

Item No. 5.	Classification: Open	Date: 30 September 2019	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Belair House, Gallery Road, London SE21 7AB	
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 Parin Patel for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Belair House, Gallery Road, Dulwich, London SE21 7AB.
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 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) Paragraph 13 of this report deal with the representations submitted by other persons objecting to the application. Copies of these representations are detailed in Appendix D.
 - d) Paragraph 14 of this report deals with representations submitted by other persons in support of the application. Copies of these representations are detailed in Appendix E.
 - e) A map showing the location of the premises is attached to this report as Appendix F.
 - f) 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

KEY ISSUES FOR CONSIDERATION

The premises licence application

3. On 6 August 2019 Belair Mansions Limited applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Belair House, Gallery Road, London SE21 7AB.
4. The premises are described in the application as:

"Belair House is located within the secluded grounds of Belair Park.

The premises has four floors:

The basement which consists of toilets, office, storage and kitchen.

The ground floor consists of the main bar, the grand hall and the two terraces.

The first floor consists of the gallery bar, the ballroom and a terrace.

The second floor consists of accommodation.

Both the ground floor and the first floor are used for the consumption of alcohol and playing music.."

5. The hours applied for are summarised as follows:

- Sale of alcohol (on and off sales)
 - Monday to Tuesday: 10:00 to 00:00
 - Wednesday to Saturday: 10:00hrs to 02:00
 - Sunday: 12:00to 00:00
- Live music, recorded music, performance of dance and late night refreshment:
 - Monday to Tuesday: 10:00 to 00:00
 - Wednesday to Saturday: 10:00 to 02:00
 - Sunday: 12:00 to 00:00
- Opening hours:
 - Monday to Tuesday: 10:00 to 00:30
 - Wednesday to Saturday: 10:00 to 02:30
 - Sunday: 12:00 to 00:30.

6. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, I, J, K, L, and M of the operating schedule set out the proposed licensable activities, operating hours and operating control measures in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part M of the operating schedule will form the basis of conditions that will be attached to any licence granted subsequent to the application. A copy of the application is attached to this report in Appendix A.

Representations from responsible authorities

7. There are none as these have been conciliated.

Representations from other persons

8. Representations objecting to this application have been received on the grounds of prevention of crime and disorder, public safety, the prevention of nuisance and the protection of children from harm from 54 local residents and three resident association. Residents representations have been supported by one local councillor. These representations are detailed at Appendix D.

Support from other persons

9. Representations supporting this application has been received from 16 other persons detailed at Appendix E.

Conciliation

10. On 4 September 2019 the applicant submitted a conciliation statement to the licensing team, which was circulated to all parties that had made representation to the new premises licence application. Subsequently representations received from the police, environmental protection team and public health have been withdrawn.
11. In the conciliation statement received from the applicant the applicant has agreed to amend the application operating schedule to include all conditions which were detailed on the lapsed premises licence for this premises. The conciliation statement is detailed at Appendix C.
12. On 16 September 2019 the applicant submitted a dispersal policy to the environmental protection team. This dispersal Policy is detailed at Appendix G.
13. On 18 September 2019 the applicant provided a noise acoustic report to the licensing team and requested that this report along with the dispersal policy for the premises be circulated to all parties. The noise acoustic report which has been circulated to all parties is detailed at Appendix H.
14. Details of the conciliation discussions with the applicant and the responsible authorities and subsequent withdrawal of objection(s) based on agreement of conditions are detailed in Appendix F.

Operating history

15. The premises was previously licensed however the premises licence was lapsed due to the company which held the premises licence dissolving.
16. The hours of this premises licence are detailed below:

Belair House, Gallery Road, London SE21 7AB, licenced for:

- Sale of alcohol (on and off sales):
 - Monday to Tuesday: 10:00 to 00:00
 - Wednesday to Saturday: 10:00 to 02:00
 - Sunday: 12:00 to 00:00
- Live music, recorded music, performance of dance, late night refreshment:
 - Monday to Tuesday: 10:00 to 00:00
 - Wednesday to Saturday: 10:00 to 02:00hrs
 - Sunday: 12:00 to 00:00
- Opening hours:
 - Monday to Tuesday: 10:00 to 00:30
 - Wednesday to Saturday: 10:00 to 02:30
 - Sunday: 12:00hrs to 00:30.
- A copy of this licence is available for 'Members' information in Appendix B, this is however is a new premises licence application.

