

IN THE MATTER OF:

**BROOK GREEN MARKET, ST MARYS PRIMARY SCHOOL, MASBRO ROAD,
LONDON, W14 0LT**

HEARING:

HOXTON MARKET LTD

APPLICANT

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

Introduction

1. This is an application for a new Premises Licence pursuant to Section 17 of the Licensing Act 2003 for an existing food at the above location.
2. A hearing is required as representations have been received.
3. The applicant is Hoxton Market Ltd who operate a food market at St. Marys, Primary School, Masbro Road. The market takes place on Wednesday evenings and Saturdays only.
4. The application site is a Primary School located at Masbro Road. The market takes place in the external areas of the school grounds.
5. Hoxton Market Ltd's sole Director, Mr. Pushpal Dhawan, is a responsible and experienced operator of food markets. Until March 2021 Mr. Dhawan operated a market at the nearby Addison Primary School. That market held a premises licence for Saturday operations and traded a number of popular Wednesday evening utilising temporary event notices. The market traded in this location for more than 7 years before relocating to its current location. We attach a map of the area showing the locations of the former and current markets locations operated by the Applicant (Appendix A).

6. The relocation of the premises followed a rent review with the former school governors, which made that location less desirable in the view of the Applicant.
7. Allegations that the market and/or the Applicant was expelled from that location are entirely refuted. We attach at 'Appendix B' a brief email from the headmaster of Addison Primary School confirming the market was not the cause of issue while at that location.
8. The operator has robust systems in place for the exercise of due diligence to ensure the market is conducted responsibly and run in accordance with the law and to ensure the avoidance of the commission of regulatory offences and the possibility of public nuisance and/or crime and disorder in particular.
9. The Applicant has a long and unblemished record of operating markets within the Borough of Hammersmith & Fulham and within this community.
10. A bi-weekly market is now hosted on the playground and other external areas, as identified on deposited plans accompanying the application. Each market day a range of artisan food retailers set up temporary structures within the grounds of the school. We attach some images taken at a recent market to illustrate a typical configuration of the market (Appendix C).
11. The market is a specialist food market meaning that the principal products sold are food, drink and related products only. This is distinct from a fashion market or antique market, as examples. We attach a list of the current stall who operate from the market (Appendix D). A significant majority of stall operators have transferred with the Applicant from Addison to St Mary's. The market has enjoyed long and successful relationships with many of their stall operators. In many instances these relationships have extended over several years.
12. The application requests licensable activities limited to the sale of alcohol for consumption on and off the premises only.

Representations

13. The hearing is required because there have been representations from interested parties that have not been resolved.

The Licensing Objectives.

14. Central to the statutory regime are the four licensing objectives which are the only relevant areas for consideration in licensing applications. They are as follows:

- Prevention of crime and disorder.
- Public safety
- Prevention of public nuisance.
- Protection of children from harm.

The Guidance

15. Under Section 182, the Secretary of State is required to issue Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4(3) requires Licensing Authorities to have regard to the Guidance.

16. Paragraph 1.17 states each application must be considered on its own merits. This is essential to avoid the imposition of disproportionate overly burdensome conditions on premises where there is no need for such condition. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

17. Guidance paragraph 2.21 stipulates:

...beyond the immediate surrounding of the premises these are matters for the personal responsibility of individuals under law and an individual engaged in anti-

social behaviour is accountable for their own right. However, it would be perfectly reasonable for the Licensing Authority to impose a condition following relevant representations to require Licence Holder or club to place signs on exists around the building encouraging patrons to be quiet until they leave the area and to respect the right of people living nearby to a peaceful night."

18. Failure to comply with any condition attached to a Licence or Certificate is a criminal offence, which on conviction, is punishable by an unlimited fine or up to 6 months imprisonment. The Courts have made it clear that it is particularly important that the conditions which are imprecise or difficult for a licence holder to observe should be avoided (paragraph 10(2)).

19. The Licensing Authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied that as a result of a hearing (unless all parties agree that a hearing is not necessary) that it is appropriate to impose conditions that promote one or more of the four licensing objectives (10.8).

20. It is possible that in some cases no additional conditions are appropriate to promote the licensing objectives (10.9).

