

<b>Item No.</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 18 May 2017	<b>Meeting Name:</b> Licensing sub-committee
<b>Report title:</b>		Licensing Act 2003: Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7LL	
<b>Ward(s) or groups affected:</b>		Rotherhithe	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee decide whether or not to issue counter notices in respect of temporary event notices (TEN) 858675,858674,858673,858672 served by Jihong Park for an event to be held at Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7LL. The TEN is between 21:00 on Monday 05 June 2017 and 03:00 on Tuesday 06 June 2017.

### Note:

2. The TEN's submitted are for various locations within Hawker House described by the applicant as Hawker House - Area 1, Hawker House - Area 2, Hawker House - Mezzanine Level, Hawker House – External.

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. On 24 November 2005 the Licensing Act 2003 came into effect establishing a licensing regime for the following licensable activities:
  - a) The retail sale of alcohol
  - b) The supply of alcohol to club members or on behalf of a club
  - c) The provision of regulated entertainment
  - d) The provision of late night refreshments.
4. The Act established a process for the giving of "temporary event notices" (TENs).
5. Amendments to the Licensing Act 2003 were brought about by way of the Police Reform and Social Responsibility Act 2011 as of 25 April 2012.
6. A premises user may serve a TEN, where it is proposed to use the premises concerned to provide one or more licensable activities for a period not exceeding 168 hours for less than 500 persons.
7. A person holding a personal license issued under the Act may serve up to 50 TENs in a calendar year. Non-personal licence holders may serve up to five TENs in the same period. No premises may be used for more than 12 TENs in a calendar year or for more than 21 days in a calendar year.

8. No premises may be used for temporary events that are less than 24 hours apart.
9. The police or environmental health authority may intervene to prevent such an event taking place or agree a modification of the proposed arrangements, and their intervention may in some cases result in the licensing authority imposing conditions on a TEN.
10. If the police or environmental health team believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. This must be given within three working days of the receipt of the TEN.
11. A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
12. The police or environmental health may contact the premises user to discuss their objections and attempt to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified. If there is no agreement, the licensing authority must hold a hearing to consider the notice.
13. If the licensing authority receives an objection notice from the police or environmental health that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions, and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and give a counter notice. This prohibits the event from taking place.

## **KEY ISSUES FOR CONSIDERATION**

### **The temporary event notices**

14. On 8 May 2017 four TENs were served by Jihong Park in respect of an event intended to be held at Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7LL. A copy of the TENs is attached to this report as Appendix A.
15. The TENs are summarised as follows:
  - TEN 858672 to be held in the external area at Hawker House, Canada Water Retail Park, Surrey Quays Road, London, SE16 7LL
  - TEN 858673 to be held at the mezzanine level at Hawker House, Canada Water Retail Park, Surrey Quays Road, London, SE16 7LL
  - TEN 858674 to be held at Area 1 at Hawker House, Canada Water Retail Park, Surrey Quays Road, London, SE16 7LL

- TEN 858675 to be held at Area 2 at Hawker House, Canada Water Retail Park, Surrey Quays Road, London, SE16 7LL
  - Each TEN is to allow the sale by retail of alcohol, the provision of regulated entertainment and the provision of late night refreshment between 21:00 on Monday 5 June 2017 and 03:00 the following day. The maximum number of people expected at any one time at the premises is 499. The activities are to take place on the premises only.
16. On 9 May 2017 the licensing service received an email from the applicant's legal representative. The licensing service was advised that the applicant wished to amend the TENs which had been submitted and restrict licensable activities in the outside area after 23:00 consistent with condition 341 of the time limited premises licence.
  17. The applicant's legal representative states the TENs clearly define four distinct areas within the premises. These are described in the specific section of the TEN form which anticipates only part of a premises may be used for a TEN. The applicants legal representative states, our client will ensure that the areas are appropriately controlled and capacity limits are not breached. They can achieve this by using SIA registered supervisors and staff to monitor capacity numbers and supervise admission to the different areas.
  18. In the email sent by the applicants legal representative they refer EPT and the licensing service to email correspondence from the Department for Business, Innovation and Skills/Department for Culture, Media and Sport on the matter of multiple TENs
  19. A copy of this email correspondence is attached at Appendix F to this report.

### **The objection notices**

20. On 18 April 2017 the councils environmental protection team (EPT) served an objection notice in respect of the various TENs submitted for Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7LL on the grounds of public nuisance.
21. The EPT objection notice states that the TENs submitted include use of the outside area after 23:00 which is specifically prohibited on the grounds of prevention of public nuisance by condition 341 of the premises license.
22. EPT state the use of the outside area for licensable activities after 23.00 is highly likely to result in public nuisance as a consequence of noise from patrons and regulated entertainment.
23. EPT also state there have been complaints received via Councillor Cryan following a similar event in December 2016 regarding (amongst other issues) noise from patrons, dispersal and urination in the street. EPT state the proposed hours increases the risk and severity of public nuisance from this premises.
24. EPT state that they object to the granting of the TENs on the grounds that the application seeks to artificially circumvent the 499 person limit for TENs by splitting

what is clearly a single premises, covered by a single premises license, into multiple 'areas'.

