

MINUTES OF THE SPECIAL LICENSING SUB COMMITTEE MEETING HELD ON TUESDAY, 20TH JULY, 2021, 7.10 - 10.15 PM

PRESENT: Councillor Sheila Peacock (Vice-Chair, in the Chair), Councillor Reg Rice, and Councillor Viv Ross.

1. FILMING AT MEETINGS

The Chair referred to the notice of filming at meetings and this information was noted.

2. APOLOGIES FOR ABSENCE

It was noted that Councillor Sheila Peacock was in attendance in place of Councillor Gina Adamou.

3. URGENT BUSINESS

It was noted that, it being a special meeting of the Sub-Committee, under Part Four, Section B, Paragraph 17 of the Council's Constitution, no other business would be considered at the meeting.

4. DECLARATIONS OF INTEREST

There were no declarations of interest.

5. SUMMARY OF PROCEDURE

The Chair provided a summary of the procedure for the meeting.

6. APPLICATION FOR A REVIEW OF A PREMISES LICENCE - KISS THE SKY, 18-20 PARK ROAD, LONDON, N8

Khumo Matthews, Legal Advisor, noted that a document had been submitted on the day of the hearing on behalf of the premises licence holder. It was explained that, generally, late items would not be considered but that this was at the discretion of the Licensing Sub-Committee, subject to any objections. Daliah Barrett, Licensing Officer, noted that the late documentation was a Noise Plan and that the premises licence holder may wish to deliver this information verbally.

Daliah Barrett, Licensing Officer, introduced the report which presented an application for a review of a premises licence for Kiss The Sky, 18-20 Park Road, London, N8. It was explained that the review had been submitted by a group of residents who stated

that they had been impacted by disturbances from the premises on 21 and 23 May 2021. It was noted that the review form was included as Appendix 1 to the report. It was stated that the licence was held by Ray Assets Ltd, which was owned by Mr Kashka Ray, and that the Designated Premises Supervisor (DPS) was Ramgolam Yogendra.

The Licensing Officer explained that the current premises licence permitted regulated entertainment for recorded music and the provision of facilities for dancing and permitted alcohol sales on the premises only; the hours of licensable activity were set out in full in the report.

It was noted that the application for review cited all four licensing objectives in the grounds for review. It was added that there had been further representations from the Licensing Authority, the Noise Team, and other persons and that one representation had been received in support of the business; these were set out in full in the agenda pack.

It was highlighted that some of the email correspondence submitted in this case included footage in relation to potential noise nuisance and anti-social behaviour. It was noted that this footage was not public information due to data protection implications as it included a number of individuals. It was noted that the footage had been shared privately with the members of the Special Licensing Sub-Committee and with the premises licence holder.

The Licensing Officer explained some background information in relation to this case. It was noted that Kashka Ray had emailed the Licensing Team on 17 May 2021 and was provided with information on how to transfer the licence. It was stated that Kashka Ray submitted an incomplete application on 21 May 2021 and this was rejected by the Licensing Team who informed him that he was unable to carry out any licensable activities at the premises until the process was undertaken correctly. It was explained that Noise Team officers were called to the premises on 21-23 May 2021 in response to reports of loud music and noise and a warning letter was issued on 23 May 2021. It was noted that Kashka Ray submitted a complete application on 24 May 2021 and that application was subject to a mandatory 14 day consultation period with the Police.

It was commented that no application to vary the Designated Premises Supervisor (DPS) was received and the previous DPS confirmed to the Council's Noise Team that they were no longer involved with the business. It was noted that a DPS was required to authorise any alcohol sales at the premises. The Licensing Team advised Kashka Ray by email and telephone that no licensable activity would be permitted at the premises until the DPS had been transferred. It was clarified that the application to vary the DPS was received on 3 June 2021.

It was noted that residents had contacted the Council about noise nuisance from 21-23 May 2021. Council officers had attended the premises on 28 May 2021 and reported witnessing the playing of loud music which was not permitted under Covid-19 rules, people dancing on site which was not permitted under Covid-19 rules, and customers consuming alcohol when no DPS was assigned to the licence. It was stated that the application for review was submitted on 1 June 2021 by residents.

