

Licensing Act 2003 Sub-Committee on 06th December 2005

Report title: COMMENCEMENT OF LICENSING ACT 2003	
Report of: The Lead Officer Licensing	
Ward(s) affected	
1. Purpose	To make Members aware of the Licensing Act 2003 applications received for premises licenses.
2. Recommendations	The Committee note the information contained in the report.
Report authorised by: Robin Payne..... Assistant Director Enforcement Services	
Contact Officer: Ms Daliah Barrett	Telephone: 020 8489 5103
3. Executive summary	For consideration by Licensing Committee under Licensing Act 2003.
4. Access to information:	Local Government (Access to Information) Act 1985 Background Papers The following Background Papers are used in the preparation of this Report: LICENSING ACT 2003 The Background Papers are located at Enforcement Service, Civic Centre, High Road Wood Green N22

5. REPORT

Background

5.1 The Licensing Act 2003 commenced with the transition period on 7th February 2005.

All current license holders were invited to apply for the conversion of their current license into the new regime.

To date Haringey has received 683 applications for Premises Licenses.

5.2 License Applications received.

Below is a detailed breakdown of the applications received from the different types of premises with the borough.

Pubs Bars and Nightclubs – 138
Applications to vary – 90.

Registered Members club - 31
Application to vary - 3

Off – Licenses - 62
Applications to vary – 6

Supermarkets & Convenience Stores -218
Applications to vary - 64

Restaurants - 150
Application to vary –20

Takeaways - 59
Applications to vary - 15

Sports Club - 6
Applications to vary - 2

Theatres and Cinemas - 3
Application to vary - 3

Village and Community halls - 4
Applications to vary - 1

Others (include snooker centres and Alexandra Palace which is multi-useage) 5
Applications to vary - 5 .

5.3 The borough has received over 30 applications for Premises wishing to sell alcohol on a 24hour basis.

The majority are grocery/convenience stores that would have traded on a 24 hours basis before this new Act, as they were able to do so under Planning.

Under the Licensing Act 2003 they are now able to sell alcohol in line with their trading hours.

Alexandra Palace also have the ability to provide the sale of alcohol and regulated entertainment on a 24 hour basis, but with conditions on notifying for each event going over the normal 2 am license granted.

The following stores have applied for 24hours for the sale of alcohol

Atakan Supermarket, 315-321 West Green Road, N15
Tottenham News, 326 High Road N15
Filiz Supermarket. 699 Seven Sisters Road N15
Seven Sisters Supermarket, 145 High Road N15
Emek Supermarket 485 High Road N17
Solma Supermarket, 791 High Road N17
Gurbets Supermarket, 604 Seven Sisters Road N5
Anil Supermarket 542 High Road N17
David Superstore 21 Broadway Parade N8
Elbistan Supermarket, 13 Great Cambridge Road N17
Supreme Supermarket, 503-505 Seven Sisters Road N15
Sirwan Supermarket, 415-417 Lordship Lane N22
Simsak Food Centre, 589-591 Green Lanes N8
Gunaydin Supermarket, 126A West Green Road N15
Sirwan Food Centre, 518-520 Lordship Lane London N22
Star Liquors, 102 Stroud Green Road N4
Somersfield 335-337 White Hart lane N17
Harringay Foods, 475 Green Lanes N4
Supermarket 708 High Road N17
Sainsburys, Williamson Road N4
Sainsburys, Muswell Hill N10
Tottenham News 145 High Road N17
Supersave, 68 West Green Road N15
Hornsey Mini Market, 95 Tottenham lane N8
Dilekkaya, 382 Green Lanes N4
Yasmin 25 Lordship Lane N17
Golds 208 Philip Lane N15
Saltan Supermarket, 169 High Road N17
Tesco South Tottenham, High Road N17 – 24hrs December only
Olympic Social Club, 705-707 Seven Sisters Road N15

Roseview Hotel – sale of alcohol for 24hrs to guests and bona fide friends.

Various premises have Late Night Refreshments and operate until 5am.

6.0 Hearings.

The Licensing Sub groups have heard over 30 cases since March 2005.

There have been some matters of concern with regards to the relationship between Planning and Licensing. This matter will be dealt with in a report from the Legal Team.

