

<b>REPORT TO:</b>	<b>LICENSING SUB COMMITTEE</b> 5 January 2021
<b>SUBJECT:</b>	<b>LICENSING ACT 2003 – APPLICATION FOR VARIATION TO A PREMISES LICENCE</b>
<b>LEAD OFFICER:</b>	<b>Executive Director, Place Department</b>
<b>CABINET MEMBER:</b>	<b>Cllr. David Wood, Cabinet Member for Communities, Safety &amp; Resilience</b>
<b>WARDS:</b>	<b>Crystal Palace &amp; Upper Norwood</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> This report is specific to this application and has no implications on the Council's Corporate Policies.	
<b>FINANCIAL SUMMARY:</b> This application is being processed as part of normal duties carried out by the Department with no additional costs involved.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.:</b> N/A	

**For general release**

<b>1. RECOMMENDATIONS</b>
1.1 The Sub-Committee is asked to determine whether to grant the application for a variation to a premises licence at 76 Westow Hill, Upper Norwood, SE19.

## **2. EXECUTIVE SUMMARY**

- 2.1 The purpose of this report is to advise the Sub-Committee that an application has been received for a variation to a premises licence under the Licensing Act 2003 ("the Act"). This application is the subject of representations, 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 and the Protocol was last amended by the licensing committee on 30 September 2020, minute 15/20 refers).

- 3.2 The applicant and the parties making representations 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 applicant and the parties making representations in accordance with “the Regulations”.
- 3.3 Appendix A to this report provides details of this application.

## **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: to grant the application, to vary the application, with or without further conditions, or to refuse the application.

### **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 the application, taking into account relevant representations, the Licensing Act 2003, the regulations made thereunder statutory guidance and the Council’s own licensing policy.

(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 Sue Moorman, HR Director, by Jennifer Sankar, Head of HR Place).

## **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.

## **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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**CONTACT OFFICER:** Michael Goddard, Head of Public Protection and Licensing, Place Department ext. 61838

**BACKGROUND DOCUMENTS:** None

### **APPENDICES:**

- Appendix A (Page 7-25):** Summary, Licensing Objectives & Policy
- Appendix A1 (Page 27-33):** Premise License
- Appendix A2 (Page 35-48):** Application to vary a Premises Licence under the Licensing Act 2003
- Appendix A3 (Page 49-52):** Resident Representations
- Appendix A4 (Page 53):** Ordinance Survey Map