

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 27 March 2018	<b>Meeting Name:</b> Licensing sub-committee
<b>Report title:</b>		Licensing Act 2003: Dulwich Picture Gallery, Gallery Road, London SE21 7BG	
<b>Ward(s) or groups affected:</b>		Village	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee decide whether or not to issue counter notices in respect of temporary event notice (TEN) 861824 served by Mr. David Anthony Michael, in regards to an event to be held in the Gallery main gardens at Dulwich Picture Gallery, Gallery Road, London SE21 7BG on 15 September 2018 from 15:00 to 00:00 (midnight)

## BACKGROUND INFORMATION

### The Licensing Act 2003

2. On 24 November 2005 the Licensing Act 2003 came into effect establishing a licensing regime for the following licensable activities:
  - a) The retail sale of alcohol
  - b) The supply of alcohol to club members or on behalf of a club
  - c) The provision of regulated entertainment
  - d) The provision of late night refreshments.
3. The Act established a process for the giving of "temporary event notices" (TENs).
4. Amendments to the Licensing Act 2003 were brought about by way of the Police Reform and Social Responsibility Act 2011 as of 25 April 2012.
5. A premises user may serve a TEN, where it is proposed to use the premises concerned to provide one or more licensable activities for a period not exceeding 168 hours for less than 500 persons.
6. A person holding a personal license issued under the Act may serve up to 50 TENs in a calendar year. Non personal licence holders may serve up to five TENs in the same period. No premises may be used for more than 12 TENs in a calendar year or for more than 21 days in a calendar year.
7. No premises may be used for temporary events that are less than 24 hours apart.
8. The police or environmental health authority may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their

intervention may in some cases result in the licensing authority imposing conditions on a TEN.

9. If the police or environmental health team believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. This must be given within three working days of the receipt of the TEN.
10. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
11. The police or environmental health may contact the premises user to discuss their objections and attempt to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified. If there is no agreement, the licensing authority must hold a hearing to consider the notice.
12. If the licensing authority receives an objection notice from the police or environmental health that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions, and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and give a counter notice. This prohibits the event from taking place.

## **KEY ISSUES FOR CONSIDERATION**

### **The temporary event notices**

13. On 16 January 2018 a standard TEN was served by Mr. David Anthony Michael (the designated premises supervisor of the premises) in respect of an event intended to be held at Dulwich Picture Gallery, Gallery Road, London SE21 7BG. A copy of the application for the TEN is attached to this report as Appendix A.
14. The TEN is summarised as follows:
  - To allow the sale of alcohol and the provision of regulated entertainment between 15:00 and 00:00 (midnight) on 15 September 2018. The maximum number of people expected at any one time at the premises is 220. The activities are to take place on the premises only, specifically in a marquee within the grounds.

### **The objection notices**

15. On 12 January 2018 the environmental health responsible authority served an objection notice in respect of the TEN.

16. The objection notice states that a similar TEN has been granted previously for a marquee in the grounds. Complaints were received regarding amplified music at the event.
17. The objector believes that the venue is not suitable for amplified music beyond 22:00.
18. A copy of the objection notice is attached to this report in Appendix B. There have been a number of communications since between the applicant and the objector and these are available (in reverse chronological order) as part of Appendix B.

### **TENs history**

19. The premises has received many TENs in the past. Below is a list of TENs held by the premises in the last 12 months listed in the order in which they were applied.

<b>No.</b>	<b>Premises user</b>	<b>Time and Date of event</b>	<b>Licensable activities</b>
1	David Anthony Michel	From 29/07/2017 to 29/07/2017 12:00 - 17:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
2	David Anthony Michel	From 09/07/2017 to 09/07/2017 15.00-18.30	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
3	Sally Muckley	From 13/06/2017 to 13/06/2017 18:00 - 23:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
4	David Anthony Michel	From 11/06/2017 to 11/06/2017 12:00 - 17:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
5	David Anthony Michel	From 19/08/2017 to 19/08/2017 12.00-00.00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
6	Mark Stephen Hone	From 10/06/2017 to 10/06/2017 15:00 - 00:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
7	Sophie Schneider	From 15/07/2017 to 15/07/2017 12:00 - 23:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
8	Sophie Schneider	From 07/07/2017 to 07/07/2017 17:00 - 00:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>

No.	Premises user	Time and Date of event	Licensable activities
9	Sophie Schneider	From 24/06/2017 to 24/06/2017 15:00 - 00:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>
10	Sophie Schneider	From 27/05/2017 to 27/05/2017 15:00 - 00:00	<ul style="list-style-type: none"> <li>• Sale by retail of alcohol to be consumed on the premises</li> <li>• Provision of Regulated Entertainment</li> </ul>

20. It should also be noted that another application for a TEN (for the same hours as the current application) has been applied for and not received an objection and will therefore go ahead.

