

Subject: Determination Hearing
Off Licence (Newchurch)

Status: For Publication

Report to: Licensing Committee

Date: 10th March 2010

Report of: Licensing Manager

1. PURPOSE OF REPORT

- 1.1 To advise members of an application to **transfer a premises licence** under section 42 of the Licensing Act 2003.
- 1.2 To request that members determine the application in accordance with the provisions of the Licensing Act 2003.
- 1.3 To advise members of an application to **vary a premises licence to specify an individual as the premises supervisor** under section 37 of the Licensing Act 2003.
- 1.4 To request that members determine the application in accordance with the provisions of the Licensing Act 2003.

2. THE LICENSING OBJECTIVES

- 2.1 Members are reminded of the licensing objectives as follows:
 - a. The prevention of crime and disorder
 - b. Public Safety
 - c. The prevention of public nuisance
 - d. The protection of children from harm

3. THE APPLICATION

- 3.1 This report deals with two applications from the applicant Mr Sadiq Patel. It is prudent to deal with both applications simultaneously.
- 3.2 The first application is one to transfer the premises licence under the Licensing Act 2003 and is appended at Appendix A. It is this application that must be determined first.
- 3.3 The application is made by Mr Sadiq Patel and was received by the licensing authority on 2nd February 2010.

- 3.4 The application was received by the Chief Officer of Police on 3rd February 2010.
- 3.5 The second application is one to vary a premises licence to specify an individual as the premises supervisor under the Licensing Act 2003. It is proposed to specify Mr Sadiq Patel as the designated premises supervisor. This application is appended at Appendix B.
- 3.6 This application is made by Mr Sadiq Patel and was received by the licensing authority on 2nd February 2010.
- 3.7 The application was received by the Chief Officer of Police on 3rd February 2010.
- 3.8 In respect of the application to transfer the premises licence, section 42(6) states that where a chief officer of police notified under the relevant subsection is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.
- 3.9 The Chief Officer of Police has given this notice to the licensing authority. It was received on 11th February 2010 and is appended at Appendix C.
- 3.10 In respect of the application to vary a premises licence to specify an individual as the premises supervisor, section 37(5) states that where a chief officer of police notified under the relevant subsection is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.
- 3.11 The Chief Officer of Police has given this notice to the licensing authority. It was received on 11th February 2010 and is appended at Appendix C.

4. BACKGROUND

- 4.1 The premises licence was originally granted on 11th October 2006.
- 4.2 During November of 2009, the applicant, Mr Sadiq Patel attended the Council offices with a view to submitting an application to transfer the premises licence and an application to specify an individual as the premises supervisor. These applications were substantially incomplete and were returned to the applicant at the time of his attendance.
- 4.3 Aside from the applications which are to be determined by this sub-committee, there have no other applications received in respect of this premises licence.
- 4.4 Mr Sadiq Patel has applied to transfer the premises licence and has simultaneously applied to specify an individual as the premises supervisor.

These applications were received by the licensing authority on 2nd February 2010 and are appended at Appendix A and B respectively.

- 4.5 These applications were received by the Chief Officer of Police on 3rd February 2010 and within the statutory period, the Chief Officer of Police has given the licensing authority a notice stating that he is satisfied that the exceptional circumstances of the case are such that granting the applications would undermine the crime prevention objective.
- 4.6 This notice was received on 11th February 2010 and is appended at Appendix C.
- 4.7 All statutory notices and documentation were sent to the relevant parties as required under the provisions of the Act and the regulations.
- 4.8 The Chief Officer of Police has returned the regulation 8 notice stating that they intend to attend the hearing.
- 4.9 At the time of publication, the licence holder had not returned the regulation 8 notice stating whether they intend to attend the hearing.

5. RELEVANT REPRESENTATIONS

- 5.1 The Chief Officer of Police is the only party who may give the notice detailed at 4.6 and which is appended at Appendix C.

6. INTERESTED PARTIES

- 6.1 There are no provisions under the Act for interested parties to make representations on applications of this nature.

