

Decision Maker: **General Purposes and Licensing Committee**

Date: **30 June 2010**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **LICENSING ACT 2003 - LATE OBJECTIONS**

Contact Officer: Paul Lehane , Head of Food Safety, Occupational Safety & Licensing
Tel: 020 8313 4216 E-mail: paul.lehane@bromley.gov.uk

Chief Officer: Nigel Davies Director of Environmental Services

Ward: All

1. Reason for report

To advise members of a Court of Appeal decision relating to late objections under the Licensing Act 2010

2. **RECOMMENDATION(S)**

Members are asked to

1. **Note that objections received outside the statutory consultation period cannot be accepted**
2. **Note that failure to comply with the Councils own non statutory consultation procedure may be subject to Judicial Review**

Corporate Policy

1. Policy Status: Existing policy. Statement of Licensing Policy 2008 - 2011
 2. BBB Priority: Safer Bromley. Quality Environment & Vibrant Thriving Town Centres
-

Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £3.5M
 5. Source of funding: Existing Revenue Budgets
-

Staff

1. Number of staff (current and additional): 62 (Licensing Service 8)
 2. If from existing staff resources, number of staff hours: n/a
-

Legal

1. Legal Requirement: Statutory requirement. Court of Appeal Decision
 2. Call-in: Call-in is not applicable.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 850 businesses licenced under the Licensing Act 2003 and local residents & businesses
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The Licensing Act 2003 sets out the statutory process for licence applications including the requirement for the applicant to undertake public consultation and the time period for this and for representations to be made.
- 3.2 Applicants must advertise an application by displaying a poster on the premises and placing a notice in a local paper for 28 days and representations must be made to the Council within that period.
- 3.3 This Council undertakes additional non statutory consultation by writing to local Ward Members, Residents Associations and all businesses and residents within a radius of the application site. The area covered is determined by the Licensing Team taking into account the nature of the application and the locality.
- 3.4 The High Court (Queens Bench Division) has recently heard a Judicial Review against Westminster Council in respect of late objections for the Albert Hall.
- 3.5 The Council received an application to add boxing and wrestling to the licence and undertook additional non statutory consultation by writing to premises in a standard 30m radius of the site.
- 3.6 Albert Court, one of the mansion blocks, adjacent to the Albert Hall was not included in the consultation but the 30m radius touched the corner of the building.
- 3.7 No representations were received within the 28 day consultation period, but a number of objections from the residents of Albert Court were received later. The Council refused to consider the late objections and granted the application. The residents sought a Judicial Review of the Councils decision.
- 3.8 The Court decided
 - a) There is no legal power for the Council to accept and consider late objections.
 - b) The Council's failure to undertake consultation as per its own published practice was, in this case, so substandard as to be irrational or unlawful and therefore the Court upheld the application for a Judicial Review and the decision of the Council to grant the variation to the licence was quashed

In the light of this decision

- c) Officers and Members should be reminded that they have no discretion to accept representations received outside the 28 day consultation period. To do so would place the Council at risk of challenge from either the applicant or residents. Under no circumstances can late objections be included in a report to Licensing Sub Committee.
- d) Officers need to approach the non statutory consultation process with 'common sense' to ensure that the purpose of the consultation is achieved, namely that of notifying those living in the immediate vicinity of the application.

4. POLICY IMPLICATIONS

The Council undertakes additional non statutory consultation and this is included in the Statement of Licensing Policy. Members may wish to review the wording of this section when the policy is reviewed later this year.

5. FINANCIAL IMPLICATIONS

There are no direct financial implications but a failure to apply the Councils own policy could lead to an application for a Judicial Review with the associated costs.

6. LEGAL IMPLICATIONS

The Council must approve a statement of Licensing Policy and review it every three years. It must also review the policy from time to time and amend it as necessary.

Non-Applicable Sections:	PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	R (on the application of (1) Albert Court Residents Association, (2) Albert Court (Westminster) Management Co Ltd, (3) Albert Court (Westminster) Freehold Co Ltd, (4) and others v Westminster City Council . Queens Bench Division 2 March 2010. Access via Paul Lehane, Head of Food, Safety and Licensing