

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 20 May 2020	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003: Pub in the Park, Dulwich Park, College Road, London SE21 7EB	
<b>Ward(s) of group(s) affected</b>		Dulwich Village	
<b>From</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee reconsiders an application made by Brand Events TM Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Pub in the Park, Dulwich Park, College Road, London SE21 7EB.
2. Notes:
  - a) This is a rehearing of a premise licence application, further to two previous hearings held on 10 and 21 January 2020, the outcome of which has been appealed by the applicant to the Magistrates Court.
  - b) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application was subject to representations from responsible authorities and local residents and was therefore referred to the sub-committee for determination.
  - c) Paragraphs 8 to 13 of this report provide a summary of the application under consideration by the sub-committee and the history of the Hearings to date. A copy of the full application is attached as Appendix A.
  - d) Paragraphs 14 to 16 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted responsible authorities are attached to this report in Appendix B. Representations from other persons are attached at Appendix C. A map showing the location of the premises is attached to this report as Appendix G with some additional documentation available in Appendix E. The Notice of Decision from 21 January 2020 is available in Appendix F.
  - e) 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 15 November 2019 Brand Events TM Limited applied to this council for the grant of a premises licence in respect of Pub in the Park, Dulwich Park, College Road, London, SE21 7EB. The premises are described in the application as follows:

“Tom Kerridge presents Pub in the Park’ is a three-day food and music festival celebrating gastropub dining from across the UK. Under an invitation from Tom Kerridge, celebrity chefs will be producing Michelin starred dining, replicating dishes from each of their own pubs, whilst the audience enjoys live music and boutique shopping in a relaxed pub garden atmosphere.

The first Pub in the Park (PITP) took place in Marlow in May 2017. In 2018 we took this unique concept to four towns, Marlow, Bath, Tunbridge Wells and Knutsford drawing in over 67,000 people across the four shows. In 2019, we expanded into eight towns, Marlow, Leeds, Knutsford, Bath, Warwick, Tunbridge Wells, Chiswick and St Albans where we attracted 120,000 visitors. Following on from a successful tour, we plan to take the event in 2020 to Marlow, Essex, Warwick, Bath, Dulwich, Tunbridge Wells, Hackney, Hampshire, Chiswick and St. Albans. Each Pub in the Park will celebrate the best of British pub dining, combined with great live music, chef demonstrations, and other festival fun.

The event site is located across from West Lawns within Dulwich Park which is an open park accessed from Court Lane and College Road.

The park is 29 hectare green space featuring a lake, a playground, benches & sports facilities.

Licensed activity such as the sale of alcohol and music entertainment will take place predominantly from temporary demountable structures, within the event site. The sale and consumption of alcohol will take place both within these structures and to outside areas within the event site.

Such likely activities include bars, wine and craft ale tasting sessions, restaurant style operations and music stages. Note; the premises license being applied for proposes a capacity of 5,999 persons on site at any one time. For clarity this includes all public, staff, contractors, chefs, performers and any other persons directly related to and specifically attending the PitP event, within the proposed footprint.

The license application is for an event to take place yearly and on an on-going basis.”

9. The application and is summarised as follows:

The sale by retail of alcohol (both on and off sales):

- Friday from 17:00 to 22:15
- Saturday and Sunday from 11:00 to 22:15

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

- Friday from 17:00 to 22:45
- Saturday and Sunday from 11:00 to 22:45

The provision of regulated entertainment in the form of live music (outdoors only):

- Friday from 13:00 to 22:45
- Saturday and Sunday from 11:00 to 22:45

Opening hours:

- Friday from 17:00 to 22:45
- Saturday and Sunday from 11:00 to 22:45
- The proposed designated premises supervisor of the premises is Katie Caines who has a personal licence by London Borough of Hammersmith and Fulham.

10. 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 and premises plan is attached to this report in Appendix A.

