

Meeting of: LICENSING ACT SUB-COMMITTEE

Date: 6TH JANUARY 2006

Report of: LICENSING MANAGER

Reference: AB

Title: MT BELLY, 6 CLARENCE STREET, LANCASTER
APPLICATION FOR THE GRANT OF A PREMISES LICENCE

Members of the Sub-Committee have the following documents attached to this report:

1. Application form (pages 43-58)
2. Copies of representations from interested parties (pages 59-66)
3. Copy letter of support (67)
4. Location Plan (page 69)
5. Notice of Hearing (page 71)

Details of Application

Arshid Mahmood, Tahir Mahmood and Javed Iqbal have submitted an application for the grant of a premises licence under Section 17 of the Licensing Act 2003 for the premises known as MT Belly, 6 Clarence Street, Lancaster.

The application is for the provision of late night refreshment only from 17.00 hours to midnight Sunday to Thursday, and to 01.00 hours on Friday and Saturday nights.

Prior to the Second Appointed Day on the 24th November 2005, there was no legal requirement or provision for takeaway food premises to be licensed. However, because the provision of late night refreshment, after 23.00 hours, is now a licensable activity under the Licensing Act 2003, a premises licence is now required by take away food premises opening after 23.00 hours.

This is therefore a new application, as required by the Act.

Representations

No representations were made by the Chief Officer of Police or other responsible authorities in respect of the application.

However, under Section 18(3) of the Act, it is necessary for a hearing to be held to consider the application, as representations have been received from a number of interested parties. These are at Document 2.

Members will be aware that the definition of "interested party" in the Licensing Act 2003 includes a person living in the vicinity of the premises, or involved in a business in that vicinity. "Vicinity" is not defined in the Act, and is ultimately a matter for Members to

determine. The plan at Document 4 shows the location of the premises, and the addresses of the interested parties.

It is implicit that relevant representations will be commenting adversely in respect of an application. In this case, a letter has also been received in support of the application, and is included at Document 3 for Members' information. The address from which this letter was sent is also indicated on the plan at Document 4.

Notice of Hearing and Request for Clarification

In accordance with the relevant Regulations, the parties have been given notice of the hearing. It was not deemed necessary to request any clarification.

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 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.

Matter for Decision

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

This is in accordance with Section 18(3) and (4) of the Act which provide as follows:

- (3) 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 necessary for the promotion of the licensing objectives.

- (4) The steps are-
 - (a) to grant the licence subject to –
 - (i) the conditions mentioned in Subsection 2(a) (*that is, conditions consistent with the operating schedule*) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any conditions 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;
(*applicable only where the application relates to the sale or supply of alcohol*)
 - (d) to reject the application.

Members are reminded that the licensing objectives are:

- the prevention of crime and disorder
- public safety

- the prevention of public nuisance and
- the protection of children from harm

The Council's Statement of Licensing Policy

Members' attention is drawn to the Council's Statement of Licensing Policy with regard to opening hours, which provides as follows:

- 7.4 *The Licensing Authority recognises that longer licensing hours can contribute to easing disorder and other problems that often occur at late night food premises, taxi ranks, private hire offices and other transport sources.*
- 7.5 *However, a limitation on licensing hours may be imposed in relation to individual premises if representations are received from a responsible authority or interested party and the premises are identified as a focus for disorder and disturbance.*
- 7.6 *As stated, the Licensing Authority will deal with applications on their individual merits. However as far as premises in residential areas are concerned, where relevant representations are received, stricter controls may be imposed in respect of opening hours to ensure that disturbance to local residents is minimised.*

With regard to the prevention of public nuisance, the Policy provides as follows:

- 10.1 *The most obvious aspect of public nuisance is noise. The primary source of noise is amplified music, either uncontained outdoors or emanating from premises, which do not have sufficient measures in place to contain the sound. Late at night or in the early hours of the morning, individuals shouting in the street or groups of people talking in an animated fashion generate a substantial level of noise and in some cases this is aggravated by offensive language.*
- 10.2 *As customers leave licensed premises, the sound of their conversation can disturb residents. Potentially greater problems arise when customers congregate or accumulate outside the licensed premises. However, it is clear that the person in control of the premises has a responsibility to ensure that disturbance to residents and businesses is kept to a minimum.*

In considering licence applications where relevant representations are received, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and disorder having regard to all the circumstances of the application. When addressing public nuisance, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent public nuisance, taking account of 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:

- *The steps the applicant has taken or proposes to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, noise limitation devices and keeping windows closed during specified hours.*
- *The steps taken to ensure 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 public nuisance*

- *The steps the applicant has taken or proposes to prevent disturbance by patrons arriving at or leaving the premises, for example warning signs at exits, and warning announcements within the premises, and the use of door supervisors to pass on the message*
- *The steps the applicant has taken or proposes to prevent queuing, or if queuing is inevitable, to divert queues away from neighbouring premises, or otherwise manage and monitor the queue to prevent disturbance of obstruction, and to prevent patrons congregating outside the premises.*
- *The implementation of a last admission time, and how the last admission time relates to the closing time of the premises*
- *The steps the applicant has taken or proposes to take to manage queues so that patrons who will not gain admission before any last admission time are advised accordingly*
- *The steps the applicant has taken to reduce queuing outside the premises and to minimise the length of time people have to queue at the premises*
- *The steps the applicant has taken to advise patrons that they will not be admitted if they are causing a disturbance, and the steps taken to implement a procedure for banning patrons who continually leave or arrive at the premises in a manner which causes a public nuisance or disturbance.*
- *The arrangements made or proposed for parking by patrons and the effect of parking on local residents.*
- *The arrangements the applicant has made or proposes to make for security lighting at the premises, and the steps the applicant has taken or proposes to take to ensure that lighting will not cause a nuisance to residents.*
- *Whether there is sufficient provision for public transport for patrons, for example the provision of a free phone taxi service or other arrangements with taxi companies, and whether information is provided to patrons about the most appropriate routes to the nearest transport facilities.*
- *Whether taxis and private hire vehicles serving the premises or traffic flow from the premises are likely to disturb local residents.*
- *Whether routes to and from the premises pass residential premises.*
- *Whether other appropriate measures to prevent nuisance have been taken, such as the use of CCTV or the employment of an adequate number of licensed door supervisors.*
- *The measures proposed to prevent the consumption or supply of illegal drugs, including any search and disposal procedures.*
- *The procedures in place for ensuring that no customer leaves with bottles or glasses*
- *If the applicant has previously held a licence within the area of the Council, the history of any enforcement action arising from those premises.*
- *Whether the premises would result in increased refuse storage or disposal problems, or additional litter in the vicinity of the premises.*
- *The steps the applicant has taken or proposes to take in order to ensure that standards of public decency are maintained in any entertainment provided at the premises.*
- *If appropriate, whether music is played at a lower level towards the end of the evening in a “wind down period”.*
- *The applicant’s proposals for the length of time between the last sales of alcohol, and the closing of the premises*
- *The nature and proposed use of any open air parts of the premises*

The above list is not intended to be exhaustive, and the Licensing Authority will expect the applicant to consider all aspects of the operation that may affect public nuisance.

Members are reminded that they should consider each application on its merits, and in the light of all the written and oral information before them at the hearing.

Natural Justice and Human Rights

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.

Conclusion

Members should consider whether to grant the application, and if so, whether to impose any additional conditions. Members are reminded that they should state the reasons for their decision.