

<b>Meeting Name:</b>	Licensing Sub-Committee
<b>Date:</b>	21 May 2024
<b>Report title:</b>	Licensing Act 2003: ANL Private Hall, 73-75 Camberwell Road, London SE5 0EZ
<b>Ward(s) or groups affected:</b>	Faraday
<b>Classification:</b>	Open
<b>Reason for lateness (if applicable):</b>	N/a

## RECOMMENDATION

1. That the licensing sub-committee considers an application made Lisseth Magda Aguilera Rojas for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as ANL Private Hall, 73-75 Camberwell Road, London SE5 0EZ.
2. Notes:
  - a) This application is for a premises licence and has been submitted under Section 17 of the Licensing Act 2003. The application is subject to representations submitted by responsible authorities and one 'other person' and is therefore referred to the licensing sub-committee for determination.
  - b) Paragraphs 7 to 14 of this report provide a summary of the application. A copy of the application submitted with the application are attached to this report as Appendix A.
  - c) Paragraphs 16 to 22 of this report deal with the representations submitted in respect of the application. A copy of the representations from the responsible authorities are available in Appendix B. The representations from the other persons are attached as Appendix C. A map showing the location of the premises is attached to this report 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 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 27 March 2024 Lisseth Magda Aguilera Rojas applied to this council for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as ANL Private Hall, 73-75 Camberwell Road, London SE5 0EZ.

9. The hours applied for are summarised as follows:
- The sale by retail of alcohol (on sales only):
    - Sunday to Thursday from 10:00 to 23:30
    - Friday and Saturday from 10:00 to 00:30
  - The provision of late night refreshment (indoors):
    - Sunday to Thursday from 23:00 to 23:30
    - Friday and Saturday from 23:00 to 00:30
  - The provision of regulated entertainment in the form of plays, live and recorded music and the performances of dance (indoors):
    - Sunday to Thursday from 11:00 to 23:00
    - Friday and Saturday from 11:00 to 00:00
  - Opening hours:
    - Sunday to Thursday from 09:00 to 00:00
    - Friday and Saturday from 09:00 to 01:00.
10. During the course of the consultation, the application was amended so that the opening hours would now be aligned with the Southwark statement of licensing policy recommended closing times, as follows:
- Opening hours:
    - Monday to Sunday from 09:00 to 00:00
11. Licensable activities have been significantly drawn back to:
- The sale by retail of alcohol (on sales only):
    - Monday to Sunday from 10:00 to 22:30
  - The provision of late night refreshment (indoors):
    - Removed
  - The provision of regulated entertainment in the form of plays, live and recorded music and the performances of dance (indoors):
    - Monday to Sunday from 11:00 to 22:30
12. The premises, and the intended operation of the premises, are described in the application as follows:

“Space for party and events. With dancing space some tables and great food.

Sometime artists will perform for our customers.

Sometimes music group will do some entertainment for customers.

Music will be played from a laptop for clients to enjoy some background music.

Clients will be able to dance sometimes and teachers will come along.

Clients will enjoy some drinks after dinner [sic].”

13. The premises licence application form provides the applicant’s operating schedule. Parts A, B, E, F, G, H, 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.
14. A copy of the application is attached to this report as Appendix A.

#### **Designated premises supervisor**

15. The proposed designated premises supervisor is Lisseth Magda Aguilera Rojas (the licence applicant) who holds a personal licence issued by the London Borough of Southwark.

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

16. There are three representations from responsible authorities, namely the Metropolitan Police Service (Licensing Division), which has been conciliated; and the council’s trading standards team and environmental protection team.
17. The representation from the police has been conciliated, with the hours drawn back and additional conditions agreed. The representation was initially submitted due to the excessive hours and the lack of detail on the operating schedule on the application and the premises’ close proximity to residential addresses.
18. The representation from trading standards asks for additional conditions in order to protect children from harm.
19. The representation from the environmental protection team is made under the licensing objective of the prevention of public nuisance. A noise impact assessment has been requested due to the concerns of excess noise and the proximity of the premises to residential addresses.
20. The representations are available in Appendix B.

## Representations from other persons

21. Representations have been submitted by seven other persons and are available in Appendix C. The representations raise concerns regarding other licensed premises in the locality having a history of antisocial behaviour and the locality of the venue, in relation to residential addresses.

## Conciliation

22. All representations were sent to the applicant. The police have withdrawn with agreed conditions and reduced hours, including a significant reduction in the hours of licensable activities. Correspondence referring to this is available in Appendix D. The hours are now in line with those recommended by the statement of licensing policy for that locality.

