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|-------------------------------------|--------------------------------|---|---|
| <b>Item No.</b><br>6.               | <b>Classification:</b><br>Open | <b>Date:</b><br>8 August 2017                             | <b>Meeting Name:</b><br>Licensing Sub-Committee |
| <b>Report Title</b>                 |                                | Dulwich Picture Gallery, Gallery Road, London SE21 7AD    |   |
| <b>Ward(s) of group(s) affected</b> |                                | Village Ward  |   |
| <b>From:</b>                        |                                | Strategic Director of Environment and Social Regeneration |   |

## RECOMMENDATIONS

1. That the licensing sub-committee considers an application made by Dulwich Picture Gallery Limited for a time limited premises licence to be granted under the Licensing Act 2003 in respect of the temporary pavilion and gardens at the premises known as Dulwich Picture Gallery, Gallery Road, London SE21 7AD from 1 September to 8 October 2017.
2. Notes:
  - a) This application forms a new application for a time limited premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 11 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
  - c) Paragraphs 12 to 14 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted are attached to this report in Appendix D. A map showing the location of the premises is attached to this report 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. Previously, on 15 March 2017 Dulwich Picture Gallery (a charity registered with the UK Charity Commission) applied for a time limited premises licence to be granted under the Licensing Act 2003 in respect of the temporary pavilion and gardens at the premises known as Dulwich Picture Gallery, Gallery Road, London SE21 7AD to run from 1 June to 31 August 2017.
9. This application received representations from local residents and went to a hearing of the Southwark licensing sub-committee on 15 May 2017. The application was granted. A copy of the notice of decision from that hearing is available in Appendix B. A copy of the issued time limited premises licence is in Appendix C.
10. On 12 June 2017 a new application was made. The current application mirrors the existing time limited licence, to run from 1 September to 8 October 2017. The application effectively extends the current licence, but has removed the additional regulated entertainment for live and recorded music and altered the designated premises supervisor. The application mirrors the current licence and is summarised as follows:

The supply by retail of alcohol (on sales only)

- Monday - 12:00 to 21:00
- Tuesday and Wednesday - 12:00 to 22:00
- Thursday to Saturday - 12:00 to 23:00
- Sunday - 12:00 to 22:00.

The provision of regulated entertainment in the form of films (indoors):

- Friday and Saturday - 18:00 to 23:00
- Sunday - 18:00 to 22:00.

Opening hours from 1 June to 31 August 2017

- Monday - 08:00 to 21:00
- Tuesday and Wednesday - 08:00 to 22:00
- Thursday to Saturday - 08:00 to 23:00
- Sunday - 08:00 to 22:00.

11. The proposed designated premises supervisor of the premises is David Anthony Michael who has been granted a personal licence by London Borough of Lambeth.
12. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application 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. A copy of the application is attached to this report in Appendix A.

### **Representations from responsible authorities**

13. No representations have been made by any of the responsible authorities.

### **Representations from other persons**

14. Representations have been received from 2 local addresses. The objectors complain that there have been noise issues with the current granted time limited licence and fear that this will extend the nuisance.
15. Copies of all representations are available in Appendix D.

### **Conciliation**

16. Copies of all representations (with personal details redacted) were provided to the applicant throughout the application, with a full bundle presented on 11 July 2017. No further contact had been made by the Applicant at the point of publication of this report.

### **Premises history**

17. The Dulwich Picture Gallery is a long-standing gallery within the borough. The main building has a premises licence in place. As advised in paragraph 9, there is a time limited premises licence in place, a copy of which is available in Appendix C1.
18. Further to the hearing on 15 May 2017, no appeal was received, and the premises licence was subsequently issued. It later came to light that there were errors within the main body of the issued licence. A copy of the incorrectly issued premises licence is available for Members' information as Appendix C2. The incorrect licence was collected from the premises and the correct version issued the same day.

19. Since the current time limited licence has been granted, the licensing authority has received complaints from local residents. Below are a list of complaints received (please note that this does not include complaints made to environmental protection (noise) as they have not made representation).

| <b>Date Received</b> | <b>Complainant</b> | <b>Complaint</b>   |
|----------------------|--------------------|--|
| 11/06/2017           | Local resident     | Complaint of music noise until midnight on 10/06/2017  |
| 11/06/2017           | Local resident     | Complaint of music noise until midnight on 10/06/2017  |
| 11/06/2017           | Local resident     | Complaint of music noise until midnight on 10/06/2017  |
| 13/06/2017           | Local resident     | Complaint of noise from pavilion over the weekend  |
| 16/06/2017           | Local resident     | Event held Saturday 10/06/2017 – loud music until midnight, also, Sunday 11/06/2017 loud music from 11:00 to 17:00 and Tuesday 13/06/2017 loud music until 23:00 |

20. It is noted that all the complaints (with exception of the latest complaint received on 16 June) all relate to an incident on 10 June. Since the granting of the last time limited licence, the premises have also applied for temporary events notices (TENs).

