



City of Westminster

Licensing Committee Report

Meeting:	<i>Licensing Committee</i>
Date:	<i>22nd March 2017</i>
Classification:	<i>For General Release</i>
Title:	<i>Licensing Act 2003 Delegated Officer Decisions 2016/17</i>
Wards Affected:	<i>All</i>
Financial Summary:	<i>There are no financial impacts associated with this report.</i>
Report of:	<i>Director of Public Protection and Licensing</i>

1. Executive Summary

- 1.1 Following a request from the Chair of the Licensing Committee the Licensing Team has undertaken a full review of Licensing Act 2003 new and full variation applications that were determined under officer delegated authority between 1st July 2016 and 2nd March 2017. The review sought to alleviate concerns raised by members of the Licensing Committee that applications were being determined under officer delegation against the Council's Licensing Policy.
- 1.2 This report sets out the criteria and process that the Licensing Team has in place when determining applications under delegated authority, the volumes and types of applications determined under delegated authority between the 1st July 2016 and 2nd March 2017 and any applications that were granted by officers outside of policy.

2. Recommendations

- 2.1 The Licensing Committee is recommended to note the content of this report.

3. Background

- 3.1 The power of officers to determine certain types of licence or other authorisation applications has been in place for many years. Powers are delegated to officers

from the Licensing Committee. The Licensing Act 2003 (the Act) is responsible for the majority of applications received by the Licensing Team and also represents the vast majority of applications determined by Licensing Sub-Committees.

- 3.2 The Act specifies the licensing functions that may be discharged to the Licensing Committee, Licensing Sub-Committee and officers. Section 7(2) of the Act specifies that the functions associated with the Licensing Policy and a non-licensing function may not be determined by the Licensing Committee. Section 10 of the Act provides for the sub-delegation of functions by the Licensing Committee.
- 3.3 The Licensing Committee may delegate certain licensing functions to either a Licensing Sub-Committee or officers. However, delegation to officers is limited. Section 10(4) sets out the functions that an officer cannot be delegated to determine. These are:
 - 3.3.1 determination of applications for a new premises licence, variation to an existing premises licence or provisional statement where representations have been made (sections 18(3), 31(3) and 35(3))
 - 3.3.2 determination of application to vary designated premises supervisor or transfer following police objection (sections 39(3) and 44(5))
 - 3.3.3 consideration of police objection made to interim authority notice (section 48(3))
 - 3.3.4 determination of interim steps pending summary review (section 53A(2)(a) or 53B)
 - 3.3.5 determination of application for a club premises certificate or to vary an existing club premises certificate where representations have been made (sections 72(3) and 85(3))
 - 3.3.6 decision to give a counter notice following police objection to a temporary event notice (section 105(2))
 - 3.3.7 determination of application for the grant of a personal licence following police objection (section 120(7))
 - 3.3.8 revocation of a personal licence where convictions have come to light after grant etc (section 124(4))
 - 3.3.9 determination of a review application for a premises licence or club premises certificate (sections 52(2) or (3), 53C, 88(2) or (3) or 167(5))
- 3.4 Officers do have the power to determine applications if the representation(s) are withdrawn or in some cases where all parties agree that a hearing is unnecessary.
- 3.5 The Council's Licensing Policy sets out a useful table which lists the matters to be dealt with by the Licensing Authority and when the decision will be made by the Licensing Committee or Sub-Committee or an officer. A copy of this table is attached at Appendix 1 to this report.

- 3.6 The Licensing Team were asked to assess the applications that were determined under officer delegated authority in 2016/17. Concerns had been raised by members of the Licensing Committee to the Chair that applications may have been granted by officers when the application was against the Council's Licensing Policy.

4. Delegated authority criteria

- 4.1 The Licensing Authority must grant an application for a new premises licence or to vary an existing licence if no representations are received. The standard approaches taken by the Licensing Team for new and variation applications decisions are as follows:
- 4.1.1 No representations received – Grant the licence
 - 4.1.2 Valid representation received but later withdrawn – Grant the licence
 - 4.1.3 Valid representation received and not withdrawn – Application to be referred to the Licensing Sub-Committee for determination
 - 4.1.4 Valid representation received but all parties agree that a hearing is not necessary – Granted the licence
- 4.2 The withdrawal of representations is a common occurrence for those submitted by responsible authorities. The Police or the Council's own Environmental Health Consultation Team will carry out an initial assessment of an application and submit a representations. This is normally because there is insufficient information submitted within the application and further discussion or documents are required. Once discussions, additional documents have been provided or the applicant amends the application to address any concerns then the responsible authority may feel that the application will no longer adversely affect one or more of the Licensing Objectives. They will then withdraw their representation.
- 4.3 An agreement between all parties that a hearing is unnecessary is also common place. This agreement is normally associated with applications where one or more responsible authorities have made representations. The representation would have been submitted due to concerns with the proposed application and the impacts on one or more of the Licensing Objectives. However, following discussions, production of documents or the applicant amending their application the responsible authority may agree a set of conditions which if included on the licence would address any concerns that they have. If an agreement is made then all parties will agree that a hearing is unnecessary.
- 4.4 The Council's Environmental Health Consultation Team has, since the introduction of the Act made representations to support the Council's Licensing Policy. If an application is made and the Council's policy is to refuse such applications then they would maintain their representation so that the application is determined by a Licensing Sub-Committee.

