

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 24 March 2022	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Belair House, Beauberry House, Gallery Road, London SE21 7AB	
<b>Ward(s) or groups affected:</b>		Dulwich Village	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by an 'other person' under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by Belair Mansion Limited in respect of the premises known as Belair House, Beauberry House, Gallery Road, London, SE21 7AB.
2. Notes:
  - a) The grounds for the review are stated in paragraphs 12 to 14 of this report. A copy of the premises licence review application is attached as Appendix A.
  - b) The review application is supported by representations submitted by Responsible Authorities in Appendix B and by other persons in Appendix C. Details of the representations are provided in paragraphs 15 to 18.
  - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix D. A map of the area that the premises are located in is attached as Appendix E.
  - 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 applications 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. 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.
  
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any Responsible Authority or other person to apply to the local Licensing Authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The premises licence allows the provision of licensable activities as follows:
  - The sale of alcohol to be consumed on and off the premises:
    - Monday to Thursday 10:00 to 00:00
    - Friday and Saturday 10:00 to 02:00
    - Sunday 10:00 to 23:30
  
  - The provision of late night refreshment (indoors):
    - Monday to Thursday 23:00 to 00:00
    - Friday and Saturday 23:00 to 02:00
    - Sunday 23:00 to 23:30

- The provision of regulated entertainment in the form of live and recorded music and the performances of dance(indoors):
  - Monday to Thursday 10:00 to 00:00
  - Friday and Saturday 10:00 to 02:00
  - Sunday 10:00 to 23:30
  
- Opening hours:
  - Monday to Thursday 10:00 to 00:30
  - Friday and Saturday 10:00 to 02:30
  - Sunday 10:00 to 23:30.

10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix D.

### **Designated premises supervisor (DPS)**

11. The current designated premises supervisor (DPS) named on the licence is Manoj Mohandas, who holds a personal licence with Croydon.

### **The review application**

12. On 2 February 2022, an application was submitted by an 'other person' under Section 51 of the Licensing Act 2003, for the review of the premises known as Belair House, Beauberry House, Gallery Road, London SE21 7AB.

13. The review application was submitted in respect of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm licensing objectives and in summary states that the following has been witnessed and / or taken place at the premises:

- Premises operating beyond its permitted hours
- Patrons congregating outside of the premises
- Excessive noise from patrons and loud music
- Drug taking
- Littering;
- The proximity to local residents.

14. Full details of the grounds for the review are provided within review the application. A copy of the review application and stills from the applicant's CCTV is attached as Appendix A. There are four short CCTV clips that the applicant will wish to be shown at the Hearing.

### **Representations from responsible authorities**

15. There are supporting representations submitted in support of the review application by the Metropolitan Police Service and the licensing authority.

16. The representation from the police is made under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. It outlines

potential licence condition breaches, externally promoted events, irresponsible alcohol promotions and complaints from local residents. This representation is available in Appendix B.

17. The licensing authority's representation is made in support of the review under the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance; and draws attention to the history of complaints emanating from the premises, including a number of licence breaches found during an inspection on 22 November 2021. This representation together with a schedule of licensing visits to the premises and temporary event notices is available in Appendix B.

### **Representations from other persons**

18. A supporting representation has been received from the Dulwich Society, citing excessive numbers of patrons, excessive noise from patrons, music, opening hours being contrary to the Southwark statement of licensing policy and breaches of the premises licence. The representation is attached as Appendix C.

### **Operating History**

19. A previous premises licence had been in place under Belair House Limited since 2013. However, the company dissolved on 18 June 2019. A transfer had been applied for on 23 July 2019, but was out of time. Therefore a new premises licence had to be applied for.
20. The current premises licence was issued on 30 September 2019 to Belair Mansion Limited with Leigh Michelle Norris as DPS, following a review hearing of the licensing sub-committee. The premises also has a Marriage Licence, currently issued on 6 September 2019, expiring on 21 August 2022.
21. A vary DPS application was made on 01 December 2021, varying it to Manoj Mohandas and issued on 08 December 2021. This is the current licence, available in Appendix D.
22. The premises were subject to government restrictions in response to the coronavirus pandemic. During this time, the operation of the premises was severely curtailed. All restrictions relating to coronavirus restrictions were lifted on 24 February 2022.
23. On 31 January 2022, an application was submitted by Christine Jones under Section 51 of the Licensing Act 2003.
24. The following is a list of recent temporary events notices issued for the premises:

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
Leigh Norris	30/10/2021 to 31/10/2021 from 20:00 to 04:00	Alcohol, regulated entertainment and late night refreshment for 300 persons	No
Leigh Norris	20/11/2021 to 21/11/2021 from 20:00 to 04:00	Alcohol, regulated entertainment and late night refreshment for 400 persons	No

<b>Applicant</b>	<b>Dates</b>	<b>Activities</b>	<b>Counter Notice</b>
Leigh Norris	03/12/2021 to 04/12/2021	Alcohol, regulated entertainment and late night refreshment for 350 persons	No
Leigh Norris	18/12/2021 to 19/12/2021 from 20:00 to 04:00	Alcohol, regulated entertainment and late night refreshment for 350 persons	No
Leigh Norris	26/12/2021 to 27/12/2021 from 21:00 to 04:00	Alcohol, regulated entertainment and late night refreshment for 350 persons	No
Leigh Norris	31/12/2021 to 01/01/2022 from 21:00 to 04:00	Alcohol, regulated entertainment and late night refreshment for 400 persons	No
Leigh Norris	01/01/2022 to 02/01/2022 from 20:00 to 04:00	Alcohol, regulated entertainment and late night refreshment for 350 persons	No

