

Licensing Panel 3

21 May, 2012

Applications under the Licensing Act 2003

1. Summary Statement

- 1.1 At its meeting on 25 May, 2007, the Licensing Committee established Licensing Panels to assist in the discharge of its licensing functions under the Act, and defined the circumstances in which those Panels 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 Panel.

2. Recommendation

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

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3. Strategic Resource Implications

- 3.1 Any costs to the Council arising from applications will currently be absorbed within existing budgets. The budgetary situation will be reviewed, however, once sufficient time has elapsed to assess the impact of the new responsibilities under the Licensing Act 2003 on the Council.

4. Legal and Statutory Implications

- 4.1 In determining the application(s) the Licensing Panel must have regard to the Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003. The Licensing Panel must carry out its functions under the Licensing Act 2003 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; and
 - d. The protection of children from harm.
- 4.2 Article 6 of Part 1 Schedule 1 of the Human Rights Act 1998, states that in determination of a person's 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.
- 4.3 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.
- 4.4 Article 10 states that everyone has the right to freedom of expression.
- 4.5 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 Act 2003 has four licensing objectives which are highly pertinent to the Council's Scorecard Priorities, these being:
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance;
 - (d) the protection of children from harm.

- 5.2 The Council's licensing functions have implications on the following Scorecard Priorities
- 5.3 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 and the Gambling Act both contribute to upholding and improving safety within the borough for its residents.
- 5.4 The licensing function already feeds into the Crime and Disorder Action Plan, Anti-Social Behaviour Plan, and Violent Crime / Alcohol Group action plan, but will have a greater role to play as the new legislation is enacted. Officers have reported directly to the Safer Sandwell Partnership Executive on licensing aspects of the above.

6. **Background Details**

General law / definitions

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 Officer.
Fire Officer.
Health and Safety Officer.
Environmental Health Officer.

6.4 Interested Party

Person living in the vicinity of the premises.
Body representing persons who live in that vicinity.
A person involved in a business in that vicinity.
A body representing persons involved in such businesses.

6.5 Responsible Authority

Police.
Fire Authority.
Health and Safety.
Planning.
Environmental Health and Trading Standards.
Education and Children Services.

6.6 Licensing Panel – Application for Grant of Premises Licence

Relevant representations have to be made, ie they are about the likely effect of the grant of the Licence on the promotion of the Licensing objectives. In the case of an interested party they must not be frivolous or vexatious.

Where such representations are made the Panel must, having regard to the representations, take such steps, as follows, as are necessary 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 necessary 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 Panel 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 Panel are 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 Panel – Application for Variation of Premises Licence

The Licensing Panel must have regard to the relevant representations made and take any of the following steps as are necessary 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 Panel consider them necessary for the promotion of the Licensing Objectives. If the Panel take the view that it is not necessary 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 the licence.

6.8 Licensing Panel – Application for Grant of Review Licence

An application to review an existing premises licence or club premises certificate may be made by an interested party 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 an interested party 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 having regard to the application and any relevant representations, take such steps as follows, as are necessary 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 representation and the chief of police of the area in which the premises is situated.

6.9 Licensing Panel - 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,

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.

In any other case, the authority must hold a hearing for the Licensing Panel to consider the objection notice, unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and having regard to the notice, the Panel must

- (i) reject the application if it considers it necessary 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 Licensing Panel - Application for Renewal 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,

the chief officer of police is satisfied that renewing 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 any such notice is withdrawn), the authority must grant the application.

In any other case, the authority must hold a hearing for the Licensing Panel to consider the objection notice unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and having regard to the notice, the Panel must

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

(ii) grant the application in any other case.

Reasons must be given

Source Documents

- Licensing Act 2003
- Hearing Regulations 2005 as amended