

APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE

Committee	Licensing Sub-Committee	
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Papers with report	Appendix 1 – copy of application form Appendix 2 – copy of letter from Sgt Meens, Metropolitan Police	
Ward(s) affected	Botwell	

SUMMARY

To consider representations from the Metropolitan Police in respect of an application to transfer the premises licences for **Hayes Superstore, 75 Station Road, Hayes UB3 4BG.**

RECOMMENDATION

That the Licensing Sub-Committee determine the application.

INFORMATION

1.1 An application to transfer the premises licence for Hayes Superstore, 75 Station Road, Hayes from Mr Manmohan Singh to Mr Harcharan Singh was received on 10th June 2011. A copy of the application form is annexed to this report as **Appendix 1.**

1.2 In accordance with the legislation, the applicant is required to send a copy of the application to the Licensing Sergeant of the Metropolitan Police Service.

On 15th June 2011 a representation was received from the Metropolitan Police Service against the application (A copy of the letter of representation is annexed to this report as **Appendix 2).**

FINANCIAL IMPLICATIONS

2.1 Members should be aware that the Planning, Environment, Education and Community Services directorate 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.

LEGAL IMPLICATIONS

Principles for making the determination

3.1 The general principle is that applications for Premises Licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

3.2 Relevant representations are those which:-

- Are about the effect of the granting of the application on the promotion of the licensing objectives
- Are made by an interested party or responsible authority
- Have not been withdrawn
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

The four licensing objectives are :

- a. The prevention of crime and disorder;**
- b. Public safety;**
- c. The prevention of nuisance; and**
- d. The protection of children from harm.**

Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.

3.3 The Licensing Sub-Committee must also consider the London Borough of Hillingdon's Licensing policy when deciding whether or not to grant the 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.

3.4 Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case

3.5 When relevant representations are received then the Sub-Committee must have regard to them. Representations based on commercial reasons or need are not in themselves relevant representations. For example, a representation from a bar owner that the grant of a premises licence to another bar will take customers away from his/her premises is not a relevant representation, nor is a representation from a local resident that another off licence in the parade of local shops is not needed.

3.6 The Licensing Sub-Committee can attach a "weight" to any relevant representations, such factors that could influence the "weight" to be placed on a representation could include:-

- Whether the representation can be clearly related to any one of the four licensing objectives;
 - Whether the representation concerns matters over which the applicant is able to exercise control;
 - Whether the representation is based on “hearsay” evidence;
 - Whether the representation is supported by firm evidence;
- Whether the person making the representation has attended the hearing in person.

3.7 Having considered all relevant representations, and having taken into account the promotion of the licensing objectives, a decision can be taken:-

- To grant the application.
- To reject the application.

Conditions

3.8 Conditions will not be necessary if they duplicate a current statutory requirement.

Members are also referred to the DCMS guidance on conditions, specifically section 10, and Annex D.

The Statutory Guidance states that only necessary, proportionate and enforceable conditions, which promote one or more of the licensing objectives, should be attached to the licence if it is granted (paragraph 10.11).

The Licensing Authority may therefore only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations (paragraph 10.11), and should avoid straying into undisputed areas (paragraph 10.12).

Statutory Guidance also states that the pool of conditions that are supplied by the Secretary of State should not be applied universally irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations.

Reasons

3.8 If the Sub-Committee determines that it is necessary to modify the conditions, or to refuse the application for a Premises Licence application, it must give reasons for its decision.

The Role of the Licensing Sub-Committee

3.9 Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

Members should note that the Licensing Sub-Committee is meeting on this occasion solely to **perform the role of licensing authority**. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, the occurrence of which would be relevant.

The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.

Under the Human Rights Act 1998, the Sub-Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.

Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

List of Representations

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

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BACKGROUND PAPERS

Appendix 1 – copy of the application form

Appendix 2 – copy of letter from Sgt Meens, Metropolitan Police Service

BACKGROUND DOCUMENTS

The Licensing Act 2003

Guidance under Section 182 of the Licensing Act 2003

The Council's Statement of Licensing Policy