

<b>Item No. 5</b>	<b>Classification: Open</b>	<b>Date: January 11 2010</b>	<b>MEETING NAME Licensing Sub-Committee</b>
<b>Report title:</b>		<b>LICENSING ACT 2003 : Dulwich College Preparatory School, 38-44 Alleyn Park SE21 7AA</b>	
<b>Ward(s) or groups affected:</b>		<b>Premises are within: College</b>	
<b>From:</b>		<b>Strategic Director of Environment and Housing</b>	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by the Bursar N.B Holliday for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Dulwich College Preparatory School, 38-44 Alleyn Park, London SE21 7AA.

### **Notes:**

- *This application forms a new application for a premises licence, under Section 17 of the Licensing Act 2003. The application is subject to representations from interested parties and is therefore referred to the sub-committee for determination;*
- *Paragraphs 8 to 15 of this report provide a summary of the application for the premises licence under consideration by the sub-committee (A copy of the full application is provided at appendix A)*
- *Paragraphs 17 to 20 of this report deal with the representations received to the premises licence application. (Copies of the relevant representations and replies are attached at appendix B and C).*

## BACKGROUND INFORMATION

### **The Licensing Act 2003**

2. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a new licensing regime for

- The sale of and supply of alcohol
- The provision of regulated entertainment
- The provision of late night refreshment

Within Southwark, this council wholly administers the licensing responsibility.

3. 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; and
- The protection of children from harm.

4. 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
5. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing justice's licenses, public entertainment licenses and night café licenses were able to apply to the local licensing authority for "grandfather rights" conversion of those existing licenses into the relevant licenses under the new system. Licenses that were so converted were converted on existing terms, conditions and restrictions. The 6 August date having passed, operators must now apply for new licenses.
6. 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 interested parties 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**

7. On the 21 September 2009 Nicholas B. Holliday applied to this council for a new premises licence in respect of the premises known as Dulwich College Preparatory School.
8. A copy of the application for the premises licence is attached to the report as appendix A.
9. The premises licence application form provides the applicant company's operating schedule. Parts M, O and P set out the proposed operating hours and operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003
10. The application is summarized as follows:
  11. To provide regulated entertainment in the form of plays, films, indoor sporting events, live music, recorded music, and the performance of dance.
  12. To provide the facilities for making music and dancing.
  13. To provide late night refreshment from 11pm to 12 midnight on Friday and Saturday evenings.
  14. To provide facilities the sale of alcohol, on the premises only, on Monday to Thursday 12:00 – 23:00 hours, Friday to Saturday 12:00 – 00:00 hours and on Sunday 12:00 – 22:00 hours.

15. The hours open to the public are as follows: - Monday to Thursday 06:00 - 23:00 hours, Friday to Saturday 06:00 -12 midnight hours, and on Sunday 10:00 - 2:00 hours.

### **Operating History**

16. The premise known as Dulwich College Preparatory School does not currently hold a Premises Licence under the Licensing Act 2003. The premises have used a number of Temporary Event Notices this year 2009 in order to hold licensable activities. The dates of those events are as follows.

- Temporary Event Notices in the year 2009:-
- 16.03.2009 18:00 to 22:00 hours
- 21.03.2009 18:00 to 22:00 hours
- 13.06.2009 18:00 to 22:00 hours
- 07.11.2009 18:00 to 22:00 hours
- 10.12.2009 19:00 to 22:00 hours
- 13.12.2009 15:00 to 18:00 hours

### **Representations from Interested Parties**

17. There are fifteen (15) representations from the interested parties, of which includes a petition signed by (7) people, which includes the organiser.

18. A copy of the representations from the interested parties is attached to the report as appendix B.

### **Representations from Responsible Authorities**

19. No representations have been received from responsible authorities.

20. A copy of the responsible authority replies to the application is attached to the report as appendix C.

### **Conciliation**

21. A conciliation meeting was arranged for the Wednesday 18 November 2009 at 18:30 hours on the college premises. On the 8 December 2009 a letter dated the 7 December 2009 was received at the licensing office in the form a conciliation statement. This document has since been sent out the interested parties for their consideration. The conciliation statement is attached to the report as appendix D.

### **Disability discrimination act**

22. The Southwark Disablement Association have no comments regarding this application.

### **The local area**

23. The nearest premises licensed under the Licensing Act 2003 to the Dulwich College Preparatory School are the Alleyn's Head pub, approximately 370m away.

24. A map of the area is attached the report as separate item to be brought to the committee by hand as the plans cannot be reduced as a normal addition to the report.

## **Southwark council statement of licensing policy**

25. Council assembly approved the third revision of Southwark's statement of licensing policy on 5 November 2008. Sections of the statement that are considered to be of particular relevance to this application are

- Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives
- Section 5 which sets out the council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence
- Section 6 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998
- Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours
- Section 8 provides general guidance on ensuring public safety including safe capacities
- Section 9 provides general guidance on the prevention of nuisance
- Section 10 provides general guidance on the protection of children from harm.

26. 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.

## **RESOURCE IMPLICATIONS**

27. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

## **CONSULTATIONS**

28. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was placed in the September 2009 edition of the Southwark London Press and a similar notice exhibited outside of the premises.

## **COMMUNITY IMPACT STATEMENT**

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

## **SUPPLEMENTARY SDVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law and Governance**

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

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

## **Principles for making the determination**

32. 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.
33. 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.
34. 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, and
  - Any condition which must under section 19,20 or 21 be included in the licence 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**

35. 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.
36. The four licensing objectives are
- The prevention of crime and disorder;
  - Public safety;
  - The prevention of nuisance; and
  - The protection of children from harm.
37. 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.
38. 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.

39. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

### **Reasons**

40. 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**

41. 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.

42. 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**

43. 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.

44. 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.

45. 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.
46. 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.
47. 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.
48. The sub-committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
49. 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.
50. Interested parties, 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**

51. Members are required to have regard to the DCMS 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.

## Background documents

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, The Chaplin Centre, Thurlow Street, London, SE17 2DG	Name: Mrs Kirty Read Phone number: 020 7525 5748

## Appendices

No.	Title
Appendix A	The application
Appendix B	Representations from Interested Parties
Appendix C	Representations/replies from Responsible Authorities
Appendix D	Conciliation meeting statement
Appendix E	Map of the area

## Audit trail

<b>Lead Officer</b>	Jonathon Toy, Head of Community Safety and Enforcement	
<b>Report Author</b>	David Swaby, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	December 21 2009	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
<b>Executive Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>	December 21 2009	