent Road, London, SE15 1NX.
9. The application is summarised as follows:
 - The provision of live music:
 - Monday to Sunday: 17:00 to 21:00
 - The provision of recorded music:
 - Monday to Wednesday: 17:00 to 23:00
 - Thursday to Saturday: 17:00 to 02:00
 - Sunday: 17:00 to 22:00

- The sale of alcohol to be consumed on the premises:
 - Monday to Wednesday: 17:00 to 22:45
 - Thursday to Saturday: 17:00 to 01:45
 - Sunday: 17:00 to 21:45
 - Proposed opening hours of the premises:
 - Monday to Wednesday: 17:00 to 23:00
 - Thursday to Saturday: 17:00 to 02:00
 - Sunday: 17:00 to 22:00.
10. The premises and the intended style of operation of the premises are described in the application as follows:
- “The premises is a nightclub / bar. There is an age restriction of 18+ as there is a bar present; the distribution of alcohol will be of a high standard. Male and female (separate) toilets downstairs. Venue space at approximately 1500 sq. ft. Capacity of approximately 200 to 250 people (standing); 70 people (seated). Two secure fire exits. DJ booth.”
 - The premises are located in the basement level of a building comprised of basement, ground floor and first floor levels.
11. The premises licence application form includes an ‘operating schedule’. Parts E, F, J, K, L and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full with reference to the four licensing objectives. Should a premises licence be issued in respect of the application then the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. Copies of the application and application plan are attached to this report as appendix A.

Designated premises supervisor (DPS)

12. The proposed designated premises supervisor (DPS) Mr. Jabulani Jabangwe.

Representations from responsible authorities

13. Representations have been submitted by this council’s licensing responsible authority, this council’s environmental protection team and by the Metropolitan Police Service.
14. The licensing responsible authority’s representation is concerned that the premises are located in an area not deemed suitable for nightclubs by this council’s statement of licensing policy and that the proposed closing times of the premises exceed those suggested for the premises in this council’s statement of licensing policy.

15. The licensing authority also advise that the premises licence previously issued in respect of the premises was reviewed by this council's licensing sub-committee twice (being revoked by the licensing sub-committee subsequent to the second review). They also state that the previous operators of the premises may still have an interest in the operation of the premises and that the licensing objectives have not been sufficiently addressed in the application. The licensing responsible authority recommends that the application be refused.
16. The environmental protection team's representation is concerned that the premises are located in an area not deemed suitable for nightclubs by this council's statement of licensing policy and that the proposed closing times of the premises exceed those suggested for the premises in this council's statement of licensing policy. Additionally, that the application does not address the prevention of public nuisance licensing objective sufficiently, that the premises are located in close proximity to residential dwellings and that a premises licence previously issued in respect of the premises was recently revoked.
17. The Metropolitan Police Service's representation is concerned that that a premises licence previously issued in respect of the premises was reviewed by this council's licensing sub-committee twice (being revoked by the licensing sub-committee subsequent to the second review). In addition they advise that the premises are located in a highly residential area, that the premises has been subject to complaints regarding public nuisance, that the licensing objectives were not sufficiently addressed in the application and that it does not appear that the applicant has taking into account this council's statement of licensing policy. The Metropolitan Police Service recommends that the application be refused.
18. Copies of the representations submitted by responsible authorities, and related correspondence, are attached as appendix B.

Representations from other persons

19. No representations were submitted by 'other persons'.

Conciliation

20. The applicant was sent copies of the representations and was advised that they could respond to the responsible authorities directly should the applicant wish to reply to, or discuss, the representations.
21. The applicant initially replied to the licensing responsible authority and also to the environmental protection team. The applicant agreed to amend the application to include various conditions proposed by the environmental protection team during correspondence between the applicant and the environmental protection team. The applicant agreed to the conditions proposed by the environmental protect team, however the environmental protection team were unable to agree opening hours regarding the premises

and seek that the opening hours of the premises be determined by the licensing sub-committee.

22. The applicant further contacted all of the responsible authorities enquiring as to whether there were any amendments to the application that the responsible authorities could suggest to allow for the operating hours proposed in respect of the premises. The Metropolitan Police Service replied stating that their representation stands as submitted because the licensing objectives were not addressed in the application.
23. Therefore, at the time of the writing of this report all of the representations submitted remain outstanding and so must be considered by the licensing sub-committee. At the hearing to determine this application the licensing sub-committee will be apprised as to any conciliation, whether partial or full, of any of the responsible authorities.