## Premises history

23. The premises has not been licensed previously.
24. There are two recent complaints regarding the premises made to the licensing department. There are more that have been made to the noise team, a request has been made to the author of the environmental protection representation to exhibit these as part of their representation.

Date	Complainant	Complaint	Outcome
09/05/2023	Local Resident	<p>██████████ 73 Camberwell Road - a property which, until last week, had been a closed down commercial property used as residential (I would assume illegally given the condition and zero windows), which has just been reopened as a for-hire event venue.</p> <p>We have had years of problems with two other places on the street who don't adhere to the terms of their licences (as a result both licences are currently under review), so when I saw this new place's signage go up, I checked for a licence but found none. This weekend they already had a party going on with no air lock or acoustic protection, and the bass of the music was very loud inside my flat.</p> <p>Please could you let me know what can be done about this venue?</p>	NTE visits conducted, premises closed at the time of visit

Date	Complainant	Complaint	Outcome
		This part of Camberwell Road is threatening to become a rowdy nightlife zone (as not one of these businesses adheres to their licence terms, or even has a licence), even though it's zoned as residential with an 11pm curfew.	
21/08/2023	Noise Officer	Visited at 00:50 hours on the 20th August 2020 as a result of a noise complaint, significant amplified music from the venue was audible in the locality but wasn't a statutory nuisance.	NTE visits – not found to be open. Would appear to open ad-hoc. Premises to be monitored weekly

### Temporary event notices

25. There is no history of temporary event notices for the premises.

### Map

26. A map showing the location of the premises is attached to this report as Appendix E. There is only one similarly licensed premises within a 100m radius:

**Southbank Nightclub, t/a La Estacion, 57-59 Camberwell Road, London SE5 0EZ**, licenced for:

- The sale by retail of alcohol (on sales):
  - Sunday to Sunday: 10:00 to 22:30
  - Friday and Saturday: 10:00 to 23:30
- The provision of late night refreshment (indoors):
  - Friday and Saturday: 23:00 to 00:00
- The provision of regulated entertainment in the form of live and recorded music and the performance of dance (indoors):
  - Friday and Saturday: 10:00 to 23:30.

### 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.

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 licenses 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.

30. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. The links for these are below:

Southwark policy:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

Section 182 Guidance:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf)

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

31. The premises is located outside of a cumulative impact area and within a residential area. The recommended opening hours for public houses and restaurants under the statement of licensing policy for that location is:

- Daily until 23:00

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

### **Community impact statement**

32. 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**

33. 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.

34. 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 who have 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.

35. The equalities impact statement for licensing decisions is contained within the Southwark statement of licensing policy 2021 – 2026 at:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

36. The equalities impact assessment is available at:

<https://moderngov.southwark.gov.uk/documents/s92016/Appendix%20F%20-%20Equalities%20Impact%20Assessment.pdf>

### **Health impact statement**

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



## **General guidance**

38. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions.
39. 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.

## **Climate change implications**

40. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
41. 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.
42. Examples of such agreements 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.
43. The council's climate change strategy is available at:

<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

## **Resource implications**

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

## **Consultation**

45. 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 was exhibited outside of the premises for a period of 28 consecutive days.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Assistant Chief Executive – Governance and Assurance**

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

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

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

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

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

50. 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.

51. 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.

52. 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**

53. 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.
54. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
55. 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.
56. 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.
57. 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**

58. 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**

59. 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.
60. 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**

61. 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.
62. 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.
63. 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.

64. 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.
65. 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.
66. 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.
67. 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.
68. 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**

69. 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**

70. 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	Southwark Licensing, C/O	Mrs Kirty Read Tel: 55748
Home Office Revised Guidance to the Act	Regulatory Services, 160 Tooley Street, London SE1 2QH	
Secondary Regulations		
Southwark statement of licensing policy		
Case file		

## APPENDICES

No.	Title
Appendix A	Copy of the application
Appendix B	Representations from responsible authorities
Appendix C	Representations from other persons against the application
Appendix D	Correspondence referring to conciliation
Appendix E	Map of locality

## AUDIT TRAIL

<b>Lead Officer</b>	Toni Ainge, Strategic Director Environment, Neighbourhoods and Growth	
<b>Report Author</b>	Andrew Heron, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	31 May 2024	
<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>
Assistant Chief Executive - Governance and Assurance	Yes	Yes
Strategic Director of Finance	No	No
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		31 May 2024