

Croydon Council

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| REPORT TO: | LICENSING SUB COMMITTEE 7 October 2015 |
| AGENDA ITEM: | |
| SUBJECT: | LICENSING ACT 2003 – HEARING OF REPRESENTATIONS FROM PREMISES LICENCE HOLDER FOLLOWING APPLICATION FOR SUMMARY REVIEW AND SUBSEQUENT SUSPENSION OF PREMISES LICENCE |
| LEAD OFFICER: | Executive Director, Place Department |
| CABINET MEMBER: | Councillor Mark Watson, Cabinet Member for Communities, Safety & Justice |
| WARDS: | Fairfield |
| CORPORATE PRIORITY/POLICY CONTEXT: This report is specific to this application and has no implications on the Council's Corporate Policies. | |
| FINANCIAL SUMMARY: This application is being processed as part of normal duties carried out by the Department with no additional costs involved. | |
| FORWARD PLAN KEY DECISION REFERENCE NO.: N/A | |

For general release

1. RECOMMENDATIONS

- 1.1 The sub-committee is asked to consider the representations from the premises licence holder against the interim step taken to suspend the premises licence at Apatura, 14 South End, Croydon, CR0 1DL.
- 1.2 The sub-committee must determine whether the interim steps are appropriate for the promotion of the licensing objectives and determine whether to withdraw or modify the steps taken.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to advise the Sub-Committee that representations have been received from the premises licence holder against the interim step taken by the licensing Sub-Committee to suspend the premises licence pending a full review hearing, under the Licensing Act 2003 (“the Act”), 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 premises licence holder and the Police, as the applicant for the review 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 licence holder and the applicant in accordance with “the Regulations”.
- 3.3 Appendix A to this report provides details of the review.

4. FINANCIAL AND RISK ASSESSMENT 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 as detailed in the recommendations at paragraph 1 above.

5 **Future savings/efficiencies**

None identified.

(Approved by: Dianne Ellender, Head of Finance and Deputy S151 Officer – Chief Executive’s Department)

6. **COMMENTS OF THE COUNCIL SECRETARY AND SOLICITOR**

6.1 The Solicitor to the Council comments that the Sub-committee must determine this matter, taking into account relevant representations, the Licensing Act 2003, statutory guidance and the Council’s own licensing policy.

(Approved by: Gabriel MacGregor, Head of Corporate Law on behalf of the Solicitor to the Council).

7. **HUMAN RESOURCES IMPACT**

7.1 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.

7.2 (Approved by: Adrian Prescod, HR Business Partner, for and on behalf of Director of Human Resources, Chief Executive’s Department)

8. **CUSTOMER IMPACT**

8.1 Apart from the powers available to the sub committee, there are no specific customer services issues relating to this matter.

9. **EQUALITIES IMPACT ASSESSMENT (EIA)**

9.1 The arrangements for the Licensing Hearings seek to ensure that all applicants, licence/certificate holders and other interested parties receive a fair hearing and that the process is accessible to all groups within the community.

10. **ENVIRONMENTAL AND DESIGN IMPACT**

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

11. **CRIME AND DISORDER REDUCTION IMPACT**

11.1 One of the licensing objectives is the prevention of crime and disorder and the police, as a responsible authority, have the opportunity to make representations in this matter if they so wish.

12. HUMAN RIGHTS IMPACT

12.1 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*.

12.2 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).

12.3 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'.

13. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

13.1 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.

CONTACT OFFICER: Michael Goddard, Licensing Manager, Place
Department, ext. 61838.

BACKGROUND DOCUMENTS: Application Forms, Licensing Hearings Protocol and Procedure.