

	<p>Licensing Committee 12th November 2018</p>
Title	Fireworks Licence Policy
Report of	Commissioning Director for Environment
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	<p>Appendix 1 – Draft Policy Appendix 2 – Summary of responses</p>
Officer Contact Details	<p>Emma Phasey Group Manager Community Protection (Regulation) Emma.phasey@barnet.gov.uk</p>

Summary
<p>This report seeks approval from Members to adopt the attached policy in relation to Fireworks Licences.</p>

Officers Recommendations
<p>1. That the draft policy be approved by the Committee for adoption.</p>

1. WHY THIS REPORT IS NEEDED

- 1.1 The London Borough of Barnet is the licensing authority under Schedule 1, Section 1(a)(ii) of the Explosives Regulations 2014 for licences relating to the storage of explosives (including fireworks).
- 1.2 Under the Firework Regulations 2004, the permitted periods for anyone to sell fireworks are –
- during the period beginning on the 15th October and ending on the 10th November;
 - during the period beginning on the 26th December and ending on the 31st December;
 - on the first day of the Chinese New year and the three days immediately preceding;
 - on the day of Diwali and the three days immediately preceding it.
- 1.3 A licence is required in order to be permitted to sell fireworks all year round and not just during the periods set out in paragraph 1.2 above. Pursuant to regulation 9 of the Fireworks Regulations 2004 the London Borough of Barnet is the licensing authority for such applications.
- 1.4 The London Borough of Barnet does not currently have a policy in relation to dealing with applications for licenses to store and/or sell fireworks. It is best practice to have a policy in relation to licence application processes and decisions.
- 1.5 The proposed new policy in Appendix 1 outlines the application process and gives details on the grounds that the Licensing Team will consider in considering applications for the grant or refusal of a licence or the revocation of a licence. The policy also outlines the appeals process available to an applicant or licence holder in the event that their application is refused or licence is revoked
- 1.6 A consultation took place between 1st September 2018 and 3rd November 2018. Details of the consultation can be found in Section 5.3. The responses can be found in Appendix 2

2. REASONS FOR RECOMMENDATIONS

- 2.1 It is best practice to have policies for each different licensing regime in order to ensure consistency of approach. This ensures clarity for traders and other interested parties in both the application and enforcement processes.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 **Do nothing** – However the London Borough of Barnet should ensure that its policies are kept under regular review and remain up to date with current guidance and best practice.

Not implementing a policy for this kind of licensing could lead to an inconsistent approach or decision making.

4. POST DECISION IMPLEMENTATION

- 4.1 If the committee approves this policy it will take immediate effect.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Policy will support objectives contained within the corporate plan. In particular in relation to a “successful place” and “quality service” by ensuring that only legal, well-regulated trading is permitted within the borough.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 Administration and enforcement is carried out by the Licensing team in Re, together with support from HB Public Law and from Governance Services, when arranging and co-ordinating arrangements for hearings.
- 5.2.2 In relation to the decisions made as the Licensing Authority there is always a risk of an appeal. However making consistent decisions in line with agreed policies, guidance and procedures minimises this risk.
- 5.2.3 The recommendations within this report have no financial implications as this will be delivered within existing resources

5.3 Social Value

- 5.3.1 Not relevant to this report

5.4 Legal and Constitutional References

- 5.4.1 The Local Authority has been provided powers under the Fireworks Regulations 2004 and Explosive Regulations 2014 in order to be able to licence premises to store and sell fireworks all year round within the London Borough of Barnet. This policy sets out how the London Borough of Barnet will discharge this function.

- 5.4.2 Article 7 – Committees, Forums, Working Groups and Partnerships, of the Council’s Constitution states that the Licensing Committee is responsible for, *“all policy matters relating to licensing with licencing hearings concerning all licencing matters delegated to sub-committees.”*

5.5 Risk Management

- 5.5.1 It is prudent to monitor performance to ensure that the Licensing function is delivered efficiently and effectively.
- 5.5.2 It is important that the London Borough of Barnet adopts a robust and accountable regulatory regime in relation to all Licensing. It needs to ensure that the risk of non-compliance and the regulatory burden to both the Local authority and to the trade is minimised.

5.6 Equalities and Diversity

- 5.6.1 The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.
- 5.6.2 When considering applications, only issues provided for in the relevant legislation, in addition to the authority’s policy will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.

5.7 Corporate Parenting

- 5.7.1 There will be no impact on looked after children and care leavers.

5.8 Consultation and Engagement

- 5.8.1 The consultation document was sent to the Metropolitan Police, Planning, Environmental Health, the Fire Brigade and all ward Councillors. The consultation will also be published on the Council’s online website.
- 5.8.2 All replies have been taken into account.

