



Report of the Assistant Chief Executive (Corporate Governance)

LICENSING COMMITTEE

Date: 20th July 2010

Subject: Licensing Act 2003 – Dealing with Representations

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

The sale or supply of alcohol and the provision of regulated entertainment are carried out under the Licensing Act 2003. Leeds City Council is the Licensing Authority for the purpose of the Act. In considering applications made under the Act, the licensing authority should have regard to DCMS guidance issued under 182 of the Licensing Act 2003. An element of the Licensing Authorities functions is to consider relevant representations against licence applications.

1.0 Purpose Of This Report

- 1.1 To advise Members of the process applied by licensing officers in determining relevant representations under the Licensing Act 2003.

2.0 Background Information

- 2.1 The Licensing Act 2003 sets out who can make a representation, namely an 'interested party' or 'responsible authority'

- i) an 'Interested Party', may be any of the following:–
- (a) a person living in the vicinity of the premises,
 - (b) a body representing persons who live in that vicinity
 - (c) a person involved in a business in that vicinity
 - (d) a body representing persons involved in such business,

and

more recently local councillors have been included as an 'interested party'. Previously a councillor could only submit representation if they lived in the vicinity or represented persons/business in the vicinity. Councillors may now make a representation in their own right irrespective of their residence, but provided they are within the same authority area.

- ii) a 'Responsible Authority', for the purpose of Leeds City Council are -
- (a) West Yorkshire Police
 - (b) West Yorkshire Fire and Rescue Service
 - (c) Environmental Health Services
 - (d) Health & Safety Team
 - (e) Health & Safety Executive
 - (f) Leeds Safeguarding Children Board
 - (g) Planning & Development Services
 - (h) West Yorkshire Trading Standards

To note that there will be additional agencies for the purpose of a water vessel.

- 2.2 For the purpose of the Act, relevant representations means representations which-
- (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives
 - (b) that they have been received within the prescribed notice period and have not been withdrawn
 - (c) relate to the identity of the person named in the application as the proposed premises supervisor (relevant to police representation only)

Where a representation is received from an interested party, this must not be frivolous, vexatious or repetitious in nature.

- 2.3 In the absence of relevant representations the authority must grant the licence in accordance with the application.

- 2.4 In processing an application for a new licence or the variation of an existing licence, licensing officers will assess any representations to ensure that they are relevant for the purpose of the Act.

- 2.5 Assessing whether an interested party resides in the vicinity is a matter which is carefully considered by officers.

Section 182 Guidance to the Act sets out that 'in making their initial decision on the question of vicinity, licensing authorities should consider whether the individual's residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises'.

- 2.6 Where it is evident that representations fall outside the scope of the Act, it would be wrong for the Licensing Authority to delay the grant of the application.
- 2.7 To delay the grant of a licence which is subject only to invalid representations could attract challenge by the licence trade.

Also by accepting invalid representations in the first instance provides a false hope for residents to then find at hearing that their representations have been disregarded. If advised earlier they could have explored alternative options.

- 2.7 Where there is question as to the validity of a representation legal advice will be sought, and / or the representation will be referred to Licensing Committee Members for consideration.

3.0 Main Issues

- 3.1 Members were concerned as to the extent that officers were using their delegated authority in determining the validity of representations.

Attached at Appendix 1 are statistics taken from the Licensing Section's database to provide an example of the numbers of applications received in a typical month.

In this instance we have looked at April 2010 and in summary there have been:

23 new applications / variations, of which

- 11 applications were granted without a hearing as there were no representations;
- 1 application was withdrawn
- 11 applications were considered before the Licensing Sub Committee. All 11 were subject to valid representations but 4 of these also included invalid representations. The theme of the invalid representations being that they were received out of time, not relevant to the licensing objectives or the author wished to remain anonymous.

- 3.2 Table 6 at Appendix 2 should provide Members with a better overview of the applications that have not been referred to a hearing as all of the representations received were deemed invalid. As these are infrequent, we had to interrogate the database back to April 2009.

- 3.3 The Licensing Section sends out a letter when advising a person or business that their representation has been deemed invalid. This is to be supplemented with a new guidance note recently prepared by the Licensing Section. A copy of the guidance note in draft format may be found at Appendix 3.

