

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 26 October 2018	<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 7PJ	
<b>Ward(s) of group(s) affected:</b>		Rotherhithe	
<b>From:</b>		Strategic Director of Environment and Social Regeneration	

## RECOMMENDATION

1. That the licensing sub-committee considers whether an application submitted by New London Markets Limited for a premises licence be granted under the Licensing Act 2003 in respect of the premises known as Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7PJ.
2. Notes:
  - a) This application, submitted under Section 17 of the Licensing Act 2003, is for a premises licence. The application is subject to representations and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 12 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix A.
  - c) Paragraphs 14 to 17 of this report deal with the representations submitted in respect of the application. Copies of the representations are attached to this report as Appendix B. A map showing the location of the premises is attached to this report 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 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 22 August 2017 New London Markets Limited applied to this council for the grant of a premises licence in respect of Hawker House, Canada Water Retail Park, Surrey Quays Road, London SE16 7PJ.
9. The application is summarised as follows:
- **Late night refreshment**
    - Monday to Saturday from 23:00 to 00:30 the following day
  - **Recorded music and the sale of alcohol to be consumed both on and off the premises**
    - Monday to Saturday from 10:00 to 00:30 the following day
    - Sunday from 10:00 to 23:00
  - **Proposed opening hours of the premises**
    - Monday to Saturday from 10:00 to 01:00 the following day
    - Sunday from 10:00 to 23:30.
  - The premises are described as a street food market.
10. The application is time limited and the proposed duration of the licence is between 1 December 2018 and 31 December 2019.
11. The premises licence application form provides the applicant's operating schedule. Parts F, I, 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 then 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. Copies of the application and documents submitted with the application are attached to this report as Appendix A.

### **Designated premises supervisor**

12. The proposed designated premises supervisor (DPS) is Jihong Park.

### **Representations from responsible authorities**

13. No representations have been submitted by responsible authorities.

### **Representations from other persons**

14. Six representations have been submitted by other persons. All of the other persons are local residents. Two of the representations object to the application and the other four support the application. The two objectors live at the same address.

15. The representations objecting to the application in summary state that:

- Noise nuisance is caused by customers approaching and leaving the premises and locale, the revving of customers, car engines and the banging of customers' car doors.
- Customers of the premises engage in anti-social behaviour including shouting, screaming, public urination, and the depositing of waste in the locale.
- The operation of the premises gives rise to a risk to public safety due to bottles being discarded in the locale and large amounts of waste arising from the premises left in the locale. A risk to public safety is caused by the premises allowing customers to become extremely intoxicated (at risk to their own health). A risk to public safety is caused due to local residents suffering sleep deprivation caused by the operation of the premises.
- That the current operation (and proposed continued operation) of the premises is not in keeping with the locale which is primarily residential in nature.
- That the style of offering provided under the current licence (and which will be permitted by the proposed licence) has changed since the premises first opened and that the premises no longer operates primarily as a food led venture.

16. The representations in support of the application in summary state that:

- The premises are an asset to the area and add to the local community
- That the premises are not a source of noise nuisance
- That the premises are operated responsibly and engage with the local community
- That the premises offer needed leisure facilities for the locale

- That anti-social behaviour hasn't arisen as a result of the premises' operation
- That the premises are in keeping with the regeneration of the locale
- Copies of the representations are attached as Appendix B.

### **Conciliation**

17. On 10 October 2018 the applicant provided a reply to the objectors. The reply outlined the background of the applicant company and the current operation of the premises. The reply also stated that the applicant would be happy to meet with the objectors to discuss the management policies in respect of the premises. The reply was sent to local residents on 11 October 2018. As of the writing of this report there has been no time for the objectors to respond to the applicant's reply, however should any responses be submitted then the licensing sub-committee will be apprised of them at the hearing to determine this application.
18. A copy of the applicant's reply to the objectors is attached as Appendix C.

