

APPENDIX A

1. The Application

- 1.1 This report concerns an application, made by the Police as a responsible authority under the Licensing Act 2003, for a summary review of the premises licence at Apatura, 14 South End, Croydon. The application was received by the Council, as licensing authority on 23 September 2015.
- 1.2 The Licensing Sub-Committee took the interim step, on 23 September of suspending the premises licence, pending a full review hearing to be held within 28 days. The premises licence holder has made representations against that interim step and the Licensing Sub-Committee are therefore required to convene to hear those representations and consider whether it is appropriate to withdraw or modify the interim step taken.
- 1.3 Attached at Appendix A1 is a copy of the certificate signed by a Police chief superintendent certifying that, in his opinion, the premises in question are associated with both serious crime and serious disorder and a copy of the summary review application.
- 1.4 Attached at Appendix A2 is a copy of the representations submitted by the premises licence holder in respect of the interim step taken to suspend the premises licence pending a full review hearing.
- 1.5 Attached at Appendix A3 is a Home Office guidance document on summary reviews.
- 1.6 Attached at Appendix A4 is a copy of the premises licence.

2. Promotion of Licensing Objectives

- 2.1 At the time of writing, no other representations have been received on the review application.
- 2.2 The premises licence holder has been provided with a written copy of the application made.

3. Policy Considerations

- 3.1 Under the terms of the Act, the Council has published a Statement of Licensing Policy. This is available on the Council website at www.croydon.gov.uk . Hard copies are also available from the Council's Place Department and copies of the policy will also be available at the licensing sub-committee hearing. The following paragraphs from the Statement are considered particularly relevant with regard to this application.

4.1 Nothing in the 'Statement of Policy' will:

- undermine the rights of any person to apply under the 2003 Act for a variety of permissions and have each application considered on its individual merits, or,
- override the right of any person to make representations on any application or seek a review of a licence or certificate where they are permitted to do so under the 2003 Act

4.4 In considering all licence applications, the Council will take into account the character of the surrounding area, the impact of the licence on that area and the nature and character of the operation.

4.7 Licensing is about the control of licensed premises, qualifying clubs and temporary events within the terms of the 2003 Act, and conditions are likely to be attached to licences, certificates and permissions that will cover matters which are within the control of individual licensees.

4.8 However, the Council acknowledges that it can only impose conditions where relevant representations have been received to an application and that such conditions must be considered necessary for the promotion of the licensing objectives raised by the representations.

4.9 When considering these conditions, the Council will primarily focus on the direct impact of the activities taking place at licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

4.10 The Council will not take 'need' into account when considering an application, as this concerns 'commercial demand' and is a matter for the planning process and the market.

5.2.1 Croydon Council is committed to reducing crime and disorder within the Borough and creating an environment where people feel safe.

5.2.2 In addition to the requirements under the 2003 Act for the Council to promote the licensing objective of preventing crime and disorder, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all it reasonable can to prevent crime and disorder in the Borough.

5.2.3 Licensed premises, especially those offering late night/early morning entertainment, alcohol and refreshment for large numbers of people, can be a source of crime and disorder problems.

5.2.4 The Council considers that the promotion of the Licensing Objective to prevent crime and disorder also places a responsibility on licence holders to work in partnership to achieve this Objective.

5.2.5 The Council will expect applicants to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be implemented and maintained so as to minimise or prevent

crime and disorder in and around the vicinity of their premises and events.

5.29 Where relevant representations have been made, the Council will consider attaching Conditions to licences and permissions to deter and prevent crime and disorder both inside and immediately outside the premises, and these may include Conditions drawn from the Model Pool of Conditions relating to Crime and Disorder contained in the Statutory Guidance to the Act and the following examples of conditions specifically with regard to 'significant events':

1. The licensee shall undertake a risk assessment of any significant promotion or event (as defined below) using the MPS Promotion/Event Risk Assessment (Form 696) or an equivalent and provide a copy* to the Metropolitan Police Service and the licensing authority not less than 14 days before the event is due to take place.
2. Where an 'event' has taken place, the licensee shall complete an MPS After Promotion/Event Debrief Risk Assessment (Form 696A) and submit this* to the Metropolitan Police and the Licensing Authority, within 14 days of the conclusion of the event.

*submission of electronic documents by e-mail is preferred.

5.3.1 The Council is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, applicants will be expected to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events.

5.3.2 The 2003 Act covers a wide range of premises that require licensing, including, cinemas, concert halls, theatres, nightclubs, public houses, cafes/restaurants and fast food outlets/takeaways.

