

Item No. 6.	Classification: Open	Date: 14 February 2020	Meeting Name: Licensing Sub-Committee
Report Title		Licensing Act 2003: Drake & Morgan, 48-50 Tooley Street, London SE1 2TF	
Ward(s) of group(s) affected		London Bridge and West Bermondsey	
From		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Drake & Morgan Limited for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Drake & Morgan Ltd, 48-50 Tooley Street, London SE1 2TF.
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 9 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 10 to 16 of this report deal with the representations submitted and any further correspondence in respect of the application. Copies of the representations are attached as Appendix B.
 - d) Paragraph 20 deals with licensed premises within a 100 metre radius of the premises. A map of the area is attached as Appendix C.
 - e) 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 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 29 November 2019, Drake & Morgan Ltd applied to this council for the grant of a premises licence in respect of Drake & Morgan Ltd, 48-50 Tooley Street, London SE1 2TF. The premises is described as a bar with provision for substantial food at all times. The application is summarised as follows:
 - **Recorded Music (indoors):**
 - Monday to Saturday: 23:00 to 01:00
 - Sunday: 23:00 to 00:00
 - **Late night refreshment (indoors):**
 - Monday to Saturday: 23:00 to 01:00
 - Sunday: 23:00 to 00:00
 - **Supply of alcohol (on and off the premises):**
 - Monday to Saturday: 08:00 to 01:00
 - Sunday: 10:00 to 00:00
 - **Operating hours:**
 - Monday to Saturday: 08:00 to 01:00
 - Sunday: 10:00 to 00:00

9. 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 the information provided in 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 is attached to this report in Appendix A.

Representations from responsible authorities

10. There are representations from Metropolitan Police Service and licensing as a responsible authority.
11. The police are concerned that the premises is situated in the Bankside, Borough, London Bridge strategic cultural and Bankside and Borough district town centre area and also falls within the Borough and Bankside cumulative impact policy area. The applicant has also failed to allow for drinking up times within the application and they would like to see at least 30 minutes between alcohol sales stopping and the premises closing.
12. The police also raised concern that the premises is described as a bar with the provision of serving food. This would allow people to drink without eating which carries a higher risk than a premises operating as a restaurant. In addition the application does not specify SIA, which they would expect from any premises in the area wanting to operate into the early hours of the morning.
13. Any additional premises within the cumulative impact zone should be refused, as they will have an impact on the area, which the policy is implemented to stop. The applicant has failed to address the rebuttable presumption to refuse. If the applicant were able to demonstrate to the licensing committee that they will not have an impact the police have recommend the conditions to be agreed and be inclusive within the licence if granted.
14. The licensing representation is based on the Southwark statement of licensing policy 2019 – 2021 and relates to the licensing objectives for the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. The licensing authority advise that the premises is situated within the Bankside, Borough, London Bridge strategic cultural & London Bridge district town centre area and also situated in the Borough and Bankside CIP Area. Under the Southwark statement of licensing policy 2019 – 2021 the appropriate closing times in the area for public houses, wine bars or other drinking establishments on Sunday to Thursday is 23:00 and for Friday and Saturday 00:00 and the appropriate closing times for restaurants and cafes on Sunday to Thursday is 00:00 and for Friday and Saturday is 01:00.
15. The Licensing authority advise that the applicant has not addressed the presumption to refuse this application within the operating schedule. They therefore recommend refusal of this application unless the applicant can demonstrate that the premises will not contributing to crime and disorder and public nuisance within the policy area. To promote the licensing objectives, they ask the applicant to consider amending the closing times and to allow for drinking time and in (and in turn the hours for licensable activities) to bring them in line with the policy. Licensing has also submitted conditions to be agreed by the applicant and to be included in the licence if granted.

16. The representations are attached as Appendix B.

Representations from other persons

17. There are no representations from other persons.

Conciliation

18. The representations were forwarded to the applicant representative. The licensing sub-committee will be updated on 14 February 2020 of any developments.

Deregulation of entertainment

19. 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.

20. 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').