4.0 Implications For Council Policy And Governance

4.1 There are no implications

5.0 Legal And Resource Implications

5.1 There is a possibility of legal challenge against the Authority for failing to act in accordance with the Licensing Act 2003.

6.0 Conclusions

6.1 Members expressed concern about the extent that officers were using their delegated powers to determine the validity of representations. Since April 2009 there have been four applications subject to invalid representations deemed granted by officers, out of a total of 282 applications.

7.0 Recommendations

7.1 Members are requested to note the contents of this report.

Entertainment Licensing Section - Legal, Licensing & Registration

Licensing Act 2003 – Licence Applications and Variations Received during April 2010

Table 1
Applications Received April 2010 (23 in total)

Licence Number	Premises Name	Premises Address
CPREM/00254/V01	Otley Cricket Club	Cross Green Otley Leeds LS21 1HE
CPREM/00298	Bardsey Sports Club	Sports Ground At Keswick Lane Bardsey Leeds LS17 9AA
PREM/00470/V02	Evolution	Cardigan Fields Kirkstall Road Burley Leeds LS4 2DG
PREM/00560/V02	Sainsbury's Supermarkets Limited	70 - 74 Brudenell Road Headingley Leeds LS6 1EG
PREM/00621/V01	Hedley Verity	45 - 47 Woodhouse Lane Leeds LS2 8JT
PREM/00621/V02	Hedley Verity	45- 47 Woodhouse Lane Leeds LS2 8JT
PREM/02403/V03	Lister Fisheries	56 North Lane Headingley Leeds LS6 3HU
PREM/02825/V01	Harewood House Trust (Grounds)	Harewood Leeds LS17 9LQ
PREM/02866	East Leeds Community Sports Club	East Leeds Working Mens Club 81 Easy Road Cross Green Leeds LS9 8QS
PREM/02867	Hukaz	47-49 Brudenell Grove Headingley Leeds LS6 1HR
PREM/02868	Armley Leisure Centre	Armley Sports And Leisure Centre Carr Crofts Armley Leeds LS12 3HB
PREM/02869	The Waterhole	43 Great George Street Leeds LS1 3BB
PREM/02870	Brooklyn Bar	50 Call Lane Leeds LS1 6DT
PREM/02871	The Becketts (Unit 607)	(Unit 607) Meanwood Road Meanwood Leeds LS6 4HQ
PREM/02872	Barburrito	62 The Headrow Leeds LS1 8TL
PREM/02873	Pitcher & Piano	Unit 3 Waterloo House Assembly Street Leeds LS2 7DE
PREM/02874	Royalty	Yorkgate Otley LS21 3DG
PREM/02875	Bramham Park	Wetherby LS22 6ND
PREM/02876	La Liga	Dick Lane Thornbury Bradford BD3 7AT
PREM/02877	Leeds Drink Delivery	Unit 7 Oak Mills Topcliffe Lane Morley Leeds LS27 0HL
PREM/02878	Fulneck Dramatic Society	The Comenius Centre Fulneck School Fulneck Pudsey LS28 8NT
PREM/02879	Royal Hotel	60 Town Street Armley Leeds LS12 3AA
PREM/02880	Garforth Town Football Club	Cedar Ridge Garforth Leeds LS25 2PF

Table 2
Applications granted without a hearing (11 of the 23 in Table 1).

NB: Re. the column headed 'Number of Valid Reps Agreed' – these will have been subject to amendments of the operating schedule in response to responsible authority requests.

Licence Number	Premises Name	Premises Address	Number of Invalid Reps	Number of Valid Reps Agreed	Number of Valid Reps Not Agreed
PREM/00470/V02	Evolution	Cardigan Fields Kirkstall Road Burley Leeds LS4 2DG	0	0	0
PREM/00621/V01	Hedley Verity	45 - 47 Woodhouse Lane Leeds LS2 8JT	0	1	0
PREM/02867	Hukaz	47-49 Brudenell Grove Headingley Leeds LS6 1HR	0	0	0
PREM/02868	Armley Leisure Centre	Armley Sports And Leisure Centre Carr Crofts Armley Leeds LS12 3HB	0	2	0
PREM/02869	The Waterhole	43 Great George Street Leeds LS1 3BB	0	1	0
PREM/02872	Barburrito	62 The Headrow Leeds LS1 8TL	0	2	0
PREM/02874	Royalty	Yorkgate Otley LS21 3DG	0	0	0
PREM/02875	Bramham Park	Wetherby LS22 6ND	0	0	0
PREM/02878	Fulneck Dramatic Society	The Comenius Centre Fulneck School Fulneck Pudsey LS28 8NT	0	0	0
PREM/02879	Royal Hotel	60 Town Street Armley Leeds LS12 3AA	0	0	0
PREM/02880	Garforth Town Football Club	Cedar Ridge Garforth Leeds LS25 2PF	0	3	0