It was explained that the Committee was required to take such steps as it considered appropriate for the promotion of the licensing objectives. It could be decided that no changes were required or that further steps were required. It was noted that the options available to the Committee were to modify the conditions of the premises licence, to exclude an activity from the scope of the premises licence, to suspend the premises licence for a period not exceeding three months, or to revoke the premises licence. It was added that the licensing authority's determination of the application was subject to a 21 day appeal period.

The Licensing Officer drew attention to the parts of the report which provided explanations in relation to live and recorded music. It was explained that live and recorded music could ordinarily be provided from 8am-11pm without a licence but that, where a review of a licence had been brought, the hours and potential conditions were at the discretion of the Committee. It was highlighted that any remedial action should be directed at the cause(s) of concerns identified in the representations and should be an appropriate and proportionate response.

In response to questions from the Committee, the following responses were provided:

- It was confirmed that the disturbances reported by residents had taken place from 21-23 May 2021, rather than June as stated on page 1 of the report.
- The Licensing Officer noted that the Licensing Team would not know the exact date when the previous DPS had stopped undertaking their role or when Kashka Ray had taken over the business. It was confirmed that initial communications had been received on 17 May 2021 and that the application to vary the DPS was received on 3 June 2021 and there was now a new DPS at the premises.
- It was clarified that the Police had not made any representations in relation to the transfer of the licence.
- It was noted that the warning letter dated 2 June 2021 was sent following Covid Marshal visits to the premises. It was explained that warning letters were sent following any issues raised by Covid Marshals or the out of hours team.
- The Licensing Officer noted that a number of email communications had been ongoing between the Licensing Team and the premises licence holder. It was noted that not all communications were included in the agenda pack but that the warning letter clearly set out the issues that had been raised.

In response to questions from the premises licence holder, the applicants, and those who had submitted representations, the following responses were provided:

- Martyn Davis, Solicitor for the premises licence holder, disputed the suggestion that there had been almost daily correspondence with Kashka Ray and stated that not all items of correspondence were included in the agenda pack. The Licensing Officer stated that there had been almost daily correspondence but that not every email had been included in the agenda pack; she commented that it was for the Licensing Sub-Committee to make a decision based on the evidence provided. Martyn Davis commented that he did not believe that this was reasonable and that this should not be taken into account.
- William Mokrynski enquired whether it was normal for a business to operate without a licence. He stated that the business had been clearly informed that they did not have a licence and continued for several weeks without a DPS. The Licensing Officer noted that the team was aware of the impact of Covid-19 on

businesses and the Local Government Association had advised working with businesses. It was acknowledged that the Licensing Act 2003 stated that it was an offence to offer licensable activity without a licence and to have alcohol sales without a DPS; however, the team assisted Kashka Ray in regularising these issues without taking legal action. William Mokrynski stated that he was surprised no action had been taken in response to the business operating without a licence, going against Covid rules, and creating excessive volume.

The Committee received representations from the applicants for the review and those who had submitted relevant representations:

