

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 12 May 2020	<b>Meeting Name</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: K-Che VIP Latin Club, First Floor, 512-516 Old Kent Road, London SE1 5BA	
<b>Ward(s) or groups affected:</b>		Old Kent Road	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

1. That the licensing sub-committee considers an application made under Section 53C of the Licensing Act 2003, by the chief of police for the Metropolitan Police area, for the review of the premises licence issued in respect of the premises known as K-Che VIP Latin Club, First Floor, 512 - 516 Old Kent Road, London SE1 5BA.
2. **Notes:**
  - a) A summary of the review application is given in paragraphs 11 to 16 of this report. A copy of review application is attached in Appendix A.
  - b) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B. A map of the local area is attached as Appendix I.
  - c) 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 summary review powers under sections 53A to 53C of the Act allow the police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and the licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

8. The premises licence issued in respect of the premises known as Licensing Act 2003: K-Che VIP Latin Club, First Floor, 512 - 516 Old Kent Road, London SE1 5BA allows licensable activities as follows:
- Live music and recorded music (indoors) and the sale of alcohol to be consumed on the premises:
    - Sunday to Tuesday: 11:00 – 01:30
    - Wednesday & Thursday: 11:00 – 02:30
    - Friday & Saturday: 11:00 – 04:30
  - Late night refreshment (indoors):
    - Sunday to Tuesday: 23:00 – 01:30
    - Wednesday & Thursday: 23:00 – 02:30
    - Friday & Saturday: 23:00 – 04:30
  - Opening Hours:
    - Sunday to Tuesday: 11:00 – 02:00
    - Wednesday & Thursday: 11:00 – 03:00
    - Friday & Saturday: 11:00 – 05:00
9. A copy of the current premises licence is attached as Appendix B.

### **Designated premises supervisor**

10. The designated premises supervisor (DPS) of the premises is Maria Zahouani.

### **The review application and certificate**

11. On 3 March 2020 the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises known as K-CHE VIP Latin Club, First Floor, 512 - 516 Old Kent Road, London SE1 5BA.
12. On 3 March 2020 a Superintendent for the Metropolitan Police Service certified that in the Superintendent's opinion the premises are associated with serious crime, serious disorder or both.
13. The application is concerned with a serious incident that took place on Saturday 29 February 2020 at approximately 03:35.
14. On Saturday 29 February 2020 at approximately 03:35 fighting started inside the premises. The premises had to stop trading as the premises' security operatives were unable to gain control of the premises, and the police were called. On the arrival of the first responding police officers a group of customers were observed fighting in the

premises' yard area. One male was armed with a brandy bottle and was attempting to hit people. He then attacked officers who had to use a Taser to subdue him. A number of other customers were attempting to attack officers. Officers had to call for urgent assistance and use batons and incapacitating spray in an attempt to restore order and defend themselves. One officer was assaulted on the dance floor area by a customer who attempted to strangle him while the officer was trying to clear the premises. A further fight and disturbance occurred in a nearby McDonald's. The police are of the opinion that urgent action is required to prevent further crime and disorder and to protect the public.

15. The police have provided a history of violent incidents associated with the premises as follows:

- On Saturday 1 September 2018 at approximately 04:00 a fight started inside the premises and security removed all parties from the venue, once outside two customers removed from K-Che were stabbed on McDonald's car park. Witnesses believe that the stabbing was as a result of the fight inside the premises.
- Since December 2018 twelve crime reports of violent incidents have occurred associated with the premises including:
  - four (4) for grievous bodily harm (GBH),
  - four (4) for actual bodily harm (ABH),
  - one (1) assault on Police,
  - one (1) common assault,
  - one (1) robbery and
  - a crime related incident for a fight inside the premises.
- On Saturday the 30 November 2019 at approximately 03:00 a fight started inside the premises, the victim was close to the DJ booth. The victim was knocked unconscious and it is believed that the victim was struck with a bottle due to serious injuries that the victim sustained.
- On the 25 January 2020 a fight occurred at the premises at approximately 01:40 and a male was assaulted. The premises' management could not provide CCTV footage to police officers on request at the time of the incident which is a breach of the conditions 289 of the premises licence issued in respect of the premises. Evidence regarding this incident is included in Appendix A.
- The area in proximity to the premises has suffered from a considerable amount of violent incidents, anti social behaviour and calls for police attendance which the police believe the operation of the premises has been a contributing factor to.

16. The police state that they have no confidence in the management of the premises.

17. Further evidence may be submitted prior to, or at, the hearing.

18. Any evidence submitted in addition to this report will be made available at the hearing.

19. A copy of the review application, review certificate and evidence in support of the review application are attached to this report as Appendix B.

### **Representations from responsible authorities**

20. This council's licensing responsible authority has submitted a representation in support of the application. The licensing responsible authority state that they have no confidence in the licensees of the premises to uphold the licensing objectives or to ensure that the conditions off the premises licence issued in respect of the premises will be met. The

licensing responsible authority recommends that the premises licence issued in respect of the premises is revoked.

