

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 15 April 2021	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report Title</b>		MIK K-Pop Festival, Southwark Park, South Section, Hawkstone Road, London SE16 2PE	
<b>Ward(s) of group(s) affected</b>		Rotherhithe	
<b>From</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

1. That the licensing sub-committee considers whether an application made by Magic Sound Limited for a time limited premises licence be granted under the Licensing Act 2003 in respect of the premises known as Southwark Park, South Section, Hawkstone Road, London SE16 2PE.
2. Notes:
  - a) This application is submitted under Section 17 of the Licensing Act 2003 and is for a time limited premises licence. The application is subject to representations submitted by responsible authorities and an 'other person' and is therefore referred to the licensing sub-committee for determination.
  - b) Paragraphs 8 to 15 of this report provide a summary of the application. Copies of the full application and related documentation are attached as Appendix A.
  - c) Paragraphs 16 to 24 of this report deal with the representations submitted in respect of the application. Copies of the representations submitted by responsible authorities, and related correspondence, are attached to this report as Appendix B. Copies of the representation submitted by the 'other person', and related correspondence, are attached to this report as Appendix C. A plan showing the location of the event area within Southwark Park is attached to this report as Appendix E. A map showing the location of Southwark Park is attached as Appendix F.
  - 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 11 February 2021 Magic Sound Limited applied to this council for the grant of a time limited premises licence in respect of Southwark Park, South Section, Hawkstone Road, London SE16 2PE.
9. The application is for a time limited premises licence to have effect on one weekend, a Saturday and the immediately following Sunday only, between 1

June 2021 and 30 September 2023 to facilitate a festival known as the 'MIK K – Pop Festival'. The application is summarised as follows:

- **The provision of plays, films, live music, recorded music, performance of dance, any thing similar to live or recorded music:**
    - Saturday: 12:00 to 22:00
    - Sunday: 12:00 to 22:00
  - **The sale of alcohol for consumption on the premises**
    - Saturday: 12:00 to 21:30
    - Sunday: 12:00 to 21:30
  - **Proposed opening hours of the premises**
    - Saturday: 12:00 to 22:15
    - Sunday: 12:00 to 22:15
  - The application seeks to allow up to 14999 people to attend the premises at any one time.
10. The premises licence application form includes an 'operating schedule'. Parts A, B, E, F, G, J, K, L and M of the operating schedule set out the proposed licensable activities, operating hours and operational control measures in full with reference to the four licensing objectives. 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. An event management plan was submitted with the application. Copies of the application and the event management plan are attached to this report as Appendix A.
11. The premises are a specified section of a Southwark Park which will be fenced off. The section of the park to be used is shown in the premises plan attached as Appendix D.
12. **NB** - The council's events team already holds a premises licence that allows for the provision of regulated entertainment in the entirety of Southwark Park (licence number 010878), however the licence only allows for events in respect of up to 4999 attendees and does not allow for the sale of alcohol. Details of licence number 010878 are as follows:
- **The provision of plays, films, live music, recorded music, performance of dance, anything similar to live or recorded music:**
    - Monday to Thursday: 10:00 to 21:00
    - Friday and Saturday: 10:00 to 22:00
    - Sunday: 11:00 to 21:00

- **Opening hours of the premises:**
    - Monday to Sunday: 08:00 to 22:00.
13. At any event in Southwark's parks or open spaces pertaining to which the event organiser proposes to allow for more than 4999 attendees, or to allow for the sale of alcohol, a new (time limited) premises licence must be applied for to allow both. There are two other matters, outlined below, which the above application seeks to address and thus, fundamentally the application is to:
- Allow for up to 14999 attendees (instead of 4999 as is permitted by the premises licence held in respect of Southwark Park by the council's events team)
  - Allow the sale of alcohol at the proposed event (which is not permitted by the premises licence held in respect of Southwark Park by the council's events team)
  - Allow regulated entertainment to take place until 22:00 on the Sunday of the event (the premises licence held in respect of the park by the council's events team only allows for regulated entertainment to take place until 21:00 on Sundays).
  - Allow the event site to be open to the public until 22:15 on both the Saturday and Sunday of the event (the premises licence held in respect of the park by the council's events team only allows for event sites to be open to the public until 22:00 on Saturdays and Sundays).
14. Please note that permission for the event to take place has already been granted by the council's events team. If this application is not granted the event can still take place under licence 010878, albeit only for up to 4999 attendees, without the sale of alcohol permitted and with curtailed operating hours. The 'other person' has been informed of this. The sub-committee are invited to consider the application in the above context.

