

Item No. 6.	Classification: Open	Date: 6 August 2019	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Hawkes, 90 Druid Street, London SE1 2HQ	
Ward(s) or groups affected:		London Bridge & West Bermondsey	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made under Section 51 of the Licensing Act 2003 by a local resident for a review of the premises licence issued in respect of the premises known as Hawkes, 90 Druid Street, London SE1 2HQ.
2. Notes:
 - a) The grounds for the review are stated in paragraph 17 and 21 of this report. A copy of the full application is provided as Appendix A.
 - b) A copy of the current premises licence issued in respect of the premises is attached to this report as Appendix B.
 - c) Paragraphs 22 to 30 of this report deals with the representations submitted in regards to the review application. Copies of the representations are attached as Appendices C and D.
 - 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 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 interested parties 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(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

KEY ISSUES FOR CONSIDERATION

The premises licence

9. The premises is a railway arch which is used as a facility for brewing beer and providing a bar/shop selling specialist beer and other alcoholic drinks. It is one of a growing number of craft breweries that have become established over the past few years in and around the Bermondsey area which forms part of the Bermondsey Beer Mile.
10. The current licence issued in respect of the premises known as Hawkes, 90 Druid Street, London SE1 2HQ was issued to Hawkes Cider Limited. The premises was originally sited at Arch 92. However, very recently the licensed premises for Hawkes moved from Arch 92 to Arch 90. Below is the information relating to that application.
11. The applicant carried works which required changing the licensed area from Arch 92 to Arch 90. This application for Arch 90 and plan replicated the licence (857527) for Arch 92. Upon the successful grant of this application the Arch 92 licence (857527) was surrendered.
12. The outside management policy as previously approved will continue to be adopted. The licence for Arch 90 was therefore issued in March 2019. However this report will also include the history of Arch 92.
13. The licence permits the following licensable activities during the hours shown:

The current premises licence

14. The premises licence allows for the following activities
- Sale of alcohol for consumption on premises:
 - Monday to Sunday from 10:00 to 22:30
 - Sale of alcohol for consumption off premises:
 - Monday to Sunday from 10:00 to 23:00

- Operating Hours:
 - Monday to Sunday from 07:00 to 23:00.

15. A copy of the current premises licence is attached to the report as Appendix B.

Designated premises supervisor

16. The designated premises supervisor (DPS) is Amber Smith who has a personal licence issued by Lewisham Council.

The application for a review of the premises licence

17. On 15 June 2019 an application for the review of the premises licence was submitted by a local resident. The grounds for the review relate to the following licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm.

18. The application details that since the Hawkes opened in September 2017, residents across the Arnold Estate, have been subject to severe anti-social behaviour and nuisance noise. A variety of interventions have been attempted by residents including; calling the bar (whom, it is alleged, do not answer their phone), lodging several complaints with noise and licensing teams, and raising the matter with ward councilors. However, the numerous breaches of licence continue. Below is a sample of the most frequently breached conditions.

- 342 - No internal waste handling after 20:00
- 343 - Noise not managed
- 353 - No entry to children after 20:00
- 355 - Customers outside should only be in designated drinking area (not across the street outside flats or sitting in the public highway)
- 356 - No more than 30 customers are permitted in outside drinking area
- 357 - The designated drinking area must be cleared by 22:00
- 358 - The premises display a prominent telephone number for local residents
- 361 - On Saturday's from noon until closing a minimum of one SIA will control outside drinking (this individual usually turns up about 14:00, spends little time outside and when he does, turns a blind eye to breaches or out of control customers)

19. The applicant further adds that escaping the weekly anti-social behaviour is not an option and after two years of residents being unable to open their windows, read a book, watch a film without hearing drunks shouting, competing to be heard over each other, trains and traffic (in what is increasingly a main traffic route).

20. A table of complaints which makes references to video clips relating to incidents on various dates is submitted and forms part of the application.
21. The review application in its entirety and the table of complaints are attached as Appendix A.

Representation from responsible authorities

22. A representation has been submitted by licensing (as a responsible authority).
23. The representation submitted by licensing supports the review application under the prevention of crime and disorder, the prevention of public nuisance and public safety licensing objectives and has regard to the Southwark statement of licensing policy 2019 – 2021.
24. They note that at the time this review was submitted on 15 June 2019 the designated premises supervisor was Megan Elizabeth Drummond and an application to vary the DPS to Jennifer Macfarlane was received on 25 June 2019.
25. Following ongoing complaints, licensing officers visited the premises on 29 June 2019 to carry out an inspection and found the premises to be in breach of the licence conditions a warning letter was sent to the licensee on 2 July 2019. A copy of the warning letter forms part of the licensing representation.
26. There have been previous complaints to the licensing unit regarding noise and antisocial behaviour from the patrons of the premises and officers of the councils night time economy team and noise team have been monitoring the area.
27. The representation is attached as Appendix C.

Representations from other persons in support of review application

28. There are four further representations submitted by other persons (consisting of a local ward councillor and three local residents) in support of the review. The representations are based on all for licensing objectives. They are concerned about the impact the business is currently having on residents on the Arnold Estate and feel that the mental health and physical safety of residents are being compromised.
29. They are further concerned by public nuisance and noise from patrons using the actual street (Druid Street) to consume alcohol; patrons using the Arnold Estate to sit and consume alcohol; public urination by patrons on the estate in front of children; and patrons leaving/discarding bottles along the walls and leaving broken bottles/rubbish on the estate.
30. Their representations are attached as Appendix D.