21. The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned.

Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing Authorities and Responsible Authorities should be alive to the indirect costs that can arise because of conditions.... Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objection (our emphasis) (10.10)

22. The determination of the Licensing Committee must be evidence based on what is before them (9.42 and Daniel Thwaites Plc v Wirral Borough MC (2008) EWHC 838).

The Application Process

23. Section 17 sets out the procedure for making a Premises Licence Application and Section 18 sets out the provisions for determination of that application where representations have been made by the Responsible Authorities or other persons.

24. Section 18 provides that where an application for a new Licence is properly made, following receipt of relevant representations, the Licensing Authority must hold a hearing following which it may, if it thinks it is necessary, take one or more of the steps set out in Section 18(4) as follows:

(a) to grant the Licence subject to:

- (i) the conditions mentioned in sub-section 2(a) modified to the extent the Authority considers appropriate for the promotion of the licensing objections; and
- (ii) any condition must under Section 19, 20 or 21 be included on the Licence.

(b) to exclude from the scope of the Licence any of the licensing activities to which the application relates.

(c) To refuse to specify a person on the Licence as Premises Supervisor.

(d) To reject the application.

Conditions

25. The general principles which govern the imposition of conditions upon Premises Licences may be summarised under 4 heads :-

- (1) A condition may only be attached to a Licence if it is appropriate for the promotion of one or more of the licensing objections.
- (2) A condition must not duplicate other statutory provisions.
- (3) The conditions must be proportionate.
- (4) In order to give rise to criminal liability a condition must be framed so as to give precision and clarity for definition in the prescribed Act.

26. At paragraph 9.12 of the Guidance, states as follows;

“Each Responsible Authority will be an expert in their respective field, and in some cases it is likely that a particular Responsible Authority will be the Licensing Authority’s main source of advice in relation to a particular licensing objective....”

Responsible Authority Comments

27. Only one Responsible Authority has made a formal comment regarding the application. PC Tom Stewart on behalf of the Metropolitan Police Service (MPS) has agreed the imposition of a number of conditions with the Applicant to ensure the promotion of the Licensing Objectives. Those conditions are:

- I. *All staff including market stall staff responsible for selling alcohol shall receive regular training (a minimum of bi-annually) in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act and conditions of the Premises Licence. Written records of this training shall be retained and made available to police and authorised officers of the Licensing Authority on request.*
- II. *A daily incident log (electric or paper based) shall be kept at the Premises and made available on request to an authorised officer of the Council or the Police or the Fire Service which shall record the following:*
 - (a) all crimes reported to the venue.*
 - (b) all ejection of patrons.*
 - (c) any complaints received.*
 - (d) any incidents of disorder*
 - (e) seizures of drugs or offensive weapons*

- (f) any faults in the CCTV system (if applicable)*
 - (g) any refusal of the sale of alcohol*
 - (h) any visit by a relevant authority or emergency service*
- III. *A responsible member of staff shall carry out proactive litter patrols outside the premises at least three throughout the premises' opening hours and specifically at the end of trading hours to ensure that there is no litter associated with the premises in the immediate vicinity and any such litter found shall be collected and returned to the premises for disposal with the premises' normal waste / refuse collection.*
- IV. *Signs shall be prominently displayed at the exits from the premises asking patrons to dispose of their waste in litter bins.*
- V. *The sale of alcohol for the consumption on the premises will cease a minimum of 30 minutes prior to the closing of the market.*
- VI. *There shall be a minimum of one personal licence holders on duty on the premises at all times when the premises are authorised to sell alcohol.*
- VII. *The premises shall operate a Challenge 25 age restricted sales policy and shall display appropriate signage advising customers of this policy.*
- VIII. *All staff shall be trained in the Proof of Age policy and how to identify acceptable means of identification.*
- IX. *The requirement for SIA registered door supervisors will be continuously assessed as part of an ongoing risk assessment. SIA door supervisors will be employed on the premises where the risk assessment highlights this need. This risk assessment will be made available without delay upon request by a responsible authority.*

28. The Applicant has engaged constructively with the MPS and agreed the imposition of a range of conditions which reflect their current management practices, especially in the context of litter management.

