

Committee: <b>Licensing Sub-Committee</b>	Date 11 April 2024	Classification <b>Unclassified</b>	Report No.	Agenda Item No.
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Report of: <b>David Tolley</b> <b>Head of Environmental Health and Trading Standards</b>  Originating Officer: <b>Mohshin Ali</b> <b>Senior Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a variation of a premises licence for (Captain Kidd), 108 Wapping High Street, London E1W 2NA</b>  Ward affected: <b>St Katharine's and Wapping</b>
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## 1.0 Summary

Licence holder:	<b>Samuel Smith (Southern)</b>
Name and Address of Premises:	<b>Captain Kidd 108 Wapping High Street London E1W 2NA</b>
Licence sought:	<b>Licensing Act 2003 - variation</b> <ul style="list-style-type: none"> <li><b>Extend the times for the sale of alcohol</b></li> </ul>
Representations:	<b>Residents / resident's association</b>

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and representations then adjudicate accordingly.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
<ul style="list-style-type: none"> <li>Guidance Issued under Section 182 of the Licensing Act 2003</li> <li>Tower Hamlets Licensing Policy</li> <li>File</li> </ul>		<b>Mohshin Ali</b> <b>020 7364 5498</b>

### 3.0 Background

- 3.1 This is an application for a variation of a variation of a premises licence for (Captain Kidd), 108 Wapping High Street, London E1W 2NA.
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**. The licensable activities and timings are as follows:

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

- *Monday to Saturday, from 11:00 hrs to 23:00 hrs*
- *Sunday, from 11:00 hrs to 22:30 hrs*

***The opening hours of the premises***

- *There are no restrictions on the hours during which this premises is open to the public (24 hours a day)*

*Non-standard times (refer to licence for other times)*

- *On New Year's Eve from the end of permitted hours to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).*

- 3.3 A copy of the variation application is enclosed as **Appendix 2**. The applicant has described the variation as:

*“Captain Kidd is a traditional Samuel Smith pub. This application is to remove all hours currently stated on the Premises Licence for the sale of alcohol, replace with standard hours Sunday to Thursday 11:00 to 23:00, extend the hours on Friday and Saturday until midnight and to add non-standard timings to extend for New Year's Eve”.*

- 3.4 The licensable activities and timings that have been applied for are as follows:

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

- *Monday to Thursday, from 11:00 hrs to 23:00 hrs (No change)*
- *Friday and Saturday, from 11:00 hrs to 00:00 hrs (midnight)*
- *Sunday, from 11:00 hrs to 23:00 hrs (No change)*

***The opening hours of the premises***

- *There are no restrictions on the hours during which this premises is open to the public (24 hours a day)*

*Non-standard times*

- *To end the hours from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.*

#### 4.0 **Location and Nature of the premises**

4.1 Maps of the venue are included as **Appendix 3**.

4.2 Photographs showing the vicinity are included as **Appendix 4**.

4.3 Details of the nearest licensed venues are included as **Appendix 5**.

#### 5.0 **Licensing Policy and Government Advice**

5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1<sup>st</sup> November 2023.

5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). It was last revised in December 2023.

5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

#### 6.0 **Representations**

6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing

6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.

6.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.

6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.

6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.

6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 6**.

- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
- Gary Lee - **(Appendix 7)**
  - Helene Thill - **(Appendix 8)**
  - Stuart Thomson - **(Appendix 9)**
- 6.9 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
  - The Metropolitan Police
  - London Fire Brigade
  - Planning Department
  - Health and Safety
  - Environmental Protection
  - Trading Standards
  - Child Protection
  - Public Health
  - Home Secretary (Home Office Immigration Enforcement)
- 6.10 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm
- 6.11 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objective(s), particularly the prevention of public nuisance and the prevention of crime and disorder.
- 6.12 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.
- 6.13 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

## **7.0 Conditions consistent with Operating Schedule**

7.1 No existing conditions.

## **8.0 Conditions proposed by the applicant**

8.1 *The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.*

8.2 *The CCTV system serving the premises shall:*

- a) be maintained fully operational and in good working order at all times;*
- b) make and retain clear images that include the points of sale of alcohol and facial images of the purchasers of the alcohol; and*
- c) show an accurate date and time that the images were made.*