No.	Applicant	Date of event	Time of event and activities
1	David Anthony Michel on 06/02/2018	From 28/07/2018 to 28/07/2018 15:00 - 00:00	Sale by retail of alcohol to be consumed on the premises Provision of Regulated Entertainment

### Premises history

21. There is a licence in place at Dulwich Picture Gallery, Gallery Road, London SE21 7BG. A copy is attached for Member's information at Appendix C. The TEN applied for here is in the grounds of the premises and therefore not covered by the existing licence.
22. The premises has had a history of time-limited premises licences in place for a temporary pavilion structure in the grounds for which a series of music events are held on a bi-annual basis throughout the summer months.
23. The licensing authority has received the following complaints regarding the premises in the past 12 months:

Complaint Date	Complainant	Complaint Details
18/09/2017	Local Resident: Address 1	Complaint of noise from amplified music during TENs and use of the pavilion
10/08/2017	Local Resident: Address 2	Complaint regarding the consultation for the time-limited pavilion and also noise from DJ-led events
12/07/2017	Local Resident: Address 1	Complaint of loud music
16/06/2017	Local Resident: Address 2	Complaint of amplified music until midnight resulting from a TEN on 10/06/2017
13/06/2017	Local Resident: Address 3	Complaint of amplified music until midnight resulting from a TEN on 10/06/2017
13/06/2017	Local Resident: Address 4	Complaint of amplified music until midnight resulting from a TEN on 10/06/2017
13/06/2017	Local Resident:	Complaint of amplified music until midnight

	Address 5	resulting from a TEN on 10/06/2017
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### **Licensing visit history**

24. The following visits have been conducted by the Licensing Authority

<b>Date</b>	<b>Visit</b>	<b>Outcome</b>
25/01/2018	Meeting to discuss TENs and future applications	Hearing
04/11/2017	19:20 Night Time Economy Visit	Premises closed and in darkness
11/08/2017	22:40 Night Time Economy Visit	Observations of external area – no music, no noise. Some people leaving via College Road

### **The local area**

25. A map showing the location of the premises is attached to this report as Appendix D. The premises are identified at the centre of the circle on the map.

### **Policy considerations**

26. Section 4 of the Southwark statement of licensing policy on “administration, exercise and delegation of function” deals with the parameters under which TENs may be considered.

### **Consideration by the sub-committee**

27. The sub-committee is asked to consider whether the issue of a counter notice is necessary for the promotion of the prevention of public nuisance and protection of public safety licensing objectives.

### **Community impact statement**

28. Members are advised that under the Act, the matters to which consideration may be given in this instance are the crime and disorder and public nuisance objectives.

29. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

### **Resource implications**

30. A fee of £21.00 has been paid by the applicant in respect of the TEN, this being the statutory fee payable.

### **Consultation**

31. The Act provides for no consultations to take place other than the process outlined in this report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

32. The sub-committee is asked to determine the notification of this temporary event under Section 105 of the Licensing Act 2003 and to consider whether or not counter notice should be issued in the circumstance. It must only issue a counter notice if they believe the event would undermine the crime prevention objective set out in the Act
33. The principles which sub-committee members must apply are set out below.

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

34. The general principle is that temporary event notices must be accepted unless a relevant objection is received from the police. This is subject to the proviso that the premises user has complied with regulations and submitted the notice within a prescribed time.
35. A relevant objection is that which:
  - Is about the likely effect of the TEN on the promotion of the crime prevention of the licensing objectives
  - Is made by the metropolitan police
  - Has not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
36. If a relevant objection notice is received then the sub-committee must have regard to it in determining whether it is necessary for the promotion of the prevention of crime prevention and the prevention of public nuisance licensing objectives of the Licensing Act to:
  - Issue a counter notice by adding to, omit, and/or alter the conditions of the licence or
  - Reject the whole or part of the application for TEN.

### **Conditions**

37. The sub-committee may attach conditions on the carrying on of permitted licensable activities. The sub-committee's function is to determine whether a counter notice should be issued
38. Members are also referred to the Department for Culture, Media and Sport (DCMS) guidance on conditions, specifically section 7, and Annexes D, E, F and G.

### **Reasons**

39. The sub-committee must give reasons for its decision to issue or not to issue a counter notice.

## Hearing procedures

40. 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 objection.
  - 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 submission.
  - The committee shall disregard any information given by a party which is not relevant:
    - To the particular submission before the committee
    - To the licensing objectives prevention of crime and disorder.
  - 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 the objection and notice the authority may take into account documentary or other information produced by a party in support of their objection or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
41. This matter relates to the determination of a notification for a temporary event notice under section 105 of the Licensing Act 2003. Regulation 26(1) (c) requires the sub-committee to make its determination at the conclusion of the hearing.
42. 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.
43. As a quasi-judicial body the licensing sub-committee is required to consider the temporary event notice 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 the police objection.

44. 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.
45. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making the objection 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.
46. Where the relevant counter notice under section 105(3) is given the premises user may appeal against that decision. Where a counter notice is not given, the chief officer of police may appeal against that decision. The appeal must be made 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. No appeal may be brought later than five working days before the day on which the event begins.

#### **Guidance**

47. 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**

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

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Licensing Act 2003 Home Office revised guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	Licensing Unit Hub 2 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read (020 7525 5748)



## APPENDICES

No.	Title
Appendix A	The temporary event notice application
Appendix B	The environment health responsible authority objection
Appendix C	Copy of current premises licence – for information only
Appendix D	Map of 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>	14 March 2018		
<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>	<b>No</b>	<b>No</b>	
<b>Date final report sent to Constitutional Team</b>		15 March 2018	