

**WESTMINSTER CITY COUNCIL LICENSING SUB- COMMITTEE NO. 4**  
**("The Committee")**

**Thursday 17 June 2021**

Membership: Councillor Karen Scarborough (Chairman), Councillor Heather Acton and Councillor Aicha Less

**Application for a New Premises Licence in respect of Van Gogh Alive East Albert Lawns Kensington Gardens Square London SW7 2AJ – 21/03050/LIPN**

**FULL DECISION**

**Premises**

East Albert Lawns  
Kensington Gardens Square  
London SW7 2AJ

**Applicant**

Active Sport & Entertainment Limited

**Cumulative Impact Area?**

N/A

**Special Consideration Zone**

N/A

**Ward**

Lancaster Gate

**Proposed Licensable Activities and Hours**

**Films – (Indoors)**

Monday to Sunday: 09:00 to 23:00 hours

Seasonal Variations: None

**Live Music – Indoors and Outdoors**

Monday to Sunday: 09:00 to 23:00 hours

Seasonal Variations: None

**Recorded Music – (Indoors)**

Monday to Sunday: 09:00 to 23:00 hours

Seasonal Variations: None

**Sale by Retail of Alcohol – (On Sales)**

Monday to Sunday: 09:00 to 22:30 hours

Seasonal Variations: None

**Hours Premises are Open to the Public**

Monday to Sunday: 09:00 to 23:00 hours

Seasonal Variations: None

**Representations Received**

- Metropolitan Police Service (PC Cheryl Boon)(Withdrawn)
- Environmental Health Service (Anil Drayan)
- One local resident

**Summary of Objections**

- The Environmental Health Service raised concerns based on the plans submitted and the supporting operating schedule, namely, that the hours requested for and the supply of alcohol on the premises, the hours requested for, and the provision of regulated entertainment may lead to an increase in Public Nuisance in the area.
- The local resident raised concerns about how the installation and event is to be situated under her window and there are elderly people living in the flat and they would like to have some quiet times. We will have no peace as the event is aimed at attracting crowds, playing music and selling alcohol and is proposed to last for a very long time (4 months). Especially since the proposed operating times are until 11 p.m. every day.

## **Summary of Application**

This is an application for a new premises licence under the Licensing Act 2003 ("The Act"). The Premises propose to operate a Van Gogh digital art experience with a gift shop, café and bar. This application is for a time limited licence and is proposed to end on 26<sup>th</sup> September 2021. The premises previously had the benefit of a time limited licence (12/03248/LIPN) in 2012.

## **Policy Position**

Under Policy HRS1, applications for hours within the Core Hours, would generally, be granted. Applications for hours outside Core Hours would be considered on their merits, subject to other relevant policies.

Under Policy CCSOS1, applications outside the West End Cumulative Zones will generally be granted, subject to other relevant policies.

## **SUBMISSIONS AND REASONS**

Ms Karyn Abbott, Senior Licensing Officer, outlined the application. Representations had been received from Environmental Health Service (EHS), Metropolitan Police Service (MPS) and one interested party. She advised that the Police subsequently withdrew their representations. The premises are situated within the Lancaster Gate Ward and do not fall within any of the Cumulative Impact Area.

Mr Andrew Wells, General Manager, on behalf of the Applicant, stated that the exhibition had opened on 4 June 2021 and was operating under a Temporary Event Notice (TEN). He stated that a temporary building had been constructed on the East Albert Lawn for what he described as a digitally projected immersive Van Gough experience. The main focus of the experience was a 45–50-minute loop of projected images of Van Gough's artworks with a musical score, and an Educational Zone describing the paintings that were being projected.

Mr Wells stated that the Exhibition had been operating with a Royal Parks Licence and in accordance with a TEN. In so doing, the organisers had worked with the Safety Advisory Group and proposed Premises Licence Conditions had been agreed with the Police.

Mr Wells stated that, in the two weeks since the Exhibition had opened, approximately 1800 visitors a day had visited the exhibition and there had been no issues regarding the operation of the exhibition. He stated that entry to the Exhibition was by timed-entry ticket only and tickets had to be purchased in advance of attending the exhibition. Approximately 125 persons were admitted to the exhibition every half hour. Therefore, over a 12-hour period, there was a steady stream of visitors.