5.9 Insight

- 5.9.1 Not relevant to this report

6 BACKGROUND PAPERS

6.1 None

Appendix 1 – Draft Policy

London Borough of Barnet

Explosives Licence Policy

2019 - 2024

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DEFINITIONS

1.1 In this policy the following expressions have the meaning set out below

2014 Regulations	The Explosives Regulations 2014
2003 Act	Fireworks Act 2003
2004 Regulations	Fireworks Regulations 2004
Storage Licence	Refers to a licence under the Explosive Regulations 2014
Licence to sell all year	Refers to a licence under the Fireworks Regulations 2004
Licensing Authority	The London Borough of Barnet exercising its powers as a licensing authority.

INTRODUCTION

2.1 The London Borough of Barnet is the licensing authority under Schedule 1, Section 1(a)(ii) of the Explosives Regulations 2014

2.2 The permitted sale periods for selling fireworks are –

- during the period beginning on the 15th October and ending on the 10th November;
- during the period beginning on the 26th December and ending on the 31st December;
- on the first day of the Chinese New year and the three days immediately proceeding;
- on the day of Diwali and the three days immediately proceeding.

2.3 A licence is required in order to be permitted to sell fireworks all year round and not just during the periods set out in paragraph 1.2 above. Pursuant to regulation 9 of the Fireworks Regulations 2004 the London Borough of Barnet is the licensing authority for such applications.

2.4 There are currently 40 premises licensed to store explosives in the London Borough of Barnet, the majority of these are supermarkets and convenience stores. There are currently 40 premises licensed to sell fireworks all year round.

2.5 A consultation took place on this policy between September 2018 and November 2018. This policy was approved at a meeting of the Full Council on 16th December 2018 and came into force on 1st January 2019.

THE APPLICATION

3.1 All applications for a licence must be made to the London Borough of Barnet either electronically using the forms on the London Borough of Barnet website or addressed to:

London Borough of Barnet
Community Protection Team
Barnet House
1255 High Road
Whetstone
London
N20 0EJ

3.2 Applicants can be an individual, company or partnership.

NEW APPLICATIONS

4.1 New applications must be:

- Made in writing

- Made on the correct application form as prescribed by the London Borough of Barnet
- Accompanied by the full fee

4.2 An incomplete or incorrectly completed application will be rejected.

RENEWAL APPLICATION

5.1 A correctly completed application for the renewal of a licence should be submitted no later than one month before the existing licence will expire.

5.2 An incomplete or incorrectly completed application will be rejected

5.3 A renewal application will be treated the same as a new application in relation to consultation and determination.

VARIATION OR TRANSFER APPLICATION

6.1 The Licensing Authority may vary a storage licence:

a) where there has been a change in circumstances such that the separation distances can no longer be maintained and the consequent reduction in the maximum amount of explosive that may be stored is required;

b) in relation to any of the matters it relates to, by agreement with the licensee.

6.2 A storage licence may be varied without the agreement of the licensee. The licensee must be given written reasons for the proposed variation. The licensee will be given the opportunity of making representations to the licensing authority, within a period of 28 days from the date of the notification. Representation can be made in writing, or both in writing and orally.

6.3 If the storage licence is varied without the agreement of the licensee, the variation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day period for representations.

6.4 The licensing authority must grant the application for the transfer of a storage licence or a licence to sell all year unless it is of the opinion that the applicant is not a fit person to store explosives as per Section 20(2)(b) of the 2014 Regulations.

CONSULTATION

7.1 All applications made under this policy will be published on the London Borough of Barnet's website.

7.2 A copy of the application will also be emailed to the London Fire Brigade.

DETERMINING THE APPLICATION

8.1 The London Borough of Barnet will consider each application on its own merits.

8.2 Storage licences can be granted or renewed for a period of up to five years. Licences to sell all year can be granted or renewed for a period of up to 12 months.

8.3 The Council will take a proportionate, risk-based approach when dealing with licence applications and the duration of the licence requested.

8.4 Storage licences will only be issued to new retailers with no inspection or enforcement history for a maximum period of one year.

8.5 Storage licences will only be issued to existing licensed sites with a mixed or poor history of compliance for a maximum period of one year.

8.6 Storage licences will only be issued to existing licensed sites:

- that have a history of regularly requiring advice;
- where minor breaches have been identified at inspections;
- that has for example high (relevant) staff turnover

for a maximum period of one year.

CONDITIONS

9.1 The 2014 Regulations at Regulation 13 (6) allow for conditions to be placed on storage licences.

9.2 The London Borough of Barnet recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to individual premises.

9.3 Appropriate conditions can be imposed on a licence. Each licence must include conditions that specify:

- the site and, within it, the places where the explosives may be stored
- the hazard type, if any, the description and maximum amount of explosives which may be stored or be present, at any one time at any place so specified.

9.4 For licences which relate to the storage of pyrotechnic articles at any site where those articles are to be offered for sale, conditions may be attached considered appropriate which relate to:

- the storage and display of those article in areas where they can be purchased;
- the prevention of risk of fire arising in respect of those articles;
- the safe use of fire escapes in that area.

9.5 The London Borough of Barnet expects licence holders to comply with the legal requirements of the 2014 Regs and any relevant guidance issued by the HSE.

