

LICENSING SUB-COMMITTEE 'B'		DATE 01 December 2016
TITLE Application for Grant of a Premises Licence for: Arnott Close Post Office, 6 Arnott Close, London SE28 8BG		ITEM NO. 5
PROVISIONS UNDER WHICH HEARING IS HELD: Section 18(3) Licensing Act 2003		
LEAD OFFICER Director of Community Services		WARD Thamesmead Moorings

I Decisions Required

1.1 The Sub-Committee is asked to consider an application made by Jitendra Patel for the grant of a new Premises Licence in respect of the Arnott Close Post Office, 6 Arnott Close, London SE28 8BG. A copy of the application form and plans is attached at **Appendix A**.

2. Background

2.1 The application the Sub-Committee is asked to consider is to grant a premises licence to allow the:

Supply of Alcohol (for consumption off the premises only)

Monday to Sunday from 06:00 hours until 21:00 hours.

The proposed opening hours are:

Monday to Sunday from 06:00 hours until 21:00 hours.

2.2 Guidance requires the Council to give its decision forthwith together with reasons for it. It is open to the licensing authority to:

- Grant the application, together with such conditions as are consistent with the operating schedule (these can be modified to such an extent that the licensing authority considers appropriate for the promotion of the licensing objectives).
- Impose additional conditions on the licence. Any conditions must be appropriate for the promotion of the licensing objectives. There is no power for the licensing authority to attach a condition that is merely aspirational, it must be appropriate. For example, conditions may not be attached that relate to the health of customers rather than direct physical safety.

- Refuse the application on the grounds that refusal is appropriate for the promotion of the licensing objectives. It may also allow only certain requested licensable activities.

2.3 The Council is required to impose conditions on the licence that are volunteered by the applicant in their operating schedule. Some conditions have been reworded to make them meaningful and enforceable or following agreement with the “Responsible Authorities”. Others have been omitted as they are already covered by primary legislation, are meaningless, or are unenforceable.

2.4 The conditions volunteered by the applicant and modified following agreement with the Metropolitan Police (Greenwich) Licensing Team and the Royal Borough of Greenwich Trading Standards Department are:

- (1) The Challenge 25/Think 25 proof of age scheme shall be operated at the premises. All customers who appear under the age of 25 will be challenged to prove that they are over 18 when attempting to purchase alcohol. Acceptable forms of ID include a photo driving licence, passport, or home office approved identity card bearing the holographic ‘PASS’ mark. If the person seeking alcohol is unable to produce an acceptable form of identification, no sale or supply of alcohol shall be made to or for that person.
- (2) All staff shall be trained in the law about the sale of alcohol. Such training will include challenging every individual who appears to be under 25 years of age and to refuse service where individuals cannot produce acceptable means of identification, acceptable forms of ID and using the refusal register. Such training (including any refresher training) will be logged and provided not less than every six months. The training log will be made available for inspection by Police and “authorised persons”.
- (3) A refusals log shall be kept at the premises, and made immediately available on request to the police or an "authorised person". The refusals log is to be inspected on a monthly basis by the DPS and noted in the log and a record made in the log of any actions that appear to be needed to protect young people from harm. The log must record all refused sales of alcohol and include the following:
 - a) the identity of the member of staff who refused the sale;
 - b) the date and time of the refusal;

- c) the alcohol requested and reason for refusal;
 - d) a description of the person refused alcohol.
- (4) The following posters shall be displayed conspicuously on the premises in customer facing areas:
- a) 'Think 25' or similar poster to advise potential purchasers that suitable proof of age will be required for all purchasers who appear to be under 25;
 - b) 'It's A Crime' or similar poster intended to warn adults not to buy alcohol for those under 18 years-of-age.
- (5) The Premises Licence Holder will ensure that legible copies of the receipts for all alcohol goods purchased will be retained on the premises for at least 6 months and be made immediately available on request to the police or an "authorised person". The documents must include the following details:
- a) Seller's name and geographical address;
 - b) Seller's company details, if applicable;
 - c) Seller's VAT details, if applicable;
 - d) Vehicle registration detail, if applicable.
- (6) The Premises Licence Holder shall not purchase any alcohol goods from door to door sellers
- (7) A CCTV recording system shall be installed that is capable of capturing an image of evidential standards. The system shall continually record whilst the venue is open for licensable activity and/or when customers are present on the premises. All CCTV recordings shall be time- & date-stamped and maintained for a minimum of thirty-one (31) days. Cameras shall be installed so as to cover both internal and external areas of the premises. At least one camera shall cover ingress/egress points.
- (8) Staff shall be fully trained in the operation of the CCTV system and there shall be at least one member of staff on duty during trading hours who is able to provide copies of CCTV recordings to the Police and authorised officers of the Local Authority. Such copies shall, in any event, be provided within forty-eight (48) hours.
- (9) Notices shall be displayed advising that CCTV is in operation.

