

Committee(s): <b>Licensing Sub-Committee</b>	Hearing Date(s): <b>04/05/2023</b>	Item no.
<b>Subject</b>	<b>Licensing Act 2003 - Public Hearing in Respect of an Application for the Grant of a Premises Licence</b>	
<b>Name of Premises</b>	<b>Hotel Saint, 14<sup>th</sup> Floor</b>	
<b>Address of Premises</b>	<b>9-13 Aldgate High Street, London, EC3N 1AH</b>	
Report of: <b>Juliemma McLoughlin – Executive Director Environment</b>	<b>Public / <del>Non-Public</del></b>	
Ward (if appropriate): <b>Portsoken</b>		

## **1. Introduction and Purpose**

- 1.1. The purpose of this sub-committee is to consider and determine, by public hearing, an application for the grant of a premises licence under the provisions of the Licensing Act 2003, taking into consideration the representations of responsible authorities, as detailed in paragraph 5, together with policy considerations detailed in paragraph 9 of this report.
- 1.2. The decision of the sub-committee must be made with a view to promoting one or more of the four licensing objectives, namely:
- the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm

## **2. Summary of Application**

- 2.1. An application made by:

**Aldgate Hotel Opco Limited  
5 Churchill Place, 10th Floor  
London, E14 5HU**

was received by the City of London licensing authority on 10 March

2023 for the grant of a premises licence in respect of the premises:

**Hotel Saint, 14th Floor, 9-13 Aldgate High Street, London, EC3N 1AH**

- 2.2. Full details of the application can be seen as Appendix 1.
- 2.3. The proposed application is a ‘shadow’ premises licence application to protect the freehold interest of the landlord of the premises, Aldgate Hotel Opco Limited. Therefore, it would facilitate a premises licence to allow the sale of alcohol, recorded music and late-night refreshment. The licence intended to be ‘shadowed’ can be seen as Appendix 1 (a). There is also another live licence at the premises which covers the wider area of the hotel (but includes the 14<sup>th</sup> floor roof terrace). This can be seen as Appendix 1 (b).
- 2.4. The application seeks permission for:
- a) the sale of alcohol for consumption on and off the premises
  - b) regulated entertainment in the form of recorded music
  - c) the provision of late-night refreshment
- 2.5. The hours applied for each activity in the application are shown in column 2 of the table below.

<u>Activity</u>	<u>Proposed licence application</u>
Supply of alcohol for consumption on and off the premises	Mon–Sun 10:00-02:00
Provision of Recorded Music	Mon–Sun 10:00-02:00
Late Night Refreshment	Mon–Sun 23:00-02:00
Opening Hours	Mon–Sun 10:00-02:30

### **3. Shadow Licences**

- 3.1. A ‘shadow licence’ is a simple way of describing a licence which has been obtained by one party in respect of premises to which another licence has already been granted to someone else. The usual reason for this would be to

protect the landlord in case the tenant surrenders the licence without giving the landlord any notice or if review proceedings are brought against the licence and the licence is revoked and the landlord has no knowledge of this. In such a scenario there is a primary or live licence operated usually by a tenant and the 'shadow licence' is an additional licence often by the landlord which sits behind the primary licence.

3.2. The term 'Shadow Licence' is used in practice, but has no legal definition. It is simply another licence on the same or similar terms as the first licence, normally granted to a landlord, with the purpose of providing them the comfort and protection of having a licence in their own name. If the original premises licence then lapses or is surrendered, the landlord is able to use the Shadow Licence to replace it and market the premises as having the benefit of a licence of the same quality.

3.3. There is no restriction in the Licensing Act 2003 for there to be only one licence in effect at the same premises. However, if there is more than one licence in effect, there would need to be clarity as to which licence is in use at any one time.

3.4. Any application made is to be considered on its particular merits with respect to promoting the licensing objectives.

