

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 12 May 2022 at 10.00 am at Online/Virtual: please contact andrew.weir@southwark.gov.uk for a link to the meeting and the instructions for joining the online meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Margy Newens
Councillor Jane Salmon

OFFICER SUPPORT: Debra Allday, legal officer
Andrew Heron, licensing officer
Andrew Weir, constitutional officer

1. ELECTION OF CHAIR

Councillor Renata Hamvas, the chair of the licensing committee, was present so therefore there was no requirement to elect a chair for this meeting.

2. APOLOGIES

This was a virtual licensing sub-committee meeting.

The chair explained to the participants and observers how the virtual meeting would run. Everyone then introduced themselves.

There were no apologies.

3. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

4. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were no late and urgent items of business.

5. DISCLOSURE OF INTERESTS AND DISPENSATIONS

Councillor Hamvas advised that she had submitted an objection to another application by We are the Fair for a licence for Peckham Rye. However, this would have no impact or influence her consideration of the item at this meeting.

6. LICENSING ACT 2033: LUNA, DULWICH PARK, COLLEGE ROAD, LONDON SE21 7BQ

It was noted that this item had been conciliated prior to the meeting.

7. LICENSING ACT 2003: WE ARE THE FAIR, BURGESS PARK, ALBANY ROAD, LONDON SE5 0A

The licensing officer presented their report and advised that the police and licensing responsible authority had conciliated with the applicant. Other person D had also withdrawn their representation. Members had no questions for the licensing officer.

The applicant and their legal representative addressed the sub-committee. Members had questions for the applicant and their legal representative.

The licensing sub-committee heard from other persons (local residents) objecting to the application. Members had questions for the other persons.

All parties were given up to five minutes for summing up.

The meeting adjourned at 12.09pm for the sub-committee to consider its decision.

The meeting reconvened at 12.47pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by We Are The Fair Limited for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of the premises known as We Are The Fair, Burgess Park, Albany Road, London SE5 0AL be granted as per the conciliated hours with Licensing as a responsible authority.

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, conditions derived from the operation schedule highlighted in Section M of the application form, the conditions agreed with the Metropolitan Police Service and the licensing responsible authority during the conciliation process and and the following additional conditions, as agreed by the licensing sub-committee:

1. That there will be no amplified music or other entertainment after 22:30 on Saturday or Sunday and 22:00 on Bank Holiday Monday.
2. That the maximum duration of events per day will not exceed 10.5 hours (Saturday) and 10 hours (Sunday or Bank Holiday Monday) from “doors open”.
3. That events categorised as ‘18+ Only’ and will operate a ‘No ID, No Entry’ policy to guests, details of which are included in the event safety management plan (ESMP). Challenge 25 will also be in operation at the entrance to the event.
4. That each and every event would be presented individually to the Safety Advisory Group (SAG) which will be approved by the responsible authorities.
5. That maximum capacities for events will be agreed with the SAG during the planning process will be approved by the responsible authorities.
6. That the events will be ticketed and open to ticket holders only.
7. That locked amnesty bins shall be provided for the disposal of alcohol and other waste.
8. That a reputable and experienced SIA accredited security and stewarding company will be appointed to ensure the public safety and to prevent crime and disorder.
9. That the ESMP crowd management plan will outline the number, position and roles of the security and stewarding staff working at the event.
10. That the security and crowd management plan will outline the details of the level of search on entry to be implemented.
11. That searches will be carried out by SIA registered staff of the same sex as those being searched.
12. That the drugs policy will include psychoactive substances (NPS) and No2/ NOS/ Nitrous Oxide. No2 will not be permitted on site and any found on entry will be confiscated.
13. That anyone found on entry with more than the agreed quantities for personal consumption (as outlined in the drugs policy) of controlled substances or NPS will be refused entry and the police informed immediately.
14. That anyone found with an offensive weapon on entry will be refused admittance and the police informed immediately.

