

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 4 October 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Dee Dees – 77 Herne Hill, London, SE24 9NE	
<b>Ward(s) or groups affected:</b>		Dulwich Village Ward	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Mr Brook Anthony Anderson to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as: Dee Dees – 77 Herne Hill, London, SE24 9NE.
2. Notes:
  - The application seeks to vary the premises licence held under current legislation in respect of the premises known as: Dee Dees – 77 Herne Hill, London, SE24 9NE under section 34 of the Licensing Act 2003. Existing permitted licensable activities are not under consideration at this meeting.
  - Paragraph 7 of this report provides a summary of the existing premises licence. A copy of the existing premises licence is attached at Appendix A.
  - Paragraphs 8 to 10 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 B. A map showing the location of the premises is attached as Appendix H.
  - Paragraphs 12 to 17 of this report deal with the representations submitted in respect of the application by the responsible authorities and local residents and are attached in Appendices C and D.
  - Paragraphs 24 to 28 of this report follow the adjourned hearing of 23 July 2018. A public meeting was held at the premises on 11 September 2018 in accordance to the notice of decision, a copy of which is available in Appendix I.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 provides a new licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment.

4. Within Southwark, this council wholly administers the licensing responsibility.
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 interested parties 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 current premises licence**

8. The current licence was issued on 20 March 2017. The current premises licence is issued to Mr Brook Anthony Anderson trading as Dee Dees – 77 Herne Hill, London, SE24 9NE. The licence permits the following:
  - The sale of alcohol to be consumed on or off the premises
    - Monday Saturday from 07:00 to 23:00
    - Sunday from 07:00 to 22:30
  - The provision of regulated entertainment in the form of recorded music (indoors)
    - Monday Saturday from 07:00 to 23:00
    - Sunday from 07:00 to 22:30
  - Opening hours
    - Monday Saturday from 07:00 to 23:30
    - Sunday from 07:00 to 23:00
9. A copy of the existing premises licence is attached as Appendix A.

## **The variation application**

10. On 25 May 2018 Mr Brook Anthony Anderson applied under section 34 of the Licensing Act 2003 to this council to vary the premises licence issued in respect of the premises trading as Dee Dees – 77 Herne Hill, London, SE24 9NE.
11. The application for variation is described as:
  - A) To add the provision of late night refreshment to the licence from 23:00 to 00:00 (midnight) Friday and Saturday plus for the requested non-standard timings on bank holiday Sunday, Christmas Eve and New Year's Eve
  - B) To extend the permitted hours for all authorised licensable activities to be until 00:00 (midnight) Friday and Saturday (there is no change requested for Sunday to Thursday except bank holiday Sundays)
  - C) To allow non-standard timings as follows: On bank holiday Sundays, Christmas Eve and New Year's Eve to extend the permitted hours for all authorised licensable activities to be until 00:00 (midnight)
  - D) To remove the following conditions:
    - Conditions 846 (Annex 3): There shall only be no applications made for any Temporary Event Notices under the Licensing Act 2003
    - Condition 4AK (Annex 2): Should a local pub watch be set up in the area, the licensee shall seek membership.
12. The application seeks the following hours:
  - The sale by retail of alcohol (both on and off sales)
    - Friday and Saturday from 10:00 to 00:00 (midnight)
  - The provision of late night refreshment (indoors)
    - Friday and Saturday from 23:00 to 00:00 (midnight)
  - The provision of regulated entertainment (indoors)
    - Friday and Saturday from 10:00 to 00:00 (midnight)
  - Opening hours
    - Friday and Saturday from 07:00 to 00:30 (the following day)
  - Non-standard Timings

To allow non-standard timings as follows: On bank holiday Sundays, Christmas Eve and New Year's Eve to extend the permitted licensable activities to be until 00:00 (midnight).
13. A copy of the application is attached to this report as Appendix B.

### **Designated premises supervisor**

14. The designated premises supervisor (DPS) under the existing premises licence is Mr Brook Anthony Anderson holding a personal licence with a council outside of London. Mr Brook Anthony Anderson is also the premises licence holder and applicant.

### **Representations from responsible authorities**

15. Southwark Licensing Authority (LA) has made representation against the extension of hours only, as they are in excess of the Southwark licensing policy. There is no objection to the removal of conditions.
16. A copy of the representation is available in Appendix C.

### **Representations from other persons**

17. Representations were received from 18 local residents, some drawing on all four of the licensing objectives. All object to any extension of hours because of the potential negative impact it may have on the prevention of public nuisance objective. Some residents state that they have been disturbed by the premises previously. Objectors state that there are a number of families in the immediate locality that may be affected by any change in hours.
18. Some representations are sparse in their content and are therefore considered to be borderline in validity. Members may wish to consider if all representations are indeed fully valid.
19. It should be noted that one representation is written from '77 Herne Hill Management Company Limited'. At least two of the directors of this company have also submitted separate representations in their own names.
20. All representations from local residents are redacted and available in Appendix D.
21. Since the publication of the first report it has come to light that two additional timely representations were received from local residents. These had been incorrectly logged and were incorrectly omitted. The residents have since been informed and the representations are attached in Appendix L.

### **Conciliation**

22. All representations were sent to the applicant's agent on 28 June 2018. An offer was made to forward a response to resident objectors, but one has not been forthcoming. At the point of the report going to publication, no representations had been withdrawn.