- (10) When the CCTV is not operating, no supply of alcohol shall be made on the premises.
- (11) The DPS will keep an up to date Authorisation sheet which will show the list of staff members who have been given the authority to sell alcohol on the premises.
- (12) Alcohol shall not be sold in an open container or consumed in the licensed premises.
- (13) There shall be no self-service of spirits. All spirits shall be displayed for sale behind the counter.
- (14) No more than 30% of the available display space at the premises shall be given over to the display of alcohol.
- (15) Signage requesting customers to respect local residents and leave the premises quietly shall be displayed at each exit.
- (16) Outside of Licensing hours all alcohol shall be covered by an opaque curtain obscuring the view of the alcohol thereby removing it from sale.

3. Summary

- 3.1 The application was made on 12th October 2016. The applicant complied with application requirements in terms of paying the fee and providing plans of the premises.
- 3.2 The last day for representations was 9th November 2016.
- 3.3 The applicant advertised their application as required by Government regulations by displaying notices of their application at the premises and advertising it in the local press.
- 3.4 The applicant complied with the requirement to serve copies of their application on the various responsible authorities, namely the Metropolitan Police, Environmental Health Officers (Commercial / Health & Safety and Noise Pollution Control), the Trading Standards Officer, the Planning Officer, the London Fire & Emergency Planning Authority, the Child Protection Committee, and the Public Health Body.

- 3.5 The Council delivered 300 letters to residential and business properties within approximately 100 metres of the premises advising them of the application and giving the address for receipt of representations.
4. History of the Premises
- 4.1 The premises itself has never held a Licence or any other form of authority to sell alcohol and currently operates as a Post Office and general store. As such, there is no history to report.
5. Location and Nature of the premises
- 5.1 The premises are situated in a small parade of ground floor shops alongside several large residential blocks.
- 5.2 The other retail premises within that parade include two off- licensed premises and a takeaway food unit.
- 5.3 The nearest residential properties are above the parade of shops but there are also several large residential blocks to the side and rear of the premises.
- 5.4 To the South West side of the premises, Windrush Primary School is approximately 100 metres away and the Christian Life Centre is approximately 20 metres away.
- 5.5 A map of the area around the premises is attached at **Appendix B**.
6. Nearest licensed premises
- 6.1 Other licensed premises within the immediate vicinity are:
- 6.1.1 **Tropikana, 5 Arnott Close, London SE28 8BG**
Sale and supply of Alcohol (Off sales only);
Monday to Saturday from 09:00 hours until 23:00 hours;
Sunday from 11:00 hours until 22:00 hours.
- 6.1.2 **Gogi's Supermarket, 7-9 Arnott Close, London SE28 8BG**
Sale and supply of Alcohol (Off sales only);
Monday to Saturday from 07:00 hours until 23:00 hours;
Sunday from 08:00 hours until 22:00 hours.

7. Relevant Considerations

7.1 The Licensing Act 2003 states that the licensing authority can only consider representations if they are relevant to one of the Government's four licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

7.2 The Sub-Committee may only consider matters that have been raised with them by way of representation. Conditions may only be imposed as a direct result of such representations. The Sub-Committee may not consider any other matters when making their decision.

7.3 Representations have been made on the basis of the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. The Sub-Committee may therefore consider issues relating to any of these licensing objectives when making their decision.

