

<b>REPORT TO:</b>	<b>LICENSING SUB-COMMITTEE</b> <b>2 October 2014</b>
<b>AGENDA ITEM:</b>	<b>6</b>
<b>SUBJECT:</b>	<b>LICENSING ACT 2003 – APPLICATION FOR VARIATION TO A PREMISES LICENCE</b>
<b>LEAD OFFICER:</b>	<b>Executive Director, Development &amp; Environment Department</b>
<b>CABINET MEMBER:</b>	<b>Councillor Mark Watson, Cabinet Member for Communities, Safety &amp; Justice</b>
<b>WARDS:</b>	<b>West Thornton</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> This report is specific to this application and has no implications on the Council's Corporate Policies.	
<b>FINANCIAL SUMMARY:</b> This application is being processed as part of normal duties carried out by the Department with no additional costs involved.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A	

For general release

<b>1. RECOMMENDATION</b>
1.1 The Sub-Committee is asked to determine whether to grant the application for a variation to the premises licence at 774 London Road, Thornton Heath, CR7 6AY

## **2. EXECUTIVE SUMMARY**

- 2.1 The purpose of this report is to advise the Sub-Committee that an application has been received for a variation to a premises licence under the Licensing Act 2003 ("the Act"). This application is the subject of a representation, therefore a hearing is required.

## **3. DETAIL**

- 3.1 A Protocol for Licensing Hearings and a Procedure for Licensing Sub-Committee Hearings has previously been agreed by the Licensing Committee (minute A/24/05 refers). The protocol has been subsequently amended by the licensing committee (minutes A/32/06, A/40/07 and A/07/12 refer).
- 3.2 The applicant and the party making the representations have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 and Licensing Act 2003 (Hearings) (Amendment) Regulations 2005 “the Regulations”. Information to accompany the notice of hearing was provided to the applicant and the person making representations in accordance with “the Regulations”.
- 3.3 Appendix A to this report provides details of this application.

## **4. FINANCIAL CONSIDERATIONS**

### **1 Revenue and Capital consequences of report recommendations**

There are no direct financial implications associated with this report, subject to the risks at 4.2 & 4.3. This application is being processed as part of normal duties and therefore the work associated with it is contained within the departmental budget.

### **2 The effect of the decision**

The decision of the Sub-Committee may be subject to appeal and/or Judicial Review

### **3 Risks**

An appeal against a decision of the Sub-Committee or a Judicial Review of the application process may present financial risks to the Council with regard to any award of costs against it.

### **4 Options**

The options available are: to grant the application, to vary the application, with or without further conditions, or to refuse the application.

### **5 Savings/ future efficiencies**

None identified.

- 6 (Approved by: Dianne Ellender, Head of Finance – Development and Environment & Central Departments)

## **5. COMMENTS OF THE SOLICITOR TO THE COUNCIL**

5.1 The Solicitor to the Council comments that the sub-committee must determine the application, taking into account relevant representations, the Licensing Act 2003, the regulations made thereunder statutory guidance and the Council's own licensing policy.

5.2 (Approved by: Gabriel MacGregor, Head of Corporate Law on behalf of the Council Solicitor and Monitoring Officer)

## **6. HUMAN RESOURCES IMPACT**

6.1 The Human Resources impact of supporting the Licensing Hearings will be contained within the budgeted establishments of the Democratic and Legal Services and Licensing Teams.

6.2 (Approved by: Heather Daley, Acting Director of Workforce)

## **7. EQUALITIES IMPACT**

7.1 The arrangements for the Licensing Hearings seek to ensure that all applicants and other interested parties receive a fair hearing and that the process is accessible to all groups within the community.

## **8. ENVIRONMENTAL AND DESIGN IMPACT**

8.1 The effective implementation of the Licensing Act 2003 will contribute to an improved environment for local residents and other stakeholders.

## **9. LICENSING OBJECTIVES IMPACT**

9.1 The licensing objectives contained in the Act are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm.

9.2 Officers comments and relevant representations on the impact of the application on these objectives appear in Appendix A to the application.

## **10. HUMAN RIGHTS IMPACT**

10.1 The Human Rights 1998 (HRA) requires public bodies to ensure everything they do is compatible with Convention Rights and makes it unlawful for a public authority to act incompatibly with those Rights. **Article 6 (A6)** of the European Convention on Human Rights (ECHR) is the right to a fair trial. The key elements of this include:

- The right to a *fair* hearing;
- The right to a *public* hearing;
- The right to a hearing before an *independent and impartial tribunal*;

- The right to a hearing *within a reasonable time*.

10.2 When hearing an application, the proceedings of a non-judicial body such as the Licensing Sub Committee, as opposed to an actual Court, need not meet the full requirements of A6 where there is a right of appeal from the Licensing Sub-Committee to a Court that does meet the full A6 standards and can consider all aspects of the case (even if that does not include a full re-hearing of the facts).

10.3 So, while it is good practice to make a hearing before the Licensing Sub-Committee as A6 compliant as possible, it will not be a breach of the HRA if it is not. Further, the hearing of all applications is subject to the principles of Natural Justice and the requirement for decisions to be 'Wednesbury reasonable'.

## **11. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS**

11.1 Protocols agreed in relation to Licensing Hearings are within the Council's Constitution and will be accessible as part of the Council's Publication Scheme maintained under the Freedom of Information Act.

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**BACKGROUND DOCUMENTS:** Application Forms  
Licensing Hearings and Protocol and Procedure