

<b>Item No.</b> 6.	<b>Classification:</b> Open	<b>Date:</b> 27 July 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		Licensing Act 2003: Ubrew, Unit 29 – 30 Old Jamaica Road Industrial Estate, Old Jamaica Road, London SE16 4AW	
<b>Ward(s) or groups affected:</b>		North Bermondsey	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers an application submitted by an 'other person' under Section 51 of the Licensing Act 2003 (the Act) for the review of the premises licence held by UBREWCC LTD in respect of the premises known as Ubrew, Unit 29 - 30 Old Jamaica Road Industrial Estate, Old Jamaica Road, London SE16 4AW.
2. Notes:
  - a) The grounds for the review are stated in paragraph 14 of this report. A copy of the review application is attached as Appendix A.
  - b) The review application is supported by a representation submitted by an 'other person'. A copy of the representation is in Appendix D. Details of the representation are provided in paragraph 19.
  - c) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B. A map of the area that the premises are located in is attached as Appendix G.
  - 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 new licensing regime for:
  - The sale of and supply of alcohol
  - The provision of regulated entertainment
  - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.

5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
  - The prevention of crime and disorder
  - The promotion of public safety
  - The prevention of nuisance
  - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
  - The Act itself
  - The guidance to the act issued under Section 182 of the Act
  - Secondary regulations issued under the Act
  - The licensing authority's own statement of licensing policy
  - The application, including the operating schedule submitted as part of the application
  - Relevant representations.
7. The applications process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.
8. The premises licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51 of the Act it remains open to any responsible authority or other person to apply to the local licensing authority for a review of the premises licence where there are ongoing concerns regarding one or more of the four stated licensing objectives.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

9. The premises licence allows the provision of licensable activities as follows:
  - **The sale of alcohol to be consumed on and off the premises:**
    - Monday to Sunday from 11:00 to 23:00
  - **Recorded music:**
    - Monday to Sunday from 09:00 to 22:00
  - **Opening times:**
    - Monday to Sunday from 09:00 to 23:00.
10. The licence is subject to the mandatory conditions set down under the Act and further conditions consistent with the operating schedule submitted with the application for the licence. A copy of the full premises licence is attached as Appendix B.

11. At the time that the review application was submitted, the licence number was 847970. The review application refers to licence number 847970. An application to vary the licence to specify a new designated premises supervisor (DPS) with immediate effect was submitted on 18 June 2018. The application to vary the licence to specify a new DPS was not subject to representations, therefore the application was granted and an amended licence was issued dated 18 June 2018. The amended licence has a new licence number. The new licence number is 863725 and is the current licence number. It is a copy of licence number 863725 that is attached as appendix B.

### **Designated premises supervisor**

12. The current DPS named on the licence is Alexis Timothy Julian Quinn.

### **The review application**

13. On 1 June 2018 an application was submitted by an 'other person', under Section 51 of the Licensing Act 2003, for the review of the premises licence held by UBREWCC LTD in respect of the premises known as Ubrew, Unit 29 - 30 Old Jamaica Road Industrial Estate, Old Jamaica Road, London SE16 4AW.
14. The review application was submitted in respect of the prevention of public nuisance licensing objective and in summary states:
  - That excessive noise nuisance is caused as a result of the operation of the premises. The sources of the noise nuisance are the premises' customers congregating at and in the vicinity of the premises.
  - That the premises operate outside of permitted hours.
  - That condition 101 of the premises licence issued in respect of the premises has allegedly been breached. Condition 101 states: "Every supply of alcohol under the Premises Licence must be made, or authorised by, a person who holds a Personal Licence."
  - That condition 341 of the premises licence issued in respect of the premises has allegedly been breached. Condition 341 states: "When events are to be held at the premises, event management plans will be available including risk assessments and nuisance management plans of any activities taking place on site."
  - That condition 342 of the premises licence issued in respect of the premises has allegedly been breached. Condition 342 states: "Patrons shall not be permitted to use the external area to the front of the premises after 22:00hrs Monday to Fridays and 20:00hrs on Saturdays, Sundays and Bank Holidays, apart for access & egress and for smoking."
  - That condition 347 of the premises licence issued in respect of the premises has allegedly been breached. Condition 347 states: "SIA registered staff will be utilised during large events."
15. Full details of the grounds for the review are provided within review the application. The review application is attached as Appendix A.