Premises history

24. Prior to 2005, a justice's licence, issued under the Licensing Act 1964, was held in respect of the premises. There are no council records available to show when the Justice's licence was originally issued, but it is known anecdotally that the premises operated as a public house known as 'The Canterbury Arms' for at least 30 years.
25. In 2005 the justice's on licence was converted to a premises licence under the Licensing Act 2003.
26. Various transfers of and / or amendments to the premises licence took place until 31 August 2011 when a further application was submitted to transfer the licence to Afrikiko Limited and an application was also submitted to specify Emmanuel Koku Dodzi Kpakpah as the DPS of the premises. The premises name was also changed on this date to Afrikiko Bar, Restaurant and Nightclub.
27. On 13 December 2016, an application, to have immediate effect, was submitted to transfer the licence to Afrikiko Restaurant and Night Club Limited. The DPS remained Emmanuel Koku Dodzi Kpakpah.
28. On 9 August 2017, the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises.
29. Further to an expedited interim review hearing that took place on 11 August 2017, a full review hearing was held on 6 September 2017. At the full review hearing the licensing sub-committee decided to suspend the premises licence issued in respect of the premises for nine weeks, to reduce the hours permitted for licensable activities and to add various conditions to the premises licence. A copy of the notice of decision pertaining to the full review hearing of 6 September 2017 is attached at Appendix C.

30. On 11 December 2017 an application, to have immediate effect, was submitted to specify Mr Phillip Kwasi Asare as the DPS of the premises.
31. On 30 September 2019 an application to vary the premises licence issued in respect of the premises was submitted. The application sought to extend the hours permitted for licensable activities at the premises. The application was objected to by responsible authorities. Following a licensing sub-committee hearing on 28 November 2019 the council's licensing sub-committee granted the application, but with operating hours reduced from those applied for. The premises' operating hours subsequent to the variation application were:
 - The sale of alcohol to be consumed on and off the premises & regulated entertainment:
 - Sunday to Thursday: 11:00 to 00:00
 - Friday and Saturday: 11:00 to 01:30
 - Late night refreshment:
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 – 01:30
 - Opening hours of the premises:
 - Sunday to Thursday: 11:00 to 00:30
 - Friday and Saturday: 11:00 to 02:00.
32. The above relates to the last premises licence that was held in respect of the premises. The premises licence number was 870250. For reference a copy of premises licence number 870250 is attached as Appendix D.
33. Mr Emmanuel Koku Dodzi Kpakpah had an interest in the premises between 2011 (as per paragraph 25 above) until 2 June 2017, when he resigned as a director of the company (Afrikiko Bar, Restaurant and Nightclub Limited) that held the premises licence in respect of the premises.
34. Ms Zeona Naa Densuah Ankrah became the sole director of Afrikiko Bar, Restaurant and Nightclub Limited on 1 June 2017.
35. On visits to the premises when the premises were operated under the remises licence previously issued in respect of the premises council officers had encountered a man named Daniel Dornoo Dornor who identified himself variously as the premises' manager, business owner or as a director of Afrikiko Bar, Restaurant and Nightclub Limited. Mr Dornor appeared to be in charge of the day to day operation of the premises, but was not the premises' DPS nor a director of Afrikiko Bar, Restaurant and Nightclub Limited. Council records show that Mr Dornor had an interest in the premises since at least 2014.

36. On 1 October 2020 the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises.
37. Further to an expedited interim review hearing that took place 2 October 2020, a full review hearing was held on 27 October 2020. At the full review hearing the licensing sub-committee decided to revoke the premises licence issued in respect of the premises. A copy of the notice of decision pertaining to the full review hearing of 27 October 2020 is attached in Appendix C.
38. **NB** – please note that there is no evidence that the current applicant has any connection to the prior operators of the premises or that the applicant was involved in the prior operation of the premises, however the prior operating history is included for completeness and because it is referred to in the representations that were submitted by responsible authorities. This is an application for a new premises licence and must be judged on its own merits. If any responsible authority has evidence that the applicant was in any way involved in the prior operation of the premises then that responsible authority must provide such evidence to the licensing sub-committee for their consideration.
39. On 5 April 2021 Mr Jabulani Jabangwe applied to this council for the grant of a premises licence in respect of Afrikiko Bar, Restaurant and Club, 871 Old Kent Road, London SE15 1NX.