Mr Wells stated that the Exhibition itself was enclosed in a soundproof structure and, following sound tests, no sound from inside the structure could be heard from a distance of about 5 to 10 metres outside the structure. In addition, there had been no issues with noise from the café and terrace area which were ancillary to the Exhibition.

In response to Members' questions, Mr Wells stated that:

1. the key elements were that there was always a Designated Premises Supervisor (DPS) and/or Personal Licence Holder on the Premises during the hours of operation, there was a "Challenge 25" policy in place; and that the café and bar were operated by Benugo, who operated other venues within the Royal Parks as well as the cafés and restaurants other museums and galleries and were experienced in managing this type of operation.
2. There had been no noise complaints since the Exhibition had opened on 4 June. Last entry to the Exhibition, Sunday to Thursday, was 8 p.m., with visitors staying for between one and two hours. Therefore, there was a gradual dispersal of up to 200 visitors from 9 p.m. On Friday's and Saturday's, last entry to the Exhibition was 9 p.m. with guests leaving between 10 p.m. and 11 p.m. In addition, there were stewards on duty to control the dispersal of guests and to direct them to the gate located south of the Albert Memorial and opposite the Albert Hall.
3. Ticket sales were managed by Ticketmaster and were sold in advance. However, there were QR codes on display outside the Exhibition and, if someone were to scan the QR code with a smart phone, they could then book a ticket for the next available slot using the "Fever" app. It was estimated that, of the 1,800 visitors a day, approximately 20 to 30 casual visitors booked slots to see the Exhibition.
4. If customers arrived early, they would be admitted to the structure where they would be directed to the café and the terrace area where they would wait until there was space in the Exhibition. Because the exhibition was operating on a reduced capacity, it was usually possible to let people who arrived early into the Exhibition upon their arrival. This allowed for a gradual flow of visitors as some visitors would arrive late.

Mr Drayan, on behalf of Environmental Health Service (EHS) stated that the EHS had no objections to the application and had simply maintained their representations so that they might be able to assist the Members of the Sub-Committee should they have any questions regarding the application.

He stated that officers had visited the Exhibition before its opening to ensure that the applicant had complied with the "Works" condition proposed by EHS.

Mr Drayan noted that the Exhibition structure was opposite the Royal Geographical Society and the Albert Hall. Consequently, there were no residents facing the Exhibition structure, and there was a busy main road between the structure and the nearest residents. He confirmed that the Resident who had made a representation lived around the corner from the Royal Geographical Society and the Albert Hall and, therefore, had no direct line of sight of the Exhibition.

In conclusion, Mr Drayan stated that no noise complaints had been received relating to the Exhibition and that the applicant had complied with all the conditions proposed by EHS.

In response to questions by Members of the Sub-Committee, Mr Drayan provided the following information.

1. The 700-person capacity of the Premises had been restricted to meet social distancing, was more than adequate for its operation.

2. The Exhibition relied on the use of diesel generators. However, the applicant had agreed to comply with the Non-Road Mobile Emission Standards applicable to building site generators.

Mr Drayan stated that the applicant had been advised that the EHS would look to see that the applicant was implementing all measures possible in relation to air quality. In addition, the applicant switched from using diesel generators during the day to an overnight backup battery generator which provided enough power for overnight protection.

Mr Drayan confirmed that Construction Site Regulations relating to the use of generators had been adapted by the Council and Event Organisers had been advised that they would be expected to comply with these adapted standards.

Mr Wells confirmed that the use the generators has been kept to a minimum with the generators operating from either 9 a.m. or 10 a.m. until about 10:30 p.m. or 11 p.m. at the latest, when the battery generator would take over.

## **Conclusion**

The Sub-Committee has a duty to consider the application on its individual merits and took into account all of the committee papers, submissions made by the Applicant and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee noted that the MPS and EHS had withdrawn their representations and welcomed the conditions agreed by the Applicant with the Responsible Authorities. The Sub-Committee had regard to the fact that the Applicant had been operating under a Temporary Event Notice since June 2021, without complaints.