- Phil Emamally, applicant for the review, stated that he was concerned about the level of noise in the building. He explained that the sound system from the bar caused his floor to shake; he had spoken to the staff and asked them to lower the music but he stated that nothing had changed. He noted that the noise was unbearable at the weekend and he was concerned about a lack of social responsibility from the new business and about the welfare of residents.
- It was noted that there had been previous issues with the premises but not to this extent. It was commented that the bar owner had sent letters to residents inviting them to meet. Phil Emamally stated that he had gone to meet with the owner and had explained his concerns. He had been informed that the owner had spent a lot of money on sound proofing but he had not received a response when he asked whether the owner had conducted a study of the building and its suitability for this level of music. Residents felt that the building was unsuitable for a nightclub and that the owner had not taken a lot of further action to address their concerns. It was added that the Council's Noise Team had confirmed that noise levels at the premises constituted statutory nuisance but that the abatement notice had not been issued yet.
- Phil Emamally stated that there were also social issues, such as crime, safety, and child protection. He expressed concerns about the crowd that the premises were attracting and stated that there had been increased levels of violence, that patrons were often drunk, that issues were often taking place at 1-2am, and that all residents had witnessed these things. He stated that the noise woke his baby and that there was evidence of four main fights, a number of which included a member of staff. He felt that the premises should not have a licence if it could not control its crowd.
- It was stated that there were many families and children in this area and that they should not be subjected to these conditions. It was commented that residents had not experienced this level of noise with the previous owner. Phil Emamally felt that the owner did not have experience of running this sort of business and that he was not really engaging with residents. He stated that he had been to see the owner twice but that nothing was changing. He commented that there was evidence from residents and the Noise Team and he felt that this evidence was strong and factual.
- Bysse Wallace, applicant for the review, stated that she agreed with the case put forward by Phil Emamally. She explained that she had grown up in the area and had seen the development of the site. She felt that the original bar licence should not have been granted and that, when it had been granted, residents did not have a full understanding of the consequences and that there was now an opportunity to review to appropriateness of the licence.

- Bysse Wallace explained that she was a Sustainability Consultant in the building industry and worked in setting standards for new builds. She stated that there were issues with the internal sound, namely noise vibrations. Khumo Matthews, Legal Advisor, noted that Bysse Wallace was not speaking as an expert and that no evidence or credentials had been submitted; it was highlighted that she was speaking as a resident. Bysse Wallace stated that she had noted these issues in writing and that she was just highlighting the issues.
- She stated that the noise vibrations were a stress on nuisance, public safety, and the protection of children. She explained that residents were affected by the impact of noise and reverberations. She commented that, when the licence was granted, there had been no review of the structure of the building or the activity that would generate this amount of noise. Bysse Wallace highlighted that, if a bar was built adjacent to residential accommodation, it would normally have a concrete structure but the building had a timber structure.
- David Kangas, local resident, stated that sound and disorder had been issues. He stated that he worked in entertainment and events, which included live music, but that he believed, as a resident, that the current building was not fit for purpose. He noted that the previous bar had generated some disturbances with small speakers in the background and that the current bar now had a supersonic DJ booth. He stated that his residence had secondary, not just double, glazing and that noise from the premises penetrated his home from across the road.
- It was commented that the premises had broken their licence as well as operating when they did not have a licence. David Kangas stated that on Thursday-Sunday nights, the premises operated beyond the permitted times. It was commented that there were patrons outside, being allowed inside, smoking and shouting in the streets, and fights in the street, including some where the police had been called.
- David Kangas noted that the noise issues were constant and that there were lots of children in the area. It was stated that there was abusive and racist language and other issues synonymous with nightclub culture. It was noted that the entire frontage of the building was glazed and that the windows had been opened during the recent hot weather. It was stated that any soundproofing would be ineffective when the doors and windows were open.
- William Mokrynski noted that at least five children lived in direct eyesight of the premises and that families lived around the bar which was not fully sound insulated. It was commented that noise from the bar and noise from the street was disturbing residents until 2.30am on multiple nights of the week and that this review was long overdue.

In response to questions from the Committee, the following responses were provided:

- It was enquired how long the premises had been licenced and whether noise issues had always been a concern. The Licensing Officer noted that the agenda pack included a history of noise complaints from 2005 onwards. It was noted that the Licensing Act 2003 came into effect in 2005 and, prior to this, there would have been a Justices' licence and public entertainment licence from the local authority.
- It was noted that, as part of the videos submitted, there were two incidents visible where the police had attended; it was enquired how often the police were called and whether this had changed since the new owner had taken over the premises. Phil Emamally noted that the police had been called during the opening weekend

of the new business and on at least two other occasions. It was noted that there had been a very serious incident last weekend. It was added that residents sometimes called the non-emergency police number and had to wait for a significant amount of time. Phil Emamally commented that residents did not want to call the police where issues could be managed by the establishment but that the welfare of residents was at stake. He stated that he had been verbally abused by a member of staff, that the bouncer was intimidating, and that patrons had threatened him for filming some of the issues. It was added that residents had tried to collect evidence but that issues often happened quickly.

