



**Committee:** LICENSING ACT SUB-COMMITTEE

**Date:** WEDNESDAY, 15 MARCH 2017

**Venue:** LANCASTER TOWN HALL

**Time:** 10.30 A.M.

## **A G E N D A**

1. **Mognies Restaurant and Takeaway, 66 Penny Street, Lancaster** (Pages 1 - 25)

Application to Transfer the Premises Licence

### **ADMINISTRATIVE ARRANGEMENTS**

**(i) Membership**

Councillors Terrie Metcalfe (Chairman), Mel Guilding and Sylvia Rogerson

**(ii) Queries regarding this Agenda**

Please contact Jane Glenton, Democratic Services - telephone: (01524) 582068 or email [jglenton@lancaster.gov.uk](mailto:jglenton@lancaster.gov.uk).

SUSAN PARSONAGE,  
CHIEF EXECUTIVE,  
TOWN HALL,  
DALTON SQUARE,  
LANCASTER. LA1 1PJ

Published on Tuesday, 7 March 2017.

**LICENSING ACT SUB COMMITTEE****Licensing Act 2003  
Transfer of Premises Licence –  
Mognies, 66 Penny Street, Lancaster****Determination of Application Following  
Relevant Representation****15th March 2017****Report of Licensing Enforcement Officer****PURPOSE OF REPORT**

To enable Members to determine an application to transfer a Premise Licence under Section 42 of the Licensing Act 2003 submitted by Mrs Savera Siraj Patel for Mognies Restaurant and Takeaway, 66 Penny Street, Lancaster, following the receipt of relevant representation.

The report is public

**RECOMMENDATIONS**

The Sub Committee is requested to determine, in the light of the representation 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 transfer 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 On 3<sup>rd</sup> February 2017, Mrs Savera Siraj Patel submitted an application under Section 42 of the Licensing Act 2003 to transfer the premise licence for Mognies Restaurant and Takeaway, 66 Penny Street, Lancaster. The applicant applied the transfer to have immediate effect in accordance with Section 43 of the Act and, as such, is currently trading at the premises.
- 1.2 Section 43 of the Licensing Act 2003 prescribes the circumstances under which a transfer application should have interim effect. Section 43 (1) prescribes that where –
- (a) An application made in accordance with section 42 includes a request that the transfer have immediate effect, and
  - (b) The requirements of this section are met,

then, by virtue of this section, the premise licence has effect during the application period as if the applicant were the holder of the licence.

The requirements as prescribed by Section 43(1)(b) above means that an application for the transfer to have immediate effect can only be made with the consent of the holder of the premise licence. That requirement has been met in this instance.

Details of the application to transfer the premises licence are set out in the application form, together with the signed consent of the existing licence holder which is attached as Appendix No.1 to this report.

- 1.3 A copy of the premises licence for Mognies Restaurant and Takeaway is attached at Appendix No. 2. This licence was granted to the premises on 2<sup>nd</sup> September 2008.
- 1.4 Under Section 44 of the Licensing Act, it is necessary for a hearing to be held to consider the application as a representation has been received from Lancashire Constabulary on 8<sup>th</sup> February 2017 under Section 42 (6) & (7) stating that the exceptional circumstances of the case are such that granting the application would undermine the crime and disorder licensing objective.

A copy of the representation is attached at Appendix No. 3.

1.5 **Notice of Hearing**

In accordance with the relevant Regulations, the parties have been given notice of the hearing. A copy of the Notice of Hearing is attached for Members' attention at Appendix No.4.

It was not felt necessary to request any clarification from the parties. 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.

1.6 **Matter for Decision**

The Sub-Committee is requested to consider the application and the representation.

This is in accordance with Section 44 (5)) of the Act which provides as follows:

Where a notice is given under Section 42(6) (and not withdrawn), the authority must

- (a) Hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and
  - (b) Having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.
- 1.7 The relevant part of the Council's Statement of Licensing Policy is set out at Appendix No. 5 to this report.

1.8 Government Guidance in relation to crime and disorder is attached at Appendix No. 6 to this report.

1.9 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.