21. The showing of films has not been de-regulated

Map of the local area

22. A map showing the location of the premises is attached to this report as Appendix C. London Bridge Station has experienced a high level of recent development and regeneration. There is a high concentration of licensed premises in the immediate vicinity both as part of the station complex and the wider locality. More premises are expected to open shortly. Examples of those in the vicinity are namely:

McDonald's, Unit 74 Tooley Street West, London Bridge Station, London SE1 2TF

- The provision of late night refreshment (both indoors and outdoors):
 - Sunday to Thursday from 23:00 to 00:00
 - Friday and Saturday from 23:00 to 01:00

Vivat Bacchus Restaurant, 4 Hays Lane, London SE1 2HB

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

- Monday to Friday from 08:00 to 00:30
- Saturday from 10:00 to 00:30
- Sunday from 10:00 to 23:30.
- The provision of late night refreshment (both indoors and outdoors):
 - Monday to Friday from 23:00 to 00:30
 - Saturday from 23:00 to 00:30
 - Sunday from 23:00 to 23:30.
- The provision of regulated entertainment in the form of live music (indoors):
 - Monday to Friday from 20:00 to 00:00
 - Saturday from 12:00 to 00:00
 - Sunday from 12:00 to 23:30.
- The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Friday from 07:00 to 00:30
 - Saturday from 10:00 to 00:30
 - Sunday from 10:00 to 23:30.

Control Risks Group Ltd, 4th Floor, Cottons Centre, London SE1 2QG

- The sale by retail of alcohol (both on and off sales):
 - Monday to Saturday from 10:00 to 23:00
 - Sunday from 12:00 to 22:30.
- The provision of late night refreshment (indoors):
 - Monday Saturday from 23:00 to 23:30.

Price Waterhouse Coopers, 1 Hays Lane, London SE1 2RD

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 07:30 to 23:00.
- The provision of regulated entertainment in the form of recorded music (indoors):
 - Monday to Sunday from 07:30 to 23:00.

London Bridge City, 1 Battle Bridge Lane, London SE1 2HP

- The sale by retail of alcohol (both on and off sales):
 - Monday to Sunday from 10:00 to 22:00.
- The provision of regulated entertainment in the form of live and recorded music, performances of dance and anything similar (outdoors):

- Monday to Sunday from 10:00 to 22:00.

Upper Crust, Unit B, London Bridge Railway Station, London SE1 9SP

- The provision of late night refreshment (indoors):
 - Monday Sunday from 23:00 to 05:00.

Nero Express, Unit A, London Bridge Railway Station, London SE1 9SP

- The provision of late night refreshment (indoors)
 - Monday Sunday from 23:00 to 05:00.

Delice De France, London Bridge Kiosk, Railway Approach, London SE1 9SP

- The provision of late night refreshment (indoors):
 - Monday Sunday from 23:00 to 05:00.

Leon, Unit 43 London Bridge Station, Railway Approach, London SE1

- The provision of late night refreshment (indoors):
 - Sunday to Thursday from 23:00 to 00:30
 - Friday and Saturday from 23:00 to 01:00.
- The sale by retail of alcohol (both on and off sales):
 - Sunday to Thursday from 11:00 to 00:00
 - Friday and Saturday from 11:00 to 00:30.

Borough and Bankside cumulative impact zone

23. Council assembly approved the introduction of a special policy for Borough and Bankside on the cumulative impact of a concentration of licensed premises (saturation/cumulative impact policy) on 5 November 2008, and extended the area in April 2011. This application falls within the policy area.
24. The decision to introduce saturation policy was taken with regard to the committee's concern over rising trends of late night alcohol related violence against the person and late night disorder and rowdiness associated with late night licensed premises in the area.
25. The effect of this special policy is to create a presumption that applications for new premises licences or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
26. The applicant has been advised to address the committees concerns around cumulative impact at the meeting.

Southwark council statement of licensing policy

27. Council assembly approved Southwark's Statement of Licensing Policy 2019-21 on 27 March 2019. 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. To be read in conjunction with Appendix B to the policy.
 - 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.
28. 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.
29. Within the Southwark statement of licensing policy 2019 - 2021 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Restaurants and cafes:
 - Sunday to Thursday: 00:00
 - Friday and Saturday is 01:00..

- Public Bars, Wine Bars and other drinking establishments:
 - Sunday to Thursday: 23:00
 - Friday and Saturday: 00:00
 - There are no restriction times for hotel bars and guest houses.

Resource implications

30. 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.

Consultations

31. 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

32. 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

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

Principles for making the determination

35. 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.
36. 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.
37. 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

38. 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.
39. The four licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
40. 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.
41. 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.
42. 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

43. 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

44. 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.
45. 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

46. 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.
47. 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.
48. 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.

49. 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.
50. 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.
51. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
52. 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.
53. 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

54. Members are required to have regard to the Home Office 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

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

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Licensing Act 2003	Southwark Licensing, C/O	Mrs Kirty Read

Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Community Safety and Enforcement, 160 Tooley Street, London, SE1 2QH	Tel: 020 7525 5748
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APPENDICES

Name	Title
Appendix A	Application for a premises licence
Appendix B	Representations submitted by responsible authorities
Appendix C	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	31 January 2020	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		3 February 2020