### **Letters of Support**

23. The applicant's agent has submitted x41 'letters of support'. These have not been accepted as valid representations as they were received outside of the consultation period. All letters are identical in their wording. One example has been added to Appendix E for information only.

## **Operating history**

24. The current premises licence was issued on 25 February 2016, further to a review initiated by a local resident on 8 May 2015. The application went to a hearing of the Southwark licensing sub committee on 23 July 2015. A copy of the notice of decision is available in Appendix F.
25. This decision was appealed by the licence holder applicant. A consent order was subsequently sought and signed on 25 February 2016 and the current licence then issued. A copy of which is available in Appendix G.
26. The premises has not had and temporary events notices issued under the current licence, as there is a condition on the operating schedule specifically preventing this. The applicant seeks to also withdraw this condition.
27. There is no history of complaints regarding the premises, since this current licence was issued.

## **Adjournment**

28. On 7 August 2018, a hearing took place of the Southwark licensing sub committee to consider the application. The hearing was adjourned in order to arrange a public meeting for local residents to discuss concerns with the premises. A copy of the notice of decision from that hearing is attached in Appendix I.
29. In accordance with the notice of decision, the public meeting was advertised on social media and via a notice at the premises. Details of those advertisements are available in Appendix J. The meeting was to be held between 14:00hrs and 16:00hrs at the premises on Tuesday 11 September 2018.
30. The licensing authority wrote to those whom had made representation to the application to advise of the meeting. Feedback was received that some residents felt that the meeting was not at a time that was accessible to many objectors. A second public meeting has therefore also been arranged for 08:00hrs at the council offices, on the morning of the reconvened hearing. Objectors have been advised of this second meeting. A copy of that invitation is available in Appendix K.
31. On 11 September 2018, the public meeting took place and was attended by the applicant and his staff, his licensing agent, licensing officers, Councillor Margy Newens and members of the public. Discussion took place but no matters were formally conciliated in relation to this application.
32. At the point this report had gone to publication, no additional representations had been received from any of the original objectors as per the notice of adjournment.

## **Map**

33. A map of the area is attached to this report as Appendix H. There are very few other licensed premises in the immediate vicinity:

- **Food and Wine – 73 Herne Hill, SE24 9NE**

The sale of alcohol to be consumed both off the premises

- Monday to Sunday                      08:00 to 22:30

- **Herne Hill Londis – 71 Herne Hill, SE24 9NE**

The sale of alcohol to be consumed both off the premises

- Monday to Sunday                      06:00 to 22:00

### **Southwark council statement of licensing policy**

34. 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. 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.
35. 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.
36. This premises is outside of a cumulative impact policy area and within a residential area. Under the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises indicated:

- Closing time for restaurants and cafes is 23:00hrs daily
- Closing time for public houses, wine bars or other drinking establishments is 23:00hrs
- Night clubs (with sui generis planning classification) are not considered appropriate for this area.

### **Resource implications**

37. A fee of £190.00 being the statutory fee payable for premises within non-domestic rateable value band A has been paid by the applicant company in respect of this application.

### **Consultations**

38. Consultation has been carried out in respect of this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper twice (there was an error on the initial advert; however, this was republished within the specified time period to the satisfaction of the Licensing Authority). A similar notice exhibited at the premises for a period of 28 consecutive days. This was inspected by a licensing officer during the consultation period and found to be compliant.

### **Community impact statement**

39. 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**

40. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003. The principles which sub-committee members must apply are set out below.

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

41. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.
42. The general principle is that applications for variation 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.
43. 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 other party or responsible authority
  - Have not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

44. 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:
- Add to, omit, and/or alter the conditions of the licence or,
  - Reject the whole or part of the application for variation.

### **Conditions**

45. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.
46. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance and
  - The protection of children from harm.
47. 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.
48. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.
49. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced 3 new conditions in respect of irresponsible promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.
50. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

### **Reasons**

51. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for to vary the premises licence, it must give reasons for its decision.

### **Hearing procedures**

52. 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
53. This matter relates to the determination of an application to vary a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1) (a) requires the sub-committee to make its determination at the conclusion of the hearing.

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

54. 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.
55. 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.
56. 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.

57. 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.
58. 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.
59. 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.
60. 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**

61. 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.

#### **Strategic Director of Finance and Governance**

62. 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 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	Mrs Kirty Read 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of the application
Appendix C	Copy of representations from Responsible Authorities
Appendix D	Representations from local residents
Appendix E	An example of a 'letter of support'
Appendix F	Copy Notice of Decision 23 July 2015
Appendix G	Copy Consent Order 25 January 2016
Appendix H	Map of the local area
Appendix I	Notice of Decision 23 July 2018
Appendix J	Advertising of Public Meeting
Appendix K	Meeting Invite
Appendix L	X2 Additional local resident representations

## AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Social Regeneration		
Report Author	Andrew, Principal Licensing Officer		
Version	Final		
Dated	20 September 2018		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments sought	Comments included
Director of Law and Democracy		Yes	Yes
Strategic Director of Finance and Governance		Yes	Yes
Cabinet Member		No	No
Date final report sent to Constitutional Team			20 September 2018