11. The application was heard initially on 10 January 2020. The applicant was asked to provide additional information to the responsible authorities and the hearing was reconvened on 21 January. Additional information was provided to the sub-committee, however, these were not considered to be public documents so have not been published. A copy of the notice of decision is available in Appendix F.
12. On 17 February 2020, the applicant appealed the decision to the Magistrates Court. Since that time, discussions have taken place between the parties. The following amendments to conditions have been agreed as part of these discussions:
  - That in relation to Condition 90, regarding compliance with the “event safety management version 8”, It is accepted that an event strategy management plan is a living document and as a result, it is suggested that Condition 90 be removed as condition 4 is more than sufficient;
  - That Conditions 85, 87 and 89 be removed;
  - That Condition 66 (a mandatory condition) be removed;
  - It is also accepted that condition 74 is vague and should be amended to read:

“That there shall be marshals at the nearest bus stops and to guide people to the train stations”.
13. Further to the appeal, the application is remitted back to the Licensing Sub Committee to continue discussions and to invite all parties to make representations based on the new information. Essentially, there remains an outstanding issue regarding the perpetuity of the licence; that it was applied as an annual event, but permitted by Members for one year only.

#### **Representations from responsible authorities**

14. The representation from the council’s environmental protection team was made under the grounds of the prevention of public nuisance due to concerns with noise levels, the lack of a dispersal policy and a lack of an event management plan. The representation is available in Appendix B.
15. The representation from the council’s licensing authority sought additional information, including a dispersal policy and an event management plan, which has since been forthcoming. The representation is available in Appendix B.

#### **Representations from other persons**

16. Representations have been received from five other persons, three individual residents, the Dulwich Society and the Friends of Dulwich Park. All cite concerns with noise, access, egress and use of the park for private ventures. These representations are available in Appendix C.

## Premises history

17. The premises does already have a premises licence in place, held by the council, for regulated entertainment only. A copy of that licence is available for information in Appendix D. It would be common practice for an event of this magnitude to apply for its own premises licence.
18. Due to the numbers of attendees expected to the event, temporary events notices (TENs) would not be suitable. Whilst TENs have been granted at the park previously, none have been sought by the current applicant.

## Map

19. A map showing the locality of the park is attached to this report as Appendix G. Local licensed premises have not been listed in this report as none are comparable to an event of this scale.

## Additional documents

20. Throughout the consultation process, meetings with residents and stakeholders have taken place, including a Safety Advisory Group on 10 December 2019. Some additional documentation has been provided by the applicant, however, notably missing at the point this report was submitted is an event management Plan. The Applicant has submitted an EMP for a similar event at different locations, but this is not relevant to the application in Dulwich.
21. The following additional documents have been submitted and are available in Appendix E:

Document	Description
1	Noise Management Plan
2	Medical Plan
3	Security Dot Plan
4	Traffic Dot Plan

## Southwark Council statement of licensing policy

22. 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.
23. 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.
24. Within Southwark's statement of licensing policy, the premises is not situated in any of Southwark's cumulative impact areas and is situated within a residential area.

### **Resource implications**

25. A fee of £1,100.00 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value bands A.

### **Consultation**

26. 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**

27. 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**

28. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.

29. The principles which sub-committee members must apply are set out below.

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

30. 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.

31. 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.

32. 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**

33. 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.

34. The four licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of nuisance
- The protection of children from harm.

35. 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.

36. 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.
37. 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**

38. 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**

39. 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.
  - 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**

40. 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.
41. 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.
42. 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.
43. 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.
44. Members will be aware of the council's code of conduct which requires them to declare personal and prejudicial interests. The code applies to members when considering licensing applications. In addition, as a quasi-judicial body, members are required to avoid both actual bias, and the appearance of bias.
45. Under the Human Rights Act 1998 the sub committee needs to consider the balance between the rights of the applicant and those making 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.
46. 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**

47. Members are required to have regard to the Home Office revised guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully

understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

### Strategic Director of Finance and Governance

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

### BACKGROUND DOCUMENTS

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 and plans
Appendix B	Representations submitted by Responsible Authorities
Appendix C	Representations submitted by Other Persons
Appendix D	Current entertainment licence
Appendix E	Additional information
Appendix F	Notice of Decision from 21 January 2020
Appendix G	Map

### AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
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<b>Dated</b>	05 May 2020	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
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