7.4 Conditions must be easy to understand, controllable by the licensee, reasonable and enforceable.

7.5 Conditions requiring the applicant to control, or seek to control, the behaviour of persons when they have left the premises would be unenforceable, as they have no legal authority to do so.

8 Responsible Authorities

8.1 Representation has been made by the Metropolitan Police (Greenwich) Licensing Team on grounds related to the prevention of crime and disorder and the protection of children from harm licensing objective. A copy of the representation is attached at **Appendix C**.

8.2 Representation has been made by the Royal Borough of Greenwich Trading Standards Team on grounds related to the protection of children from harm licensing objective. A copy of the representation is attached at **Appendix D**.

8.3 Following discussion with the Police and Trading Standards Department the points raised in the above two representations have resulted in conditions

shown in Section 2.4 of this report being agreed. Copies of the E-Mails from the applicant agreeing to these conditions are attached at **Appendix E**.

8.4 Both the Royal Borough of Greenwich Environmental Health Pollution Control and Commercial Teams and the London Fire Brigade have formally advised that they would be making no representation to this application.

9. 'Other Persons' Comments

9.1 There have been two (2) representations received from 'other persons' on grounds related to the Prevention of Crime and Disorder, the Prevention of Public Nuisance and the Protection of Children from Harm licensing objectives. One of these representations is on behalf of an adjoining licensed premises and the other has been submitted by a local Councillor. Copies of these representations are attached at **Appendix F**.

9.2 A representation in the form of a petition signed by two hundred and twenty one (221) people on grounds related to the Prevention of Crime and Disorder and the Prevention of Public licensing objectives has also been submitted. A copy of the covering letter regarding this petition and the petition itself are attached at **Appendix G**.

9.3 A further representation in the form of a petition signed by twenty six (26) people on grounds related to the Prevention of Crime and Disorder and the Prevention of Public licensing objectives has also been submitted. A copy of this petition is attached at **Appendix H**.

10. References/Considerations

10.1 In making their decision the Sub-Committee must have regard to the following:

Royal Borough of Greenwich Council Statement of Licensing Policy

10.2 The Royal Borough's Statement of Licensing Policy states at 8.1 "Every application considered by the Royal Borough under the terms of this policy will be considered on its own merits and with due regard to the Guidance issued under Section 182 of the Licensing Act 2003, the Licensing Act 2003 itself, and any supporting regulations."

10.3 Section 3.1 states: "The Royal Borough maintains that licensing is about the control of licensed premises, qualifying clubs and temporary events within the

terms of the Act. Any conditions attached to licences will be focused on matters that are within the control of individual licensees and must be appropriate for the promotion of the licensing objectives.”

- 10.4 Section 3.2 states: “These conditions will relate to the premises and other places being used for licensable activities and the impact of those activities in the near vicinity of the premises. In this regard, the Royal Borough will primarily focus on the impact, or reasonably anticipated impact, of any activities taking place at the licensed premises on those living, working or engaged in normal activity in the area concerned.”
- 10.5 Section 3.3 states: “Where the Royal Borough’s discretion is engaged as a result of relevant representations, tailored and proportionate conditions may be imposed on a licence to address the individual licensing objectives.”
- 10.6 Section 3.4 states: “In assessing the methods to be used by licence applicants to meet the licensing objectives and in consideration of representations made, regard will be taken of relevant industry standards, appropriate guidance, and local policies. These will inform the conditions which will be applied to the licence.”
- 10.7 Section 3.5 states: “In order to avoid duplication with other statutory regimes as far as possible, the Royal Borough will not attach conditions on a licence unless they are considered appropriate for the promotion of the licensing objectives. A list of non-exhaustive conditions for consideration appear in Appendices A to G [of the policy].”
- 10.8 Section 3.6 states: “The Royal Borough recognises that well run premises can make a valuable, positive contribution to the local community though the local economy, tourism and cultural development. However, if they are not properly managed and controlled, licensed premises [...] can become a serious source of crime and disorder or anti-social behaviour problems.”
- 10.9 Section 3.8 states: “The Royal Borough will expect applicants to address in their operating schedule how the operation of the premises will satisfactorily address crime and disorder issues ranging from the design of the premises through to the daily operation of the business whilst promoting the prevention of crime and disorder.”
- 10.10 Section 3.12.1 states: “The Police and local Community Safety Partnership are the main source of advice on crime and disorder. Applicants are

recommended to seek advice on crime prevention from Greenwich Police before making a formal application.”