In response to questions from the premises licence holder, the following responses were provided:

- Martyn Davis, Solicitor for the premises licence holder, stated that the first video submitted by the applicants for the review showed door staff prohibiting entry to people who were drunk. He stated that Kiss The Sky was not the only licensed establishment on the road.
- He stated that the recordings submitted were a number of small clips which had been merged into one video and that, if the videos were merged, they were no longer factual. Martyn Davis stated that the incident where someone had allegedly said 'keep filming, I'll burn your face' had been cut so as not to offend the Licensing Sub-Committee but that, as there was no evidence, this was just hearsay.
- Phil Emamally stated that the videos had been merged for data storage purposes and that he still had the individual videos if these were needed.
- Martyn Davis noted that the most incendiary parts of the video had not been included so as not to offend the Licensing Sub-Committee but that they were probably used to seeing this sort of evidence.
- Khumo Matthews, Legal Advisor, noted that the Licensing Sub-Committee would be advised to attach appropriate weight to various pieces of evidence during their deliberations. The Licensing Officer noted that the Licensing Sub-Committee could receive hearsay evidence and would attribute relevant weight to this.
- Martyn Davis enquired whether the applicants wanted the bar to close. Phil Emamally explained that his main wish was for the bar to uphold its social responsibility. He stated that it was not for him to decide whether the business should close.
- Martyn Davis noted that one of the representations said that it was possible to hear a baby in distress and he asked the person who had submitted this representation to explain how they knew this. Phil Emamally explained that he was in the room as his baby was crying due to the noise from a fight outside.
- Martyn Davis noted that the video submitted showed door staff stopping two drunk people from entering the premises. He asked whether it was accepted that it was not Kiss The Sky's fault if people became drunk elsewhere and that the staff were doing their job.
- The Chair noted that this might be more appropriately covered as part of the premises licence holder's case. It was noted that this was an opportunity to ask questions but that it was possible to move on to the reports from each of the parties to the review if there were no more questions.

The Committee received representations from the remainder of those who had submitted relevant representations:

- Suzanne Jones explained that she was struggling to sleep due to the noise from patrons at the premises. She stated that she was unwell and had been off work as she was constantly being disturbed. She noted that she had shown video evidence to the police and the council but she felt that she had no voice.
- Bysse Wallace stated that she did not think that this was an appropriate location for a licence. She noted that the location and structure of the building was not Kashka Ray's fault but that it was inappropriate for a bar.
- David Kangas noted that the premises licence holder did not seem to be disputing the fact that they had operated without a licence or that they had broken the Covid rules around music, dancing, and face masks. He stated that this was deeply concerning and the key part of the review. He enquired whether the premises licence holder or anyone else was disputing these issues.

At 8.30pm, the Special Licensing Sub-Committee agreed to adjourn briefly. The meeting resumed at 8.40pm.

- Philip Cone, Licensing Authority, stated that noise complaints about Kiss The Sky had been received on its opening weekend of 21-23 May 2021. It was noted that Council staff had attended the premises on this weekend and had found the premises to be in contravention of the Covid regulations at the time, including loud music, dancing, and people not wearing face masks. It was explained that loud music had not been permitted to prevent the possible transmission of the virus through shouting or speaking loudly.
- It was explained that Kashka Ray had submitted an incomplete licensing application that had been rejected, had not transferred the DPS, and had been informed that any licensable activity over this weekend was unauthorised.
- It was noted that a Fixed Penalty Notice (FPN) had been issued for the breaches of Covid regulations. It was explained that the incorrect FPN template had been used but that this did not mean that there had not been breaches of the Covid regulations.
- Philip Cone stated that Council officers had visited the premises on 28 May 2021 but had not been permitted to view the CCTV when requested and the door staff had refused to give their details, including their Security Industry Authority (SIA) details. It was noted that this amounted to an offence.
- Philip Cone commented that there appeared to be a lack of knowledge at the premises about licensing obligations and about the Covid regulations that had been in place.
- It was noted that a number of conditions had been suggested by the Licensing Authority and these were included in the representation. Philip Cone explained that he was asking the Licensing Sub-Committee to consider reduced hours for regulated entertainment. It was suggested that regulated entertainment should cease at 11pm across the week, with alcohol sales ceasing at 10.30pm. He noted that, given the number of issues and the level of severity, it was believed that these conditions would be proportionate.
- It was added that the government had asked the Council to engage and educate businesses before using enforcement. It was noted that the owner had been informed that he was not permitted to trade. It was stated that prosecution was a long process but that a review provided more prompt options.

