

Item No. 6	Classification: Open	Date: DECEMBER 14 2009 - 10.00am	MEETING NAME Licensing Sub-Committee
Report title:		Registration under the Manufacture and Storage of Explosives Regulations 2005 - 365 WALWORTH ROAD, SE17 2AL	
Ward(s) or groups affected:		Premises are within: FARADAY WARD	
From:		Strategic Director of Environment & Housing	

RECOMMENDATION

1. That the Licensing Sub-Committee considers a request by the Licensing Unit for the revocation of the registration issued under the Manufacture and Storage of Explosives Regulations 2005 granted to Capalina News/Walworth Convenience Store, situated at 365 Walworth Road, SE17 2AL.

BACKGROUND INFORMATION.

The Manufacturer and Storage of Explosives Regulations 2005 (MSER).

2. The Manufacturer and Storage of Explosives Regulations came into force in April 2005. The Regulation provides a new registration and licensing regime for the storage and sale of fire and explosive measures. The local authority, are responsible for ensuring that anyone who wishes to store and sell fireworks holds the appropriate registration or obtain a licence for storing larger quantities of explosives. Explosives are classified by their Hazard Type: –
 - Hazard type 1 - having a mass explosion hazard
 - Hazard type 2 - having a serious projection hazard but not a mass explosion hazard
 - Hazard type 3 - having a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard
 - Hazard type 4 - having a fire or slight explosion hazard or both, with only local effect. (Fireworks generally come under Hazard Type 4)

Fire and Explosion Measures.

3. Any person who manufactures or stores explosives shall take appropriate measures:
 - a) to prevent fire or explosion
 - b) to limit the extent of fire or explosion including measures to prevent the spreading of fires and the communication of explosions from one location to another; and
 - c) to protect persons from the effects of fire or explosions.

Registration in Relation to Storage.

4. The duty for registration falls on the person or company who is manufacturing and/or storing the explosives. The licensee is accountable for compliance with the terms of the registration/licence it is therefore essential that the person who holds the registration/licence has effective control over the activities covered by the

registration/licence. Therefore registration/licences are now granted to a person or a company and not to the site.

5. The maximum quantity of explosives that can be kept in a licensed store will depend on the separation distance available and may not exceed 2000kg. The maximum quantity of explosives that can be kept in registered premises may not exceed one of the following:
 - Up to 30kg of explosive of any Hazard Type
 - up to 100kg of Hazard Type 3
 - up to 100kg of Hazard Type 3 and 4
 - up to 250kg of Hazard Type 4 OR
 - up to 250kg small arms ammunition and 30kg shooter's powder

The weights given are calculated as the net explosive weight less packaging etc (normally taken to be 25% of the total weight).

Registrations are now issued subject to conditions relating to storage methods. Until recently information on recommended storage methods was provided under a leaflet issued by Trading Standards Services. A copy of the leaflet is attached as Appendix A to the report.

Separation Distance.

6. Separation Distance means the distance between the store or the building in which explosives are, or are to be, manufactured and a building, or other place in or at which people are or are likely to be present either all the time or from time to time
A table of separation distances for Hazards Types 3 and 4 is attached as **Appendix B** to the report.

Storage of Fireworks.

7. The MSER Approved Code Of Practice And Guidance advises on the safe storage of fireworks for quantities of 75 kg of Hazard Type 4 pyrotechnical articles where the storage is adjacent or in the same building as domestic/sleeping accommodation.
8. The premises is a ground floor shop, with mixed commercial / residential units above it.
9. The premises has commercial units adjacent to either side of it at ground floor level with mixed commercial / residential units adjacent to either side above ground floor level. A map of the local vicinity is attached as **Appendix C**. The premises is at the centre of the circle on the map. The circle has a radius of 100 metres and is for the purposes of scale only.

Registration and Licence.

10. The Local Authority is responsible for licensing storage of explosives up to two (2) tonnes. If the storage is more than two (2) tonnes, the applicant applies to the Health and Safety Executive for a licence.
11. There are restrictions on when sales can be made. The Fireworks Regulations 2004 allows a premises that holds a registration or licence to store explosives to sell fireworks only during the following times:
 - 5 November (from 15 October to November 10)
 - New Year's Eve (from December 26 to December 31)
 - Chinese New Year (The first the day of Chinese New Year and three days immediately preceding it)

- Diwali (the day of Diwali and three days immediately preceding it)

In order to sell fireworks outside of these times a separate licence under the Fireworks Regulations 2004 is necessary in addition to a registration/licence under the MSER.