- 4.5 However, since September 2016 the Council's Licensing Team, acting as a responsible authority, has also been making representations on policy grounds and when evidence or concerns have been raised by the Council's City Inspectors.
- 4.6 The Licensing Team are now making representations for the Licensing Authority relating to applications that are against policy. This approach has been introduced to develop a consistent approach to policy representations and to reduce the need for Environmental Health Officers to attend hearings when the main concern is associated with policy.
- 5. Delegated authority decisions review**
- 5.1 The Licensing Team processes, on average over 6200 applications per year. In 2016/17 (until 2nd March 2017) the Licensing Team had received the following Licensing Act 2003 applications:

Application Type	Applications Received
New Premises Licence	185
Premises Licence Full Variation	156
Premises Licence Minor Variation	264
Provisional Statement	3
Premises Licensing Vary Designated Premises Supervisor	938
Premises Licence Transfer	242
Designated Premises Supervisor Request to be Removed from licence	15
Interim Authority Notice	3
Premises Licence Change of licensee details	81
Premises Licence Change of Designated Premises Supervisor details	3
Premises Licence Change of Trading As Name	21
Premises Licence Duplicate Licence Request	6
Premises Licence Removal of works conditions	38
Premises Licence Review	5
Premises Licence Expedited Review	1
Premises Licence Notification of Interest	378
Club Premises Certificate Full Variation	1
New Personal Licence	236
Personal Licence Change of Name	4
Personal Licence Change of Address	65
Personal Licence Duplicate Licence Request	23
Temporary Event Notices	2911
Total	5603

- 5.2 The table below shows all new and full variation applications that were granted by Licensing Sub-Committee and by officers under delegated authority in 2015/16 and 2016/17.

Applications Granted (All premises uses)			
Year	Application Type	Licensing Sub-Committee	Officers
2015/16	New	83	103
	Variation	40	101
	Total	123	204
2016/17	New	48	79
	Variation	21	92
	Total	69	171

- 5.3 The two tables below show the number of new and full variation applications determined by the Licensing Sub-Committee and officers under delegated authority within the three Cumulative Impact Areas in 2015/16 and 2016/17.

New Applications Granted (All premises uses)			
Year	Cumulative Impact Areas	Licensing Sub-Committee	Officers
2015/16	Edgware Road	4	3
	Queensway and Bayswater	3	3
	West End	31	33
2016/17	Edgware Road	0	1
	Queensway and Bayswater	3	3
	West End	25	27

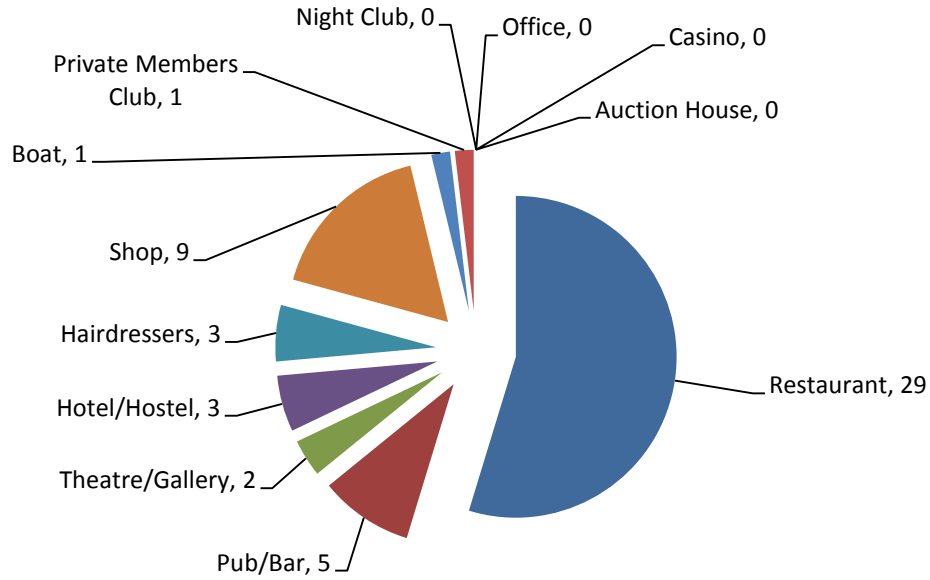
Full Variation Applications Granted (All premises uses)			
Year	Cumulative Impact Areas	Licensing Sub-Committee	Officers
2015/16	Edgware Road	0	0
	Queensway and Bayswater	0	3
	West End	19	40
2016/17	Edgware Road	0	1
	Queensway and Bayswater	1	4
	West End	8	35

