

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: Tuesday 6 February 2018

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

Title: LICENSING UPDATE FEBRUARY 2018

Contact Officer: Paul Lehane, Head of Food Safety, Occupational Safety and Licensing
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Chief Officer: Executive Director of Environment & Community Services

Ward: (All Wards);

1. Reason for report

To provide an update to Members on some key licensing issues

2. **RECOMMENDATION(S)**

Members are asked to

2.1 **Decide if the current approach by officers to undertake mediation in response to representations against licensing application should continue**

2.2 **Decide if it is appropriate to have a programme of dates pre-set for Licensing Subcommittee meeting in light of the significant reduction in the number required.**

2.3 **Note the position regarding an appeal against a licensing subcommittee decision relating to 210 High St Beckenham.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: Licensing of premises under the Licensing Act 2003 provides for the protection of children from harm, and the Gambling Act 2005 aims to protect children and vulnerable adults from harm and exploitation.
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Corporate Policy

1. Policy Status: Existing Policy: The Council adopted a Statement of Licensing Policy under the Licensing Act 2003 for the period 2016-2021. We also adopted a policy in relation to the Gambling Act 2005 covering the period 2016-2019. Members of Licensing subcommittees use these policies as a framework when making decisions on individual applications.
 2. BBB Priority: Children and Young People Excellent Council Quality Environment Safe Bromley Supporting Independence Vibrant, Thriving Town Centres Healthy Bromley Regeneration:
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Public Protection and Safety Portfolio budget
 4. Total current budget for this head: £2.122m
 5. Source of funding: Existing Revenue budget 2017/2018
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Personnel

1. Number of staff (current and additional): Licensing Team – Two licensing officers and 3.5 fte admin.
 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 the Gambling act 2005, and is responsible for the grant, renewal, variation or refusal of licence and their enforcement
 2. Call-in: Not Applicable:
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Procurement

1. Summary of Procurement Implications: Not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The Council licences approximately 900 premises for the sale of alcohol, issues about 1000 TENs, over 3000 personal licence holders and 50 gambling premises.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not applicable

3. COMMENTARY

Sub Committee Hearings since November 2017

- 3.1 In the November licensing update Members were advised that there had been no need to call on the Licensing Sub Committee to determine any applications since August 17.
- 3.2 Since then there has been one hearing in respect of Shortlands Golf Club on 14 Nov. This was an application for a new premises licence to either operate alongside the existing club premises certificate, or replace it. Nine local residents and two Ward Cllrs made representations against the application. In light of these the application had to be referred to a Subcommittee to be determined. In this case the application was granted with revised time of operation and subject to conditions to minimise nuisance from noise.
- 3.3 Looking forward we have one further application that will need to be determined by a licensing subcommittee (scheduled for 31 Jan 18).
- 3.4 While the number of licence applications has reduced somewhat over the last few years (77 in 2015 to 52 in 2017), the number of applications requiring a subcommittee decision has fallen very sharply to the point where we have had only 1 hearing in 5 months. The licensing team are still receiving representations to most applications for new licences and major variations but are seeking to mediate and resolve the concerns of those who are likely to be affected. This approach follows the approach preferred by Cllr Stevens when he was the Committee Chairman.
- 3.5 Members are asked to consider if they wish the Licensing Officers to maintain the current approach and seek to resolve representations where this is possible, or return to the previous approach of referring any application subject to a valid representation to a Licensing Subcommittee.
- 3.6 If Members decide to maintain the current approach, then they may wish to consider whether or not it is necessary to have a programme of licensing subcommittee dates pre-arranged for the forthcoming year. In light of recent experiences the majority of these have had to be vacated.
- 3.7 Under the Licensing Act 2003 the Council must establish a Licensing Committee of up to 15 Members. In Bromley is committee is incorporated with the General Purposes Committee. Any three members of this committee can be called upon to sit as a subcommittee to determine individual applications. There is no legal basis for having dates for subcommittees to be prearranged, but it made for good administrative practice when there was a greater demand.
- 3.8 Currently have to establish an additional subcommittee when we have objections to TENs (Temporary Event Notices) or when an expedited review is sought, because these need to be dealt with urgency and cannot usually wait to the next planned meeting date. The main difficulty for Committee Serves is finding a suitable room at short notice. Members have always responded to these requests very positively.
- 3.9 210 High St Beckenham - Appeal against the decision of the Licensing Subcommittee
- Since the November report, officers have continued to work with the appellant and the business to resolve the issues.
- 3.10 We have re-set and sealed the noise limiter and are satisfied that it will control the level of amplified music and prevent a 'public nuisance'. Whilst a statutory noise nuisance was witnessed when the business first opened in late 2016 / early 2017 and an abatement notice served, no further problems of that magnitude have been noted since.

- 3.11 In December 2017 the Planning Committee refused three planning applications relating to the use of the premises; however the business can legitimately continue to operate under the 'deemed planning consent' which lasts up to the end of 2018. The business has lodged appeals against the planning decisions.
- 3.12 The Council has now arrived at a point where it is satisfied that there is no statutory or public nuisance arising from the operation of the business. Residents do still continue to complain but it is our view that these relate to 'a loss of amenity' which is relevant to planning legislation and but not that of statutory nuisance or licensing.
- 3.13 On that basis, and in consultation with the appellant, the appeal against the licensing subcommittee decision is to progress to a full hearing and Bromley Magistrates Court has set aside two days commencing on 23 April 2018.

Gambling Act 2005. Statement of Policy 2016 to 2019

- 3.14 The current statement of policy for the Gambling Act 2005 was prepared in 2015 and came into effect in January 2016 for three years.
- 3.15 The Council will need to prepare its policy for the period 2019 to 2022 this year so that it can be consulted upon and adopted by full Council in the autumn, ready for January 2019.
- 3.16 A further report will be prepared to commence this process will be prepared for the first meeting of the committee after the May elections.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 There are 4 licensing objectives under the Licensing Act 2003, one of which is the 'protection of children from harm'. Vulnerable adults and children are given protection under the Gambling act 2005 through the licensing objective of 'protecting children and other vulnerable adults from being harmed or exploited by gambling. In making decisions Members must promote these objectives

5. POLICY IMPLICATIONS

- 5.1 The Council is required to prepare and publish statements of its policy under both the Licensing Act 2003 and the Gambling Act 2005.

6. FINANCIAL IMPLICATIONS

- 6.1 Decisions by Members sitting on a licensing subcommittee can be challenged by way of an appeal to the Magistrates Court, or exceptionally to the High Court. This carries a potential risk of legal costs.

7. LEGAL IMPLICATIONS

- 7.1 Members are exercising quasi-judicial administrative functions when determining applications as a Licensing subcommittee. Hearings are open to the public and must be fair. In making decisions Members need to be mindful of the legal requirements relating to the particular licensing regime, official guidance and the Councils own policies, as decisions can be formally challenged.

Non-Applicable Sections:	PERSONNEL AND PROCUREMENT IMPLICATIONS
Background Documents: (Access via Contact Officer)	Licensing Act 2003, Gambling Act 2005, Licensing and Gambling statements of policy.