12. The Fireworks (Safety) Regulations 1997, as amended, bans the supply of certain types of fireworks, this includes any banger.
13. In carrying out its licensing functions, a licensing authority must also have regard to
 - a) The Manufacture Storage of Explosives Regulations 2005;
 - b) The approved code of practice and guidance issued by the HSE;
 - c) The Fireworks Act 2003
 - d) The Fireworks Regulations 2004
 - e) Fireworks (Safety) Regulations 1997
 - f) The application submitted
 - g) Relevant representations

The Current Registration.

14. The existing registration number 830605 was issued to Sivaguru Sivaruban of Capalina News/Walworth Convenience Store, situated at 365 Walworth Road, SE17 2AL on the 21 September 2009, it gives consent for the storage and supply of fireworks, a copy of the application form for the existing registration and a copy of the existing registration is attached as **Appendix D** to the report. **Part E** of appendix D shows the quantities of explosives that the applicant stated he intended to keep. The applicant stated that he did not intend to store more than **62.5kg** net in the premises of explosives that were previously registered as a 'Mode B' store and that she did not intend to store more than **75kg** of ammunition or pyrotechnic articles in a building that contains or adjoins domestic premises.

MATTERS FOR CONSIDERATION.

The Application for Revocation (Section 17(1)(a)(b) of MSER 2005).

15. The application for revocation is sought by the Licensing Unit under Section 17(1)(a)(b) of MSER 2005 following a request from the Council's Trading Standards Service after visits made to the premises. Matters observed included the breakdown of management responsibilities leading to the storing of fireworks in an improper manner and in disregard to advice previously given to the registration holder, and the sale of fireworks to an underage person. A copy of the representation from Trading Standards is attached as **Appendix E** to the report.. A copy of the revocation notification sent to the registration holder by the licensing Unit is attached as **Appendix F**.

Additional information on the past operating history of the premises.

16. The premises has held explosives registrations for a number of years , first in the name of Sivaguru Sivaneswaran and now in the name of Sivaguru Sivaruban. Sivaguru Sivaruban has been the registration holder since October 2007.

Resource Implications

17. No fee is payable in respect of an application to revoke a registration
18. The fee for registration to store less than 250 kg of fireworks is £51.

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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

20. The Sub-Committee are asked to determine an application for revocation under section 17(1)(a) and or (b) of The Manufacture and Storage of Explosives Regulations 2005.
21. The principles that the Sub-Committee must apply are set out below.

Principles for making the determination

22. Where the licensing authority has granted a licence or registered a person for the storage of explosives under The Manufacture and Storage of Explosives Regulations 2005, the authority may, pursuant to regulation 17(1) revoke that licence or registration:
23. **(A)** Where there has been a change in circumstances such that the site, or within it, any place in which explosives are stored which licence or, as the case may be, registration relates to is no longer suitable of explosives:
24. **(B)** Where it appears to the licensing authority on information obtained after the grant of the licence or registration that the licensee or registration that the licensee or registered person is not a fit person to store explosives, in the case of a registered person or a person licensed to store explosives.
25. Where the authority proposes to revoke a licence or registration it shall, before taking such action, notify the applicant, licensee or registered person, as the case may be, of its proposed course of action and afford him the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of notification.
26. Representations may be made in writing, or both in writing and orally.
27. Where the licensing authority decides to revoke a licence or registration it shall provide in writing to the applicant, licensee or registered person, as the case may be, the reasons for its decision.
28. Where the licensing authority decides to revoke a licence or registration, that revocation shall take effect from a date to be determined by the licensing authority that shall be a date after the 28-day notification period.

Hearing Procedures.

29. 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 registration 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.

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.

Guidance.

35. 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 Papers	Held At	Contact
MSER 2005 DCMS Guidance Secondary Regulations 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 a	Copy of Trading Standards leaflet
Appendix b	Copy of table of separation distances for Hazards
Appendix c	Map of local vicinity
Appendix d	Copy existing registration and existing application
Appendix e	copies of the representation and photos from Trading Standards
Appendix f	Copy of revocation notification

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Housing	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	December 4 2009	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	No	No
Executive Member	No	No
Date final report sent to Constitutional Team	December 4 2009	