- 5.4 The majority of the new applications received within the Cumulative Impact Areas that were determined by officers were either restaurants or shadow licences for existing premises.
- 5.5 The application to vary existing premises within the Cumulative Impact Area was predominantly associated with the variation of the layout of the premises or to amend conditions on the licence.

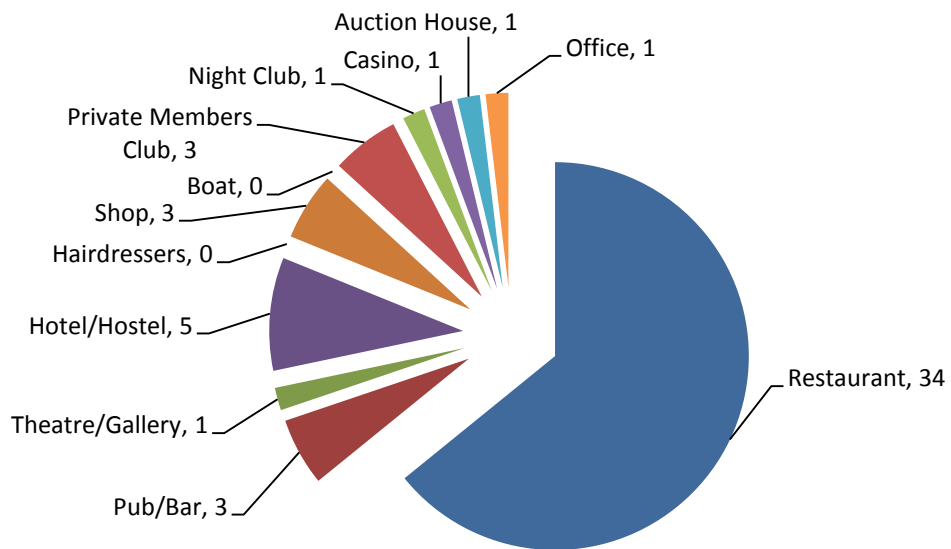
6. Delegated authority decision review findings

- 6.1 The concerns voiced by members related to both application decisions that may have been determined by officers against policy, and the time frames involved. In undertaking this review, the Licensing service has focused on new and full variation applications under the Act. Due to the volume of minor variation applications determined by officers between 1st April 2016 and 2nd March 2017 officers did not assess these decisions due to the short time scales required to produce this report. The Licensing service can undertake a review of minor variation applications under the Act for a future Licensing Committee hearing, if members feel it is necessary.
- 6.2 The Licensing Service undertook a comprehensive review of all new and full variation applications determined between the 1st July 2016 and the 2nd March 2017. This represented 54 new and 55 full variations applications; and 1 Provisional Statement.
- 6.3 The Licensing service reviewed 110 applications to identify the following information:
 - 6.3.1 Premises operation (e.g. restaurant, night club, etc).
 - 6.3.2 Whether the application, when submitted had any policies that applied to it.
 - 6.3.3 Whether a representation was made, who made it and whether it was withdrawn or an agreement was made that a hearing was unnecessary.
 - 6.3.4 Whether the application was amended in any way following the conditions.
 - 6.3.5 What the final criteria was relating to its determination, and
 - 6.3.6 How many applications were granted outside of policy.
- 6.4 The pie charts below show the breakdown of officer decisions by the type of premises operation (54 new and 55 full variation applications).

New Applications Determined By Officers Delegation 2016/17



Variation Applications Determined By Officers Delegations 2016/17



- 6.5 Of the 110 applications determined by officers within this period, 19 received no representations as they were within policy and there were no concerns associated with the application.

The following table shows the representations made per responsible authority or other persons for the 110 applications determined.