15. That the DPS shall brief all bar staff before each event. A written record of this briefing shall be kept on site.
16. That all drinks shall be sold in either opened cans, PET containers or decanted into polycarbonate vessels. No glass will be permitted into the public festival arena. Glass bottles will be retained behind bars for disposal.
17. That all emergency exits, toilets and first aid posts shall be clearly indicated by means of signage, such that it is visible to attendees.
18. That at least one week prior to the beginning of the event a leaflet drop is to be made to households in the immediate area. The leaflet is to include a timetable and description of each performance and the contact telephone numbers.
19. That no additional sound equipment shall be used on site without the prior agreement of the council's environmental protection team and the appointed noise control consultant.
20. That the appointed noise control consultant shall continually monitor noise levels at the sound mixer position and instruct the sound engineer accordingly to ensure that the above noise limits are not exceeded. The Council shall have access to the results of the noise monitoring at any time.
21. That the Ecology and Sustainability Plan will address the protection of bats in Burgess Park.

Reasons

The licensing sub-committee heard from the applicant's legal representative who advised that the applicant's management team had collectively approximately 50 years of experience in the industry and had other premises licences in Southwark that had attracted no complaints from either responsible authorities or local residents.

They advised that the applicant had invested a lot in the event and that it would create some 500+ jobs. The event would be over two days: day one (Overflo) and day two (Boiler Room). Both days would attract 18+ patrons and day two, would be for marginalised communities (LGBT+).

The application for the event had been considered by the safety advisory group (SAG). This was an evolving/living plan that would receive final approval from the SAG before the event takes place. The applicant had provided the following documents: event management plan, safety plan (page 11-12 of the agenda), crowd management plan (pages 14-17 of the agenda), bar plan (pages 22-23 of the agenda), traffic management (page 34 of the agenda) and noise (page 36-46 of the agenda).

Comprehensive conditions to the licence were set out in all of these documents and had been agreed between the applicant and responsible authorities. None of the objectors (responsible authorities, stakeholders or residents) had made critical comments of the proposed conditions, with only minor changes to the proposed conditions required. As a result, all responsible authorities had conciliated their representations. Of note, the applicant had agreed with licensing as a responsible authority to reduce the hours of the event. The applicant's representative also emphasised the significant pre-application consultation with all of the responsible authorities and local residents. The applicant confirmed that they were committed to the council's commitment not to use single use plastics and confirmed that protection of bats would be addressed in the Ecology and Sustainability Plan.

The licensing sub-committee heard from other persons objecting to the application. Parties A, C and E argued that contrary to the applicant's contention that there had been significant consultation, there had been a distinct lack of consultation with local residents and that they sought evidence from the applicant to confirm this. Parties A, C and E also made reference to the Injunction Order that expired in 2021 that prohibited unlicensed music events and stated that the current application was inconsistent with the need for the Order. Reference was also made to ecological issues such as the impact that the event would have on local wildlife, in addition to infrequency of the public transport in the evening. It was also noted that the applicant had already put tickets for the event on sale, which the residents felt pre-empted the outcome of the sub-committee hearing.

Party E also mentioned that according to the Southwark website (Hiring a park or Public Open Space page) the application did not satisfy the necessary consultation requirements. The members allowed an officer from the council's events team to address the sub-committee who confirmed that any event with a capacity of over 4,000 people would be classed as a major event and required nine months consultation. The other persons stated that they only became aware of the application relatively recently and that nine months notification had not been provided. The officer from the Events Team confirm that parties A, C and E would be added to the stakeholder's list for the Safety Advisory Group (SAG).

The licensing sub-Committee also considered the representations from four other persons who were not in attendance at the sub-committee meeting.

It was explained to the other persons present at the meeting that the event was subject to two different processes:

- a. An application to hire Burgess Park
- b. The premises licence application.

The application to hire Burgess Park was a process that was administered by the events team and subject to a level of public consultation. Details of the event are sent to ward councillors, residents and tenants associations and other local stakeholders such as park friends groups as appropriate. Consultation is for 28 days during which time concerns and/or objections could be submitted.

Applications for large events, or those events that may have a significant impact on a location and/or its surroundings are scrutinised by the SAG, which includes representatives from the various authorities/agencies such as: highways, licensing, police, fire service, environmental health, building control. The application to hire Burgess Park did not come within the remit of the licensing sub-committee. Whilst the application process for the hire of the park was not a relevant consideration for the sub-committee, the specific details agreed by the SAG, could be.

The consultation period for new premises application is 28 consecutive days from the day after a valid application is made. The licensing officer confirmed that the statutory consultation concerning the advertisement of applications had been complied pursuant to regulation 25 of Advertisement of applications Licensing Act 2003 (Premises Licences and Club Premises certificates) Regulations 2005. The suggestion made by the other persons concerning the lack of consultation for both the licensing application and the consultation involving the SAG could therefore not be accepted.