29. In the history of the market, over 7 years, the premises has not experienced issue of disorder, crime (including drugs) or underage sales.

30. Other Responsible Authorities, including Environmental Health (Noise Nuisance Team), have accepted the application as currently presented.
31. The Market has recently been subject to an unannounced visit by officers of Hammersmith & Fulham's Noise Nuisance Team. After visiting the site the officers made themselves known to staff and questioned them regarding operational issues, including the playing of recorded music.
32. It was confirmed to Officers that music levels witnessed during their unannounced inspection were typical for the market. Officers offered no criticism of any aspect of the market's operation and provided no direction or advice for improvements.
33. In accordance with paragraph 9.12 of the guidance the relevant experts in the fields of Crime & Disorder and Public Nuisance have not opposed the application.
34. Responsible Authorities who are experts in Public Safety and the Protection of Children from Harm have also offered no adverse comments regarding the application as proposed.

Residential Representations Opposed

35. As mentioned above, representations have been received from interested parties being residents.
36. Some of the representations suggest that Hoxton Market's Director is a poor character. Mr. Pushpal Dhawan denies all such allegations as baseless and untrue. The representations also allege illegality in the trading of the former market claiming the site operated without a premise licence and/or Temporary Event Notices. A simple search of the Licensing Authority's public database shows this to be untrue.
37. There are several adverse representations however many share common themes:

- I. Noise Nuisance arising from the operation of the market in particular music played during markets and noise arising from the setup of the market.
- II. Fears of an increase of anti-social behaviour which will arise, should this premises licence be approved.
- III. Parking congestion.
- IV. Litter.
- V. Public Safety concerns regarding access to the site.

38. Although the residents who have opposed the application have anxieties, it is the view of the Applicant that these anxieties are substantially unfounded. The objections site very few examples to support any of the allegations despite the Market having been trading from this site 3 months and utilising TEN to permit licensable activities, in the form sought by this application, on 15 separate days.

Residential Representations Supportive

39. The Applicant is humbled by the volume of support received from members of the community to the application.

40. The Applicant notes that supportive comments outweigh adverse comments by a ratio of thirteen to one. The Applicant has a long and established relationship with the Community which they perceive as very positive.

41. The Applicant notes that dozens of the positive representations are from regular visitors to the market who confirm that anti-social behaviour has never been witnessed at the site.

42. Due to the number of comments of this type, and the absence of contrary accounts, the Licensing Authority should be assured that anti-social behaviour has never been associated with the Applicant's markets.

Hammersmith & Fulham Borough Council Licensing Policy

43. Hammersmith & Fulham Borough Council has a detailed Licensing Policy and consideration has been given to this and the detail in preparing the application.

44. These premises do not fall within in a “cumulative impact policy area” and it is submitted that the application submitted is in line with the Licensing Policy in its terms and parameters.

33. In summary:

- I. The market is an open-air event however the Applicant proposes that the premises will close at 10pm on Wednesday evenings and only 6pm on Saturday evenings.
- II. The terminal hour proposed is within the terms of the Licensing Authority's policy (10.3) relating to the use of open-air areas.
- III. The premises are not principally alcohol led and the proposed hours and days proposed for the operation of the market would be best described as modest and infrequent.
- IV. During the proposed hours of operation public transport within the area which includes buses, underground and overground access are fully operational. Bus, underground and overground stops/stations are all within approximately seven minutes' walk of the site. Several private hire taxi businesses offer a service in the locality. The Applicant notes that in many of the representations of support persons affirmed that they attended the market on foot.
- V. There has been no evidence of illegal parking submitted with the representations associated with the operation of the market or otherwise.

- VI. Parking in the area is controlled and managed by the London Borough of Hammersmith and Fulham. The Applicant acknowledges the restrictions in place and does not seek any relaxation of the same. The London Borough of Hammersmith and Fulham are at liberty to review measures as appropriate. The Applicant cannot offer any evidence to support a change from the status quo.
- VII. The applicant has a long and unblemished history of operating an outdoor market within this community in similar circumstances and location.
- VIII. No evidence is or can be put forward specific to the approval **of this licence** will result in anti-social behaviour, litter or other matters complained of by those opposing the application.
- IX. The style of business to be operated are family friendly and will be a positive addition to the area is such that it will improve the offer to customers within the area and will not impact adversely.
- X. The set up of the market requires stall holders to arrive no more than one hour prior to the opening of the market. Several of the stall operators attend on foot or via public transport. Parking on site, for some stall operators is available. The Applicant has not witnessed illegal parking by any stall holder and would not condone the same.
- XI. In terms of litter, the Applicant provides numerous litter receptacles on site and have personnel on site during markets to ensure cleanliness. Following the end of a market the site and immediate vicinity is cleansed (the latter in now enhanced by condition).

