

Licensing Sub Committee

19 June 2017

Applications under the Licensing Act 2003

1. Summary Statement

- 1.1 At its meeting on 26 May 2017, the Licensing Committee established Licensing Sub Committees to assist in the discharge of its licensing functions under the Act, and defined the circumstances in which those Sub Committee could determine applications under the Act.
- 1.2 Accordingly, attached to this report are one or more applications which fall within the delegated authority of the Sub Committee.

2. Recommendation

- 2.1 That the Sub Committee consider and determine the attached application(s) under the Licensing Act 2003.

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Applications under the Licensing Act 2003

3. Strategic Resource Implications

3.1 The administration of the licensing regime are cost neutral.

4. Legal and Statutory Implications

4.1 In determining the application(s) the Licensing Sub Committee must have regard to;

- Representations made by the responsible authorities /other person
- The Provisions of the Licensing Act 2003 and relevant regulations made under the Act
- The statutory guidance issued under Section 182 of the Licensing Act 2003
- Relevant case law
- Sandwell MBC Statement of Licensing Policy

All with a view to promoting the Licensing Objectives which are –

a The Prevention of Crime and Disorder

b Public Safety

c The Prevention of public nuisance

d The Protection of children from harm.

4.2 In conducting Sub Committee procedure, the Sub Committee shall have particular regard to the Licensing Act 2003 (Hearings) Regulations 2005 and the Section 182 guidance referred to above.

4.3 The guidance issued under Section 182 of the Licensing Act 2003 states that “The Licensing Authority`s duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder”

4.4 Article 6 of Part 1 Schedule1 of the Human Rights Act 1998, states that in determination of a persons` civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Decisions should generally be pronounced publicly.

- 4.5 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.
- 4.6 Article 10 states that everyone has the right to freedom of expression.
- 4.7 Part II, Article 1 of the Act states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

5. Implications for the Scorecard Priorities

5.1 The Licensing Objectives outlined above are pertinent to the Councils Scorecard Priorities.

5.2 The Licensing function specifically impacts on the following Scorecard priorities:-

- i. Great Prospects – Investing in people, business and jobs - Licensed establishments provide a proportion of employment in the Borough, as such they provide an important part of the borough's economy;
- ii. Great Place – cleaner streets, more recycling and safer neighbourhoods – the objectives of the Licensing Act contributes to upholding and improving safety within the borough for its residents.
- iii. Great People – protecting children from harm associated with licensable activities.

5.3 Sandwell Partnership (SSP) is the local statutory Community Safety Partnership for the borough. A wide range of agencies, including Trading Standards and Licensing, work together to tackle crime and improve community safety through the partnership. Licensing works with responsible bodies, such as the Police, to ensure that the aims of the authorities' policies, in respect of licensable activities, are achieved and that legal standards are maintained.

6. Background Details

6.1 Licensable Activities

- Sale by retail of alcohol.
- Supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.
- Provision of regulated entertainment
- Provision of late night refreshment

6.2 **Authorisation**

Licensable activities are authorised by means of a Premises Licence, Club Premises Certificate or Temporary Event Notice.

6.3 **Authorised Persons**

Licensing Officers.
Trading Standards Officers
Fire Officer.
Health and Safety Officers.
Environmental Health Officers.

6.4 **Other Persons**

Any other person can make representations.

6.5 **Responsible Authority**

Police.
Licensing Authority
Fire Authority.
Health and Safety.
Planning.
Environmental Health
Trading Standards.
Sandwell Safeguarding Childrens Board.
Local Health Board
Public Health

6.6 **Licensing Sub Committee – Application for Grant of Premises Licence**

Relevant representations have to be made, i.e. they are about the likely effect of the grant of the Licence on the promotion of the Licensing objectives. They must not be frivolous or vexatious.

Where such representations are made the Sub Committee must, having regard to the representations, take such steps, as follows, as it considers appropriate for the promotion of the Licensing objectives:

- a) grant the Licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the Authority considers appropriate for the promotion of the Licensing objectives and any condition which must, under

Section 19, 20 or 21 of the Licensing Act 2003 (as the case may be) be included in the Licence;

- b) exclude from the scope of the Licence any of the Licensable activities to which the application relates;
- c) to refuse to specify a person in the Licence as the premises supervisor;
- d) to reject the application.

A condition suggested in an operating schedule is deemed to be “modified” if it is altered, omitted or any new condition is added.

The Licensing Sub Committee may grant a Licence subject to different conditions in respect of different parts of the premises concerned and different licensable activities.