8.3 *A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.*

8.4 *An incident log shall be kept at the premises and be available on request to the Police or an authorised officer. It must be completed within 24 hours of any incident and will record the following:*

- a) all crimes reported to the venue;*
- b) all ejections of patrons;*
- c) any complaints received concerning crime and disorder*
- d) any incidents of disorder;*
- e) all seizures of drugs or offensive weapons;*
- f) any faults in the CCTV system, searching equipment or scanning equipment;*
- g) any refusal of the sale of alcohol;*
- h) any visit by a relevant authority or emergency service.*

8.5 *Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.*

8.6 *A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone*

*number is to be made available to residents and businesses in the vicinity.*

- 8.7 *A written dispersal policy shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours.*
- 8.8 *The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.*
- 8.9 *No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 20:00 hours and 07:00 hours on the following day.*
- 8.10 *No collections of waste or recycling materials (including bottles) from the premises shall take place between 20:00 hours and 07:00 hours on the following day.*
- 8.11 *During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.*
- 8.12 *A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.*

## **9.0 Licensing Officer Comments**

- 9.1 The Business & Planning Act 2020 came into force on Wednesday 22nd July 2020 and provides a temporary permission for businesses that have a premises licence that permits them to sell alcohol in regards to the ability to sell alcohol as an off sale, i.e. for consumption off the premises. The permission will end on 31<sup>st</sup> March 2025 unless the legislation is changed by the Secretary of State.

It will only apply to businesses that hold a Premises Licence up to 22nd July 2020 and that in the last 3 years preceding 22 July 2020 those licences have NOT:

- had a premises licence application where permission for off sales was refused;
- had a variation of a premises licence seeking permission for off sales refused
- had a variation seeking to exclude off sales permission granted

- had a premises licence varied or modified by a review hearing to exclude off sales.

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the cut off time of the current licensed hours stated on the licence, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission. Further Guidance on this can be found at <https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>

9.2 The Live Music Act removed licensing requirements for the following:

- amplified live music and recorded music between 8am and 11pm before audiences of no more than 500 people on premises authorised to sell alcohol for consumption on the premises;
- unamplified live music between 8am and 11pm in all venues.
- Further exemptions apply see Section 16.5-16.6 of Section 182 Guidance.

9.3 The following is intended simply to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice (See 6.2). Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

9.4 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is “provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.12)

- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
  - ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
  - ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
  - ❖ Mandatory conditions must be imposed (10.25) and censorship avoided (10.17).
  - ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.58) Also, “Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area.” (10.21)
- 9.5 The Licensing Act 2003 permits children of any age to be on the premises which primarily sells alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 9.6 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.7 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 9.8 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)



9.9 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

10.0 In **Appendices 10 - 15** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters previously identified.

#### 11.0 **Legal Comments**

11.1 The Council's legal officer will give advice at the hearing.

#### 12.0 **Finance Comments**

12.1 There are no financial implications in this report.

## 13.0 Appendices

<b>Appendix 1</b>	A copy of the existing licence
<b>Appendix 2</b>	A copy of the variation application
<b>Appendix 3</b>	Maps of the venue
<b>Appendix 4</b>	Photographs showing vicinity of the venue
<b>Appendix 5</b>	Details of nearest licensed venues
<b>Appendix 6</b>	Home Office concerning relevant, vexatious and frivolous representations
<b>Appendix 7</b>	Representation of Gary Lee
<b>Appendix 8</b>	Representation of Helene Thill
<b>Appendix 9</b>	Representation of Stuart Thomson
<b>Appendix 10</b>	Licensing Officer comments on noise while the premise is in use
<b>Appendix 11</b>	Licensing Officer comments on access/egress Problems
<b>Appendix 12</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 13</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 14</b>	Planning
<b>Appendix 15</b>	Licensing Policy relating to hours of trading