21. A copy of the licensing responsible authority's representation is attached to this report as Appendix C.
22. At the time of the writing of this report (24 April 2020) no other responsible authority has submitted a representation in respect of the review application, however the consultation period during which representations can be submitted finishes on 29 April 2020. If any further relevant representations are submitted by responsible authorities during the consultation period they will be distributed to the licensing sub-committee and all relevant parties prior to the hearing to determine this review application.

### **Representations from other persons**

23. At the time of the writing of this report (24 April 2020) no representations in respect of the review have been submitted by other persons, however the consultation period during which representations can be submitted finishes on 29 April 2020. If any relevant representations are received during the consultation period they will be distributed to the licensing sub-committee and all relevant parties prior to the hearing to determine this review application.

### **Operating history**

24. A premises licence was issued in respect of the premises to The K-Che Club Limited, on 17 February 2016. The licence number was 851424. For reference, a copy of the licence is attached to this report as Appendix A.
25. On 3 December 2016 Licensing officers visited and inspected the premises and found the following three licence conditions being breached:
  - 288 – The CCTV was showing the incorrect time by one hour.
  - 841 – CCTV footage, adjusted to the correct time, showed that patrons were being allowed to enter the premises after 03:00hrs.
  - 364 – A refusal book could not be shown to officers inspecting the premises.
26. A warning letter was sent to the premises licence holder regarding these issues.
27. On 7 January 2017 a revisit was made and it was ascertained that the issues raised in the warning letter had been rectified.
28. On 2 September 2017 licensing officers visited and inspected the premises and found the following six licence conditions being breached:
  - 288 – There was 30 days CCTV footage available instead of 31.
  - 344 – Staff hadn't undertaken a 'recognised' training scheme.
  - 349 – Acoustic seals, brushes or self closers were not installed on relevant doors.
  - 350 – A door leading to the exterior of the premises was open (in the smoking area).
  - 359 – There was no signage instructing customers not to take their drinks outside.
  - 360 – There was no dispersal policy.
29. Warning letters were sent to the premises licence holder and to Mr Fernando Ramos regarding these issues.
30. On 13 April 2018 licensing officers visited the premises and found it to be being operated compliantly.

31. On 5 March 2018 a notice of suspension was sent to the premises licence holder regarding the non-payment of the annual licence maintenance fee for 2018, following an invoice sent with a due date of 28 February 2018.
32. On 1 March 2019 a second notice of suspension was sent to the premises licence holder regarding the non-payment of the annual licence maintenance fee for 2019, the invoice for 2019 was paid, however it was noted that the 2018 fee was still outstanding.
33. As the outstanding invoice for 2018 had not been paid, on 9 May 2019 the premises licence holder was informed that the licence was suspended.
34. The premises licence holder paid the outstanding fee from 2018 on 2 December 2019 and the premises licence was reinstated from this date.
35. On 2 December 2019 following a check with Companies House it was found that the premises licence holder had changed their company address on 12 January 2017 and had failed to inform the licensing authority of this change.
36. The premises management were contacted and were informed that this failure to inform the licensing authority of the change of address constituted an offence under Licensing Act 2003. The change of address was notified to the Licensing Authority on 02 December 2019.
37. On 3 December 2019 the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises. In the review application the Metropolitan Police Service suggested that, as an interim step prior to the full review hearing to take place on 2 January 2020, the premises licence issued in respect of the premises should be suspended until the full review hearing of 2 January 2020.
38. On 3 December 2019 a Superintendent for the Metropolitan Police Service certified that in the Superintendent's opinion the premises are associated with serious crime, serious disorder or both.
39. An expedited licensing sub-committee hearing was held on 5 December 2019 to decide whether to implement the interim step suggested by the Metropolitan Police Service in their summary review application of 3 December 2019. The licensing sub-committee did not suspend the licence as was suggested by the Metropolitan Police Service, but determined that it was necessary to modify the premises licence to include additional conditions until the full review hearing was held on 2 January 2020.
40. At the full review hearing of 2 January 2020 the licensing sub-committee permanently imposed, on the premises licence issued in respect of the licence, the conditions that had been added to the same licence as an interim step on 5 December 2020. A copy of the Notice of Decision pertaining to the hearing of 2 January 2020 is attached as appendix D.
41. On 3 March 2020 the Metropolitan Police Service applied to this licensing authority for the summary review of the premises licence issued in respect of the premises. In the review application the Metropolitan Police Service recommended that, as an interim step, the premises licence issued in respect of the premises should be suspended until the full review hearing scheduled to take place on 26 March 2020 was held.
42. On 3 March 2020 a Superintendent for the Metropolitan Police Service certified that in the Superintendent's opinion the premises are associated with serious crime, serious disorder or both.
43. An expedited licensing sub-committee hearing was held on 5 March 2020 to decide whether to implement the interim step suggested by the Metropolitan Police Service in

their summary review application of 3 March 2020. The licensing sub-committee agreed that it was appropriate and proportionate to suspend the premises licence issued in respect of the premises with immediate effect until the full review hearing due to take place on 26 March 2020 was held. A copy of the Notice of Decision pertaining to this decision is attached as Appendix E.

