

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 14 November 2018	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		Licensing Act 2003, Hop King Brewery Limited – 16 Druid Street, London, SE1 2EY	
<b>Ward(s) of group(s) affected</b>		London Bridge and West Bermondsey Ward	
<b>From</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Hop King Brewery Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Hop King Brewery – 16 Druid Street, London, SE1 2EY.
2. Notes:
  - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from responsible authorities and is therefore referred to the sub-committee for determination.
  - b) Paragraphs 8 to 11 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 12 to 16 of this report deal with the representations submitted in respect of the application. Copies of the representation submitted by the responsible authorities and attached to this report in **Appendix B** and copies of representations from other persons attached in **Appendix C**. A map showing the location of the premises is attached to this report as **Appendix E**.
  - 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 21 September 2018 Hop King Brewery Limited applied for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Hop King Brewery – 16 Druid Street, London, SE1 2EY. The premises are described in the application as being:

*“A skateboard entertainment venue located in two railway arches accommodating a skate park, shop, Company offices, back of house and with facilities for consumption of alcohol on the premises.”*

9. The hours applied for are summarised as follows:

The sale by retail of alcohol (both on and off sales only)

- Monday to Sunday 11:00 to 23:00

Opening hours

- Monday to Sunday 11:00 to 23:00

10. The Designated Premises Supervisor is to be Alexi Spasic, who holds a personal licence with the London Borough of Lewisham.
11. The premises licence application form provides the applicant's operating schedule. Parts A, B, C, E, F, G, H, 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 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. A copy of the application and premises plan is attached to this report in **Appendix A**.

### **Representations from responsible authorities**

12. Representations had been received from three Responsible Authorities, but have since been conciliated.
13. A representation had been received from the Council's Environmental Protection Team which raises concerns regarding the prevention of public nuisance. Additional conditions were requested and have since been agreed and representation is therefore withdrawn. The conditions are:
1. *That customers shall not use any outside area other than those who temporarily leave the premises to smoke, and no more than 10 people shall be permitted to do so at any one time;*
  2. *No drinks shall leave the premises other than off sales that are sold in a sealed container for consumption away from the premises;*
  3. *External waste handling, collections, deliveries and the cleaning of external areas shall only occur between the hours of 08.00 and 20.00;*
  4. *Noise from plant, patrons and activities at the premises shall be managed to ensure that public nuisance shall not be caused in the vicinity of the premises or intrude inside the nearest or most exposed noise sensitive premises.*
14. A representation has been submitted by the Licensing Authority in their role as Responsible Authority asking for additional conditions, which have

been agreed and the representation withdrawn. The conditions agreed are as follows:

1. *Any 'off-sales' of alcohol shall be provided in sealed containers and taken away from the premises;*
2. *Clear legible signage, shall be prominently displayed where it can be easily seen and read, requesting that alcohol sold as off-sales should not be opened and consumed in the vicinity of the premises;*
3. *That no drinks in opened containers shall be allowed outside the premises. This includes the area directly outside the front exit doors;*
4. *The total number of patrons on the premises at any one time not exceed 120 excluding staff.*

The representations and details of withdrawals between the Applicant and the Responsible Authorities are all available in **Appendix B**.

### **Representations from other persons**

15. Representations have been received from five persons, a Ward Councilor and local residents. The objections are concerned with the potential for public nuisance and noise that may be generated from the premises and the proximity to residential dwellings. Redacted versions of the representations are available in **Appendix C**.

### **Conciliation**

16. All representations were sent to the Applicant. All representations from the Responsible Authorities have been conciliated and withdrawn. The Applicant was offered the opportunity to write to the other person objectors. A copy of that correspondence is contained in **Appendix D**. At the time this report was composed, no responses or withdrawals had been forthcoming.

### **Premises history**

17. This is a new licensed premises, with little history. The premises has received some Temporary Events Notices in the last year, namely:

Applicant	Activities	Dates	Counter Notice
Benjamin Hopkinson	The sale by retail of alcohol (on and off)	12 October 2018 19:00 to 23:00	No
Benjamin Hopkinson	The sale by retail of alcohol (on and off)	7 November 2018 12:00 to 22:30	No
Benjamin Hopkinson	The sale by retail of alcohol (on and off)	2 to 4 November 2018 12:00 to 22:30	No

18. There is no history of complaints against this premises.

## Map

19. A map showing the location of the premises is attached to this report as **Appendix E**. Whilst there are an increasing number of licensed premises in the locality, the following are a list of licensed premises in the immediate vicinity of the application:

- **Elmadero – 30 Druid Street, SE1 2EH**

The sale by retail of alcohol (both on and off sales)

- Monday to Sunday 09:00 to 23:00

- **Wawa Restaurant – 173 Tower Bridge Road, SE1 2AW**

The sale by retail of alcohol (both on and off sales)

- Monday to Sunday 11:00 to 23:00

The provision of regulated entertainment in the form of recorded music (indoors)

- Monday to Sunday 08:00 to 23:00

- **Southwark Brewing Company – 46 Druid Street, SE1 2EZ**

The sale by retail of alcohol (both on and off sales)

- Sunday to Friday 11:00 to 23:00
- Sunday 09:00 to 23:00

## Southwark council statement of licensing policy

20. Council Assembly approved Southwark's statement of licensing policy 2011-14 on 12 October 2011 Council Assembly approved Southwark's Statement of Licensing Policy 2016-20 on 25 November 2015. The policy came into effect on 1 January 2016.

21. Further 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 – Which 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 - Which 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 – Which 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 – Which 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 – Which provides general guidance on the promotion of the first licensing objective
  - Section 9 – Public Safety – Which provides general guidance on the promotion of the second licensing objective
  - Section 10 – The Prevention of Nuisance – Which provides general guidance on the promotion of the third licensing objective
  - Section 11 – The Protection of Children from Harm – Which provides general guidance on the promotion of the fourth licensing objective.
22. 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.
23. Within Southwark’s Statement of Licensing Policy, the premises sits outside of a Cumulative Impact Policy Area but within the Bankside, Borough and London Bridge Strategic Cultural Area. Under the Southwark Statement of Licensing policy 2016 - 2020 the premises within this application would fall under the recommended closing times:
- Closing time for Public Houses Wine bars or other drinking establishments:
- Sunday to Thursday until 23:00
  - Friday and Saturday until 00:00

### **Resource implications**

24. 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 C.

### **Consultations**

25. 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**

26. 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 & Democracy**

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

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

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

29. 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.

30. 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

31. 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**

32. 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.
33. The four licensing objectives are:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm
34. 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.
35. 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.
36. 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**

37. 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**

38. 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.

39. 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**

40. 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.
41. 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.
42. 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.

43. 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.
44. 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.

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.

45. 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.
46. 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**

47. Members are required to have regard to the DCMS guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark statement of licensing Policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Representations by Responsible Authorities - conciliated
Appendix C	Representations submitted by Other Persons
Appendix D	Response from Applicant to Other Persons
Appendix E	Map of the locality

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Andrew Heron, 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 & Democracy	Yes	Yes
Strategic Director of Finance and Governance	No	No
<b>Cabinet Member</b>	No	No
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