Responsible Authority or other persons	Number of applications that received a representations*
Licensing Authority	13
Environmental Health	83
Police	64
Local Residents	16
Amenity Society	13

** Some applications received representations from more than one responsible authority or other party.*

- 6.6 Applicants will aim to try and address the concerns made by the responsible authorities or other persons within their representations. When that is not possible then the application will be brought before the Licensing Sub-Committee. However, if concerns can be addressed by conditions or amendments to the application then that can result in the determination of the application without the need for a hearing.
- 6.7 Of the 110 applications that were assessed 83 were amended or had conditions added before the responsible authority or other persons either withdrew their representation or agreed that a hearing was not necessary.
- 6.8 No applications were found to be outside any policies where there is a presumption to refuse. The vast majority of applications did have an element of policy that needed to be considered in addition to the impact the proposed application would have on one or more of the Licensing Objectives. Officers as part of their consideration took into account the Council's policy before agreeing their approach.

7. Restaurants and the Licensing Policy

- 7.1 The tables below set out the applications relating to restaurants or food led premises that were determined within the Cumulative Impact Area and who determined those applications.

New Applications Granted (Restaurant)			
Year	Cumulative Impact Areas	Licensing Sub-Committee	Officers
2015/16	Edgware Road	1	1
	Queensway and Bayswater	1	1
	West End	12	14
2016/17	Edgware Road	0	0
	Queensway and Bayswater	2	2
	West End	8	11

Full Variation Applications Granted (Restaurant)			
Year	Cumulative Impact Areas	Licensing Sub-Committee	Officers
2015/16	Edgware Road	0	0
	Queensway and Bayswater	0	2
	West End	13	12
2016/17	Edgware Road	0	1
	Queensway and Bayswater	1	3
	West End	7	25

- 7.2 The council's Cumulative Impact Policy 1 (CIP1) requires restaurant applications within the Cumulative Impact Areas be subject to other relevant policies and, must demonstrate that they will not add to cumulative impact in the Cumulative Impact Areas.

The relevant policy for restaurants within the Cumulative Impact Areas is RNT2. RNT2 states that applications will be subject to other policies and relevant criteria in the prevention of crime and disorder (CD1), public safety (PS1), prevention of public nuisance (PN1) and protecting children from harm (CH1) policies, provided it can be demonstrated that they will not add to cumulative impact in the Cumulative Impact Areas.

- 7.3 Of the 110 applications assessed, it was clear that officers, in determining applications, had a stepped approach to their assessment. Firstly they

considered whether the premise was a restaurant as defined within RTN2. Potential impact from the proposed operation under policies CD1, PS1, PN1 and CH1 was subsequently assessed. Officers also determined whether specific changes to the application were required or whether additional conditions should be imposed on a licence. All of the officer delegated decisions referenced in the tables at 7.1 above resulted in the addition of specific conditions associated with the operation of that premises or an amendment to the application following representations.

8. Legal implications

8.1 There are no legal implications as a result of this report.

Appendices

Appendix 1 Licensing Policy Appendix 3 – Committees and delegation decision making chart

If you have any queries about this report or wish to inspect any of the Background Papers please contact: Mr Kerry Simpkin on 020 7641 1840 or email ksimpkin@westminster.gov.uk

BACKGROUND PAPERS

- Licensing Act 2003
- Westminster City Council's Licensing Policy, effective 7th January 2016
- Licensing Team Delegated Authority Decision Spreadsheet

Appendix 3. - Committees and delegation decision making chart

MATTER TO BE DEALT WITH	LICENSING COMMITTEE OR SUB COMMITTEE	OFFICERS
Application for personal licence	If a police objection is made	If no objection is made
Application for personal licence with unspent convictions	All cases	
Application to vary designated personal licence holder	If a police objection is made	All other cases
Request to be removed as designated personal licence holder		All cases
Application for premises licence/club premises certificate	If a relevant representation is made	If no relevant representation is made
Application for provisional statement	If a relevant representation is made	If no relevant representation is made
Application to vary premises licence/club premises certificate	If a relevant representation is made	If no relevant representation is made
Application for a minor variation to a licence / certificate		All cases
Application for transfer of premises licence	If a police objection is made	All other cases
Application for Interim Authorities	If a police objection is made	All other cases
Application to review premises licence/club premises certificate	All cases	

MATTER TO BE DEALT WITH	LICENSING COMMITTEE OR SUB COMMITTEE	OFFICERS
Decision on whether a ground for review is irrelevant, frivolous, vexatious, etc		All cases
Decision to object when local authority is a consultee and not the lead authority		All cases
Determination of a police representation to a temporary event notice	All cases	