#### **4. Deregulation considerations**

4.1. The applicant has applied for Recorded Music with some part of the hours applied for before 23:00 hours.

4.2. The following sections/paragraphs of the statutory guidance issued under S182 of the Licensing Act 2003 are particularly relevant to this part of the application (revised December 2022):

- a) Paragraph 16.6 - As a result of deregulatory changes that have amended the 2003 Act, no licence permission is required for the following activities:

**Live music:** when a performance of unamplified live music takes place between 08.00 and 23.00 on any day, on any premises. When a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those

premises, provided that the audience does not exceed 500, and alcohol is available for sale for consumption on those premises in accordance with the existing premises licence.

**Recorded music:** any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500, and alcohol is available for sale for consumption on those premises in accordance with the existing premises licence.

- b) Paragraph 16.36 – Any conditions added on a determination of an application for a premises licence, which relate to live music or recorded music, are suspended between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises; if the music is amplified, it takes place before an audience of no more than 500 people; and the music takes place between 08.00 and 23.00 on the same day.

- 4.3 In respect of this application, it can be noted that the proposed sale or supply of alcohol for consumption on the premises is from 10:00 hours until 02:00 hours daily. In line with 4.2 above, permission for regulated entertainment is not required for live unamplified music until 23:00 hours. Permission is not required for live amplified music or recorded music until 23:00 hours subject to an audience of less than 500 persons. Where the audience capacity is more than 500 persons, live amplified music and recorded music is always regulated. Any conditions added on the determination of this application for a premises licence which relate to live or recorded music will remain in place but are suspended before 23:00 hours when the criteria in paragraph 4.2 are met.

## 5. Representations

### Representations from Responsible Authorities

- 5.1 There is 1 representation from responsible authorities, namely the Environmental Health Pollution team. This representation highlights certain conditions they would want to see added (were the licence to be granted) in order to uphold the aims of the licensing objectives - namely prevention of public nuisance.

5.2 This representation can be seen in full as Appendix 2.

5.3 On 5<sup>th</sup> April 2023, after some discussion between the applicant and the Environmental Health Pollution team, the Environmental Health Pollution Team proposed an amendment to the conditions they would wish to see attached to the licence were the licence to be granted. This can be seen in full as Appendix 2 (a).

5.4 There are no representations from ‘other persons’ in respect of this application.

## **6. Conditions**

### **Conditions drawn from the Operating Schedule**

6.1 The operating schedule submitted with the applications suggests steps intended to be taken to promote one or more of the four licensing objectives. Conditions that are consistent with the steps described in the operating schedule and appropriate for the promotion of the licensing objectives can be included on the premises licence. A summary of such conditions is attached as Appendix 3. Where the condition has a similar effect as one from the Corporation’s pool of model conditions, this has been indicated in the summary.

6.2 Appendix 3 also shows non-standard timings applied for within the operating schedule, which should be considered in the determination of the application.

## **7 Licensing/Planning History of Premises**

7.1 Planning permission was granted in 2016 for the “proposed extension to hotel building comprising rooftop hotel bar and external terrace area including associated facilities, service and guest access with reconfiguration of plant equipment.”

7.2 There is a planning condition (condition 3) of that permission which states:

“The roof terrace hereby permitted shall not be used or accessed between the hours on of 22.00 on one day and 07.00 on the following day (Monday to Saturday) or between the hours of 20.00 on one day and 07.00 on the

following day on Sundays or Bank Holidays, other than in the case of emergency.”

This condition was added to “safeguard the amenity of the adjoining premises and the area generally in accordance with the following policies of the Local Plan”: DM15.7, DM21.3. The condition was requested by the Environmental Health Pollution Team in order to protect the amenity of nearby residential occupiers from potential noise nuisance associated with the unregulated use of the roof terrace. The condition was agreed with the developer, Dorsett Hospitality International, and replicated on the premises licence shown in Appendix 1 (b).

7.3 To be in accordance with the permitted use of the premises, the current lawful use of the rooftop premises under the Town and Country Planning (Use Classes) Order 1987 (as amended) is as a bar, ancillary to the hotel (Class C1) use.