Table 3
Application withdrawn (1 of the 23 in Table 1)

Licence Number	Premises Name	Premises Address	Number of Invalid Reps	Number of Valid Reps Agreed	Number of Valid Reps Not Agreed
PREM/02877	Leeds Drink Delivery	Unit 7 Oak Mills Topcliffe Lane Morley Leeds LS27 0HL	0	0	5

Table 4
Applications referred for Hearing (11 of the 23 in Table 1):

NB: Re. the column headed 'Number of Valid Reps Agreed' – these will have been subject to amendments of the operating schedule in response to responsible authority requests.

Licence Number	Premises Name	Premises Address	Number of Invalid Reps	Number of valid Reps Agreed	Number of Valid Reps Not Agreed
CPREM/00254/V01	Otley Cricket Club	Cross Green Otley Leeds LS21 1HE	2	0	3
CPREM/00298	Bardsey Sports Club	Sports Ground At Keswick Lane Bardsey Leeds LS17 9AA	0	0	1
PREM/00560/V02	Sainsbury's Supermarkets Limited	70 - 74 Brudenell Road Headingley Leeds LS6 1EG	1	0	1
PREM/00621/V02	Hedley Verity	45- 47 Woodhouse Lane Leeds LS2 8JT	0	1	2
PREM/02403/V03	Lister Fisheries	56 North Lane Headingley Leeds LS6 3HU	0	0	6
PREM/02825/V01	Harewood House Trust (Grounds)	Harewood Leeds LS17 9LQ	0	0	1
PREM/02866	East Leeds Community Sports Club	East Leeds Working Mens Club 81 Easy Road Cross Green Leeds LS9 8QS	0	2	0
PREM/02870	Brooklyn Bar	50 Call Lane Leeds LS1 6DT	0	1	4
PREM/02871	The Becketts (Unit 607)	(Unit 607) Meanwood Road Meanwood Leeds LS6 4HQ	3	0	1
PREM/02873	Pitcher & Piano	Unit 3 Waterloo House Assembly Street Leeds LS2 7DE	0	1	1
PREM/02876	La Liga	Dick Lane Thornbury Bradford BD3 7AT	4	0	11

Table 5

Of the applications in Table 4 above which went to a hearing, 4 of these were also subject to invalid representations for the following reasons:

Licence Number	Premises Name	Premises Address	Number of Invalid Reps & Reasons
CPREM/00254/V01	Otley Cricket Club	Cross Green Otley Leeds LS21 1HE	2 reps - Did not wish to divulge personal details
PREM/00560/V02	Sainsbury's Supermarkets Limited	70 - 74 Brudenell Road Headingley Leeds LS6 1EG	Ward Councillors – reps received out of time
PREM/02871	The Becketts (Unit 607)	Meanwood Road, Meanwood Leeds LS6 4HQ	1 rep – out of time 1 rep - Did not wish to divulge personal details 1 rep - Did not wish to divulge personal details
PREM/02876	La Liga	Dick Lane Thornbury Bradford BD3 7AT	1 rep – out of time 3 reps - Irrelevant to the Licensing Objectives. Non specific general views and no supporting evidence

APPENDIX 2

Table 6

Applications subject to invalid representations – Not referred to a hearing.

1st April 2009 until 28th June 2010

Licence Number	Premises Name	Premises Address	Invalid Reprs & Reason
PREM/00521/V04	Yates's	24 - 28 Boar Lane Leeds LS1 5DA	1 – representation out of time
PREM/02327/V03	Wildcats	153 - 155 The Headrow Leeds LS1 5RB	8 – do not reside in vicinity
PREM/02627/V01	Off Licence	66 Burley Road Burley Leeds LS3 1JX	1 – out of time
PREM/02727	Restaurant	63 Lidget Hill Pudsey LS28 7LJ	1 – irrelevant to licensing objectives – not specific to premises of general nature and referring to other licensed/retail outlets in area.
PREM/02783	Off Licence	22 New Briggate Leeds LS1 6NU	1 – irrelevant to licensing objectives – competing business & refers to `need`.
PREM/02845	Thai Cottage Restaurant	37 - 39 Gt George Street Leeds LS1 3BB	1 – irrelevant to activities applied for (EHS requiring condition for music when only applied for alcohol)

The Licensing Act 2003

Licence Application

Further information on why your representation has not been accepted

Your questions answered

1) Introduction

The licensing authority must carry out its functions in accordance with Licensing Act 2003 and the Guidance issued under s182 of the Act.