### **Representations from responsible authorities**

16. The Metropolitan Police Service have submitted a representation stating that the application describes a number of issues relating to public nuisance, but no crime and disorder issues. The representation further states that the Metropolitan Police Service has been unable to associate any crime and disorder with the venue in the last 12 months.
17. A copy of the representation submitted by the Metropolitan Police Service is attached as Appendix C.

### **Representations from other persons**

18. Two representations have been submitted by 'other persons'. Both other persons are local residents (to be referred to as 'party 1' and 'party 2' hereafter).
19. Party 1's representation has been submitted in support of the review application and alleges that noise nuisance is caused by the operation of the premises and that the noise nuisance can be 'deafening' and 'nerve racking'. The representation also indicates that condition 342 of the premises licence issued in respect of the premises has allegedly been breached.
20. Party 2's representation has been submitted in support of the licensee. Party 2 states that party 2 'has never experienced any problems as a result of the trading activities or Ubrew' and has not 'witnessed any public nuisance'.
21. Copies of the representations submitted by the other persons are attached as Appendix D.

### **Operating History**

22. On 10 March 2015 a premises licence was issued in respect of the premises to UBREWCC LTD. The DPS of the premises at this time was Matthew Denham (co-founder of Ubrew).
23. On 27 March 2015 a licensing officer conducted a 'licence induction' with Matthew Denham. During a licence induction the licence document and conditions are fully explained as are the possible consequences of breaching licence conditions. A copy of an induction checklist signed by Matthew Denham is attached in Appendix E.
24. On 1 April 2015 an application to vary the premises licence to specify a new DPS with immediate effect was submitted. The application was granted, Carrie Fleetwood was specified as the premises' DPS and an amended licence was issued dated 1 April 2015.
25. On 23 May 2015 a licensing officer conducted a licence induction with Wilf Horsfall (co-founder of Ubrew). A licensing inspection of the premises was also undertaken on this date and the premises were found to be being operated compliantly. A copy of an induction checklist signed by Wilf Horsfall is attached in Appendix E.
26. On 22 June 2015 two complaints from two separate local residents were made to the licensing team. The complaints alleged that noise nuisance arose from the premises during an event that took place on 19 June 2015. The complaints both alleged that

noise nuisance was caused by very loud music and also by the loud voices of customers who were at and in the vicinity of the premises. The licensee was contacted by a licensing officer who discussed the complaint and advised against causing noise nuisance in the future.

27. On 4 July 2015 a licensing officer conducted a follow up visit to the premises to speak to the premises' management in person in regards to the noise complaints of 22 June 2015.
28. On 1 June 2018 an application was submitted by an 'other person', under Section 51 of the Licensing Act 2003, for the review of the premises licence.
29. On 18 June 2015 an application to vary the premises licence to specify a new DPS with immediate effect was submitted. The application was granted, Alexis Quinn was specified as the premises' DPS and an amended licence was issued dated 18 June 2015.
30. Details of temporary event notices (TENs) submitted in respect of the premises are attached as Appendix F.

#### **The local area**

31. A map of the local area is attached as appendix G. The following premises are shown on the map and are licensed as stated below.

**Grazing Corporate and Event Catering, Units 25 - 26, Old Jamaica Business Estate, SE16 4BB** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 08:00 to 20:00.

**Bone Daddies, Unit 27, Old Jamaica Business Estate, SE16 4AN** licensed for:

- The sale of alcohol to be consumed on and off the premises:
  - Monday to Sunday from 10:00 to 22:30.

**Brew by Numbers, Railway Arch 75, Enid Street, SE16 3RA** licensed for:

- The sale of alcohol to be consumed on the premises:
  - Monday to Sunday from 08:00 to 22:30.
- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 08:00 to 23:00.

**Pilango, Railway Arch 78, Enid Street, SE16 3RA** licensed for:

- The sale of alcohol to be consumed on and off the premises:
  - Monday to Sunday from 10:00 to 22:30.