### **Designated premises supervisor**

15. The proposed designated premises supervisor (DPS) is Harry Feigen.

### **Representations from responsible authorities**

16. Representations were submitted by this council's environmental protection team and also by the Metropolitan Police Service.
17. The representation submitted by the environmental protection team suggested a control measure that should become a condition of any licence issued subsequent to the application. The applicant agreed to amend the application to include the suggested control measure and the environmental protection team withdrew their representation.

18. The representation submitted by the Metropolitan Police Service suggested control measures that should become conditions of any licence issued subsequent to the application. Following discussions with the Metropolitan Police Service, the applicant agreed to amend the application to include various control measures and the Metropolitan Police Service withdrew their representation.
19. Copies of the representations submitted by the environmental protection team and the Metropolitan Police Service, and related correspondence, are attached as Appendix B.

### **Representations from other persons**

20. One representation objecting to the application was submitted by an 'other person', the other person being a local tenants and residents association.
21. The representation is concerned with the location within the park that the event is proposed to be held, the possible adverse effect on local sports teams who use the park and the possible deleterious effect that events taking place under the proposed licence may have on the fabric of the park. Other concerns also include the effect the event may have on public transport provision in the locale, possible noise and light nuisance arising from events held under the proposed licence, possible anti-social behaviour and crime and disorder related to the provision of events under the proposed licence and the risk of increased transmission of COVID-19 regarding events held under the proposed licence.
22. **NB** – The licensing sub-committee can only consider matters pertaining to the four licensing objectives and therefore the parts of the representation concerned with the possible deleterious effect that events taking place under the proposed licence may have on the fabric of the park, the possible adverse effect on local sports teams who use the park and the effect the event may have on public transport provision in the locale cannot be considered.
23. Concerns regarding possible noise and light nuisance, anti-social behavior, crime and disorder, the risk of increased transmission of COVID-19 and the effect that the proposed number of attendees will have on these issues can be considered by the licensing sub-committee.
24. A copy of the representation submitted by the other person is attached as Appendix C.

### **Conciliation**

25. The applicant was sent copies of all the representations. The applicant was advised that they could reply, via the licensing unit, to the representation submitted by the other person. The applicant was advised to contact directly any responsible authorities who had submitted representations.
26. The environmental protection team and the Metropolitan Police Service have now conciliated and have withdrawn their representations.

27. The applicant provided a response to the other person's representation and this response was sent to the other person however, at the time of the writing of this report, the representation submitted by the other person remains outstanding and so must be considered by the licensing sub-committee. The licensing sub-committee will be apprised to any conciliation of the other person, at the hearing to determine this application.