The 2003 Act is prescriptive on what sets the criteria for 'relevant' representations.

It is for the licensing authority to decide in the first instance whether or not representations are relevant.

In the absence of relevant representations the licensing authority is obliged to grant the application.

2) What is a 'relevant' representation ?

For a representation to be relevant it must be:

- from an interested party (or representative/s) or a responsible authority ie the police, environmental health, etc
- relevant to one or more of the licensing objectives
- must not be frivolous (not serious in nature) , vexatious (designed to upset/annoy the applicant) or repetitious
- received within the 28 day notice period

The licensing authority is unable to accept anonymous representations and representations of a speculative nature.

3) Who is an 'interested party' ?

- An interested party is defined as
- a person living in the vicinity of the premises in question;
- a body representing persons living in that vicinity, eg a residents association, parish or town council;
- a person involved in a business in the vicinity of the premises in question,
- a body representing persons involved in such businesses, eg a trade association;
- a member of the relevant licensing authority, ie elected councillors of the licensing authority for the area in which a premises is situated.

4) How is 'vicinity' defined ?

Section 182 Guidance to the Act sets out that 'in making their initial decision on the question of vicinity, licensing authorities should consider whether the individual's residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises'.

Nuisance complaints, be this noise, litter, odour etc., must be directly attributed to the premises in question and not be as a result of an accumulation of premises or activities in the area.

5) What are the licensing objectives?

A representation must be on the grounds that the application will undermine one or more of the licensing objectives:

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

6) Anonymous Representations

In the absence of a residential or business address the licensing authority is unable to accept a representation as it will be unable to assess the 'vicinity' criteria.

The licensing authority also has an obligation to serve copies of representations on the applicant and they will also be included in the committee report which is a public document.

Any person who has concerns for their identity being revealed should consider alternative measures, such as approaching a local representative, ie a councillor or a resident forum and enquire whether they would take the representation on their behalf.

Similarly the licensing authority is unable to accept petitions which do not contain comprehensible names and addresses.

7) Speculative Representations

The licensing authority will have difficulties in accepting representations which are of a speculative nature. Representations should be made on the grounds that there are existing problems or there is the potential for problems – with evidence to support this.

It should be noted that responsible authorities, such as the police and environmental health have an opportunity to comment on all applications and if problems do exist or there is the potential for problems given present evidence, then a representation to this effect may be submitted by one or more of the responsible authorities. As an alternative it is suggested that residents speak to their councillor who may liaise with these services.

The Act is designed so that premises are provided the chance to operate unless the licensing authority can be satisfied, based on evidence put before them, that the application should be refused or restricted in their operation.

The Act provides sanctions that can be brought against premises at a later date should it be proven that they are having a negative impact on the area.

8) Who will take the decision whether a representation is relevant or not?

Any representation will initially be assessed by a licensing officer who is appropriately trained and carries out their duties in accordance with the Licensing Act 2003 as delegated by the Council.

9) What can I do if my representation does not meet the relevant criteria ?

Elected Councillors of the relevant licensing authority are now interested parties regardless of whether they reside or carry on a business in the vicinity of the premises.

If your representation has been ruled out, in particular on the grounds of 'vicinity', it is suggested that you consider approaching a councillor who may be willing to take the representation forward should they have similar concerns for the application.

It should however be noted that councillors must still meet the criteria for a relevant representation, insofar as the grounds for must relate to one or more of the licensing objectives, and must not be frivolous, vexatious, repetitious or speculative.

10) Representation Notice Period

And finally, representations can only be accepted within the specified notice period. This will be a period of 28 consecutive days commencing the day after the licensing authority received the application (or 10 days for minor variation applications).

Representations, even if relevant, cannot be accepted after this time.

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