**Moor Beer Company, Railway Arch 71, Enid Street, SE16 3RA** licensed for:

- The sale of alcohol to be consumed on the premises:
  - Monday to Sunday from 10:00 to 22:30.
- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 10:00 to 23:00.

**Spirit of London, Railway Arch 69, Enid Street, SE16 3RA** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 00:00 to 00:00 (24 hours).
- The provision of late night refreshment:
  - Monday to Sunday from 23:00 to 00:00 (midnight).

**London Calling Sweden, Railway Arch 72, Enid Street, SE16 3RA** licensed for:

- The sale of alcohol to be consumed on the premises:
  - Monday to Sunday from 10:00 to 22:30.
- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 10:00 to 23:00.

**Cloudwater Brew Co, Railway Arch 72, Enid Street, SE16 3RA** licensed for:

- The sale of alcohol to be consumed on and off the premises:
  - Monday to Sunday from 08:00 to 23:00.

**Tesco Stores Ltd, 78 Jamaica Road, SE16 4BA** licensed for:

- The sale of alcohol to be consumed off the premises:
  - Monday to Sunday from 06:00 to 00:00.

**Southwark council statement of licensing policy**

32. Council assembly approved Southwark's Statement of Licensing Policy 2016 - 20 on 25 November 2015. The policy came into effect on 1 January 2016. Sections of the statement that are considered to be of particular relevance to the sub-committee's consideration are:

- Section 3 - Purpose and scope of the policy. This reinforces the four licensing objectives and the fundamental principles upon which this authority relies in determining licence applications.

- Section 5 – Determining applications for premises licences and club premises certificates. This explains how the policy works and considers issues such as location; high standards of management; and the principles behind condition setting.
  - Section 6 – Local cumulative impact policies. This sets out this authority’s approach to cumulative impact and defines the boundaries of the current special policy areas and the classifications of premises to which they apply. To be read in conjunction with Appendix B to the policy
  - Section 7 – Hours of operation. This provides a guide to the hours of licensed operation that this authority might consider appropriate by type of premises and (planning) area classification.
  - Section 8 – The prevention of crime and disorder. This provides general guidance on the promotion of the first licensing objective.
  - Section 9 – Public safety. This provides general guidance on the promotion of the second licensing objective.
  - Section 10 – The prevention of nuisance. This provides general guidance on the promotion of the third licensing objective.
  - Section 11 – The protection of children from harm. This provides general guidance on the promotion of the fourth licensing objective.
33. 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.
34. Within Southwark’s statement of licensing policy 2016 - 2020 the premises are identified as being within a residential area. The closing time recommended in the statement of licensing policy for public houses, wine bars or other drinking establishments in residential areas is 23:00 daily.

### **Resource implications**

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

### **Consultation**

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

### **Community impact statement**

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

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

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

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

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

40. Under Section 52 the licensing authority must hold a hearing to determine the review and any relevant representations.
41. The four licensing objectives are:
- The prevention of crime and disorder
  - The protection of public safety
  - The prevention of nuisance
  - The protection of children from harm.
42. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:
- Modify the conditions of the licence by altering, omitting or adding any condition
  - Exclude a licensable activity from the scope of the licence
  - Remove the designated premises supervisor
  - Suspend the licence for a period not exceeding three months
  - Revoke the licence.
43. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which:
- Are relevant to one or more of the licensing objectives
  - Are made by the holder of the premises licence, a responsible authority or an other person within the prescribed period
  - Have not been withdrawn
  - If made by an other person (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.
44. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
45. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps appropriate to promote the licensing objectives.
46. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action



should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

47. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

### **Reasons**

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

### **Hearing procedures**

49. 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.

50. 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**

51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Other persons must live in the vicinity of the premises. This will be decided on a case to case basis.
57. 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.

58. 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

59. 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

60. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

### BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

### APPENDICES

Name	Title
Appendix A	Copy of the review application
Appendix B	Copy of the premises licence
Appendix C	Copy of the representation submitted by the Metropolitan Police Service
Appendix D	Copies of the representations submitted by other persons
Appendix E	Copies of induction checklists signed by previous designated premises supervisor
Appendix F	Details of temporary event notices submitted in respect of the premises
Appendix G	Map

### AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Social Regeneration	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
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<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>	No	No
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