

LICENSING ACT SUB COMMITTEE

LICENSING ACT 2003

**PREMISES LICENCE GRANT– LANCASTER MINI-MARKET,
71 BOWERHAM ROAD, LANCASTER, LA1 4AQ.**

DETERMINATION OF APPLICATION FOLLOWING A RELEVANT REPRESENTATION

23rd September 2024

Report of Licensing Enforcement Officer

PURPOSE OF REPORT

To enable members to determine an application for a Premise Licence under Section 17 of the Licensing Act 2003 submitted by Mr Hawbash Shorsh Hamza, following the receipt of a relevant representation.

The report is public

RECOMMENDATIONS

The Sub Committee is requested to determine in the light of the representations made and having regard to the Council's Statement of Licensing Policy, The Licensing Act 2003 and any Regulations made under that Act as well as Government Guidance whether to grant the application as requested, modify any conditions of the licence, or to reject the whole application. Members are reminded that they should state the reasons for their decision.

1.0 Introduction

1.1 The Council grants permissions for Premise Licences submitted under the Licensing Act 2003 (the Act). Mr Hawbash Shorsh Hamza has submitted an application under Section 17 of the Licensing Act 2003 for the grant of a premises licence in respect of Lancaster Mini-Market, 71 Bowerham Road, Lancaster, LA1 4AQ.

The application is for a licence to facilitate the following:

Sale & Supply of Alcohol Monday – Sunday 07:00 until Midnight
(Consumption Off Premises)

The applicant has identified due diligence to the promotion of the licensing objectives within the operating schedule of the premises licence application in terms of thorough CCTV coverage, staff training and adherence to the Challenge 25 proof of age scheme.

Details of the application for the premises licence are set out in the application form including the plan, which is detailed as **Appendix No.1** to this report.

- 1.2 There is a statutory requirement to advertise such applications for a period of 28 days in which time representations in favour or against the application can be submitted. Any representation submitted must relate to the likely impact of the grant of the licence on one or more of the four licensing objectives which are:

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

The application was sent to relevant Responsible Authority's, advertised in the local press (Lancaster Guardian of 1st August 2024) and uploaded to the Council's website where it was available via a link for viewing.

- 1.3 During the statutory 28-day consultation period the Council received a relevant representation from a Responsible Authority, namely Lancashire County Council Trading Standards Service. This relates to the Crime Prevention licensing objective.

Details of the representation is attached at **Appendix No.2**.to this report.

Lancashire County Council Trading Standards Service received information that illegal trading may be taking place at the premises.

On 24th July 2024 Lancashire Trading Standards attended Lancaster Mini Market, 71 Bowerham Road, Lancaster LA1 4AQ, together with Lancashire Police, Immigration Enforcement, and an officer from Lancaster City Council Licensing department.

Trading Standards carried out an inspection of the premises and discovered 129 non-compliant vapes under the counter and 67 non-compliant vapes in a box in the storeroom. 31 packs of illegal tobacco and cigarettes were also found under the counter. These items were seized under the Consumer Rights Act 2015.

- 1.5 As a relevant representation has been received and as defined in the Licensing Act 2003 s18(3), it is necessary for a hearing to be held to consider the application. The relevant section prescribes:

Where relevant representations are made, the authority must-

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
- (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

The steps Members may take are-

(a) to grant the licence subject to –

- (i) the conditions mentioned in subsection 2 (a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives and
- (ii) any condition which must under section 19,20 or 21 be included in the licence.

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates

(c) to refuse to specify a person in the licence as the premises supervisor.

(d) to reject the application

2.0 **Background**

2.1 The premises licence was previously held by Lancaster Mini-Market Ltd (Co Reg No:13888919) from 29th March 2022 of which Mr Hamza was a company director.

It was not until the Multi-Agency operation at the premises on 24th July 2024 that checks were undertaken through Companies House that revealed the Limited Company had been dissolved on 2nd January 2024 effectively leaving the business without a premises licence.

Mr Hamza's brother who was at the premises at the time was advised that there was no current facility with which to legally retail the sale and supply of alcohol and that it should be removed from the shelves with immediate effect.

The application for the grant of a new premises licence was submitted two days later.

During the consultation period Notifications of Temporary Event were submitted to the Council to facilitate the legal retail sale of alcohol predominately for weekend business.