**2.0 Conclusion**

2.1 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 representations made, whether to grant the application to transfer the licence as requested, or if the exceptional circumstances of the matter require it, to reject the whole application. Members are reminded that they should state the reasons for their decision.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> <b>(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>	
None.	
<b>FINANCIAL IMPLICATIONS</b>	
Financial Services have not been consulted as there are no financial implications.	
<b>LEGAL IMPLICATIONS</b>	
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.	
<b>BACKGROUND PAPERS</b>	<b>Contact Officer:</b> David Eglin <b>Telephone:</b> 01524 582387 <b>E-mail:</b> deglin@lancaster.gov.uk <b>Ref:</b> DWE
None	

03 11 2007  
for a change



**Lancaster**  
**Application to transfer premises licence**  
**Licensing Act 2003**

For help contact  
licensing@lancaster.gov.uk  
Telephone: 01524 582033

\* required information

**Section 1 of 6**

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference  This is the unique reference for this application generated by the system.

Your reference  You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

- Yes       No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

**Applicant Details**

\* First name

\* Family name

\* E-mail

Main telephone number  Include country code.

Other telephone number

Indicate here if the applicant would prefer not to be contacted by telephone

Is the applicant:

- Applying as a business or organisation, including as a sole trader
- Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means the applicant is applying so the applicant can be employed, or for some other personal reason, such as following a hobby.

**Applicant Business**

Is the applicant's business registered in the UK with Companies House?  Yes       No

Is the applicant's business registered outside the UK?  Yes       No

Note: completing the Applicant Business section is optional in this form.

Business name  If the applicant's business is registered, use its registered name.

VAT number   Put "none" if the applicant is not registered for VAT.

Continued from previous page...

Legal status

Applicant's position in the business

Home country

The country where the applicant's headquarters are.

**Applicant Business Address**

If the applicant has one, this should be the applicant's official address - that is an address required of the applicant by law for receiving communications.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Agent Details**

\* First name

\* Family name

\* E-mail

Main telephone number

Include country code.

Other telephone number

Indicate here if you would prefer not to be contacted by telephone

Are you:

An agent that is a business or organisation, including a sole trader

A sole trader is a business owned by one person without any special legal structure.

A private individual acting as an agent

**Agent Business**

Is your business registered in the UK with Companies House?  Yes  No

Note: completing the Applicant Business section is optional in this form.

Registration number

Business name

If your business is registered, use its registered name.

VAT number

Put "none" if you are not registered for VAT.

Legal status

*Continued from previous page...*

Your position in the business

Home country

The country where the headquarters of your business is located.

**Agent Registered Address**

Address registered with Companies House.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Section 2 of 6**

**PREMISES DETAILS**

I/we, as named in section 1, apply to transfer the premises licence described below under section 42 of the Licensing Act 2003 for the premises described in section 2 below.

**Premises Licence**

\* Premise licence number

**Name Of Current Premises Licence Holder**

\* Name

**Premises Address**

Are you able to provide a postal address, OS map reference or description of the premises?

- Address     OS map reference     Description

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Further Details**

Please give a brief description of the premises

Continued from previous page...

Mognies is a city centre restaurant and takeaway serving fast food. It has a late night refreshment licence.

Telephone number at the premises if any

**Section 3 of 6**

**APPLICATION DETAILS**

In what capacity are you applying for the premises licence to be transferred to you?

- An individual or individuals
- A limited company
- A partnership
- An unincorporated association
- A recognised club
- A charity
- The proprietor of an educational establishment
- A health service body
- A person who is registered under part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales
- A person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying on of a regulated activity (within the meaning of that Part) in an independent hospital in England
- The chief officer of police of a police force in England and Wales
- Other (for example a statutory corporation)

**Please confirm the following:**

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities
- I am making the application pursuant to a statutory function
- I am making the application pursuant to a function discharged by virtue of Her Majesty's prerogative

**Section 4 of 6**

**INDIVIDUAL APPLICANT DETAILS**



Continued from previous page...

**Applicant Name**

Is the name the same as (or similar to) the details given in section one?

- Yes  No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

First name

Family name

Is the applicant 18 years of age or older?

- Yes  No

**Applicant Postal Address**

Is the address the same as (or similar to) the address given in section one?

- Yes  No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

**Applicant Contact Details**

Are the contact details the same as (or similar to) those given in section one?

- Yes  No

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

E-mail

Telephone number

Other telephone number

**Section 5 of 6**

**FURTHER INFORMATION**

Are you the holder of the premises licence under an interim authority notice?

- Yes  No

Do you wish the transfer to have immediate effect?

- Yes  No

Continued from previous page...

Have you attached the consent form signed by the existing premises licence holder?

Yes  No

If this application is granted I would be in a position to use the premises during the application period for the licensable activity or activities authorised by the licence (see section 43 of the Licensing Act 2003)?