| <b>Date of Application</b> | <b>Date of Event</b>                                     | <b>Applicant</b> | <b>Licensable Activities</b>                                   | <b>Issue of counter notice?</b> |
|----------------------------|--|------------------|--|---------------------------------|
| 10/07/2017                 | From<br>29/07/2017 to<br>29/07/2017<br><br>12:00 - 17:00 | David Michel     | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 19/06/2017                 | From<br>09/07/2017 to<br>09/07/2017<br><br>15:00-18:30   | David Michel     | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 30/05/2017                 | From<br>13/06/2017 to<br>13/06/2017<br><br>18:00 - 23:00 | Sally Muckley    | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 30/05/2017                 | From<br>11/06/2017 to<br>11/06/2017<br><br>12:00 - 17:00 | David Michel     | Alcohol to be consumed on the premises/regulated entertainment | No                              |

| <b>Date of Application</b> | <b>Date of Event</b>                                     | <b>Applicant</b>        | <b>Licensable Activities</b>                                   | <b>Issue of counter notice?</b> |
|----------------------------|--|-------------------------|--|---------------------------------|
| 13/04/2017                 | From<br>19/08/2017 to<br>19/08/2017<br><br>12:00-00:00   | David Michel            | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 20/02/2017                 | From<br>10/06/2017 to<br>10/06/2017<br><br>15:00 - 00:00 | Mark<br>Stephen<br>Hone | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 06/02/2017                 | From<br>15/07/2017 to<br>15/07/2017<br><br>12:00 - 23:00 | Sophie<br>Schneider     | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 03/02/2017                 | From<br>07/07/2017 to<br>07/07/2017<br><br>17:00 - 00:00 | Sophie<br>Schneider     | Alcohol to be consumed on the premises/regulated entertainment | No                              |
| 30/01/2017                 | From<br>24/06/2017 to<br>24/06/2017<br><br>15:00 - 00:00 | Sophie<br>Schneider     | Alcohol to be consumed on the premises/regulated entertainment | No                              |

21. It is therefore concluded that the complaints relate to a temporary events notice, not the current granted premises licence. Complainants have all received advice on formally reporting noise incidents. In addition, the management of the Dulwich Picture Gallery have been made aware of the local residents' complaints.

### **Deregulation of entertainment**

22. On 6 April 2015 entertainment became deregulated and as a result:

- Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
- Live amplified music is deregulated between 08:00 and 23:00 at on-licensed premises provided the audience does not exceed 500 people, however, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

## Map

23. A map showing the location of the premises is attached to this report as Appendix E. There are not many licensed premises in the immediate vicinity, the following similarly licensed premises in the area are:

**Dulwich Picture Gallery, College Road SE21 7GB** licenced for:

The sale of alcohol (on sales only)

- Monday to Friday - 11:00 to 23:30
- Saturday - 10:00 to 23:30
- Sunday - 12:00 to 23:30.

The provision of late night refreshment (indoors)

- Monday to Sunday - 23:00 to 01:30 (the following day).

The provisions of regulated entertainment in the form of films, plays, performances of dance, live and recorded music (all indoors)

- Monday to Sunday - 09:00 to 23:00.

**The Edward Alleyn Club, Burbage Road SE24 9HD** licenced for:

The sale of alcohol (on sales only)

- Monday to Sunday - 10:00 to 23:30.

The provision of late night refreshment (indoors)

- Monday to Friday - 23:00 to 23:30
- Saturday and Sunday - 23:00 to 23:59.

The provision of regulated entertainment in the form of performances of dance, live and recorded music (all indoors)

- Monday to Saturday - 10:00 to 23:30
- Sunday - 12:00 to 22:30.

**Old College Lawn Tennis and Croquet Club, 10 Gallery Road SE21 7AB** licensed for a club licence for:

The sale of alcohol (to member indoors)

- Monday to Sunday - 12:00 to 23:00.

## Southwark council statement of licensing policy

24. Council assembly approved Southwark's statement of licensing policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016.
25. Further 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.
26. 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.
27. Within Southwark’s statement of licensing policy, the premises are identified as being within the Dulwich Village local town centre area, which is outside of any of Southwark’s cumulative impact zones. Therefore relevant closing times recommended in the statement of licensing policy for licensed premises in residential areas are as follows:
- Closing time for restaurants and cafes:
- Sunday to Thursday is 23:00 and for Friday and Saturday is 00:00 (midnight).
- Closing time for Public Houses Wine bars or other drinking establishments:
- 23:00 daily.

## **Resource implications**

28. A fee of £100.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value bands D/E.

## **Consultations**

29. 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**

30. 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**

31. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
32. The principles which sub-committee members must apply are set out below.

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

33. 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.
34. 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.
35. 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**

36. 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.
37. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
38. 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.
39. 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.
40. 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**

41. 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**

42. 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.
43. 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**

44. 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.
45. 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.
46. 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.
47. 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.

48. 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.
49. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
50. 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.
51. 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

52. 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.

### BACKGROUND DOCUMENTS

| Background Papers  | Held At  | Contact                          |
|--|--|----------------------------------|
| Licensing Act 2003<br>Home Office Guidance to the Act<br>Secondary Regulations<br>Southwark statement of licensing<br>Policy Case file | Southwark Licensing c/o<br>Community Safety and<br>Enforcement<br>160 Tooley Street<br>London<br>SE1 2QH | Kirty Read<br>Tel: 020 7525 5748 |

### APPENDICES

| Name                 | Title   |
|----------------------|---|
| Appendix A           | Application for a time limited premises licence |
| Appendix B           | Notice of Decision from 15 May 2017             |
| Appendices C1 and C2 | Copies of current time limited premises licence |
| Appendix D           | Representations by local residents              |
| Appendix E           | Map of the local area                           |

## AUDIT TRAIL

|   |  |                          |
|---|--|--------------------------|
| <b>Lead Officer</b>   | Deborah Collins, Strategic Director of Environment and Social Regeneration |                          |
| <b>Report Author</b>  | Andrew Heron, Principal Licensing Officer                                  |                          |
| <b>Version</b>  | Final  |                          |
| <b>Dated</b>  | 27 July 2017   |                          |
| <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                            | No   | No                       |
| <b>Cabinet Member</b>   | No   | No                       |
| <b>Date final report sent to Constitutional Team</b>                    | 27 July 2017   |                          |