

Item No. 5	Classification: Open	Date: 15 October 2008	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 Section 51(1) Costcutter 31-39 Norwood Road SE24 9AA	
Ward(s) or groups affected:		Village	
From:		Director of Environment and Housing	

Recommendation

1. That the Sub-Committee considers an application by the Commissioner of the Metropolitan Police for a review of the premises licence granted under the Licensing Act 2003 to Costcutter Supermarkets Group Limited in respect of the premises known as: Costcutters of 31-39 Norwood Road SE24
2. *Notes*
 - a) *The grounds for the review are stated in paragraph 15 – 16 of this report.*
 - b) *A copy of the Council's approved procedure for hearings by 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 prior to the meeting.*

The application for a review is supported by an additional submission from the responsible authority Trading Standards.

3. The Licensing Act 2003 came into effect on 25 November 2005. The Act's introduction provided a new licensing regime for the retail sale of alcohol; the provision of regulated entertainment; and the provision of late night refreshment.
4. Under the Act a premises user wishing to provide any of the licensable activities listed in paragraph 3 of this report must secure a premises licence from the local licensing authority for the area in which the business concerned is located. Where the retail sale of alcohol is involved a designated premises supervisor holding a personal licence issued by the local authority for the area in which that individual lives must be named upon the premises licence.
5. 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.

MATTERS FOR CONSIDERATION

The Premises Licence

6. On the 3 August 2005 the licensing unit received an application for the conversion of the old Justices Licence to a Premises Licence under the Licensing Act 2003. The Designated

Premises Supervisor was named as Mohammad Senaei who was also the licence holder at that time. The police made no representations to the application.

7. On the 18 October 2005 an application was received at the licensing unit to vary the premises licence, by increasing the licensed hours for the sale of alcohol to 24 hours.
8. On the 20 October 2005 the police raised an objection on the grounds of increased hours for the sale of alcohol. The police stated that they would impose conditions that must be met, which as follows: CCTV; proof of age scheme; recognised training scheme for staff; and Personal Licence Holder must be on site at all times for the sale of alcohol.
9. On the 18 November 2005 the police agree to withdraw the representation as the licensee agrees to the conditions imposed by the police.
10. On the 22 November 2005 an application is received at the licensing unit to vary the Premises Licence to specify Pervez Iqbar as the new DPS. The application is unopposed by the police.
11. On the 21 January 2006 the Premises Licence is issued stating Pervez Iqbar as the DPS
12. On the 22 February 2007 an application was received at the licensing unit to vary the Premises Licence to specify Peter Winterton as the new DPS. The application was unopposed by the police.
13. On the 9 March 2007 a new Premises Licence was issued naming Peter Winterton as the DPS.
14. On the 5 June 2007 and application was received at the Licensing Unit to vary the Premises Licence to specify Gabino Garcia Cadavieco as the new DPS. The application was unopposed by the police.
15. On the 14 August 2007 a new Premises Licence was issued naming Gabino Garcia Cadavieco as the new DPS.
16. A copy of the Premises Licence is attached to the report as Appendix B.

Recent History

17. On the 25 September 2008 at approximately 16:15 I conducted programmed inspection at the premises which forms part of a (Risk Assessment) that will determine the level of inspections, required for the future. During the inspections I noted the following:
 - Mr Ashram Bhatti who was in charge of the premises at the time of my visit did not have a Personal Licence. He was however; able to show me evidence that he had completed the BIIAB course.

The Application for a Review of the Premises Licence

18. On the 29th August 2008 an application requesting a review of the premises licence was received from PC Stephen McNally of the Metropolitan Police Licensing Service. The grounds for the review relate to the following licensing objectives and are summarized as follows: -

The Prevention of Crime and Disorder

- a) During a recent Test Purchase Operation carried out in conjunction with the Local Authority Trading Standards Unit staff at these premises sold intoxicating liquor to a person aged under eighteen.
- b) At no stage during the sale was the young persons questioned regarding their age or the proof of such.