- Jennifer Barrett, Noise Team, noted that she had set out her concerns in full in her representation and addendum. It was explained that the Council continued to receive complaints and that music at the venue had recently been substantiated as a statutory nuisance. It was considered that the structure of the building could not contain noise from live or amplified music and it was highlighted that the premises should not have open windows as this did not offer any noise protection.
- Jennifer Barrett stated that, in her view, the current noise control measures were ineffective. It was explained that there were several areas for consideration. It was noted that it would be difficult to offer music until sufficient noise control measures were in place. It was explained that a Noise Management Plan should be a document which detailed all measures for noise control and should be developed by a trained acoustician, after a full survey of the premises and taking into account all of the issues raised. It was added that this Plan would be considered and approved by the local authority, appended to the licence, and used as a control mechanism. The Licensing Sub-Committee was asked to consider restricting the music played at the premises to background level only until the appropriate noise controls were in place. It was also requested that all external doors and windows were kept closed at any time when regulated entertainment was taking place. It was explained that noise breakout issues had been identified following visits to the premises and that no nuisance should be caused by noise coming from the premises or through vibrations of the building structure. It was also noted that speakers should be mounted on anti-vibration mountings.
- It was stated that more stringent noise controls were needed and that the Noise Team representation set out the conditions and current controls that needed to be strengthened. It was considered that the current status of the premises meant that it was not possible to uphold the licensing objective in relation to public nuisance.
- Stephane Euzen was in attendance but did not make a verbal representation.

In response to questions from the Committee, the following responses were provided:

- Jennifer Barrett clarified that four issues with noise disturbance had been identified in Figure 1 on page 55 of the agenda pack. It was noted that these were the key contributing issues that had been identified but it was acknowledged that these may not be the sole issues and that the control of patrons and the playing of music at excessive levels could contribute.

In response to questions from the premises licence holder, the following responses were provided:

- Martyn Davis noted that no noise abatement notice had been issued at the premises for some time. It was enquired why this had not been done if the noise was a significant disturbance. Jennifer Barrett explained that the premises had a relatively new DPS and the local authority approach focused on engagement and education before enforcement. It was noted that the local authority had looked to assist Kashka Ray and that the abatement notice was the next step.
- Martyn Davis stated that Kashka Ray had taken over the business on 14 May 2021, had spent a lot of money, and was willing to spend more money. He noted that the building had not changed, other than the addition of soundproofing, and that the implication of the discussions was that the building should have been discussed when the new licence was applied for.

- Martyn Davis noted that there were two SIA officers on the door and that copies of their licences had been provided. It was stated that, if the issues were severe, they had not just become severe and it was queried why a licence had been granted to a new business if it was known that the premises were unsuitable. Jennifer Barrett stated that a licence was granted based on a range of things and that the suitability of the premises would depend on the activities planned for the premises. She commented that it was possible to use the premises as a bar or cocktail bar with background music. It was noted that different operating styles had different requirements and that the use of the premises as more of a nightclub might require additional controls.

The Committee heard from the representatives for the premises licence holder, Martyn Davis (Solicitor) and Kashka Ray (premises licence holder). Martyn Davis explained that, if the Licensing Sub-Committee were to change the hours of the bar, this would effectively be closing the bar due to its business model. It was stated that there was one representation in support of the bar in the agenda pack, although it was believed that there were more, and it would be a significant loss for the community if the bar were to close permanently.