25. EPT state in the event that the TENs were granted the 499 person limit would still apply in each artificially constructed 'area' of the single premises. It would be impossible in practice for the premises supervisor to reasonably control movement of 2000 people through the premises so as to be assured that no single area exceeds 499 people at any time whilst licensable activities take place. The TENs would therefore be consenting something known to be unachievable in practice.
26. EPT state that it would be unverifiable and unenforceable for the licensing authority to monitor the numbers of people in each area as they are neither sufficiently precisely defined nor marked in reality in the premises. Furthermore movement of people between areas is unrestricted and so numbers will constantly ebb and flow so as to prevent any practical monitoring or enforcement by the licensing authority and the police.
27. On 10 May 2017 the Metropolitan Police Service served an objection notice in respect of four TENs submitted for Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7LL.
28. The Metropolitan Police Service state: "all the applications are for the same event, describing it as a private corporate event in a street food market. The only difference between the four applications is the area specified. If allowed this would give a total attendance of 2000 people in one premises currently covered by one premises licence. An event of this size going on till 3am in the morning would require considerable consultation which is the reason for time limited premises licences to allow proper consultation by the responsible authorities and local residents, and conditions to be placed on the licence if thought appropriate. The police believe that this is not four separate events and is one and they have submitted four applications to circumvent the consultation process associated with a time limited application".
29. The Metropolitan Police Service state: "if a time limited application had been submitted it would have allowed for a comprehensive dispersal policy to be considered, along with a full description of the activities taking place within the event. We would still have serious concerns with that amount of people late at night and possibly still made representations against the application, but this could have been a more informed process than having to comment on possible 2000 people attending a corporate event next to residential buildings".
30. The Metropolitan Police Service maintain that this is not four separate events and is just one single event.
31. The Metropolitan Police Service state that any late night event of such scale will likely have a detrimental effect on the licensing objectives, causing public nuisance, anti-social behaviour and crime and disorder in the area.
32. The Metropolitan Police Service also state that the premises are very close to large residential blocks of flats with balconies overlooking the premises. Any late night activity will cause nuisance just by the number of people entering and exiting the premises and the associated noise. The Metropolitan Police state that they object

to the TENs on the grounds that it would be undermining the prevention of crime and disorder licensing objective.

33. A copy of the EPT objection notice and the Metropolitan Police Service objection notice is attached to this report as Appendix B and Appendix C.

### TENs History

34. Below is the recent history of TENs for the last year in respect of the premises.

No.	Premises user	Date of event	Time of event and activities
1	Jihong Park	08/12/16	From 08/12/2016 to 09/12/2016 17:00 – 02:00 Sale by retail of alcohol to be consumed on & off the premises Provision of Regulated Entertainment Provision of Late night Refreshment
2	Jihong Park	08/12/16	From 08/12/2016 to 09/12/2016 17:00 – 02:00 Sale by retail of alcohol to be consumed on & off the premises Provision of Regulated Entertainment Provision of Late night Refreshment
3	Jihong Park	08/12/16	From 08/12/2016 to 09/12/2016 17:00 – 02:00 Sale by retail of alcohol to be consumed on & off the premises Provision of Regulated Entertainment Provision of Late night Refreshment
4	Jihong Park	08/12/16	From 08/12/2016 to 09/12/2016 17:00 – 02:00 Sale by retail of alcohol to be consumed on & off the premises Provision of Regulated Entertainment Provision of Late night Refreshment

### Premises history

35. The premises operate as a Street Food Market.
36. A time limited premises licence was granted to New London Markets Ltd on 29 September 2015 which permitted a time limited licence to operate from 1 October 2015 to 1 October 2016. This licence is attached as Appendix D
37. On 20 May 2016, a time limited premises licence was granted to New London Markets Ltd which permitted a time limited licence to operate from 2 October 2016 to the 30 November 2017. This licence is attached as Appendix E.

## Time Limited Premises Licence

38. Details of current time limited premises licence:

- **Licensable activities authorised by the licence**  
Late Night Refreshment – Indoors and outdoors  
Sale by retail of alcohol to be consumed on and off the premises  
Recorded music
- **Opening hours of the premises**  
Monday to Saturday                    10:00 – 01:00  
Sunday                                        10:00 – 23:30
- **Late Night Refreshment – Indoors and Outdoors**  
Monday to Saturday                    23:00 – 00:30
- **Sale by retail of alcohol to be consumed on and off premises**  
Monday to Saturday                    10:00 – 00:30  
Sunday                                        10:00 – 23:00
- **Recorded Music**  
Monday to Saturday                    10:00 – 00:30  
Sunday                                        10:00 – 23:00

39. The current time limited premises licence is attached as Appendix E.

## Licensing visit history

40. On 11 October 2016 the licensing service received a complaint from a local resident in relation to noise emanating from Hawker House.
41. On 31 January 2017 a complaint was received from local ward councillor, Councillor Stephanie Cryan on behalf of several local residents. The local ward councillor informed the licensing service that several residents had raised concern about anti-social behaviour from customers of Hawker House.
42. The local ward councillor confirmed the main concerns of local resident's as:
- Noise from customers when leaving and making their way back to Canada Water station.
  - People urinating in the street and on the side of the building.
  - Fighting in the street (there have been a couple of occasions when the police had been called).
  - Recycling collection at 06:00 or earlier for the bottles (the noise is waking them).
43. A visit was carried out by enforcement officers on 3 February 2017 and also on 4 and 5 February 2017. The officers who inspected the premises reported no issues in regards to compliance and operation of the premises.