Yes  No

Have you attached the previous licence?

Yes  No

**Section 6 of 6****PAYMENT DETAILS**

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

This formality requires a fixed fee of £23

**ATTACHMENTS****AUTHORITY POSTAL ADDRESS****Address**

Building number or name	<input type="text" value="TOWN HALL"/>
Street	<input type="text" value="DALTON SQUARE"/>
District	<input type="text"/>
City or town	<input type="text" value="LANCASTER"/>
County or administrative area	<input type="text" value="LANCASHIRE"/>
Postcode	<input type="text" value="LA1 1PJ"/>
Country	<input type="text" value="United Kingdom"/>

**DECLARATION**

\* I/we understand it is an offence, liable on conviction to a fine up to level 5 on the standard scale, under section 158 of the licensing act 2003, to make a false statement in or in connection with this application.

Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

* Full name	<input type="text" value="JOHN HALEWOOD-DODD"/>
* Capacity	<input type="text" value="SOLICITOR-AGENT"/>
Date (dd/mm/yyyy)	<input type="text" value="03-02-2017"/>

Consent of premises licence holder to transfer

1 FEB 2017

I/we SIRAJ PATEL

[full name of premises licence holder(s)]

the premises licence holder of premises licence number

LAPLNA 0090

[insert premises licence number]

relating to

MOGNIES TAKEAWAY AND RESTAURANT, 66 PENNY STREET, LANCASTER  
[name and address of premises to which the application relates]

hereby give my consent for the transfer of premises licence number

LAPLNA 0090

[insert premises licence number]

to

SAVERA SIRAJ PATEL

[full name of transferee].

signed



name  
(please print)

Siraj Patel.

dated

31/1/2017.



Health and Housing  
Licensing Section  
Town Hall  
Dalton Square  
Lancaster  
LA1 1PJ

LANCASTER  
CITY COUNCIL

Tel: (01524) 582000  
email: [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk)

## Premises Licence

# LAPLNA0090

### Part 1 - Premises Details

#### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

### Mognies Restaurant & Takeaway

66 Penny Street, Lancaster, Lancashire, LA1 1XF.

Telephone 01524 843 400 or 01524 846 064 (Patel Home)

#### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

#### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- provision of late night refreshment

#### THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
I. Late night refreshment (Indoors & Outdoors)	Monday - Sunday	23:00	05:00

#### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday-Saturday	11:00	05:00
Sunday	16:00	05:00

#### WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

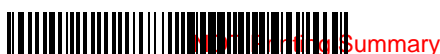
### Part 2

#### NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Siraj Patel

17 Dallas Road, Lancaster, Lancashire, LA1 1TP.  
Telephone 01524 63763 (work) or 01524 846 314 (home)

#### REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)





Health and Housing  
Licensing Section  
Town Hall  
Dalton Square  
Lancaster  
LA1 1PJ



Tel: (01524) 582000  
email: [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk)

## Premises Licence

LAPLNA0090

### ANNEXES

#### **Mandatory condition where Door Supervisors are provided**

All individuals who carry out security activities must be licensed by the Security Industry Authority (SIA)

#### **Conditions attached after a hearing by the Licensing Authority**

A minimum number of [2] members of door staff registered with the SIA will be on duty from 1am until close on Saturday and Sunday mornings.

To install, maintain and operate a CCTV system, which complies with the minimum requirements, expected of the Lancashire Constabulary and shall record during all hours that a licensable activity takes place on the premises.

Premises licence holder is to register and use the community/network radio





Health and Housing  
Licensing Section  
Town Hall  
Dalton Square  
Lancaster  
LA1 1PJ



Tel: (01524) 582000  
email: [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk)

# Premises Licence Summary

## LAPLNA0090

### Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION	
<b>Mognies Restaurant &amp; Takeaway</b>	
66 Penny Street, Lancaster, Lancashire, LA1 1XF.	Telephone 01524 843 400 or 01524 846 064 (Patel Home

WHERE THE LICENCE IS TIME LIMITED THE DATES
Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE
- provision of late night refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES			
Activity (and Area if applicable)	Description	Time From	Time To
I. Late night refreshment (Indoors & Outdoors)	Monday - Sunday	23:00	05:00

THE OPENING HOURS OF THE PREMISES			
	Description	Time From	Time To
	Monday-Saturday	11:00	05:00
	Sunday	16:00	05:00

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE
Siraj Patel <span style="float: right;">17 Dallas Road, Lancaster, Lancashire, LA1 1TP.</span>

