

<b>Item No. 6</b>	<b>Classification: Open</b>	<b>Date: November 28 2008</b>	<b>MEETING NAME Licensing Sub-Committee</b>
<b>Report title:</b>		<b>LICENSING ACT 2003 – BRAMCOTE ARMS. 58 BRAMCOTE GROVE, SE16 3BW</b>	
<b>Ward(s) or groups affected:</b>		<b>LIVESEY</b>	
<b>From:</b>		<b>Strategic Director of Environment and Housing</b>	

## **RECOMMENDATION**

1. That, in compliance with sections 167(2) and 167(5) of the Licensing Act 2003, the sub-committee considers a review of the premises licence granted under the act to Patrick Joseph Holohan in respect of the premises known as the Bramcote Arms, 58 Bramcote Grove, Bermondsey, SE16 3BW.
2. *Notes*
  - a) *Under sections 167(2) and 167(5) of the Licensing Act 2003 it is mandatory that the licensing authority holds a hearing to consider a review of the premises licence where a premises closure order has been made by a senior police officer under section 161(1)(a) of the Licensing Act 2003 and a consequent order made by the magistrates' court under section 165(2) of the Act;*
  - b) *The review of the premises licence has been advertised in accordance with Section 167(4) of the Act; and*
  - c) *A copy of the council's approved procedure for public hearings by the sub-committee under the Licensing Act 2003, along with a copy of the Hearing Regulations, has been circulated to all parties prior to the meeting.*

## **BACKGROUND INFORMATION**

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 licensable activities 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.
6. Section 161 of the Act also provides that a senior police officer make a closure order in relation to any relevant premises if he reasonably believes that
  - a) There is, or is likely imminently to be, disorder on, or in the vicinity of and related to the premises and their closure is necessary in the interests of public safety; or

- b) A public nuisance is being caused by noise coming from the premises and the closure order of the premises is necessary to prevent that nuisance.
- 7. Section 164(1) of the Act provides that the responsible senior police officer must, as soon as reasonably practicable after a closure order comes into force in respect of any relevant premises, apply to a relevant magistrate's court for it to consider the order and any extension to it.
- 8. Section 165(1) provides that a relevant magistrates court must hold a hearing as soon as reasonably practicable after receiving an application under section 164(1) and may determine under section 165(2) to use any of a range of powers available to it, including to order under part (b) of that section, the premises to remain closed until such time that the relevant licensing authority has determined a premises licence review under section 167 of the Act.

## **KEY ISSUES FOR CONSIDERATION**

### **The premises licence**

- 9. On 6 August 2005, during the transitional period of the implementation of the Act, an application was made under Schedule 8 by Patrick Joseph Holohan for the conversion of an existing Justices' On Licence into a premises licence, in respect of the Bramcote Arms, 58 Bramcote Grove, Bermondsey, SE16 3BZ.
- 10. The conversion application was duly granted to Patrick Joseph Holohan authorising the following licensable activity:
  - a) The retail sale of alcohol for consumption on and off the premises each day Monday – Saturday from 10.00-23.00 hours and on Sundays from 12.00 - 22.30 hours.
- 11. Bridget Mary Connolly was named as the designated premises supervisor on the premises licence at the time of the conversion and has remained on the licence since.
- 12. A copy of the current premises licence is attached as appendix A to the report.

### **Previous operating history under the premises licence**

- 13. On 29 September 2008, licensing officers visited the premises to carry out an inspection of the licence conditions and compile a licensing risk assessment with the dps Bridget Connolly. No issues were highlighted to licensing at the time of this visit officers by the dps. Following the visit a warning letter was sent to the premises dated 2 October 2008. The only matters of concern raised in the warning letter was that the premises licence was not kept on the premises and the premises licence summary was not on display.