Out of the 30 hearings we have had 3 cases that have had appeals lodged against the Licensing Authority's decision in the Magistrates Court.

O'Neils, Muswell Hill N10

A resident Mr Thompson has lodged an appeal on various matters with regards the decision arrived at by the committee, this ranges from some of the paperwork not being included, to issues regarding our own Statement of Licensing Policy.

The Botany Bay – Philip Lane N15

The Applicants are appealing the refusal in spite of evidence from the Police showing that the current licensees were not conducting the pub in a good fashion.

The Hill – Muswell Hill Broadway N10

The hours were restricted by the committee and various conditions applied. The applicants feel disadvantaged by this and have appealed on this basis.

6.1 Hearing Decisions

Attached are all the decisions made by the various committees.

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

The Licensing Act 2003 further requires the Council to publish a Statement of Licensing Policy that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

8.1 The London Borough of Haringey has made a number of policy decisions within this paper. The policies that are relevant to this application can be summarised as follows:

Licensing Objectives – Statement of Licensing Policy

"2.4 The Council acknowledges that the licensing function cannot be used for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. The new licensing controls do however play a key role in preventing crime and disorder in and around licensed premises, and they support this objective on the streets generally. Apart from the licensing function, there are a number of other measures available for addressing issues of unruly behaviour that can occur away from licensed premises; these include....."

"7.13 Under the Crime and Disorder Act 1998 local authorities must have regard to the likely effects of exercising their functions, and do all they can to prevent crime and disorder in their area. "

"7.14 The Council will have special regard to the local impact of licensing on related crime and disorder in the borough particularly when considering the location, impact, operation and management of all proposed licences/certificates, applications, renewals and variations of conditions. "

8.0 Planning

"8.2 All premises that apply for a licence must have planning permission for the intended use and hours of operation or be deemed "lawful" for the purposes of planning control. The Licensing Authority will not consider a new application or variation of conditions if permitted licensable activities on the premises would constitute an unlawful planning use or if the hours of operation sought exceed those authorised by the planning permission."

9.0 Regulatory Services

"9.1 Building regulations govern a variety of issues, which will directly contribute to the licensing objectives, including the means of escape, structural integrity, accessibility and public safety. Applicants are

reminded that Building Regulation approval and completion certificates are required for works under the Building Regulations to avoid contravention of those regulations."

13.0 The Prevention of Public Nuisance

"13.7 In considering all licensed applications, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. The Licensing Authority will expect applicants to address the issues under prevention of public nuisance detailed in the Appendix."

18.0 Licensing Hours

"18.3 The Council will deal with the issue of licensing hours on the individual merits of each application. When issuing a licence, stricter conditions with regard to noise control and/or limitations to opening hours may be imposed in the case of premises where relevant representations are made and that are situated in largely residential areas. Operating hours between 23.00 and 07.00 are considered to give greater potential for noise nuisance."

24.0 Conditions

"24.1 The Council recognises that the only conditions that should be imposed on a licence are those that are necessary and proportionate to meeting the licensing objectives..."

"24.2 Where conditions are imposed they will be tailored to the individual style and characteristics of the premises and events concerned..."

PART B

GUIDANCE FROM THE SECRETARY OF STATE

The Secretary of State has issued Guidance on the implementation of the Licensing Act 2003, which the Council must take into account in considering applications.

National guidance regarding control of areas outside the premises is as follows:

"3.11 Statements of policies should make clear that licensing is about regulating the carrying on of licensable activities on licensed premises,

by qualifying clubs and at temporary events within the terms of the 2003 Act, and that the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others in possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises. Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of public living, working or engaged in normal activity in the area concerned. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and antisocial behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres."

"7.45 In the context of preventing public nuisance, it is again essential that conditions are focussed on matters within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder...cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises....Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law.

National guidance regarding public nuisance is as follows:

"7.39 The 2003 Act requires licensing authorities following receipt of relevant representations...to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licenses and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable."

National guidance regarding licensing hours is as follows:

- "3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration."
- "6.5 The Government strongly believes that fixed and artificially early closing times promote...rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously....It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public."
- "6.6 The aim of the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should be avoided."