7. ASSOCIATED PAPERS

- 7.1 There are no associated papers for this report.

8. POLICY CONSIDERATIONS

- 8.1 The relevant extracts from the Statement of Licensing Policy made from 7th January 2008 to 6th January 2011 are detailed below and are numbered as they appear in the Statement of Licensing Policy document.

2. LICENSING OBJECTIVES

- *the prevention of crime and disorder*
- *public safety*
- *the prevention of public nuisance; and*
- *the protection of children from harm*

- 2.1 *The licensing objectives are of equal importance and are the only matters which may be taken into account by the licensing authority.*

- 2.10 *We will endeavor to carry out our licensing functions in a way that*
- *ensures public safety*
 - *supports well managed premises where licence holders actively promote the licensing objectives and display sensitivity to the potential impact of licensable activities on local residents and other businesses*
 - *protects residents' quality of life*
- 2.12 *We will discharge our functions with integrity and objectivity. We will work in partnership with the leisure industry, responsible authorities, residents and local businesses to promote the licensing objectives.*
- 2.17 *We will therefore focus upon the direct impact of the activities taking place at or in the vicinity of licensed premises on members of the public living, working or engaged in normal activities in the vicinity of those places.*
- 3.4 *We will promote the 4 licensing objectives, namely*
- *the prevention of crime and disorder*
 - *public safety*
 - *the prevention of public nuisance; and*
 - *the protection of children from harm,*
- and all our decisions will reflect these objectives.*
- 3.5 *We consider each licensing objective to be of equal importance. They will be considered in relation to matters centered on the premises or within the control of the licensee. We will objectively consider the direct effect that the carrying on of the licensable activities has in the vicinity of the premises.*
- 3.6 *Licensing law is not a mechanism for the general control of anti-social behavior by individuals once they are beyond the direct control of the licensee or vicinity of licensed premises.*
- 3.7 *We will not deter an individual making an application and having that application judged on its individual merits.*
- 8.12 *We will take extremely seriously any offence under Section 146 of the Act (selling or supplying alcohol to a child under 18 years) Section 150 (allowing a child under 18 years to consume alcohol on premises) Section 151 (delivering alcohol to children) or Section 153 (unsupervised sales by a person under 18 years).*
- 8.13 *We emphasise the extended definition of premises from that of a 'bar' under the 1964 Act. Our enforcement protocol will encourage test*

purchasing by both the police and trading standards, targeting premises in areas of alcohol related anti-social behaviour.

- 8.2 The relevant extracts from the Guidance issued under section 182 of the Licensing Act 2003 are detailed below and are numbered as they appear in the Guidance document.

LICENSING OBJECTIVES AND AIMS

- 1.2 *The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken:*

The licensing objectives:

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

- 1.28 *All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.*

- 1.29 *Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area.*

- 1.3 *Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.*

Purpose

- 1.6 *The Guidance is provided for licensing authorities carrying out their functions. It also provides information for magistrates hearing appeals against licensing decisions and has been made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. 1.7 The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.*

Legal status

Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

- 1.8 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation.*
- 2.14 It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained and licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act ensure, for example, that the prevention of disorder is in sharp focus for all such managers, licence holders and clubs.*

SPECIFICATION OF NEW DESIGNATED PREMISES SUPERVISORS

- 4.19 In every premises licensed for the supply of alcohol, a personal licence holder must be specified as the 'designated premises supervisor', as defined in the 2003 Act. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to disapply the usual mandatory conditions set out in sections 19(2) and 19(3) of the 2003 Act. Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance.*
- 4.20 The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the designated premises supervisor so that any problems can be dealt with swiftly. For this reason, the name of the designated premises supervisor and contact details must be specified on the premises licence and this must be held at the premises and displayed in summary form.*

