

Item No. 5.	Classification: Open	Date: 22 March 2019	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Dulwich Picture Gallery – Gallery Road, London, SE21 7AD	
Ward(s) of group(s) affected		Dulwich Village	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Dulwich Picture Gallery Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Dulwich Picture Gallery – Gallery Road, London, SE21 7AD.
2. Notes:
 - a) This application forms a new application for a 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 12 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 13 to 21 of this report deal with the representations submitted in respect of the application. Copies of the representation submitted by the responsible authorities and attached to this report in Appendix B and copies of representations from other persons against the application attached in Appendix C with those in favour in Appendix D. A map showing the location of the premises is attached to this report as Appendix F.
 - 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 31 January 2019 Dulwich Picture Gallery Limited applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Dulwich Picture Gallery – Gallery Road, London, SE21 7AD. The premises are described in the application as being:

“Dulwich Picture Gallery - a public art gallery with a shop, café and gardens.

Dulwich Picture Gallery has consulted with its local ‘neighbourhood group’ (local residents who have opted into receiving communications from the Gallery and to be updated on upcoming events or activities which may have an impact on them) about this licensing application.

Dulwich Picture Gallery held meetings on 19 September 2018, 5 December 2018 and 9 January 2019 where the ‘neighbourhood group’ were invited to feedback on the application. The Gallery has made amendments to the application and incorporated limitations within the conditions based on this feedback.”

9. The hours applied for are summarised as follows:

The sale by retail of alcohol (on sales only)

- Sunday to Thursday 11:00 to 23:00
- Friday and Saturday 11:00 to 00:00

10. The outdoor supply of alcohol for events (i.e. separate to normal café opening hours) will take place on the following hours: Monday, Tuesday, Sunday: 12:00 - 22:00, Wednesday - Saturday: 12:00 - 23:00. The licensee may hold up to 12 events per calendar year on which dates licensable activities in the outdoor areas may go past 22:00, on these occasions the supply of alcohol will finish no later than 00:00. These will not be held on consecutive days. Of these 12 events, up to four may be held in the Meadow Space.

The provision of regulated entertainment in the form of plays (both indoors and outdoors)

- Sunday to Thursday 09:00 to 23:00
- Friday and Saturday 09:00 to 00:00

The outdoor performance of plays will finish no later than 22:00 and will only go past 18:00 a maximum of 50 times per calendar year and will only go past 20:00 a maximum of ten times per calendar year.

The provision of regulated entertainment in the form of films (both indoors and outdoors)

- Sunday to Thursday 09:00 to 23:00
- Friday and Saturday 09:00 to 00:00

The outdoor performance of films will finish no later than 23:00 and will only go past 18:00 a maximum of 50 occasions per calendar year and will only go past 20:00 a maximum of 25 occasions per calendar year.

The provision of regulated entertainment in the form of live music (both indoors and outdoors)

- Sunday to Thursday 09:00 to 23:00
- Friday and Saturday 09:00 to 00:00

The outdoor performance of live music will take place only between the hours of 12:00 - 22:00 Monday to Sunday and will only go past 18:00 a maximum of 50 occasions per calendar year and a maximum of 25 occasions past 20:00 over each calendar year, subject to the following:

The licensee may hold up to 12 events per calendar year on which dates licensable activities in the outdoor areas may go past 22:00, on these occasions any live music will finish no later than 23:00 and will not be held on consecutive days. Of these 12 events, up to four may be held in the Meadow Space.

The provision of regulated entertainment in the form of recorded music (both indoors and outdoors)

- Sunday to Thursday 09:00 to 23:00
- Friday and Saturday 09:00 to 00:00

The outdoor playing of recorded music will only take place between the hours of 12:00 - 22:00 Monday to Sunday up to a maximum of 50 occasions past 18:00 and of those only 25 occasions past 20:00 over each calendar year, subject to the following: The licensee may hold up to 12 events per calendar year on which dates licensable activities in the outdoor areas can go on past 22:00 and may finish no later than 00:00, these will not be held on consecutive days. Of these 12 events, up to four may be held in the Meadow Space. Of these 12 events, no more than eight will have recorded music playing beyond 23:00.

The provision of regulated entertainment in the form of performances of dance (both indoors and outdoors)

- Sunday to Thursday 09:00 to 23:00
- Friday and Saturday 09:00 to 00:00

The outdoor performance of dance will finish no later than 22:00 and will only go past 18:00 a maximum of 50 times per calendar year and of those a maximum of ten times per calendar year could go past 20:00.

