

Item No. 7.	Classification: Open	Date: 20 September 2018	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act: Southwark Park Lantern & Lights, Southwark Park North Section, Gomm Road, SE16 2TX	
Ward(s) of group(s) affected		Rotherhithe	
From		Strategic Director of Environment and Social Regeneration	

RECOMMENDATION

1. That the licensing sub-committee considers whether an application made by Marcus Van Der Gaag for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Southwark Park North Section, Gomm Road, SE16 2TX.
2. Notes:
 - a) This is an application for a time limited premises licence submitted under Section 17 of the Licensing Act 2003. The application is subject to representations and is therefore referred to the licensing 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 16 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as appendices B & C. 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. On 3 July 2018 Marcus Van Der Gaag applied to this council for the grant of a premises licence in respect of Southwark Park North Section, Gomm Road, SE16 2TX.

9. The application is for a time limited premises licence to facilitate a 'light and lantern festival' and is summarised as follows:

- **The provision of live music, recorded music, performances of dance, anything similar to live / recorded music and the sale of alcohol for consumption on the premises**

Monday to Sunday 15:00 to 22:00

- **Proposed opening hours of the premises**

Monday to Sunday 15:00 to 22:00

It is proposed that the licence operates between 7 November 2018 and 11 January 2019

- **In the application the festival is described as follows:**

“Southwark Park Lantern & Lights Festival is a unique lantern experience themed around Alice in Wonderland. The experience will take place in the Northern section of Southwark Park. Lanterns are being designed around the popular children's classic, Alice in Wonderland and will include a walk through the story created in

lantern format. The event has been designed to be interactive using slides and other audio visual effects to explore the lanterns. There will also be food and beverage traders, entertainers on the bandstand and special effects. The event will be ticketed and both pre-sale and on the door tickets will be available.

The event is created by Things to Do Ltd. Unusual Expo have designed the lanterns and Continental Drifts will manage the event.

It is likely there will be two bars at the event which will be in two separate areas. There will be on bar at the bandstand area as well as one location on the lights route.”

10. The premises licence application form provides the applicant's operating schedule. Parts E, F, G, H, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full, with reference to the four licensing objectives 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 as Appendix A.

Designated premises supervisor

11. The proposed designated premises supervisor (DPS) is Marcus Van Der Gaag.

Representations from responsible authorities

12. A representation was submitted by this council's Environmental Protection Team. The representation sought further details in regards to noise management during the festival and also requested that a comprehensive dispersal policy be provided. The applicant provided a noise management plan and dispersal policy and also agreed to the inclusion of three conditions in respect of any licence issued subsequent to the application. The environmental protection team subsequently withdrew their representation.
13. Copies of the environmental protection team's representation, and related correspondence, are attached as Appendix B.

Representations from other persons

14. Seven representations have been submitted by 'other persons' being 5 local residents, 1 local company and a local ward councillor. In summary the representations are concerned that the proposed operation of the premises will lead to noise nuisance and will potentially give rise to disorderly and / or anti social behaviour.
15. The applicant provided a response to the representations submitted by the 'other persons'.
16. Copies of the representations submitted by 'other persons' and related correspondence are attached as Appendix C.

Conciliation

17. The applicant was sent copies of all the representations and was invited to respond to them. Following an agreement made with the environmental Protection Team the

Environmental Protection Team withdrew their representation. The applicant provided a response to the representations submitted by the 'other persons', however at the time of the writing of this report all of the representations submitted by the other persons remain outstanding and must be considered by the licensing sub-committee. At the hearing to consider the application the licensing sub-committee will be apprised as to the withdrawal of any of the representations or of any agreement(s) reached in regards to any of the representations.

Premises history

18. A permanent premises licence (licence number 10878) was issued in respect of the premises on 16 January 2007 and is summarised as follows:

- **The provision of live music, recorded music, performances of dance, anything similar to live / recorded music**

Monday to Thursday	10:00 to 21:00
Friday & Saturday	10:00 to 22:00
Sunday	11:00 to 21:00

- **Opening hours**

Monday to Sunday	08:00 to 22:00
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The sale of alcohol is **not** permitted by licence number 10878.

A copy of the licence is attached as Appendix D.

19. On 3 July 2018 Marcus Van Der Gaag applied to this council for the grant of a premises licence in respect of Southwark Park North Section, Gomm Road, SE16 2TX.

20. N.B. The effect of the application will extend the provision of entertainment at the park by an hour on Sunday to Thursday and will allow the sale of alcohol at the park. Permission for the event to take place has already been given to the applicant by this council's Events Team. If this application is not granted the event can still take place under licence 10878, albeit without the sale of alcohol permitted and with curtailed hours for entertainment on Sunday to Thursday. The 'other persons' have been informed of this. The sub-committee are invited to consider the application in the above context i.e. to make a decision as to whether the sale of alcohol at the park should be permitted as applied for and whether entertainment should be permitted until 22:00 on Sunday to Thursday rather than making a decision as to whether the event can take place – as this permission has already been granted.

Deregulation of entertainment

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

- Live unamplified music is deregulated between 08:00hrs and 23:00hrs on any premises.
- Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
- Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.

- Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.
- 22. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
- 23. The showing of films has not been de-regulated.

Map

- 24. A map showing the location of the premises is attached to this report as Appendix E.

Southwark council statement of licensing policy

- 25. Council Assembly approved Southwark's Statement of Licensing Policy 2016 - 2020 on 25 November 2015. The policy came into effect on 1 January 2016. 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 – Which 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 - Which 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 – Which 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 of the policy.
 - Section 7 – Hours of Operation – Which 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 – Which provides general guidance on the promotion of the first licensing objective.
 - Section 9 – Public Safety – Which provides general guidance on the promotion of the second licensing objective.
 - Section 10 – The Prevention of Nuisance – Which provides general guidance on the promotion of the third licensing objective.
 - Section 11 – The Protection of Children from Harm – Which 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 2016 - 2020 the premises are identified as being within a residential area. The closing time recommended in the Statement of Licensing Policy for restaurants, cafes, cinemas, theatres, public houses, wine bars or other drinking establishments in residential areas is 23:00 daily.

Resource implications

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

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 at 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 & 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.

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.

49. 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.
50. 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

51. Members are required to have regard to the DCMS 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 DCMS Guidance to the Act Secondary Regulations Southwark statement of licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Copy of the application
Appendix B	Copies of the representation submitted by the Environmental Protection team and related correspondence
Appendix C	Copies of the representations submitted by 'other persons' and related correspondence
Appendix D	Copy of licence number 10878
Appendix E	Map of the local area

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration	
Report Author	Wesley McArthur, Principal Licensing Officer	
Version	Final	
Dated	6 September 2018	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	7 September 2018	