### **The review of the premises licence & the police submissions**

- 14. On Friday 21 November 2008, the police executed a search warrant under the Misuse of Drugs Act 1971 at the premises at 19.00 hours. Twenty persons were arrested in connection with the supply and possession of controlled drugs. Persons arrested included the designated premises supervisor and three members of staff. A closure order was served on the premises.
- 15. On Saturday 22 November 2008, the police made a successful application to the magistrate's court for an extension of the closure order up until 10.00 on Friday 28 November 2008 in order for a review hearing to be held by this Council.

16. A copy of the court order is attached as appendix B.

17. On 24 November 2008, PC Paul Compton provided copies of all correspondences sent to the licensee and DPS. These are attached at appendix C. The grounds for the review relate to the following licensing objectives and are stated as follows:-

- a) Prevention of crime and disorder – “The Bramcote Arms, 58 Bramcote Grove, SE16 3BW, were the recipient of a closure order, authorised by Inspector Flanders, Southwark police, under section 161 Licensing Act 2003 from 19.00 hours on Friday 21 November 2008 for a period of twenty-four hours. The closure order was issued after the execution of a search warrant under the Misuse of Drugs Act 1971 following information received re the supply and possession of controlled drugs inside the premises and it’s environs. Simultaneously three close by addresses were also the subject of searches under the Misuse of Drugs Act. The reasons for the issue of the closure order was to prevent continuation of these offences as police feared that the management had insufficient control over activities taking place inside the premises and had failed to address the problems.

The execution of the search warrant resulted in the seizure of an amount of controlled drugs and twenty persons being arrested, including the designated premises supervisor and three members of staff for a variety of offences. All persons arrested have been subsequently bailed to early 2009 pending further enquiries and forensic examination of items seized. Items seized were found in the possession of individuals and also behind the “private” portion of the main bar.

The issue of the closure order required police to attend Camberwell Green magistrates court on Saturday 22 November 2008 at 10.00 to explain to the District Judge the justification for the issue of the closure order, at which point police made an application to extend the closure order up to 10.00 on Friday 28 November 2008. The issue of a closure order automatically instigates a review of the premises licence and this has been scheduled for 10.00 on Friday 28 November 2008 at Peckham Town Hall, Peckham. SE5 before the licensing sub-committee. The designated premises supervisor, Mrs Bridgett Connolly and the premises licence holder, Mr Patrick Holohan, were both present at the magistrates court hearing and did not contest the application to extend the closure order.”

### **Other representations submitted following advertisement of the review application**

18. The licence review has been advertised as of 24 November by means of a notice positioned on a streetlight immediately outside of the premises and regular checks are being made to ensure that it remains in place. The review is also being advertised at the Southwark Town Hall and on the Council’s web site. Further representations may be received up until the day before the hearing.

19. Due to the short period of time available to consider this matter following the magistrates court’s notification, this report is being written before it is known whether any further representations concerning this matter will be received. If any further representations are received by the service, these will be presented at the hearing.

### **The Local Vicinity**

20. A map of the local vicinity is attached as Appendix D. There are no other licensed premises within a 100m radius of The Bramcote Arms.

## **Policy implications**

21. The initial Southwark Statement of Licensing Policy was approved by council assembly on 8 December 2004. The latest full revision of the policy was approved 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 re-inforces 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;
  - h) Section 10 provides general guidance on the protection of children from harm; and
  - i) Section 11 deals with enforcement matters.
22. 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.

## **Community Impact Statement**

23. The Licensing Act 2003 requires the council as licensing authority to promote the four licensing objectives, being
- a) The prevention of crime and disorder;
  - b) Public safety;
  - c) The prevention of nuisance; and
  - d) The protection of children from harm.
24. The council's licensing sub-committee will determine this licence review with regard to the Act and secondary regulations and the four objectives in particular. The pursuit of the licensing objectives helps to ensure that responsible licensed operations complement and work successfully within their local community while protecting the community from irresponsible operation.
25. Each application is required by law to be considered upon its own merits with all relevant matters taken into account.

## **Resource Implications**

26. No fee is payable in respect of a determination of a premises licence review. The costs of the review must be met from the existing licensing service budget.

## **Consultations**

27. Consultation has been carried out in accordance with the provisions of the Licensing Act 2003 and is detailed in paragraph 18 of this report.

