

Item No: 5	Classification: Open	Date: 20.10.08	Meeting Name: Licensing Sub-Committee
Report Title:		LICENSING ACT 2003 – APPLICATION FOR A PERSONAL LICENCE	
Ward(s) or groups affected		None	
From:		Director of Environment and Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee decides whether to grant the application for a Personal Licence under Section 117 of the Licensing Act 2003 to the individual specified in the closed report.
2. Note: the Commissioner of Police for the Metropolis has made Representations in respect of this application.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for the sale of alcohol; the provision of regulated entertainment; and the provision of late night refreshment.
4. This new licensing regime becomes effective as of 24 November 2005. From this date, licensable activities under the Act can only be carried on under the appropriate combination of personal and premises licences; club premises certificates; and temporary event notices.
5. Except for circumstances where the police raise representations, properly made applications must be granted.

MATTERS FOR CONSIDERATION

The Personal Licence Application Process

6. A Personal Licence is required under the Act by any person who intends to operate in a position where they will authorize the sale or supply of alcohol in conjunction with a premises licence. Applications for Personal Licences are made to the local authority for the area in which the applicant normally resides. Licences last for 10 years and are portable.
7. Individuals seeking a personal licence must:
 - a) Provide a criminal records disclosure (or certified copy of it)
 - b) Provide a photograph of him or herself, endorsed to the effect that it is a true likeness;

- c) Provide a statement (by way of a form entitled “Disclosure of Convictions and Declaration”) giving details of any relevant or foreign offence of which they have been convicted;
 - d) Provide a copy of the application to the police within 48 hours of the application being made; and
 - e) Pay the appropriate fee of £37.
8. Where the applicant has been convicted of a relevant offence or foreign offence and the chief officer of police is satisfied that the circumstances of the case are such that granting the application would undermine the crime prevention objective, the chief officer of police must give an “objection notice” no later than 28 days after the day on which a copy of the application is provided. Unless this “objection notice” is withdrawn, the local authority must hold a hearing to consider the objection and must determine the matter within a period of three months beginning on the day on which the authority receives the application.

The Application Under Consideration

9. An application for a personal licence has been submitted to the Council under Section 117 of the Licensing Act 2003. The application was accompanied by the additional documentation and information outlined in paragraph 7 above.

Police Notice of Objection

10. The Commissioner of Police for the Metropolis submitted a written representation in respect of the application.

The Licensing Act 2003 & the Southwark Council Statement of Licensing Policy

11. The Licensing Act 2003 requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives, which are
- a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of nuisance; and
 - d) The protection of children from harm.
12. In carrying out its functions, a licensing authority must also have regard to
- a) The Act itself;
 - b) The Guidance to the Act issued under Section 182 of the Act;
 - c) Secondary regulations issued under the Act;
 - d) The Licensing Authority’s own Statement of Licensing Policy;
 - e) The application; and
 - f) Relevant representations
13. The Council Assembly approved the Southwark Council Statement of Licensing Policy on 8 December 2004. 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 re-inforces the four licensing objectives;
- b) Section 4 covering administration, exercise and delegation of function which deals with the licensing process; and
- c) Section 6 details other relevant Council and Government policies including the relevant Articles under the Human Rights Act 1998.

14. The purpose of Southwark's Licensing Statement of 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 applications placed before it. 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

15. A fee of £37, being the statutory fee payable in respect of an application for a Personal License, has been paid by the applicant. The fee makes a contribution toward the cost of processing the application.

CONSULTATIONS

16. The provisions of the Licensing Act 2003 do not provide for any consultation beyond that with the Commissioner of Police for the Metropolis.

EQUAL OPPORTUNITIES IMPLICATIONS

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

CONCURRENT REPORT BY THE BOROUGH SOLICITOR – LEGAL ISSUES

18. The Sub-Committee is asked to determine the application for a grant of personal licence. The application for a Personal License should normally be granted without the need for a hearing if no relevant objections were received from the Police on crime and disorder grounds.

19. It is important to distinguish the application for grant /renewal of a Personal License under the Licensing Act 2003 from the type of applications previously heard by the Sub-Committee, where a licence was renewed or an applicant sought to vary. The principles that apply are significantly different in many respects (although the requirement to give all parties a fair, unbiased hearing remains).

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

Principles for making the determination

21. The general principle is that applications must be granted unless relevant representation is received. This is subject to the proviso that the applicant has not been convicted of, or committed any of the relevant offences as contained in Schedule 4 of the Licensing Act 2003.

Determination of Application for grant of personal licence

22. The Sub-Committee's discretion is thus limited. It can only grant, or refuse the Personal Licence, if it is necessary to do so in regards to the promotion of the prevention of crime and disorder.

Hearing Procedures

23. 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.

Council's multiple roles and the role of the Licensing Sub-Committee

24. 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.

25. 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.
26. The Licensing Sub-Committee is entitled to consider other information not contained in this document if they are relevant, i.e. are properly attributable to the suitability of the applicant to hold a licence. Guidance is that the licensing authority will primarily focus on the direct impact of granting the personal license to the applicant on members of the public, living, working or engaged in normal activity in the area concerned.
27. Members will be aware of the Council's Code of Conduct that 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.

Guidance

28. Members are required to have regard to the Secretary of State 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 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

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Version	Final	
Dated	9 th October 2008	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Legal & Democratic Services	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	9 th October 2008	