### **Premises history**

19. A time limited premises licence with a duration of 1 October 2015 to 1 October 2016 was issued on 29 September 2015. A copy of the licence is attached in Appendix D.
20. A time limited premises licence with a duration of 2 October 2016 to 30 November 2017 was issued on 20 May 2016. A copy of the licence is attached in Appendix D.
21. A time limited premises licence with a duration of 1 December 2017 to 30 November 2018 was issued on 16 October 2017. A copy of the licence is attached in Appendix D.
22. A list of Temporary Event Notices submitted in regards to the premises is attached as appendix E.
23. Details of visits to the premises by licensing officers are attached as appendix F.

### **Deregulation of entertainment**

24. On 6 April 2015 entertainment became deregulated and as a result:
  - Live unamplified music is deregulated between 08:00 and 23:00 on any premises.
  - Live amplified music and recorded music are deregulated between 08:00 and 23:00 at on licensed premises for an audience of up to 500 people.
  - Plays and the performance of dance are deregulated between 08:00 and 23:00 for an audience of up to 500 people.
  - Indoor sporting events are deregulated between 08:00 and 23:00 for an audience of up to 1000 people.

25. Live music and recorded music can become licensable in on-licensed premises if the licensing authority removes the effect of deregulation following a licence review ('licence review mechanism').
26. The showing of films has not been de-regulated.

### **Map**

27. A map showing the location of the premises is attached to this report as Appendix G. The following licensed premises are also shown on the map and provide licensable activities as stated below :

**The Printworks, 1 Surrey Quays Road, London SE16 7ND** licensed for:

- Live music, recorded music, entertainment similar to live / recorded music, films, indoor sporting events plays, the sale of alcohol to be consumed on or off the premises:
  - Sunday to Thursday: from 10:00 to 01:00
  - Friday & Saturday: from 10:00 to 02:00.
- Late night refreshment:
  - Sunday to Thursday: from 23:00 to 01:00
  - Friday & Saturday: from 23:00 to 02:00.

**Gala Club, Surrey Quays Leisure Park, Surrey Quays Road, London SE16 1LL** licensed for:

- Live music, recorded music entertainment similar to live / recorded music, films performance of dance, plays:
  - Monday to Sunday: from 09:00 to 03:00.
- Late night refreshment:
  - Monday to Sunday: from 23:00 to 03:00.
- The sale of alcohol to be consumed on or off the premises:
  - Monday to Saturday from 09:00 to 23:00
  - Sunday from 12:00 to 22:30.

**Hollywood Bowl, 3A Teredo Street, London SE16 7LW** licensed for:

- Films and the sale of alcohol to be consumed on and off the premises
  - Monday to Sunday: from 10:00 to 01:00.
- Indoor sporting events:
  - Monday to Sunday: from 09:00 to 01:00.
- Recorded music:

- Monday to Sunday: from 08:00 to 01:30

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

28. 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.
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. The premises are located in Canada Water major town centre area. Closing times suggested in the statement of licensing policy for relevant types of licensed premises located in Canada Water major town centre area are:
- Restaurants and cafes:
    - Friday to Saturday: 01:00
    - Sunday to Thursday: 00:00.

- Public houses, wine bars or other drinking establishments
  - Friday to Saturday: 00:00
  - Sunday to Thursday: 23:00.

### **Resource implications**

31. A fee of £315.00 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 C.

### **Consultation**

32. 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 similar notices were exhibited outside of the premises for a period of 28 consecutive days.

### **Community impact statement**

33. 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**

34. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
35. The principles which sub-committee members must apply are set out below.

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

36. 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.
37. 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
38. 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**

39. 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.
40. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
41. 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.
42. 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.
43. 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**

44. 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**

45. 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.
46. 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**

47. 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.
48. 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.
49. 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.
50. 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.

51. 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.
52. 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.
53. 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.
54. 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**

55. 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**

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

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
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 Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Copy of the application and support documents
Appendix B	Copies of representations submitted by other persons
Appendix C	Copies of the applicants reply to the objectors
Appendix D	Copies of previous premises licences issued in respect of the premises
Appendix E	Details of temporary event notice submitted in respect of the premises
Appendix F	Details of licensing visits to the premises
Appendix G	Map of the local area

## 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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