National guidance regarding non-duplication of other regimes is as follows:

- 3.53 "Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. *For example*, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are "necessary" for the promotion of that licensing objective and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with

licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary.”*

PART C

COMMENTS ON LOCAL AND NATIONAL POLICY

Hours of Operation and Public Nuisance:

Chapter 6 of the Secretary of State’s Guidance recommends that Local Authorities do not set up a series of zones in their areas within which closing hours are reduced. No such zones have been set up within the Borough of Haringey. The Guidance also states that 'staggering' closing times for premises in an area would only serve to replace current peaks of disorder after 11pm with a series of smaller peaks.

The London Borough of Haringey acknowledges that the Government’s Guidance attached to the Licensing Act 2003 states that it believes that fixed and artificially-early closing times are a key cause of disorder and disturbance, when large numbers of customers are required to leave premises simultaneously. The

Guidance goes on to state that this puts pressure on fast food outlets and transport facilities which, in turn, produces friction and gives rise to disorder and peaks of noise and other nuisance. It advises that licensing authorities should recognise these problems when addressing issues such as hours of operation and should aim to reduce the concentrations and achieve a slower dispersal of people from licensed premises through longer opening times.

However, the Guidance is aimed nationally and there will be some areas in some towns and cities where parts of it may not apply. There may be situations in which the imposition of conditions on premises licences would not in itself, resolve the issue of disturbance to residents from late night premises. Conditions may include trying to ensure that customers leave quietly but licensees will have little or no control of their customers once they leave the close vicinity of the premises. The area is extremely densely populated with residential dwellings above and next to most licensed premises. Generally throughout the borough, ambient noise levels fall significantly between 11pm and midnight and noise from even well behaved customers leaving licensed premises after midnight does disturb residents.

Actions that during the day would have little adverse environmental effect, such as car doors shutting and conversations, can have the opposite effect after midnight, disturbing local residents and breaking their sleep.

The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises.

Each application will be considered on its own merits.

Interpretation of "Vicinity":

The term "vicinity" is used within the Licensing Act 2003 on a number of occasions and, in particular, with reference to those "interested parties" who may lodge objections to applications for premises licences and who may make representations concerning existing premises licences. Section 13(3) defines an "interested party" as being "a person living in the vicinity, a body representing persons living in the vicinity, a person involved in a business in the vicinity or a body representing those persons."

However, the Act does not define the term "vicinity" and debate in both the House of Lords and the House of Commons similarly failed to produce a definition. Paragraph 5.33 of the Guidance states that the licensing authority should consider whether the individual's residence or business is likely to be directly affected by disorder or disturbance occurring or potentially occurring on those premises or immediately outside the premises.

Operating Schedules: Conditions

In all applications relating to premises licences the London Borough of Haringey expects applicants to specify methods by which they will promote the four licensing objectives in their operating schedules.

In relation to “the prevention of crime and disorder” this may, *for example*, be promoted by employing registered door supervisors, ensuring staff have attained relevant BIIAB qualifications, i.e. the Drugs Awareness Certificate, the Barperson’s National Certificate, the Professional Barperson’s Qualification etc., incorporating a search policy into the entry conditions of the premises, restrictions on the irresponsible use of “happy hours” and other drinks promotions.

In relation to “public safety” this may, *for example*, be promoted by ensuring that staff have the appropriate training, ensuring that safe capacity limits are set and that there is no overcrowding, that fire-fighting equipment is checked regularly, and that certificates required by the Council are available by the relevant date.

In relation to “the prevention of public nuisance” the London Borough of Haringey will take particular care to ensure that residents are not disturbed late at night. However, before refusing a licence on these grounds the Council will consider whether such disturbance may be avoided by the application of conditions.

In the case of every premises licence application Council will consider whether the sound from music and/or customers may escape from the premises, noise from ventilation and other mechanical plant is minimal, steps are taken to ensure patrons and staff leave the premises quietly (including the prominent display of notices to this effect), arrangements are made for patrons to park their cars in a manner that does not disturb or inconvenience local residents and arrangements are made to minimise noise from taxis. Conditions may be imposed to satisfy these considerations. The Council will also consider whether applicants have made sufficient arrangements to ensure that any waste, bottles etc, from the premises do not cause any detrimental environmental effect in the vicinity. Page 63 of the Government’s National Alcohol Harm Reduction Strategy states that: “Under the Licensing Act 2003, the premises

The operating schedule can also require licensees to deal with litter”. Where relevant, the Licensing Committee may place conditions on a Premises Licence to ensure waste, bottle etc., are disposed of properly.