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED



## Appendix 3

### Mognies

#### Objection to premises licence transfer.

Lancashire Constabulary objects to the application to transfer the Premises Licence at Mognies Takeaway from Siraj PATEL to Savera PATEL on the basis that Siraj PATEL, who was convicted of 'Meet a female child under 16 following sexual grooming' and 'Had sexual activity with female child under 16' on 7<sup>th</sup> November 2014. On 18<sup>th</sup> November 2016 Siraj PATEL was convicted of these offences at Preston Crown Court and sentenced to 4 years in Prison and is now a registered sex offender and VISOR nominal. These offences were committed as a result of Siraj PATEL's ability to groom children at the premises of Mognies and then take the child in his Mognies delivery vehicle to secluded locations where the offences occurred in the delivery vehicle and whilst he was trading.

Lancashire Constabulary takes the view that by permitting the transfer of the Premises Licence, the prevention of crime and disorder licensing objective would be undermined as this is an attempt to defeat an application for review of the Licence and would, if granted, allow the premises to continue to trade within the same family ownership as that which allowed the offence to occur. There is a serious risk that other children will be groomed/abused if the premises is permitted to remain open. All the staff are the same as when the offences occurred. On 27<sup>th</sup> June 2016 three illegal immigrants from Pakistan were found living above Mognies and working in the shop by Immigration and deported. At the time Siraj PATEL was abusive to Immigration staff throwing paperwork into their faces and showed little or no remorse or respect for any officials.

Lancashire Constabulary believe these are exceptional circumstances and therefore object to the transfer of the Premises Licence.

## Appendix 4

### LANCASTER CITY COUNCIL

#### LICENSING ACT 2003 AND THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

#### NOTICE OF HEARING

To: The Applicant: Mrs Savera Siraj Patel

Responsible Authority: Lancashire Constabulary

**THE LANCASTER CITY COUNCIL, AS LICENSING AUTHORITY, HEREBY GIVES YOU NOTICE** that a hearing before a Sub-Committee of the Licensing Act Committee to consider a relevant representation in respect of an application under Section 42 of the Licensing Act 2003 to transfer a premise licence in respect of premises known as **Mognies Restaurant & Takeaway, 66 Penny Street, Lancaster, LA1 1XF**, will take place on the **15th March 2017** at Lancaster Town Hall, commencing at **10.30 a.m.**

**AND TAKE NOTICE THAT** each party as listed above is required to give to the Licensing Authority by no later than five working days before the day of the hearing a notice in writing stating whether that party intends to attend or be represented at the hearing, and whether he or she considers a hearing to be unnecessary.

**AND TAKE NOTICE THAT** if a party wishes any other person (other than the person he/she intends to represent him at the hearing) to appear at the hearing, the notice given by that party and referred to in the preceding paragraph must contain a request for permission for such other person to appear at the hearing, and must set out details of the name of that person and a brief description of the point or points on which that person may be able to assist in connection with the matter to be considered by the Sub-Committee.

**GIVEN** this 27th day of February 2017 by the Lancaster City Council as Licensing Authority.



## INFORMATION TO ACCOMPANY NOTICE OF HEARING

### 1. Right of attendance, assistance and representation

A party may attend the hearing and may be assisted or represented by any person, whether or not that person is legally qualified.

The hearing will generally take place in public. However, the Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking part in public. In such circumstances, a party and any person assisting or representing a party may be treated as a member of the public. The Sub-Committee will exclude the public (and the parties and their representatives) during the decision making process.

The Sub-Committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing, and may refuse to permit that person to return, or permit him to return only on such conditions as the Sub-Committee may specify. However, such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which he would have been entitled to give orally had he not been required to leave.

### 2. Representations and Supporting Information

At the hearing a party shall be entitled to:

- (a) Give further information as applicable in response to a point upon which notice has been given to that party that clarification is required. (Note – if such clarification is required from a party this will have been indicated in the Notice of Hearing).
- (b) Question any other party, but only if given permission by the Sub-Committee; and
- (c) Address the Sub-Committee

### 3. Failure of Parties to attend the Hearing

If a party has given notice that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

If a party who has not so indicated fails to attend or be represented at a hearing, the Sub-Committee may, where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or hold the hearing in the party's absence. If the hearing proceeds in a party's absence, the Sub-Committee will consider and give appropriate weight to the application, representation or notice given by that party in their absence.