44. Due to the restrictions put in place by the government in respect of the Coronavirus outbreak it was not possible to proceed with the hearing scheduled to take place on 26 March 2020. With the agreement of the Metropolitan Police Service and the licensee the hearing that was postponed until 30 April 2020.
45. Because it was not possible for the review application (as per paragraph 41 above) to be determined within the mandated 28-days (pursuant to section 53 (A) (2) (b) of the Licensing Act 2003) the review application became invalidated. As a result, the Metropolitan Police have submitted a further summary review application on 15 April 2020. In the review application the Metropolitan Police Service recommended that, as an interim step, the premises licence issued in respect of the premises should be suspended until the full review hearing scheduled to take place on 12 May 2020 is held.
46. An expedited licensing sub-committee hearing was held on 16 April 2020 to decide whether to implement the interim step suggested by the Metropolitan Police Service in their summary review application of 15 April 2020. The licensing sub-committee agreed that it was appropriate and proportionate to suspend the premises licence issued in respect of the premises with immediate effect until the full review hearing is held on 12 May 2020. A copy of the notice of decision pertaining to this decision is attached as Appendix F.
47. Details of night time visits to the premises by council licensing officers are provided in Appendix G.
48. Details of temporary event notices (TENs) submitted in respect of the premises are attached as Appendix H.

#### **The local area**

49. A map of the local area is attached at Appendix I.

#### **Southwark Council statement of licensing policy**

50. Council Assembly approved Southwark's Statement of Licensing Policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
  - Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.
  - Section 5 - Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
  - Section 6 - Local cumulative impact policies. This sets out this authority's approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy.

- Section 7 - Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
- Section 8 - The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
- Section 9 - Public safety. This provides general guidance on the promotion of the second licensing objective.
- Section 10 - The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
- Section 11 - The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.

51. 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.

#### **Resource implications**

52. There is no fee associated with this type of application.

#### **Consultation**

53. The premises licence holder has been informed of the application for review and of the details of the interim hearing.

#### **Community impact statement**

54. 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 Democracy**

55. The sub-committee is asked to consider interim steps following an application to review the premises licence under Section 53A of the licensing act 2003.

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

#### **Principles for making the determination**

57. The licensing authority must hold a hearing to consider interim steps within 48 hours of receiving an application for review of a premises licence where.

- The application is properly made in accordance with Section 53A of the Act.
- The licensing authority has considered the ground(s) of review to be relevant to the licensing objective for prevention of crime and disorder.

58. The four licensing objectives are:

- The prevention of crime and disorder
- The protection of public safety

- The prevention of nuisance
  - The protection of children from harm.
59. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
- Modify the conditions of the licence by altering, omitting or adding any condition
  - Exclude a licensable activity from the scope of the licence
  - Remove the designated premises supervisor
  - Suspend the premises licence.
60. The steps will remain in place until the review application is determined at a full hearing of the licensing sub-committee.
61. The authority may decide to take no action if it finds no interim steps are appropriate to promote the licensing objectives.
62. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
63. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

64. Where the authority takes interim steps on an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
  - The chief officer of police for the area (or each police area) in which the premises are situated.

### **Hearing procedures**

65. 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
  - To 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.

66. This matter relates to the review of the premises licence under section 53A of the Licensing Act 2003.

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

67. 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.
68. 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.
69. 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.
70. 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.
71. 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.
72. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested

parties must live in the vicinity of the premises. This will be decided on a case to case basis.

73. 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.
74. There is no right of appeal to a Magistrates' Court against the licensing authority's decision regarding the setting of interim steps at this stage.

### Guidance

75. Members are required to have regard to the Home Office revised 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

76. The head of community safety and enforcement has confirmed that the costs of this process 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	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

### APPENDICES

Name	Title
Appendix A	Copy of the review application, review certificate and evidence in support of the review application
Appendix B	Copy of the premises licence issued in respect of the premises
Appendix C	Copy of the representation submitted by the licensing responsible authority
Appendix D	Copy of the notice of decision relating to the review hearing of 2 January 2020
Appendix E	Copy of the notice of decision relating to the expedited review hearing of 5 March 2020
Appendix F	Copy of the notice of decision relating to the expedited review hearing of 16 April 2020
Appendix G	Details of night time visits to the premises
Appendix H	Details of temporary event notices submitted in respect of the premises
Appendix I	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Wesley McArthur, Principal Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	24 April 2020	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	27 April 2020	