Licensing operating history

31. The licensing service has received a considerable number of complaints regarding this premises, (then 92 Druid Street) made on a very regular basis over a period of time. Often these have been accompanied by very short video clips intended to emphasise the points made. These have primarily dealt with allegations of nuisance and disturbance caused by customers of Hawkes drinking immediately outside of the premises and upon occasions spreading into and across the road.

32. Given the frequency of complaints, this premises has been the subject of regular visits by officers on the partnership night time economy team. These are detailed in full in Appendix E.
33. Since the review application was submitted there have been two applications to vary the designated premises supervisor (DPS). The first was submitted on 25 June 2019 to vary the DPS from Megan Elizabeth Drummond to Jennifer MacFarlane. The second was submitted on 19 July 2019 to vary the DPS from Jennifer MacFarlane to Amber Smith. A licence was issued to that effect.

Temporary event notices (TENs)

34. Below is the recent history of TENs applied for in respect of the premises in 2019.

No.	Date of event	Time of event and activities
1	19 to 20 July 2019	11:00 to 00:00 - Alcohol

The local area

35. A map of the area is attached to this report as Appendix F. The premises is identified by a diamond at the centre of the map. For purposes of scale only, the circle on the map has a 100 metre radius. The following licensed premises including terminal hours are also shown on the map:

Public houses/restaurant/brewery

- Marquis of Wellington Public House, 21 Druid Street, London SE1 (Monday to Wednesday until 23.00, Thursday until 00.00, Friday and Saturday until 01.00 and Sunday until 00.00) - granted 1 October 2005
- Elmadero, Railway Arch 840, 30 Druid Street, London SE1 (Monday to Sunday until 23.00) granted 18 October 2011
- Southwark Brewing Company Limited, 46 Druid Street, London SE1 (Monday to Sunday until 23.00) - granted 29 July 2014
- Doodle Bar, 60 Druid Street, London SE1 (Sunday to Thursday until 00:00 and Friday and Saturday until 01:00) - granted 29 September 2016
- St John Bakery Company Ltd, 72 Druid Street, London SE1 (Monday to Sunday until 23.00) - granted 9 August 2011
- Bea's of Bloomsbury Railway Arch, 76 Druid Street, London SE1 (Monday to Sunday until 22.00) - granted 9 June 2012
- Speckmobile Railway Arch, 76 Druid Street, London SE1 (Monday to Saturday until 23.00 and Sunday until 22:30) - granted 31 October 2017
- Lassco, Ropewalk and Arches 46 and 48 to 53, London SE1 (Wednesday to Sunday until 17:30) - granted 24 May 2012
- Lassco, 37 Maltby Street, London SE1 (Monday to Sunday until 23:00) - granted 17 August 2017

- Maltby Restaurant, 40 Maltby Street, London SE1 (Wednesday to Saturday until 01:00 and Sunday until 17:30) - granted 12 June 2012
- Comptoir Gourmand, 98 Druid Street, London SE1 (Monday to Sunday until 23:00) - granted 1 January 2016
- Anspach & Hobday, 116 - 118 Druid Street, London SE1 (Monday to Sunday until 23:00) - granted 17 January 2014
- Rinneroon, 130 Druid Street, London SE1 (Monday to Saturday until 23:00 and Sunday until 18:00) - granted 3 August 2018
- Bottles, 128 Druid Street, London SE1 (Monday to Sunday until 23:00) - granted 16 April 2014
- Lemporio, 134 Druid Street, London SE1 (Sunday to Wednesday until 22:00 and Thursday to Saturday until 23:00) - granted 15 September 2016
- Thames Takeaway, 140 Tanner Street, London SE1 (Sunday to Thursday until 00:00 and Sunday until 00:30) - granted 17 January 2006
- Ronnies Supermarket, 116-118 Tanners Street, London SE1 (Monday to Saturday until 23:00 and Sunday until 22:30) - granted 5 August 2005.

Deregulation of entertainment

36. 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 is deregulated between 08:00 and 23:00 provided the audience does not exceed 500 people.

37. However, live music can become licensable in on-licensed premises if the licensing authority removes the effect of the deregulation following a licence review ('licence review mechanism').

Southwark council statement of licensing policy

38. 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.

39. 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.
40. Within the Southwark statement of licensing policy 2016 - 2020 the following closing times are recommended as appropriate within this area for this categories of premises as follows:
- Closing time for restaurant, cafés, public houses, wine bars or other drinking establishments: 23:00 daily

Resource implications

41. No fee is payable in respect of an application for licence review.

Consultation

42. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was exhibited outside the premises for a period of 28 days.

Community impact statement

43. 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

44. The sub-committee is asked to determine, under Section 52 of the Licensing Act 2003, 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.

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

Principles for making the determination

46. The licensing authority must hold a hearing to consider an application for review of a premises licence where:

- The application is properly made in accordance with Section 51 of the Act
- The applicant has given notice in accordance with Section 51(3) of the Act
- The advertising requirements provided for under Section 51(3) of the Act are satisfied
- The licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious
- The licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

Reasons

47. 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

48. 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.
49. 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

50. 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.
51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. 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.

57. 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

58. 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

59. 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	Kirby Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Review application
Appendix B	Premises licence
Appendix C	Responsible authority representation
Appendix D	Representations in support of the review application
Appendix E	Visits logged by the night time economy team
Appendix F	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	25 July 2019	
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	26 July 2019	