Moreover, several checks were undertaken by Licensing Enforcement Officers at Lancaster Mini Market to ensure alcohol was not available for sale when there was no authorisation to do so. This was fully complied with by the business operator.

3.0 **Statement of Licensing Policy 2023-2027**

The updated Council's Statement of Licensing Policy was approved by Licensing Committee in November 2023 and was subsequently considered by Cabinet in February 2024, prior to approval by Full Council in April 2024.

3.1 This is attached at **Appendix No.3** to this report. The following sections are relevant to this application:

3.6 Representations

3.6.1 Under the 2003 Act both Responsible Authorities and 'other persons' may make representations on licence/certificate applications and review existing premises licences/certificates.

3.6.2 Other persons are defined as any individual, body or business that may be affected by the operation of a licensed premise regardless of their geographical location. Although the other person may be in any geographical location, any representation they make must be relevant to one or more of the licensing objectives. In addition, the other person is encouraged to provide evidence supporting their representation or review. This may be for example by way of recording dates where noise nuisance or anti-social behaviour occurs. Any representation however must be specific to the premises in question and not to the area in general. The representation should also detail how the granting of the application is likely to affect the person making it.

3.6.3 The Licensing Authority will however consider the geographical location of the other person who has made the representation in their consideration of their evidence.

3.6.4 In addition all representations must be relevant relating to the likely effect of the grant of the licence/certificate on the promotion of at least one of the licensing objectives. The Licensing Authority will determine whether a representation from an individual, body or business is relevant, frivolous, repetitive or vexatious. If appropriate, the benefit of the doubt will be given to the person or body making that representation.

4.1 Premises Licence

4.1.1 The Premises Licence application outlines the operating conditions and the Operating Schedule that will form the basis of conditions that will be attached to the Licence. It should include information that is necessary to enable any Responsible Authority or other person to assess whether the steps to be taken to promote the licensing objectives are satisfactory. The Licensing Authority shall expect the applicant to have carefully considered the promotion of all four Licensing Objectives in their Operating Schedule.

4.1.2 It is recommended that applicants liaise with neighbours and/or any relevant community group such as a local residents association, or other such groups, as may be appropriate prior to submitting an application.

4.1.3 The Licensing Authority especially recommends that applicants liaise with the Relevant Authorities prior to submitting their applications, e.g. Police or Fire Authority, when compiling their Operating Schedules and the local Pubwatch if one operates in that area.

4.1.4 In completing their Operating Schedule the Licensing Authority suggests the applicant considers the following:

General

- Premises log book
- Management and staff training and awareness of duties under the 2003 Act • Policies and procedures relating to e.g. age restricted sales, capacity, noise monitoring, dispersal, queuing, etc.
- Safe capacities
- Evidence of competent management procedures

Prevention of Crime and Disorder

- Drugs policy
- CCTV
- Pub Watch and Radio links with other licensed premises

- *Security Industry Authority Door supervisors and Approved Contractor Scheme*
- *Polycarbonate or shatterproof vessels*
- *Frequency of glass bottle disposal and provision of secure storage before collection*
- *An appropriate ratio of tables and chairs to customers*
- *Management of outside areas*
- *Use of 'spikeys' or similar anti drink spiking device*
- *Policy for reporting of sexual harassment/ violence towards women*
- *Calming atmosphere at close of business/event*
- *Safe capacities*
- *Queuing policy*
- *Stewards for events and event plan Public Safety*

Public Safety

- *Health and Safety and Fire Safety risk assessments and staff training*
- *Safeguarding measures*
- *Use of CCTV in and around the premises*
- *Safe capacities and monitoring procedures*
- *Provision of local taxi companies who can provide safe transportation home*
- *Procedures to control access to and egress from premises*
- *Patrolling of premises*
- *Glass clearance policy*
- *Control of ventilation*
- *Control of litter immediately outside the premises*
- *The presence of trained first aiders and appropriate & sufficient first aid kits*
- *Adequate external lighting*
- *Consideration of the safety of performers appearing at any premises*
- *Indoor sporting events: medical practitioner; flame retardant material, location of public to wrestling ring; water sports events – lifeguards*
- *Stewards for events and event plan; and regard to standards of the National Sporting Body*
- *Ensuring appropriate access for emergency services*