In relation to “the protection of children” this may, *for example*, be achieved by ensuring children are not admitted to premises on days when adult entertainment is provided, that “proof of age” cards complying with the Home Office approved Proof of Age Standards Scheme (PASS), such as those promoted by the Portman Group, are required for the supply of alcohol, and that children are not admitted, or allowed to remain on, premises after a certain time.

Maximum capacities:

The type of entertainment offered in licensed premises and the closing hour of premises permitted to provide alcohol to the public often have a direct link to crime and disorder, public nuisance and public safety. *For example*, there is generally more likelihood of crime and disorder and public safety problems occurring in a music and dance venue permitted to sell alcohol and open until 3am than there is in

a quiet back street pub that provides no regular regulated entertainment and closes at 11pm.

The Council accepts that a lot of the problems that may occur in late night licensed premises may be controlled by good management practices.

However, controlling the numbers of customers allowed into the premises will also assist in promoting the following three licensing objectives:

- (1) *the prevention of crime and disorder*
- (2) *public safety*
- (3) *the prevention of public nuisance*

Where a fire safety certificate for premises includes a capacity condition the Council will not normally set a capacity by way of a licence condition. However, if the fire certificate was granted for premises when their future use was not known, the Council will consider setting a new capacity condition having regard to the licensable activity proposed. The Council will also consider setting a capacity condition where this may be beneficial in preventing crime and is order or nuisance. Such a capacity may be lower than that set by the fire safety certificate. This section of the Police Statement will be reviewed when the Regulatory Reform (Fire Safety) Order 2004 becomes "live" and replaces the *Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997*.

Where no Fire Safety Certificate is in existence for premises wishing to supply alcohol to customers after 11pm and/or where regulated entertainment is provided, the Council, in partnership with the London Fire and Emergency Planning Authority, will seek to attach a capacity condition to the premises licence.

Under these circumstances the capacity limits will be set primarily on the basis of how many people can leave the premises safely and quickly in an emergency. However, as stated in paragraph 10.3, a lower capacity limit may be set where this may be beneficial in preventing crime and disorder and public nuisance issues.

Responsible Authorities:

Section 13(4) of the Act lists a number of "Responsible Authorities" who may make comments regarding Premises Licence applications and who may apply for an existing licence to be reviewed. One of those "Responsible Authorities" is defined in the Act as:

"a body which:

- (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
- (ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters."

Paragraph 3.41 of the Secretary of State's Guidance states that:

"A statement of licensing policy should therefore indicate which body the licensing authority judges to be competent in this area and therefore to which applications will need to be copied. In most cases, this may be the Area Child

Protection Committee. However, in some areas, the Committees involvement may not be practical and the licensing authority should consider alternatives. For example, the local authority social services department."

PART D

ADDITIONAL OBSERVATIONS

The Committee is obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

In making its decision, the Committee is also obliged to have regard to national Guidance and the Council's own Licensing Policy.

Of course, the Committee must also have regard to all of the representations made and the evidence it hears.

The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) Grant the application as asked
- (b) Modify the conditions of the licence, by altering or omitting or adding to them.
- (c) Reject the whole or part of the application.

The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

As to the objections raised:

Terminal hours: The premises are close to a residential area. The Committee should take account of national guidance and the Council policy on terminal hours and take such steps as it considers are necessary to promote the licensing objectives. The Committee must consider whether there is any evidence that the alleged nuisance in the vicinity is connected with the premises in question. The Committee must also be aware that it is only the extension in hours from the current hours to the later times proposed that is at issue. Members must consider whether there is evidence that any nuisance arising from granting the licence will be increased by later opening hours.

Parking provision: This matter is relevant only to the extent that the use of the residential roads for parking could give rise to public nuisance. It is likely that noise from customers with cars will add materially to the general background noise in this area.

Noise from premises. The Committee should consider what, if any, conditions are necessary to prevent public nuisance from noise from the premises.

Planning: The Committee is directed to national guidance on the issue of planning. It is considered that planning should be in place before the licence application is determined.