The Sub-Committee welcomed the fact that the Applicant was managing the Exhibition in accordance with a Parks Licence granted by the Royal Parks under the terms of the Royal Parks Hyde Park Alcohol Management Policy 2020.

The Sub-Committee noted that EHS had visited the premises following the opening of the Exhibition and they were satisfied that the Applicant was managing the premises in accordance with the agreed conditions proposed by the Responsible Authorities. Accordingly, the Sub-Committee concluded that the licence would promote the licensing objectives.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this application and the promotion of the four licensing objectives:

1. **To grant permission for Films – (Indoors)** Monday to Sunday: 09:00 to 23:00 hours. **There are no seasonal variations**
2. **To grant permission for Live Music – Indoors and Outdoors** Monday to Sunday: 09:00 to 23:00 hours. **There are no seasonal variations.**
3. **To grant permission for Recorded Music – (Indoors)** Monday to Sunday: 09:00 to 23:00 hours. **There are no seasonal variations.**
4. **To grant permission for Sale by Retail of Alcohol – (On Sales)** Monday to Sunday: 09:00 to 22:30 hours. **There are no seasonal variations.**

5. **To grant permission for the Hours Premises are Open to the Public** Monday to Sunday: 09:00 to 23:00 hours. **There are no seasonal variations.**
6. **To grant permission for a time limited Premises Licence** to authorise licensable activities until 26 September 2021.
7. That the Premises Licence shall be time limited to 26 September 2021 and the licensable activities so authorised shall be restricted to this date after which time this Licence shall cease and have no effect as specified in condition 44 below.
8. That the Licence is subject to relevant mandatory conditions.
9. That the Licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

#### **Conditions imposed by the Committee after a hearing**

10. The use of this licence shall be agreed through the Licensing, Operational and Safety Planning Group (LOSPG) process and shall have had 'no objection' raised by the representatives on the LOSPG.
11. The Licensing, Operational and Safety Planning Group (LOPSG) shall be chaired by a representative of The Royal Parks.
12. Membership of the Licensing, Operational and Safety Planning Group (LOSPG) shall normally consist of invited representatives of the designated event organiser, the Metropolitan Police Service, Officers of the Council from Emergency Planning, the Environmental Health Consultation Team (EHCT), London Fire Brigade, and any other appropriate and specialist advisor as required by the chairman of the LOSPG to achieve 'no objection' and to meet the objectives of the Licensing Act.
13. Unless otherwise agreed, no later than 28 days prior to the event the Premises Licence holder must ensure a provisional Event Management Plan is presented to the members of the LOSPG for their comments.
14. Patrons attending the site shall only be those who have pre-purchased a ticket.
15. The provision of alcohol shall be in accordance with relevant parts of The Royal Parks Hyde Park Alcohol Management Policy 2020 or as agreed at the LOSPG for this event.
16. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
17. A challenge 25 proof of age scheme for the sale of alcohol shall be operated at the premises where the only acceptable forms of identification are

recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

18. Any special effects or mechanical installations shall be arranged, operated and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used after prior approval from EHCT and/or London Fire Brigade where consent has not previously been given:
  - dry ice and cryogenic fog
  - smoke machines and fog generators
  - pyrotechnics including fireworks
  - firearms
  - lasers
  - explosives and highly flammable substances
  - real flame
  - strobe lighting.
19. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased. NOTE: (1) This rule does not apply to exhibitions given under the provisions of Section 2(1A) and 5 of the Hypnotism Act 1952.
20. The number of persons accommodated in the premises (excluding staff) shall not exceed 700 persons at any one time.
21. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
22. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
23. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
24. All parts of the licensed area including access and egress paths from the park intended to be used in the absence of adequate daylight and all essential safety signage shall be suitably illuminable. Details of the locations and level of illumination must be submitted to the LOSPG or their authorised representative.
25. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.
26. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes, entertainment areas, shall be non-combustible.