The remit of this licensing sub-committee is to consider the premises licence application submitted under the Licensing Act 2003. As a permissive regime, the licensing sub-committee *must* grant a premises licence if an application is made in accordance with statutory requirements. Determination of applications are required to be evidence based and justified as being “appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve” (paragraph 9.43, Home Office, Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018).

The evidence relevant for this sub-committee was whether the application or event would undermine the licensing objectives, namely: the prevention of crime and disorder; the promotion of public safety and the prevention of public nuisance, the protection of children from harm. It is a matter for this sub-committee to consider the balance between the rights of the applicant and those other persons making representations to the application when making its decision on whether the licensing objectives could be promoted or undermined.

The sub-committee noted that the objections submitted by the Metropolitan Police Service and licensing as a responsible authority had conciliated with the applicant and had subsequently withdrawn their representations. Paragraph 2.1 of the Section 182 Guidance provides that: “Licensing authorities should look to the police as the main source of advice on crime and disorder”. Given that that the police had withdrawn its representation, it would be reasonable to conclude that the police had no reason to believe the application/event would undermine the crime and disorder licensing objective.

Licensing as a responsible authority has also withdrawn their representation. As the gatekeeper of Southwark’s statement of licensing policy 2021-2026, it was reasonable to conclude that licensing as a responsible authority was satisfied that the application/event would not undermine the crime and disorder licensing objective.

The environmental protection team, whose responsibilities relate to the prevention of nuisance licensing objective, did not submit a representation, but were consulted on as part of the SAG. It was therefore reasonable to conclude that they were satisfied that application/event would not undermine the prevention of public nuisance licensing objective.

It was also noted by the sub-committee that the Friends of Burgess Park were a stakeholder for the SAG in the Hiring of a Park application. However, they had not submitted a representation objecting to the licensing application.

The suggestion made by the other persons that this licensing application had been dismissed over “points of procedure to ensure that the event proceeds” is dismissed. The licensing sub-committee is a quasi-judicial body and is required to consider each application on its merits. It must take into account only relevant factors, and ignore irrelevant factors. The decision is based on evidence, which shows the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which is relevant. The licensing sub-committee is obliged to give fair consideration to the contentions of all persons entitled to make representations to them.

It is accepted that there was an Injunction Order in respect of Burgess Park which expired in 2021. The legal advisor to the sub-committee confirmed that it was sought to address acute crime and disorder associated with unlicensed music events (UMEs) in the park that attracted large crowds, breaches in the Coronavirus Regulations and the increased probability of the attendees contracting coronavirus.

Burgess Park already has a premises licence (licence number 010884) issued in 2017 that provides for regulated entertainment until 21:00 on Monday to Thursday and 22:00 on Fridays, Saturdays and Sundays. This amended application seeks to provide the regulated entertainment and the sale of alcohol on Saturday until 22:30 and 22:00 hours respectively.

The other persons raised their legitimate concerns, however, this licensing sub-committee are of the view that it would be far beneficial to the local residents to have a properly organised event with considerable appropriate control measures that can be enforced by the responsible authorities if necessary, rather than a series of unruly UMEs that authorities are unable to regulate.

The other persons are also reminded that should the local residents have serious concerns of the management of the event they have a right to call the premises licence in for a review when ultimately, the licensing sub-committee could revoke the premises licence. The residents were also reminded, that they had a right to appeal the decision at the Magistrates’ Court, the details of which are provided.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

Appeal rights

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a) The licence ought not to be been granted; or
- b) That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 12.50pm.

CHAIR:

DATED:

[CABINET ONLY]

DEADLINE FOR NOTIFICATION OF CALL-IN UNDER SECTION 17 OF THE OVERVIEW AND SCRUTINY PROCEDURE RULES IS MIDNIGHT, [DATE].

THE ABOVE DECISIONS WILL NOT BE IMPLEMENTABLE UNTIL AFTER THAT DATE. SHOULD A DECISION OF THE CABINET BE CALLED-IN FOR SCRUTINY, THEN THE RELEVANT DECISION WILL BE HELD IN ABEYANCE PENDING THE OUTCOME OF SCRUTINY CONSIDERATION.