## **8 Map and Plans**

8.1 A map showing the location of the premises, and a document detailing terminal hour for alcohol sales and late-night refreshment, are attached as Appendix 4 (a) and 4 (b).

8.2 The plan of the premises can be seen as Appendix 5.

## **9 Policy Considerations**

9.1 In carrying out its licensing functions, the Licensing Authority must have regard to its statement of licensing policy and any statutory guidance issued under s 182 of the Licensing Act 2003.

### ***City of London Corporation’s Statement of Licensing Policy (2022)***

The following pages/sections/paragraphs of the City of London Corporation’s Statement of Licensing Policy are particularly applicable to this application.

Pages 15-17 address the licensing objective ‘The prevention of crime and disorder’ and pages 22-25 address the licensing objective ‘The prevention of public nuisance’.

Paragraph 92 states the need to strike a fair balance between the benefits to a community of a licensed venue, and the risk of disturbance to local residents and workers.

Paragraph 92 also states an overriding policy principle namely, that each application will be determined on its individual merits.

Certain aspects of paragraphs 97 – 99 are relevant as they address the need of care when controlling noise from those persons leaving a premises – which can apply equally to staff at the premises.

Paragraph 104 considers various factors that should be taken into account when considering whether any licensable activity should be permitted.

Paragraphs 138-144 (Section 13) state the City of London Corporation's policy on setting conditions which may be applicable dependant on the step(s) taken by members as stated in paragraph nine of this report.

### ***Statutory Guidance***

9.2 The following sections/paragraphs of the statutory guidance issued under S182 of the Licensing Act 2003 are particularly applicable to this application (revised December 2022):

Chapter 2 of the guidance covers the four licensing objectives. In particular, paragraph 2.15 states that it is, '*...important that in considering the promotion of [the public nuisance licensing objective, licensing authorities] focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable.*' Also, paragraph 2.16 indicates that the prevention of public nuisance could, in appropriate circumstances include, '*the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.*'

Chapter 10 refers to conditions attached to premises licences with paragraph 10.10 stating that, '*Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.*' To which is added; '*Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.*'

## **10 Summary**

10.1 The Licensing Authority has a duty under the Licensing Act 2003 to promote the licensing objectives. Each objective has equal importance. In carrying out its licensing functions, the licensing authority must also have regard to its Statement of Licensing Policy, any statutory guidance under the Licensing Act 2003 and is bound by the Human Rights Act 1998. The City of London Corporation must also fulfil its obligations under section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in the City of London.

## **11 Options**

11.1 The Sub-committee must, having regard to the representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- (a) grant the licence subject to any conditions consistent with the operating schedule modified to such extent as the Sub-committee considers appropriate for the promotion of the licensing objectives and include the mandatory conditions contained in Ss. 19-21 of the Licensing Act 2003;
- (b) exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the designated premises supervisor;
- (d) reject the application

For the purposes of paragraph 11.1(a) conditions consistent with the operating schedule are modified if any of them are altered or omitted or any new condition is added

11.2 Where a licensing authority takes one or more of the steps stated in paragraph 11.1 above the applicant, or the holder of the licence and/or a person who made relevant representations in relation to the application, may appeal the decision to the Magistrates' Court. Any appeal must be commenced within 21 days following notification of the decision to the appellant by the licensing authority.

## **12 Recommendation**



12.1 It is therefore RECOMMENDED that your Sub-Committee determine this application for a new premises licence in accordance with paragraph 11 of this report.

Prepared by Robert Breese, Licensing Officer  
Robert.breese@cityoflondon.gov.uk

### **Background Papers**

<u>BACKGROUND PAPER</u>	<u>DEPT</u>	<u>FILE</u>
Corporation of London Statement of Licensing Policy (revised Jan 2022)	MCP	3rd Floor Guild Hall
Statutory Guidance – ‘Revised Guidance Issued Under Section 182 Of The Licensing Act 2003’. (December 2022)		<a href="#">Statutory Guidance</a>