### **Legal implications – Concurrent report from the Strategic Director for Legal and Democratic Services**

28. The sub-committee is asked to determine, under section 167(2) / 167(5) of the Licensing Act a review of the said premises licence.

### **Principles for making the determination**

29. The principles that the Sub-Committee members must apply are set out below.

30. The licensing authority must review the premises licence where a closure order has come into force in relation to the premises in respect of which a premises licence has effect and where the licensing authority has received a notice under section 165(4) (notice of magistrates' court's determination), in relation to the order and any extension of it.

31. Before reviewing the licence the licensing authority must advertise the review by displaying a notice, as prescribed by regulations 38 and 39 of The Licensing Act 2003 (premises licences and club premises certificates) Regulations 2005, at, on or near the site of the premise to which the application relates, where it can conveniently be read from the exterior of the premises by the public and at the offices or the main offices of the licensing authority in a central and conspicuous place. The notice must be displayed for a period of no less than seven consecutive days and must invite representations about it to be made to the authority by responsible authorities and interested parties. The notice must state the dates between which interested parties and responsible authorities may make representations to the relevant licensing authority.

32. The closure order issued by the Court on Saturday 22 November has effect until Friday 28 November. As a result of this short timescale, it has not been possible to comply fully with the advertising requirements. The notices advertising the review were displayed as of Monday 24 November. Regulation 31 of the Licensing Act 2003 (Hearings) Regulations 2005 states that any irregularity resulting from a failure to comply with any provision of the regulations prior to the licensing authority making a determination shall not render the proceedings void.

33. "Relevant representations" are those 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; and
- 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.

34. The four licensing objectives are

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

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

36. The authority must hold a hearing to consider –

- a) The closure order and any extension of it;
- b) Any order made by the magistrates' court in respect of it, and
- c) Any relevant representations and take such of the following steps as it considers necessary for the promotion of the licensing objectives.

37. The steps are to –

- a) Modify the conditions of the licence by altering, omitting or adding any condition;
- b) Exclude a licensable activities from the scope of the licence;
- c) Remove the designated premises supervisor;
- d) Suspend the licence for a period not exceeding three months; and
- e) Revoke the licence.

38. For this purpose the conditions of a premises licence is modified if any of them are altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

39. 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. The authority must reach a determination no later than 28 days after the day on which it receives the notice of magistrates' court's determination.

40. In deciding what remedial action if any it should take, the authority must direct it's mind to the causes or concerns which 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.

41. 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.

### **Notification of Determination**

42. 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) Any person who made relevant representations;
- c) The chief officer of police for the area (or each police area) in which the premises are situated

43. Subject to the Licensing Hearing Regulations, the licensing committee may determine its own procedures. Key elements of the regulations are that

- a) 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;
- b) Members of the authority are free to ask any question of any party or other person appearing at the hearing;
- c) 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.
- d) 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.
- e) 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; and
- f) 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.

### **Financial implications**

44. There are no financial implications.

### **Reasons for urgency**

45. This application is submitted for urgent consideration in order to meet the deadline for determination of the matter of 28 November 2008 set under the relevant Court Order.

### **Reason for lateness**

46. This report is necessarily submitted as a late item as the relevant court order was made with short notice providing only for 10 working days for this process to be completed.

### **BACKGROUND PAPERS**

Background papers	Held at	Contact
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Various papers from the case file	The Health Safety & Licensing Office, The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirtikula Read 020 7525 5748

### **APPENDICES**

Appendix A	Premises licence
Appendix B	Court Order
Appendix C	Documents from Police
Appendix D	Map of locality

### **AUDIT TRAIL**

Lead Officer	Jonathon Toy, Head of Community Safety and Enforcement
Report Author	Kay Riley, Licensing Enforcement Officer

Version	Final	
Dated	24 November 2008	
Key decision	No	
Consultation with other officers		
Officer title	Comment sought	Comment included
Director of Legal and Democratic Services	Yes	Yes
Director of Finance	No	No