Prevention of Public Nuisance

- *Control of general noise, disturbance, light, odour, litter and anti-social behaviour*
- *Whilst regulated entertainment taking place, management of noise disturbance*
- *Control of litter (e.g. cigarette ends, rubbish, etc.), vomiting, urinating and anti-social behaviour in the vicinity of the premises*
- *Dispersal policy to ensure customers respect their neighbours*
- *Delivery vehicle management, ensuring no obstructions are caused in the vicinity of the premises.*
- *Removal of persons causing disturbance*
- *Management of outside areas, e.g. pub gardens, smokers, etc.*
- *Control of deliveries in early hours*
- *Queuing policy*
- *Winding down period*

Protection of Children from Harm

- *Refusals book*
- *Consideration of access to premises where adult entertainment may take place*
- *Consideration to proximity of premises to schools and youth clubs*
- *Restriction on hours when children under a specified age can be present and whether they should be accompanied by a responsible adult*
- *Clarity on activities and times at which events take place to determine whether or not it is appropriate to allow access to children*
- *Challenge 21 or 25 policy*

- *Prompting mechanism on tills at retail outlets*
- *Measures to control access to hotel minibars*
- *Operational measures to avoid proxy purchases*
- *How to prevent children from being exposed to alcohol sales at underage events, gambling, incidents of violence and disorder and drugs or drug taking*
- *Consideration of safeguarding issues*
- *Consideration of children as performers where relevant*
- *Supervision of children*
- *Under 18 event Code of Conduct, for example: searches, ticketed event, door supervisors, DBS checks, stewards monitoring event, set hours for event, restricted event, policy to ensure young people leave premise safely, etc.*

These lists are not exhaustive, and advice can be obtained from the relevant responsible authorities. However, applicants are reminded again to contact the relevant Responsible Authorities to seek their expert advice before an application is submitted to the Licensing Authority.

- 3.2 In accordance with the relevant Regulations, the parties have been given notice of the hearing. The parties have been required in accordance with the Regulations to indicate at least five working days before the hearing whether they intend to attend and/or be represented at the hearing and if they wish any witness to appear at the hearing. Any responses and any further documentation submitted by any of the parties after the circulation of this agenda will be circulated to Members in advance of the meeting. Members are reminded that documentary or other information submitted on the day of the hearing may only be taken into account with the consent of the Sub-Committee and all the parties.
- 3.3 Members are reminded that they must follow the rules of natural justice and must also consider human rights implications. In particular, in accordance with Article 6, all parties are entitled to a fair hearing. Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

4.0 Relevant part of Government Section 182 Guidance

Crime and Disorder

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to

ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.4 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.

2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. 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. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety. Revised Guidance issued under section 182 of the Licensing Act 2003.

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises.

2.7 The objective to crime under the Licensing Act 2003 would include taking measures to prevent incidents of spiking which would usually be prosecuted under section 23 and 24 of the Offences Against the Person Act 1861, and section 61 of the Sexual Offences Act 2003. The following examples are within the range of behaviours that would be considered spiking. This list is not exhaustive:

- Putting alcohol into someone's drink without their knowledge or permission
- Putting prescription or illegal drugs into an alcoholic or non-alcoholic drink without their knowledge or permission
- Injecting another person with prescription or illegal drugs without their knowledge or permission.

- Putting prescription or illegal drugs into another person's food without their knowledge or permission.
- Putting prescription or illegal drugs into another person's cigarette or vape without their knowledge or permission.

5.0 Options available to Members

5.1 Members should consider, having regard to the Council's Statement of Licensing Policy, The Licensing Act 2003 and any Regulations made under that Act, Government Guidance and the representation made to undertake the following decisions:

- whether to grant the application as requested
- modify any conditions of the licence,
- or to reject the whole application.

Members are asked to consider the suitability of the applicant when his business has previously been found negligent in the sale of illegal non-compliant vapes and whether this constitutes someone fit and proper to possess a premises licence to sell alcohol that is endorsed by this Authority.

Members are reminded that they should state the reasons for their decision.

<p>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p> <p>None.</p>	
<p>FINANCIAL IMPLICATIONS</p> <p>Financial Services have not been consulted as there are no financial implications.</p>	
<p>LEGAL IMPLICATIONS</p> <p>Legal implications are contained within the report, In accordance with Section 181 and Schedule 5 of the Licensing Act 2003, the parties have a right of appeal to the Magistrates court within 21 days</p>	
<p>BACKGROUND PAPERS</p> <p>None</p>	<p>Contact Officer: David Eglin Telephone: 01524 582033 E-mail: deglin@lancaster.gov.uk Ref: DWE</p>