- 4.21 *To specify a new designated premises supervisor, the premises licence holder – perhaps a supermarket chain or a pub operating company – should normally submit an application to the licensing authority (which may include an application for immediate interim effect) with:*
- *a form of consent by the individual concerned to show that they consent to taking on this responsible role, and*
 - *the relevant part (Part A) of the licence.*
- 4.22 *If they are applying in writing, they must also notify the police of the application.*
- 4.24 *The premises licence holder must notify the existing designated premises supervisor (if there is one) of the application on the same day as the application is given to the licensing authority. This requirement applies regardless of whether the application was given by means of an electronic facility, or by some other means.*
- 4.26 *Only one designated premises supervisor may be specified in a single premises licence, but a designated premises supervisor may supervise more than one premises as long as they are able to ensure that the four licensing objectives are properly promoted and the premises complies with licensing law and licence conditions.*
- 4.27 *Where there are frequent changes of supervisor, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.*

POLICE OBJECTIONS TO NEW SUPERVISORS

- 4.28 *The police may object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a particular designated premises supervisor is first appointed or transfers into particular premises and their presence in combination with particular premises gives rise to exceptional concerns. For example, where a personal licence holder has been allowed by the courts to retain their licence despite convictions for selling alcohol to minors (a relevant offence) and then transfers into premises known for underage drinking.*
- 4.29 *Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put their arguments. The 2003 Act provides that the applicant may apply for the individual to take up post as designated premises supervisor immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.*

4.30 *The portability of personal licences from one premises to another is an important concept within the 2003 Act. The Secretary of State expects that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on un-exceptional grounds, they should raise the matter with the chief officer of police as a matter of urgency.*

TRANSFERS OF PREMISES LICENCES

8.104 *The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police. Where it is made electronically via businesslink or the licensing authority's electronic facility, the licensing authority must notify the police no later than the first working day after the application is given. However, the responsibility to notify the DPS remains with the applicant. Otherwise the general guidance on electronic applications set out in paragraphs 8.27 – 8.35 applies.*

8.105 *In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.*

8.106 *In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such objections are expected to be rare and arise because the police have evidence that the business or individuals seeking to hold the licence or business or individuals linked to such persons are involved in crime (or disorder). For example, the police would rightly seek to prevent a company having a licence transferred to it if they had evidence that the premises might be used to launder money obtained from drugs crime. Where an objection is made, the licensing authority must hold a hearing at which the authority will consider the objection. The authority's consideration would be confined to the issue of the crime prevention objective and the hearing should not be permitted to stray into other extraneous matters. The burden would be on the police to demonstrate to the authority that there were good grounds for believing that the transfer of the licence would undermine the crime prevention objective. The licensing authority must give clear and comprehensive reasons for its eventual determination in anticipation of a possible appeal by either party.*

8.107 *It is stressed that such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that it would raise the matter immediately with the chief officer of police.*

9. THE DECISION

9.1 In accordance with Regulation 26(2) of the Licensing Act 2003 (Hearings) Regulations 2005, a decision must be made within the period of 5 working days beginning with the day or the last day on which the hearing was held.

9.2 This paragraph applies to the application to transfer a premises licence. In accordance with section 44(5) of the Licensing Act 2003, members must, having regard to the notice of objection, either:

- a) grant the application, or
- b) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

9.3 This paragraph applies to the application to vary a premises licence to specify an individual as the premises supervisor. In accordance with section 39 (3) of the Licensing Act 2003, members must, having regard to the notice of objection, either:

- a) grant the application, or
- b) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

10. CRIME & DISORDER

10.1 Without prejudice to any other obligation imposed on it, the Local Authority has a duty to consider crime and disorder implications.

11. WARDS AFFECTED

11.1 The premises are situated within the Hareholme ward and no other ward is likely to be affected. The ward councillor(s) are not members of the sub committee.

Background Papers	
Document	Place of Inspection
Statement of Licensing Policy	

	Council Offices or via www.rossendale.gov.uk
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Appendices	
Document	Appendix Number
Application to transfer a premises licence	<i>A</i>
Application to vary a premises to specify an individual as premises supervisor	<i>B</i>
Police notice	<i>C</i>