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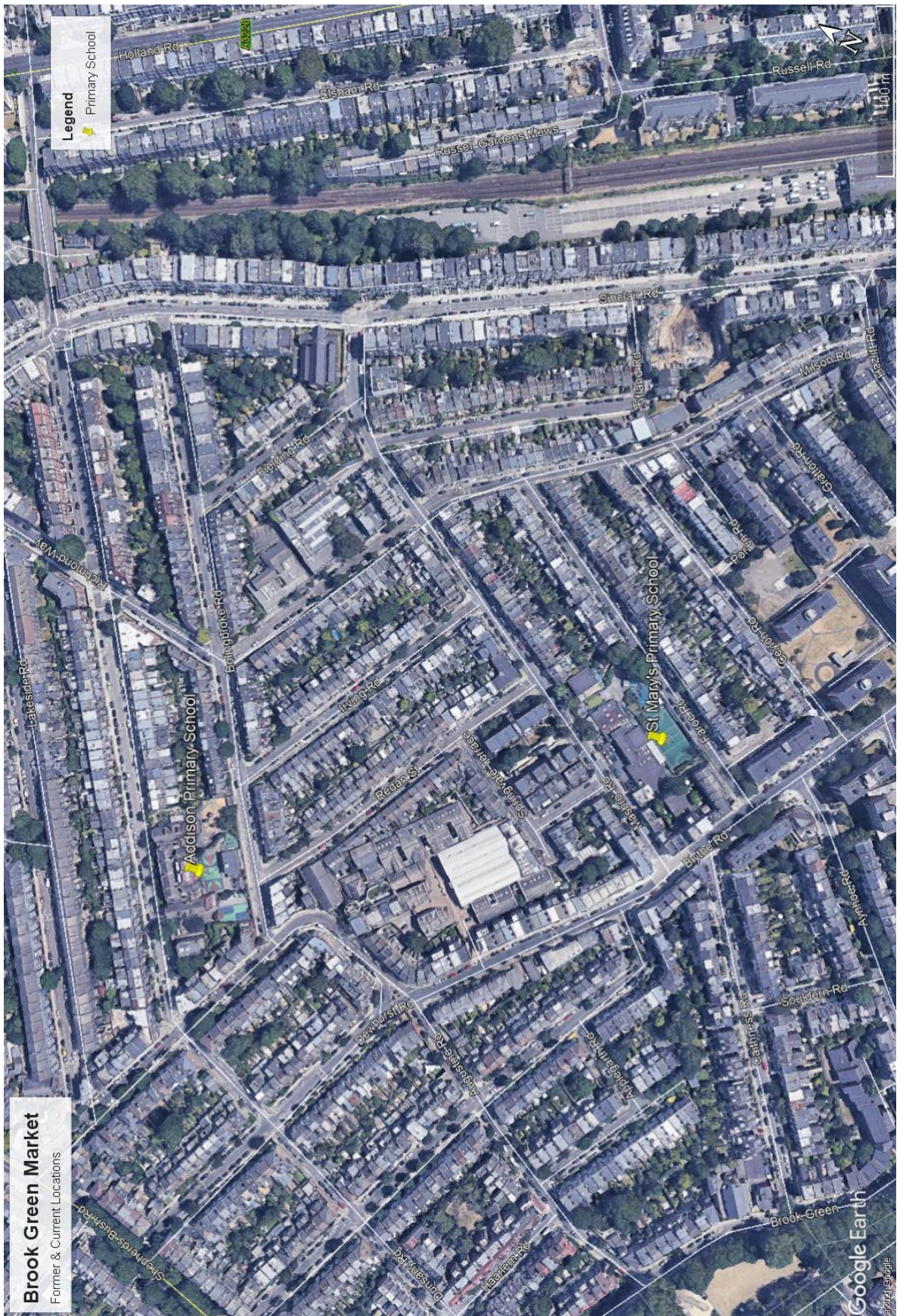
HOXTON MARKET LTD

APPLICANT

APPLICANT'S DOCUMENTS

**Appendix A | Location Plan.
Appendix B | Email from Damien McGarrigle.
Appendix C | Market Images.
Appendix D | List of Stalls.**

Appendix A | Location Plan.