Where relevant representations are made the Licensing Sub Committee is required to give reasons for granting the Licence (with or without conditions)/excluding certain activities/refusing to specify a person as a premises supervisor or in fact rejecting the application. The reasons must be given by way of a formal Notice.

6.7 Licensing Sub Committee – Application for Variation of Premises Licence

The Licensing Sub Committee must have regard to the relevant representations made and take any of the following steps as it is considered appropriate for the promotion of the Licensing objectives:

- a) modify the conditions of the Licence;
- b) reject the whole or part of the application.

The above steps shall only be taken if the Sub Committee consider them appropriate for the promotion of the Licensing Objectives. If the Sub Committee take the view that it is not appropriate to modify conditions then the application will be granted as of right. If the application is granted then the conditions under Section 19, 20 or 21 of the Licensing Act 2003 (as the case may be) must be included in the licence.

6.8 Licensing Sub Committee – Application for the Review of a Licence

An application to review an existing premises licence or club premises certificate may be made by any person or a responsible authority. In the case of a club, a club member may also apply.

The authority may, at any time reject any ground for review specified in the application if it is satisfied

- a) that the ground is not relevant to one or more of the licensing objectives, or
- b) in the case of an application made by a person other than a responsible authority that
 - i) the ground is frivolous or vexatious, or
 - ii) the ground is repetition

Where a review has been applied for the licence holder/club, a responsible authority and any person may make relevant representations relating to that review.

Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

The authority must have regard to the application and any relevant representations, take such steps as follows, as are considered appropriate for the promotion of the licensing objectives:

- a) to modify the conditions of the licence or certificate
- b) to exclude a licensable activity from the scope of the licence or exclude a qualifying club activity from the scope of the certificate
- c) to remove the designated premises supervisor in the case of a premises licence
- d) to suspend the licence or certificate for a period not exceeding three months.
- e) to revoke the licence or withdraw the certificate; for this purpose the conditions of the licence or certificate are modified if any one of them is altered or omitted or any new condition is added.

Where the authority modifies the conditions of the licence or excludes a licensable activity/qualifying club activity from the scope of the licence it may specify that the modification or exclusion is to have effect for a period not exceeding three months.

Conditions that are required by sections 19,20 or 21 on premises licence may not be removed or modified.

Conditions that are required by sections 73 or 74 on a club premises certificate may not be removed or modified.

Where an authority makes a determination for a review it must notify the holder of the licence/the club, the applicant, any person who made representations and the chief of police of the area in which the premises is situated.

6.9 Licensing Sub Committee - Application for Grant of Personal Licence

Where, having regard to

- (a) any conviction of the applicant for a relevant offence, and
- (b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence, and
- (c) the applicant having been required to pay any immigration penalty

the chief officer of police is satisfied that granting the licence would undermine the crime prevention objective, he must give the authority a notice stating the reasons why he is so satisfied (an "objection notice"). Where no objection notice is given (or the notice is withdrawn), the authority must grant the application.

If it appears to the authority that the applicant has been—

- (a) convicted of an immigration offence,
- (b) convicted of a foreign offence that the authority considers to be comparable to an immigration offence, or
- (c) required to pay an immigration penalty,

the authority must give the Secretary of State a notice to that effect.

Where, having regard to—

- (a) any conviction of the applicant for an immigration offence,
- (b) any conviction of the applicant for a foreign offence which the Secretary of State considers to be comparable to an immigration offence, and

(c) the applicant having been required to pay any immigration penalty, the Secretary of State is satisfied that granting the licence would be prejudicial to the prevention of illegal working in licensed premises, the Secretary of State must, within the period of 14 days beginning with the day the Secretary of State received the notice from the Local Authority give the authority a notice stating the reasons for being so satisfied.

Where no objection notice is given by the Secretary of State of the chief officer of police within that period, the authority must grant the application.

In any other case, (where an objection notice or an immigration objection notice is given within the period of 14 days and not withdrawn),] the authority—

(a) must hold a hearing to consider the objection notice, unless the applicant, person who gave the notice and the authority agree that it is unnecessary, and

(b) having regard to the notice, must—

(i) reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so, and

(ii) grant the application in any other case

Reasons must be given

6.10 Summary Review of a Premises Licence

An application may be made for a summary review of a premises licence by the Police when they provide appropriate certification of serious crime and disorder. The Authority must within 48 hours of receipt of such an application, consider whether or not to take interim steps to modify the conditions of the licence, exclude the retail sale of alcohol from the scope of the licence, remove the Designated Premises Supervisor or suspend the licence

Source Documents

- Licensing Act 2003
- Hearing Regulations 2005 as amended