Opening hours

- Sunday to Thursday 08:00 to 23:45
- Friday and Saturday 08:00 to 00:45

11. The designated premises supervisor is to be David Michel, who holds a personal licence with the London Borough of Lambeth.

12. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, 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 and premises plan is attached to this report in Appendix A.

Representations from responsible authorities

13. Representations have been received from three responsible authorities. At the point that this report was written, they had not been conciliated.
14. A representation had been received from this council's trading standards service requesting additional conditions in relation to the protection of children from harm.
15. A representation has been provided by this council's environmental protection team, again asking for additional conditions as there is a concern of the potential noise impact on local residents in the immediate vicinity.
16. A representation has been submitted by the licensing authority in their role as responsible authority, asking for an adjustment in hours for the sale of alcohol and additional conditions, though it is accepted that the premises likely falls outside of the jurisdiction of the Southwark Licensing Policy.
17. The representations and details of withdrawals between the applicant and the responsible authorities are all available in Appendix B.

Representations from other persons

18. Representations against the application have been received from 25 other persons. All express concerns in relation to the potential for noise from the premises and antisocial behaviour from visitors to the premises.
19. Objectors disagree on the final outcome of the application, some preferring the application to be dismissed in full, others seeking a curtailment of hours. All representations however, carry similar concerns in relation to the application, in summary:
 - Noise egress from the premises (whether a noise impact assessment has been completed and whether noise limiters have been considered)
 - The potential lack of sound insulation at the installation
 - The potential frequency of evening events over the summer
 - The proximity of the premises to residential addresses
 - Increased footfall and traffic
 - Access and egress problems, including limited parking facilities and the use of a private road
 - The behaviour of intoxicated patrons departing the premises and alcohol-related nuisance
 - The potential disruption to the sleep of local children
 - The granting of this licence forming a potential precedent for future applications.
20. The representations against the application are provided in Appendix C.

21. Five supporting representations have been provided. These are available in Appendix D.

Conciliation

22. All representations were sent to the applicant. At the point that this report was written, none had been conciliated and withdrawn. Public meetings have already taken place with local residents at the Gallery in the build up to this application being submitted.

Premises history

23. The premises already has a premises licence. The hours are as follows:

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)
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The provision 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
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24. A copy of the current licence is available for members' information in Appendix E, this is however a new application. In addition, every other summer, the premises has held an additional time-limited premises licence for an external pavilion for a biannual music event
25. The premises has been granted a number of temporary events notices in the last 12 months, namely:

Applicant	Activities	Dates	Counter Notice
David Michel	Alcohol (on sales) and regulated entertainment	11/07/2018 12:00 to 21:00	Application withdrawn
Johan Hallin	Alcohol (on sales)	11/07/2018 12:00 to 21:00	Rejected – late
Johan Hallin	Alcohol (on sales)	11/07/2018 10:00 to 20:00	Rejected – late
David Michel	Alcohol (on sales)	07/09/2018 19:00 to 21:00	No
David Michel	Alcohol (on sales)	18/08/2018 12:00 to 17:00	No
David Michel	Alcohol (on sales) and regulated entertainment	13/04/2019 to 13/04/2019	No

26. It is acknowledged that there has been a previous history of noise complaints in relation to the premises, however, formal mediation has taken place between local residents and the premises. As a result, the licensing department has one complaint registered against the premises in the last year:

Date	Complainant	Complaint	Action
28/06/2018	Local Resident	Complaint regarding the granting of TENS	Advice received from EPT

Deregulation of entertainment

27. 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

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

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

29. Council Assembly approved Southwark's Statement of Licensing Policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016. 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.
30. 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.
31. 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

32. A fee of £635.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value E.

Consultations

33. 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

34. 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

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

Principles for making the determination

37. 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.
38. 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.
39. 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

40. 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.
41. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
42. 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.

43. 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.
44. 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

45. 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

46. 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.
47. 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

48. 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.

49. 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.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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.
55. 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

56. 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.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
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 Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Representations submitted by responsible authorities
Appendix C	Representations submitted by other persons against the application
Appendix D	Representations submitted by other persons in favour of the application
Appendix E	Copy of current premises licence for information
Appendix F	Map of the locality

AUDIT TRAIL

Lead Officer	Ian Smith, Strategic Director of Environment and Leisure	
Report Author	Andrew Heron, Principal Licensing Officer	
Version	Final	
Dated	4 March 2019	
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	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	6 March 2019	