27. All fabric, including curtains and drapes used on stage for tents and marquees, or plastic and weather sheeting, shall be inherently or durably flame retardant to the relevant British Standards. Certificates of compliance must be available upon request by an authorised officer of Westminster City Council and/or The London Fire Brigade.
28. Any moving flown equipment must contain a device or method whereby failure in the lifting system would not allow the load to fall. All hung scenery and equipment must be provided with a minimum of two securely fixed independent suspensions such that in the event of failure of one suspension the load shall be safely sustained.
29. The certificates listed below shall be submitted to an authorised officer on request:
  - Any permanent or temporary emergency lighting battery or system
  - Any permanent or temporary electrical installation
  - Any permanent or temporary emergency warning system
  - Any ceiling inspection
30. Flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties (save insofar as they are necessary for the prevention of crime).
31. A sufficient number of easily identifiable, readily accessible receptacles for refuse must be provided, including provisions for concessions. Arrangements must be made for regular collection. Public areas must be kept clear of refuse and other combustible waste prior to, and so far, as is reasonably practicable, during the licensed event.
32. For licensable events the Music Noise Level shall not exceed 5dB LAeq (15 minutes) above the ambient level in the area one metre from the nearest noise sensitive façade. (final level to be determined at time of works clearance).
33. The minimum number of toilet accommodation shall be agreed with EHCT (final level to be determined at time of works clearance).
34. Full structural design details and calculations of all and any structures to be erected must be submitted for approval to Westminster City Council Building Control. A certificate from a competent person or engineer that a completed structure has been erected in accordance with the structural drawings and design specification must be available for inspection prior to a relevant structure being used during the licensed event.
35. The Premises Licence Holder must ensure that competent persons are employed to assess the electrical requirements at the event and the compatibility of the electricity supply with the equipment to be used. Appropriate safety devices (such as 30mA Residual Current Devices at Source) must be used for electrical apparatus, particularly for any electrical equipment exposed to adverse conditions or electrical equipment to be used in association with hand-held devices (e.g., microphones). The competent



person must make a certificate of inspection of the electrical installation available for inspection.

36. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises are open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
37. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
38. A minimum of 3 SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business.
39. During private/corporate events the number of SIA required will be risk assessed by the management, a copy of this assessment shall be available at the premises for inspection by a Police officer and/or an authorised officer of Westminster City Council.
40. A copy of the premises' dispersal policy shall be available at the premises for inspection by a Police officer and/or an authorised officer of Westminster City Council.
41. The Premises Licence Holder shall ensure that the management team register and successfully complete the nationally recognised counter terrorism training product referred to as ACT eLearning package or can demonstrate that the ACT eLearning product has been successfully completed within the preceding 12 months and that all staff employed by or at the premises complete the ACT eLearning within a reasonable period not exceeding 3 months from the day, they start their employment.
42. The Premises Licence Holder shall present the Event Management Plan (upon request) to authorised officers at least 28 days before the first event day. The Event Management Plan shall include as a minimum:
  - (a) Covid-19 Statement (if appropriate);
  - (b) Access Management Plan;
  - (c) Adverse Weather Plan;
  - (d) Alcohol Management Plan;
  - (e) Cancellation Procedure;
  - (f) CCTV Plan;
  - (g) Communications Plan;
  - (h) Child & Vulnerable Adults Policy;
  - (i) Crowd Management Plan (including Security and Stewarding Plan);
  - (j) Egress Management Plan;

- (k) Emergency Evacuation procedures;
- (l) Event Control Statement of Intent;
- (m) Event Medical Plan;
- (n) Event Safety Plan including Risk Assessment;
- (o) Fire Safety Management Plan;
- (p) Ingress Management Plan;
- (q) Lighting Plan;
- (r) Noise Management Plan;
- (s) Public Liability Insurance;
- (t) Security and Crime Reduction Plan;
- (u) Site Plans;
- (v) Sustainability Statement;
- (w) Terms and Conditions of Entry;
- (x) Trader Food Management Plan;
- (y) Transport Assessment;
- (z) Waste Management Plan.

- 43. The Premises Licence Holder shall ensure that the event is run in accordance with the Event Management Plan.
- 44. No licensable activities shall take place at the Premises after 26 September 2021 for the avoidance of doubt.

**This is the Full Decision reached by the Licensing Sub-Committee.  
This Decision takes immediate effect.**

**Licensing Sub-Committee  
17 June 2021**