It was noted that Kashka Ray did not want to have a bad relationship with the community and this was demonstrated by his offer to meet with residents to discuss any issues. Martyn Davis stated that none of the people complaining had made an effort to meet with Kashka Ray; it was noted that he had attempted to engage but that the residents had refused to do so.

In relation to the protection of children, it was explained that the Licensing Act 2003 was concerned with children inside licensed premises, not children who lived above licensed premises. It was noted that children were not permitted to enter the premises as only those over 21 could enter and there was a Challenge 25 policy.

In relation to noise, Martyn Davis stated that this was objective. It was explained that Kashka Ray had installed a noise limiter and regulator so that he could test the noise levels and it was stated that he could share this information. It was noted that Kashka Ray was prepared to put more soundproofing in place and had agreed to consult with an acoustic expert. Martyn Davis stated that it was denied that there was dancing at the premises and it was noted that a picture of the inside of the bar had been submitted as evidence. It was stated that there was no possibility of dancing inside the bar unless people tried very hard. It was added that there was CCTV at the premises and Kashka Ray would be able to share these videos with the police and the local authority.

Martyn Davis noted that it was difficult when residents moved into an area after the establishment of a business like Kiss The Sky. He stated that at least one resident had admitted that they wanted the bar to close and enquired how many residents had submitted multiple complaints. Martyn Davis noted that complaints were vexatious and repetitious if they were coming from the same people about the same issues. He stated that he could not tell who had submitted the complaints against the premises but that they could be from the same people. He noted that the Secretary of State guidance suggested that a new licensee should be permitted 12 months before a review. He also stated that a review could not be applied for anonymously and that the

respondent should know who people were and who had made which complaint. He commented that the applicant details had been redacted, that it was difficult to question the appropriate people, that the petition letter was anonymous, and that no petition had been presented. Martyn Davis stated that it was therefore assumed that there was not significant support for this review.

Martyn Davis stated that there had been a suggestion that the door staff were not SIA registered but that copies of SIA licences had been included as evidence. There had also been a suggestion that there had been no Covid risk register and that this was also included as evidence. It was noted that a Noise Management Plan had been requested by officers and a draft had been submitted as late evidence to show that there was a willingness to undertake actions and engage with acoustic professionals; it was explained that this had been submitted late as there had been some difficulty in getting it ready and the legal representative had been unwell.

It was stated that the video evidence that had been submitted by residents had been altered and that various issues had been cut. Martyn Davis noted that the most threatening parts of the videos had been left out and he felt that this created scepticism about validity. It was noted that the video showed staff refusing entry to two people who were drunk and that staff should not be in trouble for doing their job. It was added that these two drunk people had been served by another bar in the area which was an issue for the other bar.

It was noted that, after the premises closed, staff needed to clean and prepare for the following day. Martyn Davis noted this and had advised that this might need to be quieter. He stated that there was no evidence to suggest that there were alcohol sales after the permitted hours, no evidence that drunk people were served alcohol, and no evidence that the premises attracted an unruly group of people. It was suggested that some people passing along the road might be unruly and Kashka Ray had noted that there was a group of difficult young people who moved through bars in the area. It was explained that these were the people who had been involved in the most recent incident outside the premises and that Kashka Ray had tracked them down, spoken to them, and hoped that they would now stay away from the premises.

It was stated that Kashka Ray had conducted himself professionally and had tried to listen to complaints and it was felt that some of the responses from the local authority were slightly aggressive. Martyn Davis stated that Kashka Ray was open to guidance and to working with the local authority and residents to ensure a good relationship and a successful business successful. It was added that the business would create jobs and would provide a safe venue for local people to go to.

Martyn Davis stated that the premises licence holder contended that the complaints were repetitious and vexatious, that the video evidence was changed, and that the complaints should not be considered. It was argued that Kashka Ray had only been in charge of the business for two weeks when the complaints were submitted and that he should be given a reasonable time as set out in the Secretary of State guidance. It was stated that there had been no time for the business to ensure improvements and it was hoped that the Licensing Sub-Committee would give the business appropriate time to react to the concerns raised.

