

REPORT TO:	LICENSING SUB COMMITTEE 27 July 2022
AGENDA ITEM:	
SUBJECT:	LICENSING ACT 2003 – APPLICATION FOR SUMMARY REVIEW OF PREMISES LICENCE
LEAD OFFICER:	Corporate Director, Sustainable Communities, Regeneration & Economic Recovery
CABINET MEMBER:	Cllr. Scott Roche Streets & Environment
WARDS:	South Croydon
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
The Sub – Committee is asked to consider the application for a review of the premises licence at 3 Brighton Road, South Croydon, CR2 6EA under the provisions of Section 53C of the Licensing Act 2003 (“The Act”) and pursuant to the provisions of Section 53D of the Act, a review of the Interim Steps imposed.
1.1 In undertaking the review under S53C, the sub committee must consider what steps it considers necessary for the promotion of the licensing objectives having regard to the relevant representations as contained within the report, appendices and made at the hearing; the Council’s Licensing Policy and Statutory Guidance issued under S182 of the Licensing Act 2003.
1.2 The steps the licensing authority can take under S53C are: <ul style="list-style-type: none"> • the modification of the conditions of the premises licence; • the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence; • the removal of the designated premises supervisor from the licence; • the suspension of the licence for a period not exceeding 3 months; and • the revocation of the licence.

For this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

- 1.3 Under Section 53D of the Licensing Act 2003, the Sub-Committee is required to review any Interim Steps that have been taken by the relevant licensing authority under section 53B that have effect on the date of the hearing.
- 1.4 In conducting the review under section 53D, the sub-committee must—
 - (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives;
 - (b) consider any relevant representations; and
 - (c) determine whether to withdraw or modify the interim steps taken.
- 1.5 The power of the sub-committee on a review under section 53D includes a power to take any of the following interim steps—
 - (a) the modification of the conditions of the premises licence;
 - (b) the exclusion of the sale of alcohol by retail from the scope of the licence;
 - (c) the removal of the designated premises supervisor from the licence;
 - (d) the suspension of the licence;and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to advise the Sub-Committee that an application has been received for a review of a premises licence under the Licensing Act 2003 (“the Act”). This application is made by the police, as a responsible authority. The Councils’ licensing sub committee is therefore required to hear the application. In addition, Interim Steps were imposed under Section 53B of the Licensing Act and the Sub-Committee is required to review these as part of the determination of the review under Section 53C of the Act.

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 and the Protocol was last amended by the licensing committee on 30 September 2020, minute 15/20 refers).
- 3.2 The premises licence holder, the applicant and the other parties making representations have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) and the

Licensing Act 2003 (Summary Review of Premises Licences) Regulations 2007 (the Regulations).

3.3 Appendix A to this report provides details of the Review.

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 as detailed in the recommendations at paragraph 1 above.

5 Savings/ future efficiencies

None identified.

6 (Approved by: Flora Osiyemi, Head of Finance Place, Residents & Gateway)

5. COMMENTS OF THE SOLICITOR TO THE COUNCIL

5.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance 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.

5.2 The licensing authority must hold a full review of the premises licence and determine the review within 28 days after the day of receipt of the chief officer's application. There can be no adjournment of the hearing or delay in reaching a determination beyond the end of the 28 day period. This must take place even if the chief officer asks to withdraw his application or representations.

- 5.3 At the review hearing, the licensing authority must consider what steps are appropriate for the promotion of the licensing objectives taking into account any change in circumstances since any interim steps were imposed, consider any relevant representations, and review the interim steps already taken.
- 5.4 In making its final determination the steps the licensing authority can take are as detailed in the recommendations:
- the modification of the conditions of the premises licence;
 - the exclusion of a licensable activity from the scope of the licence;
 - the removal of the designated premises supervisor from the licence;
 - the suspension of the licence for a period not exceeding 3 months; and
 - the revocation of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

- 5.5 The licensing authority's determination on review does not have effect until the end of the 21 day period given for appealing the decision, or until the disposal of any appeal that is lodged.
- 5.6 Under Section 53D of the Act and to ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn. In making its decision, the licensing authority must consider any relevant representations made.
- 5.7 In conducting the review of the interim steps the licensing authority has the power to take any of the steps that were available to it at the initial stage namely
- the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail from the scope of the licence;
 - the removal of the designated premises supervisor from the licence; and
 - the suspension of the licence.

Any interim steps taken at the review hearing apply until— (a) the end of the period given for appealing against a decision made under section 53C (21 days), (b) if the decision under section 53C is appealed against, the time the appeal is disposed of, or (c) the end of a period determined by the relevant licensing authority (which may not be longer than the period of time for which such interim steps could apply under (a) or (b) above).

- 5.8 The licence holder or the chief officer of police may appeal against the decision made by the licensing authority concerning its review of the interim steps to a magistrates' court. The appeal must be made within 21 days of the appellant being notified of the licensing authority's decision and must be heard in full by the magistrates' court within 28 days beginning with the day on which

the appellant lodged the appeal.

- 5.9 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations. The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.
- 5.10 Where appeals are lodged both against the decision following the review of the interim steps and against the final determination, the courts may decide to consider the appeal against the final determination within the 28 day period, allowing the interim steps appeal to be disposed of at the same time.

(Approved by Sandra Herbert, Head of Litigation and Corporate law on behalf of the Director of Law and Governance and Deputy 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 for and on behalf of HR by Jennifer Sankar, Head of HR Sustainable Communities).

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. In exercising licensing functions, the Council is required to comply with Section 149 of the Equality Act 2010 which requires public bodies to have due regard to the need to:
- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
 - Foster good relations between people who share a protected characteristic and people who do not share it.
- 7.2 For these purposes the protected characteristics are
- age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race

- religion or belief
- sex
- sexual orientation

7.3 The Act explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

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