Map

40. A map showing the location of the premises is attached to this report as appendix E. The following licensed premises are also shown on the map and provide licensable activities as stated:

Lidl, 760 Old Kent Road, London SE15 1NJ licensed for:

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 07:00 to 22:00

The Empire Lounge, Unit 2, 777 Old Kent Road, London SE15 1NZ licensed for:

- The sale of alcohol to be consumed on and off the premises:
 - Sunday to Thursday: 11:00 to 23:30
 - Friday and Saturday: 11:00 to 00:30
- The provision of late night refreshment:
 - Sunday to Thursday: 23:00 to 23:30
 - Friday and Saturday: 23:00 to 00:30

805 Restaurant, 805-809 Old Kent Road, London SE15 1NX licensed for:

- The sale of alcohol to be consumed on the premises & recorded music:
 - Monday to Sunday: 14:00 to 00:30
- Live music:
 - Monday to Sunday: 21:00 to 00:00
- The provision of late night refreshment:
 - Monday to Sunday: 23:00 to 00:30
- **Esquire Bar & Grill, 817 Old Kent Road, SE15 1NX** licensed for:
 - The sale of alcohol to be consumed on the premises:
 - Sunday to Thursday: 10:00 to 00:00
 - Friday & Saturday: 10:00 to 03:00
 - The provision of late night refreshment:
 - Sunday to Thursday: 23:00 to 00:30
 - Friday and Saturday: 23:00 to 03:00
- **Aldi, 840 Old Kent Road, London SE15 1NQ** licensed for:
 - The sale of alcohol to be consumed off the premises:
 - Monday to Saturday: 08:00 to 23:00
 - Sunday: 10:00 to 22:30
- **The Windsor, 888 Old Kent Road, London SE15 1NQ** licensed for:
 - The sale of alcohol to be consumed on and off the premises:
 - Monday to Saturday: 10:00 to 23:00
 - Sunday: 12:00 to 22:30
 - The provision of late night refreshment:
 - Monday to Saturday: 10:00 to 23:00.

Southwark council statement of licensing policy

41. Assembly approved Southwark's Statement of Licensing Policy 2021 - 2026 on 25 November 2020. The policy came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

42. The purpose of Southwark's statement of licensing policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the sub-committee when considering the applications. However, the sub-committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.
43. The statement of licensing policy states that the premises are located in a residential area. Below are closing times for various types of premises, located in residential areas, as suggested in the statement of licensing policy:
- Public houses, wine bars, or other drinking establishments and bars in other types of premises:
 - Monday to Sunday: 23:00
 - Event premises/ spaces where sale of alcohol is included in, and ancillary to, range of activities including meals:
 - Monday to Sunday: 23:00
 - Night clubs (with 'sui generis' planning classification):
 - Not considered suitable for residential areas

Resource implications

44. A fee of £190.00 has been paid by the applicant in respect of this application, that fee being the statutory fee payable for premises within non-domestic rateable value band 'B'.

Consultations

45. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and similar notices were exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

46. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

47. The sub-committee is asked to determine the application for a premises licence under Section 17 of the Licensing Act 2003.

48. The principles which sub-committee members must apply are set out below.

Principles for making the determination

49. The general principle is that applications for premises licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

50. Relevant representations are those which:

- Are about the likely effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious

51. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to:

- To grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence
- To exclude from the scope of the licence any of the licensable activities to which the application relates
- To refuse to specify a person in the licence as the premises supervisor
- To reject the application.

Conditions

52. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.

53. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
54. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
55. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
56. Members are also referred to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 on conditions, specifically section 10.

Reasons

57. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a premises licence application, it must give reasons for its decision.

Hearing procedures

58. Subject to the licensing hearing regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that:
- The hearing shall take the form of a discussion led by the authority. Cross examination shall not be permitted unless the authority considered that it is required for it to consider the representations.
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing.
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to:
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant to the particular application before the committee and the licensing objectives.

- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
 - In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
59. This matter relates to the determination of an application for a premises licence under Section 17 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

Council's multiple roles and the role of the licensing sub-committee

60. Sub-committee members will note that, in relation to this application, the council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.
61. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the licensing law, guidance and the council's statement of licensing policy.
62. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.
63. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the

licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

64. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
65. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
66. Under the Human Rights Act 1998, the sub-committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The sub-committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the borough.
67. Other persons, responsible authorities and the applicant have the right to appeal the decision of the sub-committee to the magistrates' court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

Guidance

68. Members are required to have regard to the Home Office guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

Strategic Director of Finance and Governance

69. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copies of the application and application plan
Appendix B	Copies of the representations submitted by responsible authorities, and related correspondence
Appendix C	Notices of decision pertaining to licensing sub-committee hearings of 6 September 2017 and 27 October 2020
Appendix D	Copy of licence number 870250
Appendix E	Map showing the location of the premises

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	18 June 2021	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	18 June 2021	