In response to questions from the Committee, the following responses were provided:

- It was enquired why a change of hours would mean that the business had to close. Martyn Davis explained that the bar was open from Thursday-Sunday and was designed to attract a young crowd of people who would not go to the bar earlier. It was stated that the bar did not open earlier as there was no demand for this.
- It was noted that the legal representative for the premises licence holder had argued that the complaints were vexatious and repetitive. It was noted that complaints data was included in the agenda pack and that there had been a significant increase in complaints over the last two months. Martyn Davis stated that there could be repetitious complaints within a two month period and that those people may or may not have a desire to close the bar. It was explained that the police had been called twice, once by the owner, and that no action had been taken against the bar. It was stated that a noise registration machine should have been put in place to determine whether any noise was excessive. It was suggested that the number of people in the local area who would be affected by any noise and the number of people who had made a complaint should be considered to determine whether the noise was substantial. It was added that Kashka Ray had offered to meet with residents but that they had not shown up.
- In relation to the capacity of the venue, it was noted that capacities were mentioned on a premises licence if this was relevant for public safety. It was clarified that no maximum capacity was set as part of this premises licence. It was added that businesses were expected to be operating at reduced capacity in response to the Covid measures.

In response to questions from the applicants and those who had submitted representations, the following responses were provided:

- Philip Cone, Licensing Authority, stated that there had been a number of breaches of the Covid regulations since Kashka Ray had taken over the business which had not been discussed by the premises licence holder or the legal representative. He stated that the police were called at 2am at the weekend which was three hours after the closing time for the premises. It was added that demonstrating that there was no dancefloor did not mean that there had been no dancing. Philip Cone also noted that his representation and proposed conditions had come from things that were witnessed by Council officers rather than residents.
- Jennifer Barrett, Noise Team, added that noise nuisance had been established and that, although no formal notice had been received yet, the warning process had been commenced. Jennifer Barrett stated that she would not suggest that the complaints were vexatious. It was added that noise nuisance had been substantiated on 8 July 2021 within a residential property and at street level.
- Phil Emamally, applicant for the review, noted that there had been a suggestion that none of the people complaining had met with Kashka Ray. He stated that he had met with Kashka Ray. He added that it had been stated that the business was only open from Thursday-Sunday but that the business was also open on Wednesdays where there was an acoustic night until about midnight.
- The Licensing Officer noted that the question of whether something was frivolous or vexatious was for the licensing authority to determine. It was explained that, if the licensing authority determined that something was frivolous or vexatious, it would not be put forward for consideration by the Licensing Sub-Committee.
- The Licensing Officer added that the full list of complaints, including identities of individuals, had been provided to the premises licence holder.

- It was also confirmed that there had been no petition or petition letter.

The parties were invited to summarise.

Martyn Davis summarised that whether something was vexatious was not for a non-legal authority to decide. He noted that the video had been altered and stated that the complaint was vexatious and would be seen as vexatious if it went to the Magistrates' Court. He stated that this was not for a Licensing Officer to decide and that this was clearly a repetitious complaint. Martyn Davis noted that there were suggestions that the building was unsuitable to be a licensed premises but commented that there had been previous licences there. He stated that the local authority should accept responsibility for allowing a businessman to undertake significant sound insulation measures when they were going to determine that the building was unsuitable.

In relation to Covid-19, Martyn Davis explained that the Covid guidance advised premises to open their windows but the local authority had advised that the premises could not open the windows for sound reasons; it was noted that the premises could not do both of these things. He stated that the recommendations from licensing officers were contradictory and it seemed that, from the start of the process, there had been a concerted effort to close the establishment. Martyn Davis commented that it was not for the local authority to recommend a business model to a licensee. He noted that, if the Licensing Sub-Committee closed the establishment, the local authority should take some responsibility for not raising these issues with Kashka Ray when he was granted a licence. It was added that the owner should also possibly be compensated.

Martyn Davis stated that Kashka Ray had made significant improvements and had agreed to take the advice and recommendations of sound engineers. He had also agreed to work with the local authority and residents. It was also noted that Kashka Ray had only been in the premises for eight weeks and that he should not be punished for things that were not his fault or for historic issues.