### **Premises history**

28. Southwark Council's events team holds a premise licence in respect of Southwark Park. The licence number is 010878 and was issued on 16 January 2007. Details of the licence are provided in paragraph 12 above. The licence allows for a maximum of up to 4999 attendees at events held under the licence. A copy of licence number 010878 is attached as Appendix D.
29. On 7 May 2013 a time limited premises licence, to have effect between 3 October 2013 and 6 October 2013 was issued to London Oktoberfest Limited. The licence allowed for the provision of live and recorded music and the sale of alcohol on Thursday and Friday between 16:00 and 23:00, on Saturday between 12:00 and 23:00 and on Sunday between 12:00 and 19:00. The licence allowed for a maximum of up to 4999 attendees at any event to be held under the licence.
30. On 7 May 2013 a time limited premises licence to have effect on 30 June 2016 only was issued to The London Borough of Southwark to facilitate an event known as 'Bermondsey Carnival'. The licence allowed for the provision of plays, films, live and recorded music performances of dance and entertainments similar to live and recorded music between 12:00 and 20:00. The licence allowed for the sale of alcohol between 12:00 and 19:45. The licence allowed for a maximum of up to 4999 attendees at any event to be held under the licence.
31. On 13 October 2018 a time limited premises licence to have effect between 7 November 2018 and 11 January 2019 was issued to Marcus Van Der Gaag to facilitate an event known as 'Alice in Wonderland Lantern Festival'. The licence allowed for the provision of recorded music, entertainment similar to live or recorded music and the sale of alcohol on Monday to Sunday between 15:00 and 21:00. The licence allowed for the provision of live music on Sunday to Thursday between 15:00 and 21:00 and on Friday and Saturday between 15:00 and 22:00. The application for this event was subject to representations and was determined at a licensing sub-committee hearing. The licence allowed for a maximum of up to 4999 attendees at any event to be held under the licence.
32. On 2 April 2019 a time limited premises licence, to have effect on 6 July 2019 only, was issued to Continental Drifts Limited to facilitate an event known as 'Bermondsey Carnival'. The licence allowed for the provision of plays, films, live and recorded music performances of dance and entertainments similar to live and recorded music and the sale of alcohol between 12:00 and 20:00.

The licence allowed for a maximum of up to 4999 attendees at any event to be held under the licence.

33. On 11 February 2021 Magic Sound Limited applied to this council for the grant of a time limited premises licence in respect of Southwark Park, South Section, Hawkstone Road, London, SE16 2PE.

### **Map**

34. A map showing the location of Southwark Park is attached to this report as Appendix F.

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

35. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021.
36. 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.

37. 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.
38. The statement of licensing policy states that the premises are located in a residential area. Below are closing times for various types of premises in residential areas in Southwark as suggested in the statement of licensing policy:
- Restaurants, cafes and takeaway establishments:
    - Monday to Sunday: 23:00
  - Public houses, wine bars or other drinking establishments:
    - Monday to Sunday: 23:00
  - Event premises/ spaces where sale of alcohol is included in, and ancillary to, range of activities including meals:
    - Monday to Sunday: 23:00
  - Night clubs:
    - Not considered suitable for residential areas.

### **Resource implications**

39. A fee of £2100.00 has been paid by the applicant in respect of this application, that fee being the statutory fee payable for premises within non-domestic rateable value band 'A' and where the additional fee in respect of 10000 – 14999 people being in attendance at the premises at any one time applies.

### **Consultation**

40. 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**

41. 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 Governance**

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

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

44. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
45. The principles which sub-committee members must apply are set out below.
46. 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.
47. 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.
48. 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**

49. 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.
50. The four licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of nuisance
  - The protection of children from harm.
51. 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.
52. 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.
53. 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**

54. 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**

55. 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.
56. 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**

57. 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.
58. 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.
59. 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.

60. 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.
61. 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.
62. 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.
63. 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.
64. 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**

65. 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**

66. 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 Home Office Revised Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety and Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

## APPENDICES

Name	Title
Appendix A	Copies of the application and related documentation
Appendix B	Copies of the representations submitted by the environmental protection team and the Metropolitan Police Service, and related correspondence
Appendix C	Copy of the representation submitted by an 'other person'
Appendix D	Copy of premises licence number 010878
Appendix E	Plan showing the location of the proposed event area in Southwark Park of the local area
Appendix F	Map showing the location of Southwark Park

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Wesley McArthur, Principal Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	29 March 2021	
<b>Key Decision?</b>	No	
<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 Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
<b>Date final report sent to Constitutional Team</b>		30 March 2021