Protection of Children from Harm

- c) It is also known to the Police that a similar sale was made by staff at these premises to a person aged under eighteen on the 7 December 2007

19. A copy of the review application is attached to the report as Appendix A.

Other Representations Submitted following Advertisement of the Review Application

20. In accordance with the provisions of the Act the application for a review of the premises licence was advertised on a post immediately outside of the premises; on the Council's web site; and at the Southwark Town Hall. Checks were made to ensure that posters displayed in the street and the premises remained in position. Further representations could be made up until 26 September 2008.

Responsible Authority

21. The licensing unit has received a representation from the Responsible Authority known as Southwark Council Trading Standards Team. A copy of the representation is attached the report as Appendix C.

Interested Parties

22. The Licensing Unit has not received any representations from Interested Parties.

The Local Vicinity

23. A map of the local vicinity is attached as Appendix D. The circle shown on the map has a radius of 100 meters and is shown for the purposes of scale only.

SOUTHWARK STATEMENT OF LICENSING POLICY

24. Council Assembly approved the Southwark Statement of Licensing Policy on 2 April 2008. Sections of the Statement that are considered to be of particular relevance to this application are

- a) Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives;
- b) Section 4 which sets out the arrangements for the administration, exercise and delegation of functions;
- c) Section 5 which sets out the Council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence;

- d) Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998;
- e) Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours;
- f) Section 8 provides general guidance on ensuring public safety including safe capacities;
- g) Section 9 provides general guidance on the prevention of nuisance; and
- h) Section 10 provides general guidance on the protection of children from harm.

25. 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.

RESOURCE IMPLICATIONS

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

CONSULTATIONS

27. Consultation undertaken upon this application has been carried out in accordance with the provisions of the Licensing Act 2003. Responses are detailed elsewhere in this report.

EQUAL OPPORTUNITIES IMPLICATIONS

28. Each application is required by law to be considered upon its own merits with all relevant matters taken into account.

SUPPLEMENTAL ADVICE FROM OTHER OFFICERS

Borough Solicitor

29. 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 an interested party 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.

Principles for making the determination

30. The principles, which Sub-Committee members must apply, are set out below.

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

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

32. The four licensing objectives are -

- (a) the prevention of crime and disorder.
- (b) Public safety.
- (c) The prevention of nuisance.
- (d) The protection of children from harm.

33. Each objective must be considered to be of equal importance

34. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are to-

- (a) modify the conditions of the licence by altering, omitting or adding any condition.
- (b) exclude a licensable activity from the scope of the licence.
- (c) remove the designated premises supervisor.
- (d) suspend the licence for a period not exceeding three months.
- (e) revoke the licence.

35. For the purpose of determining a relevant representation under section 52 of the Act a “relevant representation” means representations which -

- (a) are relevant to one or more of the licensing objectives.
- (b) are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
- (c) have not been withdrawn
- (d) if made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

36. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

37. The authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

38. In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.

39. It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

40. Where the authority determines an application for review it must notify the determination and reasons for making it to –

- (a) the holder of the licence.
- (b) the applicant
- (c) any person who made relevant representations
- (d) the chief officer of police for the area (or each police area) in which the premises are situated

Hearing Procedure

41. 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.
42. This matter relates to the review of a Premises Licence under section 51 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

43. 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.
44. 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.
45. 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.

46. 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.
47. 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.
48. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case-to-case basis.
49. 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.
50. Interested Parties, 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

51. Members are required to have regard to the DCMS 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.

BACKGROUND INFORMATION

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

Lead Officer	Gill Davies, Director of Environment & Housing
Report Author	David Swaby, Principal Licensing Officer
Version	Final

Dated	15 October 2008	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	6 October 2008	

APPENDICES

No.	Title
Appendix A	The Review Application
Appendix B	The Premises Licence
Appendix C	Representation by the Responsible Authority
Appendix D	Map of the Local Vicinity

AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community safety and Enforcement	
Report Author	David Swaby, Principal Licensing Officer	
Version	Final	
Dated	6 October 2008	
Key Decision	No	
Consultation with other Officers / Directorates		
Officer Title	Comments sought	Comments included
Strategic Director of Legal & Democratic Service	No	No