



City of Westminster

Licensing Committee

Date: 20 November 2013

Classification: For General Release

Title: Licensing Act 2003 – Opening Hours

Report of: Operational Director for Premises Management

Wards Involved: Not Applicable

Policy Context: Management of the Public Realm

Financial Summary: No financial implications

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1. Summary

- 1.1 Under the Licensing Act 2003, applicants for premises licences are required to state the opening hours for their premises on the application form, despite opening hours not being a licensable activity. The purpose of this report is to explain why the information is required and why Members can take them into account when considering licence applications.

2. Recommendation

- 2.1 The Committee is recommended to note the report.

3. Relevant Information

- 3.1 When determining applications under the Licensing Act 2003 ('the 2003 Act') it is important to distinguish between the hours when the licensable activities can take place and the hours when the premises can open and close.
- 3.2 There is nothing in the 2003 Act itself that specifically allows a licensing authority to determine the opening and closing hours of the premises.

However, the prescribed application forms do require an applicant to specify the opening and closing hours and there is a requirement for the opening and closing hours to be specified on the licence itself.

- 3.3 The question that might arise is whether the licensing authority can prosecute anyone if, for example, the premises stop selling alcohol at 11.30 pm but then remain open until 1 am. An inspector might visit the premises at 12.30 am and note that the premises are open, that customers are still present and that some of the customers are still consuming alcohol. In the absence of any sale taking place, it would be difficult to prove that any licensable activities were taking place at that time.
- 3.4 Most operators appear to accept that they should comply with the opening and closing hours despite the potential enforcement problems. That may reflect the fact that they always remain vulnerable to review proceedings being taken if there is any suggestion that they are carrying on their licensable activities in such a way as to undermine the licensing objectives. For example, in the circumstances described above, there might be evidence from local residents that the premises are remaining open beyond midnight and that customers who are drunk are leaving at 1 am and are causing a disturbance. As a warning shot across the bows, the licensing authority might decide to cut back the hours when the alcohol can be sold to 11 pm or even earlier and it might warn the operators that if problems continue they will be at risk of losing their licence altogether.
- 3.5 It must also be borne in mind that there are some circumstances where the licensable activities that take place on the premises are ancillary to other activities that may well have to continue beyond the "usual" hours when other premises are licensed. Such examples include hotels, which may need to remain open for 24 hours a day, and some shops which may want to remain open for up to 24 hours for the sale of goods that do not require any licence at all.
- 3.6 There is only one case where the issue of opening and closing hours under the 2003 Act has been considered. In R (on the application of Daniel Thwaites PLC) v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin), Black J clearly stated that the licensing authority was permitted to regulate the hours of opening as well as the hours for the licensable activities themselves. She said as follows:

I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly, keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in s 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also 'any other times during which it is proposed that the premises

are to be open to the public'. On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

- 3.7 In conclusion, it does appear to be generally accepted that the licensing authority can determine the opening and closing hours of the premises even though some operators assert that they can retain the option of opening for longer hours in those circumstances where they are not providing any licensable activities. The legal advice is that the licensing authority can and should determine the opening hours and the closing hours for the premises and Members of the Licensing Sub-Committee should always apply their minds to those hours as well as the hours for the licensable activities themselves. Indeed, it is important to stress that the Council's core hours for licensable activities are defined in the statement of licensing policy to be the hours when customers are permitted to be on the premises.

4. Financial Implications

- 4.1 There are no financial implications arising from this report.

5. Legal Implications

- 5.1 There are no legal implications.

If you have any queries about this report please contact Sharon Bamborough on 020 7641 7824, or email sbamborough@westminster.gov.uk