

Item No. 5.	Classification: Open	Date: 8 June 2023	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Application for a Review of a Personal Licence	
Ward(s) or groups affected:		N/a	
From:		Strategic Director of Environment, Neighbourhoods and Growth	

RECOMMENDATION

1. That the licensing sub-committee considers a request submitted under Section 132A of the Licensing Act 2003 (the Act) for the review of a personal licence.
2. Notes:
 - a) The police have requested a review of a personal licence.
 - 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 to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.
5. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In carrying out its licensing functions, a licensing authority must also have regard to:
 - The Act itself
 - The guidance to the act issued under Section 182 of the Act
 - Secondary regulations issued under the Act

- The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. A personal licence is needed by an individual to act as a designated premises supervisor (DPS) where there is a premises licence to sell or authorise the sale of alcohol.
 8. The Act provides for the suspension or forfeiture of a personal licences by the courts and licensing authorities following convictions for relevant offences, including breaches of licensing law. The police can at any stage before or after the grant of a personal licence to seek a review of a personal licence on the grounds the personal licence holder has been:
 - a. Convicted of any relevant offence or foreign offence; or
 - b. Required to pay an immigration penalty.
 9. The portability of personal licences is also important to industry because of the frequency with which some businesses move managers from premises to premises.

KEY ISSUES FOR CONSIDERATION

The personal licence

10. A personal licence may be surrendered by the personal licence holder by giving notice to the licensing authority that granted the original licence. The notice must be accompanied by the personal licence or, if it is not available, a statement of the reason for failure to produce the licence. The licence will then lapse on receipt of the notice.
11. In cases where a personal licence holder has not formally surrendered their licence and a licensing authority becomes aware that the individual was convicted of a relevant offence they must give notice of the conviction to the chief officer of police for its area.
12. When an objection notice is served, a licensing sub-committee hearing must be convened to consider the notice unless the personal licence holder, chief officer of police, and licensing authority agree that a hearing isn't necessary. The licensing sub-committee must suspend or revoke the personal licence if it decides that to do so would be appropriate for the promotion of the crime prevention objective.

The review application

13. On 13 April 2023, a request was submitted under Section 132a of the Act, for the review of a personal licence, asking that the licensing sub-committee consider suspension or revocation of his licence.

Southwark Council statement of licensing policy

14. Council assembly approved Southwark's statement of licensing policy 2021-2026 on 25 November 2020 and it came into effect on 1 January 2021. The policy seeks to clarify the position of a personal licence holder as a designated premises supervisor, but does not address the circumstance as to when an incumbent licence holder receives a conviction of a relevant offence.
15. Members should take into consideration both the Southwark statement of licensing policy and the Section 182 Guidance when making decisions. Links are below.

Southwark policy:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>

Section 182 Guidance:

[Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/revised-guidance-issued-under-section-182-of-licensing-act-2003)

Climate change implications

16. Following council assembly on 14 July 2021, the council is committed to considering the climate change implications of any decisions.
17. Climate change is not a legal factor in the consideration of a review of a personal licence.
18. The council's climate change strategy is available:
<https://www.southwark.gov.uk/assets/attach/48607/Climate-Change-Strategy-July-2021-.pdf>

Community, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

20. This report does not result in a policy decision and each application is required to be considered upon its own individual merits with all relevant matters taken into account. In considering the recommendations of this report, due regard must be given to the public sector equality duty set out in section 149 of the Equality Act 2010. This requires the council to consider all individuals when carrying out its functions.
21. Importantly, the council must have due regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between people with protected

characteristics and those who do not. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The public sector equality duty also applies to marriage and civil partnership, but only in relation to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct.

22. The equalities impact statement for licensing decisions is contained within the Southwark Statement of Licensing Policy 2021 – 2026 at:

<https://www.southwark.gov.uk/business/licences/business-premises-licensing/licensing-and-gambling-act-policy>.

Health impact statement

23. Health impacts cannot be considered by law when making decisions under the Licensing Act 2003.

Resource implications

24. There is no fee associated with this type of hearing.

Consultation

25. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive – Governance and Assurance

26. The sub-committee is asked to determine, under Section 132A of the Licensing Act 2003, following an application, made under Section 132A of the Act, for a review of a personal licence. At any stage, before or after the grant of a personal licence to the grant of a premises licence, the police may ask the licensing authority to review the personal because the personal licence holder has been:

- a) convicted of any relevant offence or foreign offence; or
- b) required to pay an immigration penalty.

27. The principles which sub-committee members must apply are set out below.

Principles for making the determination

28. Under Section 132A, this licensing authority must hold a hearing to determine the review and any relevant representations.

29. Each objective must be considered to be of equal importance. The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives. The steps are to:

- Suspend the personal licence for a period not exceeding six months; or
- Revoke the personal licence.

34. If a licensing authority is considering whether to suspend or revoke the licence under section 132A, the authority must give notice to the licence holder and invite them to make representations regarding:
- Any decision of a court in relation to the licence
 - Any other relevant information (including information regarding the licence holder's personal circumstances).
35. Before deciding whether to suspend or revoke the licence the relevant licensing authority must take into account:
- Any representations made by the licence holder
 - Any decision of a court in relation to the relevant offence; and
 - Any other information which the authority considers relevant.
36. The authority may decide that no action is necessary if it finds that the review of the personal licence does not require it to take any steps appropriate to promote the licensing objectives.
37. In deciding what remedial action if any it should take, the authority must direct its mind to the representations. and should always be no more than an appropriate and proportionate response.
38. It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for the review of personal licence.

Reasons

39. Where the authority determines an application for review it must notify the determination and reasons why for making it to:
- The holder of the licence
 - The applicant, the chief officer of police for the area (or each police area) in which the premises are situated

Hearing procedures

40. 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.
41. This matter relates to the review of the 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

42. 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.
43. 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.
44. 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.

45. 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.
46. 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.
47. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities.
48. 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.
49. Other persons, 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

50. Members are required to have regard to the Home Office 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.

Strategic Director, Finance

51. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

BACKGROUND DOCUMENTS

Background papers	Held At	Contact
Licensing Act 2003 Home Office Revised Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
	None

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment, Neighbourhoods and Growth	
Report Author	Andrew Heron, Team Leader - Licensing	
Version	Final	
Dated	23 May 2023	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Assistant Chief Executive - Governance and Assurance	Yes	Yes
Strategic Director, Finance	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team		23 May 2023