### **The local area.**

44. A map showing the location of the premises is attached to this report as Appendix G. The premises are identified at the centre of the circle on the map.

### **Policy considerations**

45. Section 4 of the Southwark statement of licensing policy on “administration, exercise and delegation of function” deals with the parameters under which TENs may be considered.

### **Consideration by the sub-committee**

46. The sub-committee is asked to consider whether the issue of a counter notice is necessary for the promotion of the prevention of public nuisance and protection of public safety licensing objectives.

### **Community impact statement**

47. Members are advised that under the Act, the matters to which consideration may be given in this instance are the crime and disorder and public nuisance objectives.
48. In considering the TENs in terms of community impact the sub-committee must restrict its considerations to this matter.

### **Resource implications**

49. A fee of £21.00 has been paid by the applicant in respect of the TEN, this being the statutory fee payable.

### **Consultation**

50. The Act provides for no consultations to take place other than the process outlined in this report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

51. The sub-committee is asked to determine the notification of this temporary event under Section 105 of the Licensing Act 2003 and to consider whether or not counter notice should be issued in the circumstance. It must only issue a counter notice if they believe the event would undermine the crime prevention objective set out in the Act
52. The principles which sub-committee members must apply are set out below.

## **Principles for making the determination**

53. The general principle is that temporary event notices must be accepted unless a relevant objection is received from the police. This is subject to the proviso that the premises user has complied with regulations and submitted the notice within a prescribed time.
54. A relevant objection is that which:
- Is about the likely effect of the TEN on the promotion of the crime prevention of the licensing objectives
  - Is made by the metropolitan police
  - Has not been withdrawn
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
55. If a relevant objection notice is received then the sub-committee must have regard to it in determining whether it is necessary for the promotion of the prevention of crime prevention and the prevention of public nuisance licensing objectives of the Licensing Act to:
- Issue a counter notice by adding to, omit, and/or alter the conditions of the licence or
  - Reject the whole or part of the application for TEN.

## **Conditions**

56. The sub-committee may attach conditions on the carrying on of permitted licensable activities. The sub-committee's function is to determine whether a counter notice should be issued
57. Members are also referred to the Home Office revised guidance on conditions.

## **Reasons**

58. The sub-committee must give reasons for its decision to issue or not to issue a counter notice.

## **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 objection.
  - 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 submission.
  - The committee shall disregard any information given by a party which is not relevant:
    - To the particular submission before the committee
    - To the licensing objectives prevention of crime and disorder.
  - 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 the objection and notice the authority may take into account documentary or other information produced by a party in support of their objection 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 a notification for a temporary event notice under section 105 of the Licensing Act 2003. Regulation 26(1) requires the sub-committee to make its determination at the conclusion of the hearing.
61. 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.
62. As a quasi-judicial body the licensing sub-committee is required to consider the temporary event notice 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 the police objection.
63. 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.

64. Under the Human Rights Act 1998, the sub committee needs to consider the balance between the rights of the applicant and those making the objection 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.
65. Where the relevant counter notice under section 105(3) is given the premises user may appeal against that decision. Where a counter notice is not given, the chief officer of police may appeal against that decision. The appeal must be made 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. No appeal may be brought later than five working days before the day on which the event begins.

### **Guidance**

66. Members are required to have regard to the Home Office revised 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**

67. The head of regulatory services has confirmed that the costs of this process over and above the application fee are borne by the service.

### **REASONS FOR URGENCY**

68. The TENs process is time limited, and due to legislative time constraints it would not be possible to wait for a further meeting to be held to consider this report.

### **REASONS FOR LATENESS**

69. Due to the time limited nature of TENs there was not sufficient time to prepare and clear the report in time for the main agenda dispatch.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Licensing Act 2003 Home Office revised guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	Licensing Unit Hub 2 Third Floor 160 Tooley Street SE1 2TZ	Kirty Read (020 7525 5748)

## APPENDICES

No.	Title
Appendix A	The temporary event notice(s)
Appendix B	Environmental Protection Team objection
Appendix C	Metropolitan Police Service objection
Appendix D	Time limited premises licence: 1 October 2015 to 1 October 2016
Appendix E	Time limited premises licence: 2 October 2016 to 30 November 2017
Appendix F	Correspondence from applicants legal representative
Appendix G	Map of the area

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Richard Kalu, Licensing Enforcement Officer	
<b>Version</b>	Final	
<b>Dated</b>	15 May 2017	
<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 Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	<b>No</b>	<b>No</b>
<b>Date final report sent to Constitutional Team</b>	15 May 2017	