

## APPLICATION FOR A REVIEW OF PREMISES LICENCE

<b>Committee</b>	Licensing Sub-Committee
<b>Officer Contact</b>	Sharon Garner 01895 277230
<b>Papers with report</b>	Appendix 1 – Review application form Appendix 2 – List of Responsible Authorities Appendix 3 – Memorandum from Trading Standards Appendix 4 – Memorandum from Safeguarding Children Appendix 5 – Current Premises Licence Appendix 6 – Photographs of the premises Appendix 7 – Map of the area
<b>Ward(s) affected</b>	BOTWELL

### SUMMARY

To consider an application for a Review of a premises licence under Part 3 Section 51, of the Licensing Act 2003 made by the Metropolitan Police Service in respect of World Wines, Station Road, Hayes.

### RECOMMENDATION

**That the Licensing Sub-Committee determine the application.**

### INFORMATION

- 1.1 An application for a Review of the premises licence for World Wines, Station Road, Hayes made by the Metropolitan Police Service, was received on 7<sup>th</sup> August 2009 on the grounds of:-

Prevention of crime and disorder  
Public Safety  
Prevention of public nuisance  
Protection of children from harm

The premises is a single unit convenience shop trading as an off licence.

- 1.2 The Metropolitan Police Service sent copies of the application to all the Responsible Authorities (list attached as **Appendix 2**), as required by the Licensing Act 2003. A copy of the application is annexed to this report as **Appendix 1**.
- 1.3 In accordance with the legislation, a poster giving details of the application was displayed at the premises for 28 days and weekly checks were made by the Council's Licensing Officers to ensure that the poster was still correctly displayed.
- 1.4 As required by the legislation, a poster was also displayed on the Civic Centre notice board for 28 days and the details were listed on the Council's website.

- 1.5 The legislation provides for other Responsible Authorities and/or interested parties such as residents to support the Review application. The period for Responsible Authorities and local residents to support the application for a review expired on 4 September 2009. Two other Responsible Authorities wrote in support of the application.

Copies of the letters of support are annexed to this report as **Appendices 3 & 4**.

### **LEGAL IMPLICATIONS**

- 2.1 The Licensing Act 2003 requires local authorities to consider licence applications for licensable activities. Licensable activities are defined as the sale by retail of alcohol, the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club, the provision of regulated entertainment, and the provision of late night refreshment. Licensable activities may not be carried on except under and in accordance with a licence.
- 2.2 An application for review is made under section 51 of the Licensing Act 2003. An application to review a licence must be made by either a Responsible Authority or Interested Party as defined under the Act.

#### **Hillingdon Police are a Responsible Authority.**

- 2.3 The Licensing Act 2003 has four objectives, and the licensing authority must take the objectives into account in considering an application for a review. The Application must also relate to at least one of the Licensing Act's four objectives:
- The prevention of crime and disorder;
  - Public safety;
  - The prevention of public nuisance; and
  - The protection of children from harm.
- 2.4 The Licensing Sub-Committee must also consider London Borough of Hillingdon's licensing policy when considering this review application. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.

Where there is a conflict between the Licensing Act 2003, and the Statement of Licensing Policy, the Licensing Act must prevail.

- 2.5 The Licensing Sub-Committee must receive and consider all representations submitted in the appropriate form in the appropriate time frame. The Licensing Sub-Committee must attach such "weight" to any relevant representations as it thinks fit having properly considered all the circumstances of the case.

Factors that could influence the appropriate weight to be placed on an representation may include:

- Whether the representation can be clearly related to the four licensing objectives;

- Whether the representation concerns matters over which the applicant is able, or has been able, to exercise control;
- Whether the Responsible Authority/Interested Party/Premises Licence Holder appears in person;
- Whether the representation is based on hearsay;
- Whether the representation is supported by evidence (either statistical evidence or evidence from a witness);

2.6 Following consideration of the application, relevant representations and any comments of the Licence Holder, Members of the Sub-Committee may take such steps mentioned in section 52(4) of the Licensing Act (if any) as they consider necessary for the promotion of the licensing objectives.

The steps are:

- To take no action
- To modify the conditions of the licence (this may include altering an existing condition or adding a new condition)
- To exclude a licensable activity from the scope of the licence
- To remove the Designated Premises Supervisor
- To suspend the licence for a period not exceeding three months
- To revoke the licence

2.7 The final decision of the Sub-committee shall be based on the individual merits of the application and the factual findings made at the hearing.

2.8 An applicant may appeal a decision of the Licensing Sub-Committee to the Magistrates' Court. If the applicant were successful on appeal, then costs could be awarded in favour of the applicant against the local authority. However, the risk of appeal should not be a factor in reaching a decision, and the Licensing Sub-Committee should consider each application on its merits taking into account the legislation and the Statement of Licensing Policy.

2.9 An applicant may seek to challenge the decision of a the Licensing Sub-Committee on the grounds that the process adopted by the Licensing Sub-Committee is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms:

Article 1 of Protocol 1 of the European Convention of Human Rights confers on individuals (and companies) the right to peaceful enjoyment of their possessions and protection of their property. Members of the Sub-Committee must bear in mind:

- That a Licence is a possession;
- That no one can be deprived of their property or have controls put on their property except where the action is permitted by law and justifiable in the public interest; and
- When considering matters relating to the suspension or revocation of licences, the exclusion of licensable activities and the placing of conditions on licences, it must consider whether the decision affects an individual, group or company's human rights as set out in the Convention and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition, consideration must be given to whether the interference is proportionate to

the general purpose.

Article 6 confers the right to a fair and public hearing within a reasonable time by an independent tribunal established by law. The process must be fair in terms of parties being able to put their case, hear and challenge witnesses and the proceedings must be free from bias.

It is unlawful for the Licensing Sub-Committee to act in a way which is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms which has effect for the purposes of the Human Rights Act 1998.

Additionally, an applicant could seek to challenge the procedure and decisions of the Licensing Sub-Committee in a Judicial Review action.

2.10 The Licensing Sub-Committee must ensure that:

- It acts within its powers.
- It acts fairly.
- It acts reasonably.
- It acts in accordance with the rules of natural justice (namely, that parties are given a chance to “have their say”).
- It takes into account all relevant considerations and does not take into account any irrelevant considerations.
- The decision is not a decision that no Licensing Sub-Committee, acting reasonably, would have reached.

### **FINANCIAL IMPLICATIONS**

3.1 Members should be aware that the Environment and Consumer Protection does not have a budget provision for costs, should the applicant be successful in appealing to the Court(s) against a decision of the Council. In the event that a Court was to uphold an appeal, officers would need to identify how the costs would be funded before action could be taken in order to comply with Council financial policy.

### **LIST OF REPRESENTATIONS**

	Prevention of Crime & Disorder	Public Safety	Prevention of Public Nuisance	Protection of Children from Harm
Metropolitan Police Service	X	X	X	X
Trading Standards	X			X
Safeguarding Children				X

### **RELEVANT DOCUMENTS**

- Copy of Review application from Metropolitan Police Service
- List of Responsible Authorities
- Copies of letters of support from Trading Standards & Safeguarding Children

- Copy of premises licence
- Photographs of the premises
- Map of the area
- Witness Statement – PART 2 – MEMBERS ONLY

**BACKGROUND DOCUMENTS:**

The Licensing Act 2003

Guidance under Section 182 of the Licensing Act

Statement of Licensing Policy