

Item No. 5	Classification: Open	Date: 15 July 2009 at 10am	MEETING NAME Licensing Sub-Committee
Report title:		LICENSING ACT 2003 – B D WINES, 1 BRAGANZAR STREET, LONDON SE17 3RD	
Ward(s) or groups affected:		NEWINGTON	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Sub-Committee considers an application by the Metropolitan Police for a review of the Premises Licence granted under the Licensing Act 2003 to Mr Bahader Singh Mahil in respect of the premises known as B D Wines, 1 Braganzar Street, London SE17 3RD.
2. *Notes*
 - a) *The grounds for the review are stated in paragraph 10 – 15 of this report.*
 - b) *A copy of the Council's approved procedure for hearings of 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.*

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 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 11 February 2005, during the transitional period of the implementation of the Act, an application was made under Schedule 8 by Bahader Singh Mahil for the conversion of existing Justices Licence into a Premises Licence, in respect of B D Wines, 1 Braganzar Street, London SE17 3RD for the ground floor convenience store and off licence. The application sought a straight conversion of the existing licence - no variation of the existing licence was sought.

7. In the absence of any police representations the application was duly granted on 22 December 2005. As a result Mr Mahil holds a Premises Licence which authorises the retail sale of alcohol for consumption off the premises for the convenience Store and Off licence on:
 - a) Monday-Saturday from 10.00 to 23.00
 - b) Sundays from 12.00-22.30
8. The Designated Premises Supervisor named on the licence at the time this review is Mr Bahader Singh Mahil.
9. A copy of the Premises Licence is attached to the report as Appendix 1.

The Application for a Review of the Premises Licence

10. On 28 May 2009 an application requesting a review of the premises licence was received from PC Paul Compton of the Metropolitan Police. A copy of the application is attached as Appendix B. The grounds for the review relate to the following licensing objectives and are summarized as follows:-
 - a) **The Prevention of Crime and Disorder** – Supply of controlled drugs openly (sold) at the premises.
 - b) **Protection of Children From Harm** - 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.
11. A copy of the review application is attached to the report as Appendix 2.
12. Additional information in the form of witness statement by supplied by two officers of the Metropolitan Police are attached as Appendix 3 to the report.

Other Representations Submitted following Advertisement of the Review Application

13. 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 June 2009.

Responsible Authorities

14. Additional information supporting the review application was made by the Councils Trading Standards on the grounds of the licensing objective– prevention of children from harm. A copy of the representation is attached as Appendix 4 to the report.

Interested Parties

15. There have been no further representations made by interested parties.

The Local Vicinity

16. A map of the local vicinity is attached as Appendix 5.

RESOURCE IMPLICATIONS

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

CONSULTATIONS

18. 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

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

SOUTHWARK STATEMENT OF LICENSING POLICY

20. 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.

21. 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.

CONCURRENT REPORT BY THE STRATEGIC DIRECTOR OF COMMUNITIES LAW AND GOVERNANCE – LEGAL ISSUES

22. 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

23. The principles, which Sub-Committee members must apply, are set out below.
24. 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 repetitious.
 - (e) The licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.
25. 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.
26. Each objective must be considered to be of equal importance
27. 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.
28. 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.
29. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
30. 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.
31. In deciding what remedial action if any it should take, the authority must direct it's 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.

32. 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

33. 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

34. 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.
35. 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

36. 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.

37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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

44. 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

APPENDICES

No.	Title
Appendix 1	The Premises Licence
Appendix 2	The Review Application
Appendix 3	Statement of Witness
Appendix 4	Representation by the Responsible Authority
Appendix 5	Map of the Local Vicinity

AUDIT TRAIL

Lead Officer	Jonathon Toy, Head of Community safety and Enforcement	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	3 July 2009	
Key Decision	No	
Consultation with other Officers / Directorates		
Officer Title	Comments sought	Comments included
Strategic Director of Communities, Law and Governance	No	No