It was noted that Jennifer Barrett, Noise Team, had to leave the meeting but that she had made all of the points that she had wished to make.

Philip Cone, Licensing Authority, acknowledged that there was advice to open windows to reduce the spread of Covid-19 but explained that music should have been at background level rather than reaching the threshold for an abatement notice. He stated that the conditions proposed did not relate to the business model and he believed that they were appropriate in response to the issues raised.

The applicants for the review were invited to summarise. Bysse Wallace stated that residents had engaged with the owner and acknowledged that the owner had made efforts to install sound insulation, as well as some other measures. She believed that the premises were not suitable for the business unless a concrete box was installed around the bar. She stated that, even if this was possible, there would still be issues of ventilation, as well as the smell and noise issues generated from a smoking area on the street which was in close proximity to residential dwellings. Bysse Wallace noted that the legal representative for the premises licence holder had enquired why the premises licence had not been reviewed before and she stated that the recent issues

had been so severe that it had brought the community together. She commented that this was a serious matter and that was why a review was requested now, regardless of any previous decisions.

At 9.50pm, the Committee adjourned to consider the application.

RESOLVED

The Special Licensing Sub-Committee carefully considered the application for a review of a premises licence at Kiss The Sky, 18-20 Park Road, London, N8. In considering the application, the Committee took account of the review application and representations made by all parties, as well as the Council's Statement of Licensing Policy, the Licensing Act 2003, and the section 182 Licensing Act 2003 guidance.

Considering the evidence it heard, the Committee decided it was appropriate and proportionate to revoke the licence.

Reasons

Having heard evidence from the Responsible Authorities, residents, and the respondents, the Committee was satisfied that there had been a failure on the part of the licence holder to promote and uphold the licensing objectives relating to public nuisance and crime and disorder.

The evidence put before the Committee regarding the management of the premises showed that the licence holder had wilfully disregarded his obligations in several respects.

Despite written warnings not to commence trading until a Designated Premises Supervisor had been appointed and the licence lawfully transferred, the respondent ignored the Responsible Authority's correspondence and began trading at a time when he was not lawfully permitted to do so.

During the Covid crisis, the respondent permitted dancing at the premises which took place while patrons were not socially distanced, which was not in keeping with Covid safety guidelines.

The venue was a source of considerable noise nuisance, which emanated from the premises via its sound system and also as a result of its patrons dispersing from the premises with little supervision, and in a manner that disturbed neighbouring residents, and was characterised by anti-social behaviour including street fights, shouting, swearing, and the use of racially charged language.

The premises failed to furnish responsible authorities with CCTV when requested to, knowing full well that CCTV should have readily been made available.

The door staff at the premises refused and/or failed to confirm that they had SIA authorisation when asked to do so by the Responsible Authority.

The Committee was satisfied on the evidence it heard that, even with conditions, the licence holder would not be able to address the problems with respect to anti-social behaviour and noise nuisance that were taking place at and in the immediate vicinity of the premises. The Committee was satisfied that it had heard credible evidence regarding incidents of anti-social behaviour and nuisance associated with the premises, all of which caused severe disturbance to locals going about their normal activities. These issues were compounded by poor management of the premises.

The incidents linked to the premises were serious and had a very negative impact on the residents and, in the circumstances, the Committee decided it was appropriate to revoke the licence.

The Committee was satisfied the incidents complained of could be attributed to patrons of the premises and felt that complete revocation of the licence was the only measure that could ensure the promotion of the licensing objectives, namely the prevention of nuisance and crime and disorder.

The Committee only made its decision after considering all the evidence and was satisfied that revocation of the licence was an appropriate and proportionate response to the matters that were put before it.

Appeal Rights

This decision is open to appeal to the Magistrates Court within the period of 21 days beginning on the day upon which the appellant is notified of the decision. This decision does not take effect until the end of the appeal period or, in the event that an appeal has been lodged, until the appeal is dispensed with.

CHAIR: Councillor Sheila Peacock (Vice-Chair, in the Chair)

Signed by Chair

Date