REFUSAL OF AN APPLICATION

- 10.1 The London Borough of Barnet may refuse an application to sell fireworks all year if the applicant has committed an offence specified in Section 9(5) of the 2004 Regulations.
- 10.2 If the London Borough of Barnet refuse an application to sell fireworks all year notice will be given in writing to the applicant within 5 working days of the decision.
- 10.3 The London Borough of Barnet will refuse an application for a storage licence where they are of the opinion that the applicant is not a fit person to store explosives as defined by Section 20(2)(b) of the 2014 Regulations.
- 10.2 Where the London Borough of Barnet is minded to refuse an application for storage it will, before taking such action, notify the applicant of its proposed course of action and afford the applicant the opportunity of making representations, within a period of 28 days from the date of the notification.
- 10.3 If the London Borough of Barnet refuses an application for a storage licence, representations may be made to the licensing authority in writing, or both in writing or orally.

- 10.4 The final decision to refuse an storage licence application will be made by a senior member of the Licensing team. Consideration will be made of the circumstances surrounding the application and any representations received from the applicant.
- 10.5 Where the London Borough of Barnet decides to refuse an application the applicant will be provided with written reasons for its decision. This will be provided within 5 working days from the decision.

EXPIRY OF A LICENCE

- 11.1 A licence will expire on the date specified on the licence unless it is renewed in time.
- 11.2 A licence holder may surrender his/her licence by sending it to the Licensing Department of London Borough of Barnet at which time it will cease to be valid and will expire.

REVOCAION OF A LICENCE

- 12.1 The London Borough of Barnet may revoke a licence to sell all year if the licence holder is convicted of an offence specified in Section 9(5) of the 2004 Regulations.
- 12.2 If the London Borough of Barnet revoke an application to sell fireworks all year notice will be given in writing to the applicant within 5 working days of the decision.
- 12.2 The London Borough of Barnet may revoke a storage licence on any of the grounds contained within the Act which include:

- where there has been a change in circumstances such as that the site is no longer suitable for the manufacture or storage;
- where it appears to the licensing authority on information obtained by it after the grant of the licence that the licensee is not a fit and proper person as per Section 20(2)(B) of the 2014 Regulations to store explosives,
- by agreement with the licensee.

12.2 Where the licensing authority proposes to revoke the storage licence, it must, before taking such action, notify the licensee of its proposed course of action and afford that person the opportunity of making representations to the licensing authority about it, within a period of 28 days from the date of the notification.

12.3 Representation when the London Borough of Barnet is minded to revoke a storage licence must be given in writing, or both in writing and orally.

12.4 Where the licensing authority decides to revoke a licence, it must provide in writing to the licensee the reason for its decision.

12.5 Where the licensing authority revokes the storage licence, that revocation takes effect from a date to be determined by the licensing authority which must be a date after the 28 day representation period.

12.6 A person whose storage licence is revoked must ensure that:

- all explosives are removed from site as soon as practicable after revocation of a licence in respect of that site
- those explosives are deposited at a licensed site, or suitable arrangements are made for those explosives to be disposed of
- the licence is returned to the licensing authority within 28 days of the date that the revocation takes effect.

FEES

- 13.1 Fees for a storage licence are set by the Health and Safety (Fees) Regulations and are variable dependant on the amount of explosives to be stored and safety distances
- 13.2 Fees for a licence to sell all year are set by the Fireworks Regulations 2004.
- 13.3 The current fees applicable are set out in the London Borough of Barnet's Fees and Charges Schedule.

DECISIONS

- 14.1 The reasons for any decision(s) taken by the London Borough of Barnet in respect of an application for a licence will be provided in writing to all parties to the proceedings within 5 working days of the decision.
- 14.2 Decisions will be taken having regard to this Policy and the relevant legislation

APPEALS

- 15.1 Any applicant who is refused a licence to sell fireworks all year rounds may within 28 days of receiving the decision notice, appeal to the local magistrate.

ENFORCEMENT AND INSPECTION

- 16.1 Any enforcement action instigated by the London Borough of Barnet will be in accordance with the Act and the current Enforcement Policy.
- 16.2 Site inspection will be undertaken:
- (a) prior to the grant of a licence;

(b) if required, following the grant of a licence;

(c) prior to or following the renewal of a licence: and if information is received that the licence holder is operating outside the requirements of the licence.

16.3 Enforcement visits will be undertaken to unlicensed premises.

PUBLIC REGISTER

17.1 The London Borough of Barnet will maintain a register containing information relating to the application and licence. This information will be held electronically on the Council website.

Appendix 2 – Summary of responses

Response received from	Summary or response	Licensing Team Comments
London Fire Brigade	We would like to be advised of any application you receive for the licensing of premises storing fireworks, we can then decide on what action, if any, we may want to take in terms of inspection and maintaining records. Providing us with a copy of the licence application or the licence issued would be sufficient in meeting this request.	This can be actioned by the team and has been added at 7.2