- 10.11 Section 3.13 states: “Conditions may, for example, include items relating to management systems, training, drugs policies, search procedures, entry policies, physical security, door supervisors, bottle bans, drinks containers, smoking area capacity limits, CCTV, restricting drinking areas, premises capacity limits, age verification systems such as ‘Challenge 25’, crime prevention notices, and signage.”
- 10.12 Section 3.24 states: “The Royal Borough will require any applicant to demonstrate within their operating schedule how they intend to prevent public nuisance arising and, equally, to prevent nuisance to ensure that the Prevention of Public Nuisance licensing objective in particular, and the licensing objectives in general, are met. Public nuisance includes noise caused by customers arriving at and/or leaving a premises, noise created whilst they are within a premises, general anti-social behaviour, and issues such as smoke, odour, litter, light, fly-posting, and obstruction of the highway. These examples are not exhaustive, and applicants should demonstrate within their application how all potential public nuisance issues relevant to their premises will be mitigated.”
- 10.13 Section 3.26 states: “Procedures must be put in place to manage the behaviour of customers in so far as preventing it from becoming a public nuisance. These measures may include management of patrons when they arrive and leave the premises; the placing of signage reminding patrons to arrive and leave quietly, and to have respect for local residents; arranging a dedicated taxi service to assist the quick dispersal of customers away from the premises; and when drinking outside is permitted (such as in a beer garden or on a forecourt), the implementation of workable procedures to reduce/remove the potential of disturbance to neighbours. Again, these examples are not exhaustive.”
- 10.14 Section 3.29 states: “The trading hours during which the licensable activities are permitted at premises by the conditions of a premises licence or a club premises certificate are set for the prevention of public nuisance. Therefore, where premises are in a predominately residential area, the potential for public nuisance is greater. Restrictions may be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times.”

- 10.15 Section 3.32 states: “Licence holders are expected to adhere to the prevention of public nuisance through their licensable activities and demonstrate ways in which public nuisances, which result from the premises or its users, will be mitigated against.”
- 10.16 Section 3.39 states: “The Royal Borough will expect applicants of alcohol licences to demonstrate in their operating schedule that suitable and sufficient steps are to be taken to ensure the licensing objective of the protection of children from harm.”
- 10.17 Section 7.11 states: “Crime, disorder and public nuisance can take place in relation to licensed premises despite the best efforts of the licensee, as they may occur outside the licensee’s sphere of influence and legal control. However, the duty to promote the licensing objectives requires the Royal Borough to take account of representations that raise such activity in relation to a particular area when making decisions on applications”
- 10.18 Section 11.3 states: “The Royal Borough will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence, stricter conditions will be expected with regard to noise control in the case of premises that are situated in areas that have a greater density of residential accommodation. This will particularly apply in circumstances where, having regard to the location, size, and nature of the licensed premises, it is likely that disturbance will be caused to residents in the vicinity of the premises by concentrations of people leaving during normal night-time sleeping periods from 23:00 hours to the following 07:00 hours”
- 10.19 The Sub-Committee is reminded to have regard to the Policy *in general* when making their decision

Guidance Published by the Government under Section 182 of the Act

- 10.20 Guidance states at 2.14: “The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises, which may be disproportionate and unreasonable.”

10.21 The Guidance states, at 2.15, “Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include, in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health”.

10.22 Section 2.20 says, “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area or that, if they wish to smoke, to do so at designated places on the premises instead of outside and to respect the rights of people living nearby to a peaceful night”.

10.23 The Guidance states at 9.37: “In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all the parties;
- This Guidance;
- Its own statement of licensing policy.”

The Licensing Act 2003 Regulations

10.24 The Sub-Committee should have regard to the Hearings Regulations published by the Government under the Licensing Act 2003.

Human Rights Act 1998

10.25 The Human Rights Act provides that “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” The term “possession” includes a Licence as well as a home and the things it contains.