### 4. Representations and Evidence

A party who wishes to rely on information or documentary evidence that has not been submitted in advance of the issue of the Notice of Hearing should ensure that such information or evidence, together with sufficient copies for all the parties, is submitted to the Licensing Manager as soon as possible before the day of the hearing.

Parties are reminded that documentary or other information submitted on the day of the hearing may only be taken into account with the consent of all the other parties.

A party who wishes to produce audio/visual evidence should make such evidence available as soon as practical, and should give a minimum of two clear working days notice to the Licensing Manager to facilitate arrangements for the appropriate equipment to be available at the hearing.

## **5. Procedure**

A summary of the procedure that will normally be followed at the hearing is enclosed.

It should be noted that this is a general procedure intended to cover matters that will normally be applicable at all hearings.

However, depending on the circumstances of each individual case, it is recognised that other issues may need to be considered as preliminary points at the hearing. These may include (but are not limited to):

- Whether to proceed in the absence of a party
- Whether to admit new documents/information submitted at the hearing
- Whether it is in the public interest to exclude members of the public from the hearing or any part of the hearing (other than the decision making process)
- Whether any party wished to withdraw representations previously submitted

## **6. Special Needs**

Any person who intends to attend a hearing and who has special needs, for example in connection with access, language, hearing or vision, should inform the Licensing Manager as soon as practical prior to the day of the hearing, so that appropriate provision or arrangements may be made.

## **PROCEDURE TO BE FOLLOWED AT HEARINGS TO WHICH THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005 APPLY**

1. The Chairman will introduce the Members and the Legal Adviser and Democratic Support Officer.
2. The Chairman will ask the parties to introduce themselves and any persons with them.
3. The Chairman will confirm that there is no reason why any of the three sub-committee Members should not participate in this matter.
4. The Chairman will confirm that this is a discussion led by the authority, that any questions should generally be put through the Chairman, and that cross-examination will only be permitted if the Sub-Committee considers that it is necessary.
5. The Chairman will ask the parties if they have any requests to cross-examine, and such requests will be considered by the Sub-Committee.
6. The Sub-Committee will consider any requests from the parties for permission for another person to appear at the hearing.
7. The Chairman will explain to the parties that the procedure to be followed will be the published one (unless the circumstances of the case require the normal procedures to be varied) – that is,
  - that the Licensing Manager (or his representative) will introduce the details of the application, the reason for the hearing, and the documentation,
  - that each party making representations will address the sub-committee in turn and will call other persons where permission has been given
  - that the applicant/licence holder will present his case and will call other persons where permission has been given
  - that Members may ask questions of all parties and persons
  - that questions from the parties must be directed through the Chairman unless cross-examination has been permitted under 4 above
  - that all parties will have the opportunity to make a closing statement, with the applicant/licence holder having the final word
  - that the Sub-Committee will withdraw to make its decision and formulate the reasons for the decision in private, and will ask its Legal Adviser and the Democratic Support Officer to join it in order to assist in documenting the decision and the reasons, or to provide clarification on any point. The decision will be announced in public and confirmed in writing. (In certain circumstances, the decision may not be made on the same day as the hearing). In the event that the Legal Adviser has been asked for clarification on any point then the point raised and the advice given will be declared to all parties.
8. The Chairman will indicate the maximum period of time each party will be allowed in which to present their case, and will seek comments from the parties before the Sub-Committee makes its final indication on this point.
9. The hearing will then proceed following the procedure in 7 above. The Chairman will arrange for reasonable comfort breaks throughout the hearing.