17. This premises licence was issued to the premises on the 16 August 2006, it was then known as 'Beauberry House Restaurant' with Circa Bar and Grill Limited specified as the

premises licence holder and Mr Ibrahim Issolah was detailed as the designated premises supervisor on the premises licence.

18. On the 15 November 2013 an application was granted to transfer the premises licence into the name of Belair House Limited and specify N R Unsworth as the designated premises supervisor.
19. An application was granted on 20 November 2015 and a licence issued which specified Eloise Brason as the new designated premises supervisor for the premises.
20. On the December 2017 an application was granted and licence issued which specified Robert Savory as the new designated premises Supervisor.
21. An application was granted on the 9 November 2019 which specified Leigh Michelle Norris as the new designated Premises supervisor for the premises.
22. On 23 July 2019 an application was made to transfer the premises licence into the name of Belair Mansions Limited as the premises licence holder.
23. This application to transfer the premises licence into the name of Belair Mansions Limited was rejected as the company which held the premises licence in the name of Belair House Limited had dissolved. No attempt had been made to transfer the premises licence within 28 days of the company being dissolved which resulted in the premises licence being lapsed.
24. The premises has been granted a number of temporary events notices in the last 12 months, namely:

Applicant	Activities	Dates	Counter Notice
Leigh Norris	The sale by retail of alcohol The provision of regulated The provision of late night refreshment	06/09/2019 - 11:00hrs - 18:00hrs	No
Leigh Norris	The sale by retail of alcohol The provision of regulated The provision of late night refreshment	30/08/2019 - 18:00hrs - 02:00hrs 31/08/2019 - 18:00hrs - 02:00hrs 01/09/2019 - 12:00hrs - 17:00hrs	No
Leigh Norris	The sale by retail of alcohol The provision of regulated The provision of late night refreshment	22/08/2019 - 14:00hrs - 22:00hrs 23/08/2019 - 16:00hrs - 02:00hrs	No
Lita Loan	The sale by retail of alcohol The provision of regulated	16/08/2019 - 14:00hrs - 00:00hrs	No

Applicant	Activities	Dates	Counter Notice
	The provision of late night refreshment	17/08/2019 - 18:00hrs - 02:00hrs 18/08/2019 - 10:00hrs - 14:00hrs 19/08/2019 - 14:00hrs - 21:00hrs	

Map

25. A map showing the location of the premises is attached to this report as Appendix I. There are no licensed premises in the immediate vicinity of the premises.

Deregulation of entertainment

26. 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.

27. 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').

28. The showing of films has not been de-regulated.

Southwark council statement of licensing policy

29. Council assembly approved Southwark's statement of licensing policy 2019 - 2021 on 27 March 2019. The policy came into effect on 28 March 2019. 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 areas. Therefore relevant closing times recommended in the statement of licensing policy for licensed premises in residential areas are as follows:
- Restaurants and Cafes:
 - Sunday to Thursday is 23:00 and for Friday and Saturday is 00:00 (midnight)
 - Public Houses Wine bars or other drinking establishments:
 - 23:00 daily

Resource implications

32. A fee of £315.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value B.

Consultation

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 a similar notice 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. Interested parties 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 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

57. 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

Background Papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and 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	Lapsed premises licence
Appendix C	Applicant's conciliation statement
Appendix D	Representations from other persons objecting
Appendix E	Representations from other persons supporting
Appendix F	Responsible authority conciliation
Appendix G	Applicant's dispersal policy
Appendix H	Noise acoustic report
Appendix I	Map of the locality

AUDIT TRAIL

Lead Officer	Caroline Bruce, Director of Environment and Leisure	
Report Author	Richard Kalu, Principal Licensing Officer	
Version	Final	
Dated	17 September 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	Yes	Yes
Cabinet Member	No	No
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