

REPORT TO:	LICENSING COMMITTEE 20 November 2012
AGENDA ITEM:	6
SUBJECT:	London Local Authorities Act 1990 Applications for Two Street Designation Orders and a Variation to a Street Trading Licence
LEAD OFFICER:	Executive Director Planning & Environment Department
CABINET MEMBER:	Councillor Simon Hoar Cabinet Member for Community Safety & Public Protection
WARDS:	Fairfield, Sanderstead & Woodside
CORPORATE PRIORITY/POLICY CONTEXT: This report is specific to this application and has no implications on the Council's Corporate Policies	
FINANCIAL SUMMARY: There are no direct financial implications arising from this report.	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

For general release

1. RECOMMENDATIONS

- 1.1 The Committee is asked to determine whether to designate the sites detailed at Appendices A & B for the purposes of street trading and if designated to then determine whether to grant a street trading licence to the sites.
- 1.2 The Committee is also asked to determine whether to vary the existing street trading licence detailed at Appendix C

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to seek the Committee's decision on the proposal to designate sites in the Borough as 'licence streets for street trading and the

granting of street trading licences under the provisions of the London Local Authorities Act 1990 (as amended.)

- 2.2. Also to vary an existing street trading licence to increase the size of the display

3. DETAIL

- 3.1 The London Local Authorities Act 1990 (as amended) (The Act) provides a legislative framework to control street trading in the Borough. Trading in respect of services as well as goods comes within the scope of the Act.
- 3.2 Licensed street trading may only take place in streets or parts of streets which have been formally designated as "licence streets".
- 3.3 Appendices A & B to this report provide details of the applications. The applicants have been invited to attend the meeting.
- 3.4 If the sites outlined in Appendices A & B are formally designated as 'licence streets' by the committee then the committee will decide whether to grant street trading licences
- 3.5 The measurements of the individual display areas as outlined in the Appendices A & B will allow for the required 2m clear distance between the edge of the display and the kerb which is the requirement for roads maintained by the Council.
- 3.6 The site outlined at Appendix C has already been designated as a 'licence' street and a street trading licence is in place.
- 3.7 The application at Appendix C is to vary the existing size of the display area.

4. CONSULTATION

- 4.1 The applications were duly advertised in the Croydon Guardian and brought to the attention of the police, planning, highways, Croydon BID, parking services, food team and Transport for London.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 **The effect of the decision**

There are no direct financial implications as a result of this report.

5.2 **Risks**

If an applicant is refused a licence on any of the grounds mentioned in paragraph 7.2 (a) - (g) he/she will have the right of appeal to the Magistrates' Court against this decision

The decision of the Committee may also be subject to Judicial Review

An appeal against a decision of the 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.

5.3 **Options**

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

5.4 **Future savings/efficiencies**

There are no savings or efficiencies arising directly from the recommendations in the report.

(Approved by: Dianne Ellender, Head of Finance – Planning & Environment & Central Departments)

6. **COMMENTS OF THE SOLICITOR AND MONITORING OFFICER**

LICENCE STREET

6.1 If the borough council considers that street trading should be licensed in an area, they may pass a resolution designating any street within the borough as a "licence street" in accordance with Section 24 of the Act.

6.2 The first decision which has to be made is whether to designate the particular location as a "licence street", which in turn would permit the consideration of a licence application.

6.3 Under Section 24 of the Act, the designation of a location as a “licence street” is at the discretion of the Committee and this decision is not subject to any direct appeal.

6.4 Each application must be considered on its own merits.

6.5 **STREET TRADING LICENCE**

If a site has been designated as a ‘licence street’, the committee must then decide whether to grant a licence to trade at that site: a ‘street trading licence’

7. **GROUNDINGS FOR REFUSAL**

7.1 Under Section 25(4) of the Act, a street trading licence:

(a) shall not be granted:

(i) to a person under the age of 17 years; or

(ii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading to a person, on a corresponding day, days or time, who holds a street trading licence in any other licence street granted under this Part of the Act but nothing in this paragraph shall prevent the renewal of such a licence; or

(iii) except where the application is made by a company incorporated under the Companies Acts, or by a partnership, for a licence to carry on ice-cream trading to a body corporate or to an unincorporated association;

(iv) in respect of an application for a licence which is not a

temporary licence to trade in a street which is not a licence street; or

(v) where the street to which the application relates is a street in respect of which the borough council have by resolution passed under Sub-Section 1) (b) of Section 24 of this Act, specified a class of articles or things, or services which they will not prescribe in any street trading licence and the grant of the licence would be contrary to any of the terms of that resolution;

(b) shall not be granted unless the borough council are satisfied that there is enough space in the street for the applicant to engage in the trading in which he desires to trade without causing undue interference or inconvenience to persons or vehicular traffic using the street.

7.2 Under Section 25(6) of the Act, the Council may refuse an application any of the following grounds:

(a) that there are enough traders trading in the street or in any street adjoining the street in respect of which the application is made in the goods in which the applicant desires to trade;

(b) that the applicant is on account of misconduct or for any other sufficient reason unsuitable to hold the licence;

(c) that the applicant is an individual who has without reasonable excuse failed personally to avail himself of a previous street trading licence;

(d) that the applicant has at any time been granted a street trading licence by the borough council which was revoked or could have been revoked on the grounds that he had refused or neglected to pay fees or other charges due to them in respect of the licence;

- (e) that the applicant has failed to provide or to identify suitable or adequate premises for the storage of any receptacles or perishable goods in which he proposed to trade when street trading is not taking place;
- (f) that
 - (i) the application is for the grant (but not the renewal) of a street trading licence; and
 - (ii) the only available position is in that part of the street which is contiguous with the frontage of a shop; and
 - (iii) the articles, things or services mentioned in the application are sold or provided at the shop;
- (g) that
 - (i) the application is for the grant (but not the renewal) of a street trading licence; and
 - (ii) the only available position in the street is within the curtilage of a shop; and
 - (iii) the applicant is not the owner or occupier of the premises comprising the shop.

7.3 (Approved by: Gabriel MacGregor, Head of Legal Services (Corporate) on behalf of the Council Solicitor and Monitoring Officer

8. HUMAN RESOURCES IMPACT

8.1 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.

8.2 (Approved by: Pam Parkes, Head of Human Resources & OD)

9. CUSTOMER IMPACT

9.1 There are no specific customer services issues relating to these applications

10 EQUALITIES IMPACT ASSESSMENT (EIA)

10.1 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.

11. ENVIRONMENTAL AND DESIGN IMPACT

11.1 There are no perceived environmental and design impacts relating to these applications

12. CRIME AND DISORDER REDUCTION IMPACT

12.1 The Police Licensing Officer has been consulted on these applications.

13. HUMAN RIGHTS IMPACT

13.1 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*.

13.2 When hearing an application, the proceedings of a non-judicial body such as the Licensing 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 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).

13.3 So, while it is good practice to make a hearing before the Licensing 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'.

14. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

14.1 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: Wendy Shepherd, Safety/Licensing Officer,
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BACKGROUND DOCUMENTS: Application Forms