## Appendix 5

### 14.0 The prevention of crime and disorder

- 14.1 The central concerns of licensing in relation to law and order are acts of violence and vandalism brought about by consumption of alcohol and the use of licensed premises as part of a distribution network for illegal drugs.
- 14.2 It is not the function of licensing to impose good practice in the adoption of wider crime reduction measures, such as those for securing premises outside of trading hours. It is also not a purpose of licensing to require that measures be put in place to enhance the opportunities for gathering evidence in relation to crime of a general nature. However, the Licensing Authority recognises that CCTV cameras at premises have an important role in preventing crime and disorder.
- 14.3 The Licensing Authority's starting point is to seek a reduction in crime and disorder throughout the area, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998. Licences may be granted if applicants can demonstrate that a positive reduction in crime and disorder will result, or that it will not increase, as a result of the application being granted.
- 14.4 Where there are relevant representations, the Licensing Authority will generally not grant a licence where it is likely that the premises will be used for unlawful purposes or where it is considered that the use of the premises is likely to cause an increase in crime and disorder in the area or the premises and this cannot be prevented by the imposition of conditions. When addressing crime and disorder, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent crime and disorder, taking account the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant's operating schedule, and may include:
- Use of CCTV inside and outside the premises. The Lancashire Constabulary has produced suggested minimum requirements for CCTV and these are available from the Lancashire Constabulary or from the Licensing Authority's administrative staff
  - Use of metal detection or other search equipment or procedures
  - Crime and disorder risk assessment in relation to the proposed activities
  - Measures to prevent the use or supply of illegal drugs and procedures for searching customers
  - Ensuring that all staff are appropriately trained
  - Ensuring that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent crime and disorder
  - Employment of sufficient security staff where appropriate, controlling admission, monitoring capacity within the premises as a whole and in separate rooms/levels and patrolling the interior and exterior of the premises (any such staff must be licensed by the Security Industry Authority). The Licensing Authority recognises that there is a greater need for security staff in some premises than in others. For example there will be a greater need for security staff in a town centre nightclub than in a village pub. It will be for the applicant to consider the appropriate number of doorstaff required for the particular premises.
  - Ensuring that a register of door staff and their working times is maintained

- Participation in Pub Watch, Best Bar None or other relevant schemes and using radio links/pages as a means of connecting to other licensed premises.
  - Use of plastic or polycarbonate glasses and bottles, where appropriate, or toughened glass. Applicants are advised that the Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries
  - Wherever possible, agreed protocols with police and other organisations and a commitment to co-operate and provide such evidence as the Police require.
  - Adopting the “Night Safe Initiative” and “Safer Clubbing Guide” as statements of best practice
  - Following the trade codes of practice, for example BBPA and Portman Group, and not carrying out any irresponsible drinks promotions
  - Providing a suitable environment for customers having regard to the activities going on in the premises, in particular appropriate levels of seating
  - Ensuring that there are sufficient transport facilities available to ensure that customers can leave the premises safely and swiftly.
  - Maintaining an incident log
  - The steps the applicant has taken to prevent crime and disorder issues from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking, due to location, control within and management of such areas.
- Glasses and glass bottles can be dangerous weapons. As such the Licensing Authority would encourage the use of polycarbonate glasses, in premises. Where a particular issue has been hi-lighted, particularly if the premises has been brought to review by a responsible authority, a condition to this effect may be imposed.
- It is important that that glasses and bottles are frequently collected to ensure that empty containers do not accumulate in or around the licensed premises. Staff also must prevent the removal of bottles or glasses from the curtilage and grounds of licensed premises, to prevent them being used to cause harm.

It should be noted that this list is not intended to be exhaustive. It may be appropriate for the applicant to consider other steps. Equally, the Licensing Authority recognises that not all the items in the list will be applicable to all premises.

14.5 Following the receipt of relevant representations, the Licensing Authority will not normally allow a person to be specified as a designated premises supervisor where that is likely to undermine the prevention of crime and disorder by reason of that person’s known past conduct. A person is likely to be considered unsuitable if he has previous unspent convictions for a relevant offence, notwithstanding that he may have been granted a personal licence. However, each case would be considered on its own merits in the light of representations received.

## 2. The licensing objectives

### 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. 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.

## Public safety

- 2.6 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.
- 2.7 A number of matters should be considered in relation to public safety. These may include:
- Fire safety;
  - Ensuring appropriate access for emergency services such as ambulances;
  - Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
  - Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
  - Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
  - Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
  - Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.11-2.12, and Chapter 10; and
  - Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).
- 2.8 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.33-8.41), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

## Ensuring safe departure of those using the premises

- 2.9 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:
- Providing information on the premises of local taxi companies who can provide safe transportation home; and
  - Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

## Maintenance and repair

- 2.10 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

## Safe capacities

- 2.11 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.
- 2.12 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act<sup>1</sup>, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of those premises should be.
- 2.13 Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.

## Public nuisance

- 2.14 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be

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<sup>1</sup> S 177 of the 2003 Act now only applies to performances of dance.



disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.15 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.16 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.17 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.18 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.19 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.20 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

## Protection of children from harm

- 2.21 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- 2.22 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:
- adult entertainment is provided;
  - a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
  - it is known that unaccompanied children have been allowed access;
  - there is a known association with drug taking or dealing; or
  - in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.
- 2.23 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to consider this point carefully. This would broadly include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.
- 2.24 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.
- 2.25 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.
- 2.26 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:
- restrictions on the hours when children may be present;
  - restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;