25. The following is a table of most recent complaints regarding the premises:

<b>Date</b>	<b>Complainant</b>	<b>Complaint</b>	<b>Outcome</b>
05/07/2020	Local Resident	Out of control crowds, screaming and running all over the front carpark and spilling onto the roads causing obstructions and beeping of car horns ensuing insults and crowd intimidation. Scary stuff. Police. Music and still continuous crowd since lockdown rules lifted and I dread the further months of any functions as they cannot cope with the party goers. No security and no road traffic measures. Noise. I can't live like this. First function	Observations of premises and eventual inspection
31/10/2021	Local Resident	Noise Team: The music is incredibly loud tonight at Belair House. I have concerns also that most partygoers are outside. It's insufferable.	Southwark Noise Team investigation – no further information
22/11/2021	Local Resident	I write to bring to your attention that since the club next to us (5 Gallery Road) started business over the past 4-5 weeks nothing seems to have changed as the management started to hire the place to the promoters where very large number of young people come in at night with their own drinks in their hands and hang around outside in the park and the street with no security guards to be seen anywhere, the music is thumping loudly certainly till after 3am in the	Inspection

		<p>morning with no closed windows as recommended by the licensing authorities. And the next day as you will see from the videos and pictures attached for your kind consideration both the park and gallery road become an absolute rubbish dump with empty bottles, food cartons and just general rubbish. Which is totally in violation of the terms and conditions of the renewed license, last Friday and Saturday in particular apart from the music and the rubbish there was a massive brawl outside after 3am with people shouting and screaming which terribly scared my children again with no security guard to be seen anywhere. I shall be very grateful if you could write to the management of Bel Air Club/ restaurant to remind them of the terms and conditions of their renewed weekend late night license and to ask them to ensure that they clean the park and Gallery Road in order to avoid their licence suspended or withdrawn after their functions and to ensure they have security guards for such big events as recommended by the licensing authorities. It is important to note also that they have started to put the barriers in the entrance to bel air park so mums can't park in the car park to take their children to school. And this causes mayhem especially on Saturday and Sunday where a lot of the families bring their kids to play in the park. (Photographs included in Licensing Authority representation).</p>	
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**The local area**

- 26. A map of the local area is attached as Appendix D. There are no other licensed premises in the immediate vicinity (100 metres):

**Southwark Council statement of licensing policy**

- 27. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:
- 28. 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.
29. 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.

### **Cumulative impact area (CIA)**

30. Within Southwark’s statement of licensing policy, the premises is not situated in a cumulative impact area. Under the Southwark statement of licensing policy 2021 – 2026, the following closing times are recommended as appropriate within this area for this categories of premises indicated:
- Closing time for restaurants and cafes is 23:00 daily
  - Closing time for public houses is 23:00 daily
  - Closing time for night clubs (with 'sui generis' planning classification) are not considered appropriate for this area.

## **Climate Change Implications**

31. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
32. Climate change is not a legal factor in the consideration of a grant of a premises license under the current licensing objectives, however members can make enquiries and request an agreement from applicants to promote the reduction of the impact of climate change that may be caused by the operation of the premises.
33. Examples of such an undertaking may be:
  - Not use single use plastics, such as disposable plastic glasses, when selling alcohol at the premises.
  - Encourage patrons not to drive to venues by providing details of public transport on their webpages/tickets.
34. The council's climate change strategy is available:  
<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

35. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

### **Equalities (including socio-economic) impact statement**

36. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the Council to consider all individuals when carrying out its functions.
37. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.
38. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021-2026.:  
<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

## **Health impact statement**

39. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

## **Resource implications**

40. There is no fee associated with this type of application.

## **Consultation**

41. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

42. The sub-committee is asked to determine, under Section 51 of the Licensing Act 2003, following an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or any other person may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

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

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

44. Under Section 52, the licensing authority must hold a hearing to determine the review and any relevant representations.

45. The four licensing objectives are:

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

46. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Modify the conditions of the licence by altering, omitting or adding any condition
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence.

47. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives.
  - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period.
  - Have not been withdrawn.
  - If made by another person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
48. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
49. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
50. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
51. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

## **Reasons**

52. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
  - The applicant
  - Any person who made relevant representations
  - The chief officer of police for the area (or each police area) in which the premises are situated.

## **Hearing procedures**

53. 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.

54. This matter relates to the review of the premises licence under section 51 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**

55. 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.
56. 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.
57. 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.

58. 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.
59. 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.
60. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
61. 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.
62. 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**

63. 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**

64. The head of community safety and enforcement has confirmed that the costs of this process 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 & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

## APPENDICES

No.	Title
Appendix A	Copy of the review application
Appendix B	Representation from responsible authorities
Appendix C	Representation from one other person
Appendix D	Copy of the current premises licence
Appendix E	Map of local area

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	9 March 2022	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		9 March 2022