Appendix B | Email from Damien McGarrigle.

From: Damien Mcgarrigle

Sent: Monday, May 17, 2021 8:55 PM

To: licensing@lbhf.gov.uk <licensing@lbhf.gov.uk>

Subject: Licensing application 2021/00255/LAPR for Hoxton Market Ltd trading as the Brook Green Market in St Mary's Catholic Primary School

Dear Sir/Madam,

I have been informed that Brook Green Market are applying for a trading license.

I am writing to provide a character reference for the Brook Green Market team. I can safely state that Brook Green Market are a professional and friendly service which is valued within the local community.

Previously, the Market traded at Addison Primary School (I am the Head Teacher) for seven years, during which time they followed all protocols and guidelines to the letter.

All staff at the Market were friendly, approachable and polite.

Best wishes

Damien Mc Garrigle

Sent from [Mail](#) for Windows 10

Appendix C | Market Images.



















Appendix D | List of Stalls.

Stall Name	General Description
ANRU	Homemade Indian Cooking sauces and dahls
Astons Bakehouse	Handmade artisan breads
Bagnell Farm	Award winning meat direct from the farmer
Bee Energy	Honey producer
Bey Roots	Lebanese Street Food
Borough Cheese	British and French Cheese (Borough Market Trader)
Bottle Brush	Homemade ferments
Brambletye Fruit Farm	Biodynamic and organic fruit and veg
Buns From Home	Savoury and sweet buns produced here in Notting Hill
Bun House	Asian filled steamed buns(they have a restaurant in Soho)
Copper Rattle	Former St John chefs producing seasonal pies and selling a unique line-up of boutique wine
EM's Kitchen	Vegan nutritional food
Food and Forest	Producer of British nuts
Finer Things Deli	Spanish deli - cheese and charcuterie
Finest Fayre	London producer of scotch eggs
Ginger Q	Biscuit producer
Hase Ya	Freshly produced sushi
Hazel's	Homemade icecreams
Heritage Cheese	British, Irish and Italian cheese and charcuterie
Jolly Kitchen	Cured salmon
Kensal Rise Provisions	Artisanal cooking sauces, soups and condiments
Kitchiya	European cakes with a japanese influence
Krafty Braumeister	Craft beer producer
Le petit Moulin	Freshly prepared french food
Limpopo	Biltong
Little Light Company	Handmade candles
Lovely Bunch of Coconuts	Mauritian street food
Maltby and Greek	Greek Deli
Nettle	Vegan cheese
Old Gin Bakery	Craft Gin distiller
Pasta E Basta	Handmade pasta and sauces
Perry Court Farm	Farmer growing naturally produced fruit and veg
Pick's Organic Farm	Certified organic, grass fed meat and poultry
Pleasant Lady	Chinese wraps - one of London's most renowned restaurateurs
Popina	Producer of savoury and sweet tarts and quiches
Rarewood	Purveyor of fine wines and non alcoholic drinks
Scotties Coffee	Coffee roaster
Seriously Italian	Handmade pasta and sauces
So Choux	French cakes and patisserie

Strong Man's Tipple	Premixed cocktails from mixologist
Sud Italia	Woodfired Neapolitan pizza
Tart Tart Quiche	Producer of savoury and sweet tarts and quiches
The Fish Stall	Day boat fish direct from the fishermen
The Sloe Kitchen	Former St John chefs producing jams, chutneys, sauces and doughnuts
Thee Olive Tree	Olives and antipasti
Tua Italia	Italian style products
Ugly Dumpling	Asian dumplings
Wild Country Organics	Award winning certified organic fruit and veg
Wingnut Wines	Natural wines