

**Decision Maker:** GENERAL PURPOSES AND LICENSING COMMITTEE

**Date:** Wednesday 26 September 2012

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

**Title:** UPDATE ON APPEALS - LICENSING ACT 2003

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

**Chief Officer:** Nigel Davies, Director of Environmental Services

**Ward:** (All Wards);

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1. Reason for report

To advise members of the outcome of recent appeals to the Magistrates Court against the decisions of Licensing Sub-Committees

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2. **RECOMMENDATION(S)**

**Members are asked to note the success in defending three appeals and that two further appeals await determination.**

## Corporate Policy

1. Policy Status: Existing Policy: The Council adopted a Statement of Licensing Policy for the period 2011 to 2016. This policy guides Members sitting on Sub Committees in their decision making
  2. BBB Priority: Children and Young People Excellent Council Quality Environment Safer Bromley Vibrant, Thriving Town Centres:
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## Financial

1. Cost of proposal:: Further Details Defending an appeal incurs costs. Where the appeal is successfully defended the Court have the discretion to award costs to the Council, but where an appeal was not successfully defended the Council is at risk of paying the appellants costs.
  2. Ongoing costs: Non-Recurring Cost:
  3. Budget head/performance centre: Public Protection
  4. Total current budget for this head: £4.033m
  5. Source of funding: 74
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## Staff

1. Number of staff (current and additional): The Licensing Team consists of three licensing officers supported by 2 full time and 2 part time administrators.
  2. If from existing staff resources, number of staff hours:
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## Legal

1. Legal Requirement: Statutory Requirement: The Council is the Licensing Authority under the Licensing Act 2003 and must determine licence applications. The Act contains a right of appeal against the Councils decision.
  2. Call-in: Not Applicable:
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not known
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## Ward Councillor Views

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

### **3. COMMENTARY**

Over the last 18 months the Licensing Team supported by the Council's Legal Service have successfully responded to three (3) appeal hearings at the Magistrates Court following decisions made by licensing subcommittees.

#### **3.1 Beckenham Convenience Store 268 High Street Beckenham**

Following complaints alleging a breach of operating hours licensing officers undertook a number of successful test purchases leading to two Reviews. The first Review application was made by Councillor Stephen Wells, the first such application by a Ward Councillor. The Sub Committee imposed a 2 month suspension of the licence. This was subject to an appeal which had the effect of deferring the Councils decision until the appeal was determined by the Court. A further successful test purchase was made during this period which prompted a second Review by the Metropolitan Police. This led to the Sub Committee chaired by Cllr Tim Stevens Revoking the licence. This decision was also subject to an appeal. The two appeals were heard by Bromley Magistrates Court together on 26 July 2011. Prior to the appeal the business had been sold and the licence transferred to the new owner.

The Court accepted that that the business had been sold and decided that a 1 month suspension was appropriate. The original licence holder was also prosecuted for the offences of selling alcohol after the time permitted by the license and was fined a total of £1,700 + £15 victim surcharge and ordered to pay costs to the Council of £693.70. His personal licence was suspended for 3 months.

#### **3.2 Bridge Bar (formerly Langtry's), 2-8, High Street, Beckenham, Kent**

An application was made to vary the licence in April 2011 to extend the operating hours to 03.00 on Saturday and Sunday and to increase the occupancy to 550 from 450. The application was refused by the Licensing Sub Committee chaired by Cllr Owen on 30 June 2011 as it was in the Beckenham Cumulative Impact area. The Committee believed that the licensing objectives would not be positively promoted if the application were to be granted. The applicant appealed against the decision which was heard by South East London Magistrates on 10 January 2012. The Court upheld the Council's decision and dismissed the appeal, awarding costs of £1,930.60 in favour of the Council. This was an important decision as it supported the Councils cumulative impact policy in Beckenham.

#### **3.3 The Beech Tree Wellington Road Orpington**

Following a long and protracted involvement by the Public Protection Division's Nuisance and Licensing Teams the Licence for these premises was revoked on appeal by the South East London Magistrates on 31 May 2012. The Court upheld the decision of the Councils Licensing Sub Committee chaired by Cllr Nicholas Bennett JP on 19 December 2011 when it heard an application for a Review.

An application to formally 'Review' the licence was made by the Council's Public Health Nuisance Team following a series of complaints about loud music and anti social behaviour from the pub and by the landlord since March 2011. At the 'Review' the Councils Licensing Sub Committee decided that the only way to resolve the problems in this case was to 'Revoke' the licence.

The Sub Committee heard that residents had been complaining about loud music and intimidating and anti-social behaviour. Police witnessed the noise and an Abatement Notice was served by the Council.

A breach of the Noise Abatement Notice was witnessed by Environmental Health Officers who then arranged to seized the pub's noise equipment on 25 and 31 August 21011 including speakers amplifiers and TV. The Licence holder was also prosecuted for breaching the Noise Abatement Notice but also lodged an appeal against his conviction which is due to be heard at the Crown Court in September 2012 .

Following further complaints of noise Council Officers again visited the pub on 25 May 2012 and seized further equipment.

The Licence holder appealed to South East London Magistrates Court against the decision to Revoke his licence. After 3 days of evidence the Court decided that the Councils decision was the correct one and dismissed the appeal awarding costs of £6,125.

### **Future Appeals**

There are currently two further appeals awaiting determination by the Court. These relate to

- 'Your Local' 75 High St Bromley for refusing to grant a licence for an Off Licence. This application was in the Bromley Cumulative Impact area. The appeal is currently listed for a hearing on 15 October 2012, and
- TR Supermarket Edgehill Road Chislehurst where Members Revoked the licence following underage sales.

## **4. POLICY IMPLICATIONS**

Members should be encouraged by the success of these three appeals in as much as it indicates that they are adopting a lawful, balanced and proportionate approach to their decision making when determining applications at Sub committee hearings. Members are taking appropriate account of the four licensing objectives and the Councils Statement of Licensing Policy when determining applications.

## **5. FINANCIAL IMPLICATIONS**

There is a cost to the Council in defending an appeal in officer time and possibly also in legal fees if we instruct Counsel. The Court has the discretion to make an award of costs if the appeal is dismissed in favour of the Councils decision, but is not automatic and there is no guarantee that all the Councils costs will be recovered in any particular case.

## **6. LEGAL IMPLICATIONS**

The Licensing Act 2003 establishes the Council as the Licensing Authority. There is a legal duty to prepare, consult on and adopt a Statement of Licensing Policy and to refer to it when making decisions. At the heart of each decision are the 4 Licensing Objectives set out in section 4 which are

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

## 7. PERSONNEL IMPLICATIONS

The effective and efficient discharge of the Councils licensing functions is only achieved through a mutually supportive team approach which includes the 3 Licensing Officers and their administrative support team, the councils legal team, colleagues in Trading Standards, the Public Health Nuisance Team, the Health & Safety Team and Planning Department. The various partner organisations (Responsible Authorities) mainly the Metropolitan Police and Fire Brigade and of Members of this Committee.

<b>Non-Applicable Sections:</b>	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	Premises case files for the businesses referred to in the report