10.26 The Act further provides:

- 1) “it is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- 2) Subsection (1) does not apply to an act if-
 - a. as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - b. in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.”

10.27 However, it is recognised that the Council’s Statement of Licensing Policy and Statutory Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Therefore subject to both the Policy and Guidance having been properly and carefully considered, licensing authorities may depart from them if they have a justifiable reason to do so. If doing so, licensing authorities will need to give full reasons for their actions.

11 Legal Considerations

11.1 A Premises Licence lasts for the lifetime of the business, unless it lapses due to the death or insolvency of the licence holder, is surrendered by the applicant, is suspended, or is revoked.

11.2 However, the Government have introduced a review mechanism where licensed premises are found to be contravening one of the licensing objectives.

11.3 The Guidance states at 11.2: “At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives”.

- 11.4 Any Responsible Authority or 'Other Person' may apply to the Council for a review of the licence at any time (except in the case of an 'other person' where the representation is deemed to be repetitious, vexatious or frivolous).
- 11.5 The Sub-Committee should also be aware of the applicant's right to have a certain number of temporary permitted activities a year. In order to apply for these, the applicant must serve a Temporary Event Notice (TEN) on the Council, Police, and relevant Environmental Health Officers not less than 10 working days before the event, or, in the case of a deemed "Late" TEN, not less than five working days before the event.
- 11.6 Temporary Event Notices permit licensable activities to take place subject to the following rules:
- i) No person or associate may give more than five notices a year (of which two can be "late"), unless they hold a Personal Licence. In this case, they may give up to 50 notices (of which ten can be "late").
 - ii) No Temporary Event Notice may give consent for the premises to be used for more than seven days at a time (168 hours), with a break of at least 24 hours between events.
 - iii) No premises may have more than 15 Temporary Event Notices a year, or an aggregate 21 days of events, whichever is the lesser number.
 - iv) No more than 499 persons may be accommodated on the premises.
- 11.7 Temporary Event Notices can be used to extend the hours licensable activities take place, to add licensable activities not currently catered for, or to hold licensable activities at premises not currently licensed.
- 11.8 The Police and Environmental Health can object to a Temporary Event Notice, on the basis of one, more or all of the prescribed licensing objectives. Such objections may be resolved by attaching to the Notice one, more or all pre-existing conditions currently attached to a licence granted to a premises for which the Notice is being sought. However, such conditions cannot be reworded, nor can 'new' conditions be attached in any circumstances.
- 11.9 In the case of a "Late" TEN, any objection automatically renders the Notice as refused.
- 11.10 The applicant for the grant of the Premises Licence, or any 'other person' who made relevant representations to the application may appeal, against any decision made by the Council, to the Magistrates' Court within 21 days

beginning with the day on which the appellant was notified by the Council of the decision being appealed against.

11.11 No amendments to the Premises Licence made by the Council will have effect during the time period within which an appeal may be brought and until such time that any appeal has been determined or abandoned.

12 Appeal Rights

12.1 Where a Licensing Authority rejects in whole or in part, an application to grant a premises licence, the applicant may appeal against the decision to a Magistrates' Court within 21 days of being notified of the decision.

12.2 Similarly, where a person who made relevant representations in relation to the application contends that the licence ought not to have been granted, or that different or additional conditions should have been imposed on the licence, they may appeal against the decision to a Magistrates' Court within 21 days of being notified of the Council's decision.

12.3 The Guidance states at 12.10: "It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act".

Background Papers

Premises Licence file

Royal Borough of Greenwich Council's Statement of Licensing Policy dated 7 January 2016

Guidance published by the Government under Section 182 of the Licensing Act 2003

Appendices:

- Appendix A:** Premises Licence Application and Plans
- Appendix B:** Map of local area
- Appendix C:** Representation by Metropolitan Police (Greenwich) Licensing Team
- Appendix D:** Representation by RBG Trading Standards Team
- Appendix E:** E-Mail agreements by applicant to amended conditions
- Appendix F:** Letters of representation by 'other persons'
- Appendix G:** Copy of cover letter and petition submitted by 'other persons'
- Appendix H:** Copy of petition submitted by 'other persons'

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