5.3.3 Each of these types of premises present a mixture of different risks, with many common to most premises and others unique to specific operations. These will range from fire safety, including fire precautionary and means of escape arrangements in all types of premises, to the use of scenery and pyrotechnics in theatres and special lighting effects in night clubs.

5.3.4 It is essential that premises are constructed or adapted and operated so as to acknowledge and safeguard occupants against these risks.

5.3.7 Additionally, when preparing their Operating Schedules, applicants are recommended to seek advice from the Council's Health and Safety Officers and the London Fire and Emergency Planning Authority.

- 5.3.8 The Council will consider attaching Conditions to licences and permissions to promote safety, and these may include Conditions drawn from the Model Pool of Conditions relating to 'Public Safety' and 'Cinemas and Fire Safety' contained in the Statutory Guidance to the Act.
- 5.4.1 The Council recognises the need to protect the amenities of people living, visiting and working in the vicinity of the licensed premises, while balancing the rights of businesses to develop.
- 5.4.2 Licensed premises, especially those operating late at night and in the early hours of the morning, can give rise to a range of public nuisances which may impact adversely on local communities.
- 5.4.3 These concerns mainly relate to noise and disturbance, light pollution, noxious smells, litter and anti-social behaviour and due regard will be taken on the impact these may have.
- 5.4.4 The Council will generally deal with the issue of licensing hours having due regard to the individual merits of each application, considering the potential for nuisance associated with the style, characteristics and activities of the business and examining any steps that might reduce the risk of nuisance.
- 5.4.5 The Council recognises that longer licensing hours for the sale of alcohol will avoid concentrations of people leaving premises at the same time, necessary to reduce the friction at late night fast food outlets, taxi ranks/minicab offices and other sources of transport that can lead to disorder and disturbance.
- 5.4.6 The Council will not set fixed trading hours within designated areas ("zoning") as it recognises this could lead to significant movements of people across boundaries at particular times seeking premises opening later and would lead to the peaks of disorder and disturbance the Council is trying to avoid. Additionally, this would seemingly treat residents in one area less favourably than those in another.
- 5.4.7 However, although the Council will treat each case on its individual merits, generally it will not grant opening hours beyond 23.30 hours on Sundays to Thursdays and Midnight on Fridays and Saturdays in respect of public houses situated in areas having denser residential accommodation. The Council would expect good reasons to be given to support any application for extensions beyond these hours, including addressing possible disturbance to residents and local parking. Additionally, in these areas, consideration will be given to imposing stricter conditions in respect of noise control.
- 5.4.8 There will be a presumption that the Council will generally consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises at any times they are open for trading.

- 5.4.9 However, the Council may consider there are very good reasons for restricting hours for licensable activities, for example where representations are made by the police and/or local residents as interested parties in respect of shops in residential areas or shops which are known to be the focus of disorder and nuisance because young people gather there. Although the Council will treat each case on its individual merits, generally in such cases the Council will not grant permission for licensable activities beyond 2330 hours on Sunday to Thursdays and midnight on Friday and Saturday.
- 5.4.10 The Council will expect applicants to demonstrate in their Operating Schedule that they have identified satisfactory measures and will implement and maintain these so as to prevent public nuisance, having due regard to the style, characteristics and activities of their particular premises and events.
- 5.4.13 Additionally, when preparing their Operating Schedules applicants are recommended to seek advice from Council Pollution Enforcement Officers.
- 5.4.14 The Council will consider attaching Conditions to licences and permissions to prevent public nuisance, and these may include Conditions drawn from the Model Pool of Conditions relating to 'Public Nuisance'.
- 5.5.1 The wide range of premises that require licensing means that children can be expected to visit many of these, often on their own, to buy food and/or for entertainment.
- 5.5.2 Although the 2003 Act details certain age and/or time limitations on the admission of accompanied or unaccompanied children to certain types of licensed premises, the Council recognises that additional limitations may have to be considered where it appears necessary to protect them from physical, moral or psychological harm.
- 5.5.3 The Council will consider the merits of each application before deciding whether to impose conditions limiting the access of children to individual premises.
- 5.5.7 The Council will not impose conditions on licences or certificates requiring that children be admitted to any premises and, where no limitation is imposed, this will be left to the discretion of the individual licensee. However, where applicants volunteer prohibitions and limitations in their operating schedules and no relevant representations have been made to the Council, these will become conditions attached to the licence/certificate conditions and will be enforceable as such.

The Home Office has produced Statutory Guidance under Section 182 of the Licensing Act 2003. The following paragraphs are reproduced below to assist:

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant,

frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental

financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises; money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

4.2 All relevant parties have been made aware of the date, time and location of the Sub Committee meeting.

4.3 An ordinance survey extract map of the area with the application premises shown at the centre is attached at Appendix A5.