

Meeting of: LICENSING ACT SUB-COMMITTEE

Date: 13TH JUNE 2013

Report of: LICENSING MANAGER

Reference: WP

Title: POULTON EXPRESS NO. 2, 86-88 ALEXANDRA ROAD, MORECAMBE

APPLICATION FOR VARIATION OF LICENCE TO SPECIFY AN INDIVIDUAL AS DESIGNATED PREMISE SUPERVISOR UNDER THE LICENSING ACT 2003

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

- 1. Application form**
- 2. Copy of representation from the Chief Officer of Police, Lancashire Constabulary**
- 3. Copy of current premises Licence**
- 4. Notice of Hearing**

Details of Application

Mr Methenan Puvanendrasa has submitted an application under Section 37 of the Licensing Act 2003 to vary the premises licence to specify himself as the designated premises supervisor in respect of Poulton Express No. 2, 86-88 Alexandra Road, Morecambe

Details of the application to vary the premises licence are set out in the application form, which is Document 1 attached to this report.

Representations

Under Section 39(3) of the Act, it is necessary for a hearing to be held to consider the application, as a notice has been given under section 37(6) by the Chief Officer of police, Lancashire Constabulary

Lancashire Constabulary objected to this application on 14th May 2013 on the grounds that Mr Methenan Puvanendrasa was previously given a fixed penalty notice in March 2012 for selling alcohol to a person under the age of 18 years old contravening the protection of children from harm licensing objective.

A copy of the representation submitted by Lancashire Constabulary is at Document 2,

Notice of Hearing

In accordance with the relevant Regulations, the parties have been given notice of the hearing. 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.

Matter for Decision

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

This is in accordance with Section 35(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 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 necessary for the promotion of the crime prevention objective to do so.

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

Government Guidance under Section 182 of the Licensing Act 2003

2.42 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 or 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.

Relevant Parts of the Council's Statement of Licensing Policy

With regard to the prevention of crime and disorder, the Policy provides as follows:

12.0 Protection of Children

- 12.1 The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-aways, community halls and schools. Access by children to all types of premises will not be limited in any way unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm. Equally, no premises will be obliged to allow access by children.
- 12.2 If relevant representations are received in relation to limiting access to children, the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children would include premises:-
- where entertainment of an adult or sexual nature is provided
 - where there is a strong element of gambling taking place (but not, for example, the simple presence of a small number of cash prize gaming machines)
 - with a known association with drug taking or dealing
 - where there have been convictions of current members of staff for serving alcohol to those under 18
 - with a reputation for under age drinking
- 12.3 In the case of premises which are used for film exhibitions, conditions will be imposed restricting access only to those who meet the required age limit in line with any certificate granted by the British Board of Film Classification or, in specific cases, a certificate given to the film by the Licensing Authority itself.
- 12.4 The options available for limiting access by children would include:-
- a limit on the hours when children may be present
 - a limitation or exclusion when certain activities are taking place
 - the requirement to be accompanied by an adult
 - access may be limited to parts of the premises but not the whole
 - an age limitation (for under 18s)
- 12.5 The Licensing Authority will not impose any condition which specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed the issue of access will remain a matter for the discretion of the individual licensee or club.
- 12.6 Under the Act, certain "responsible authorities" must be notified of and are entitled to make representations about applications for premises licences or club premises certificates or major variations of such licences or certificates, or to ask the licensing authority to review a licence or certificate. Applicants for premises licences and club premises certificates are required to send details of their applications to these bodies. In matters concerning the protection of children from harm, the Licensing Authority regards the Lancashire Safeguarding Children Board as the 'responsible authority' within the terms of Section 13 (4).f of the Licensing Act.

- 12.7 Where a large number of children are likely to be present on any licensed premises, for example a children's show or disco, the applicant may wish to consider including in the operating schedule arrangements for the presence of an appropriate number of adult staff to ensure public safety and the protection of the children from harm. The applicant should also consider whether employees working at the premises for such events and having unsupervised contact with children should have an enhanced Criminal Records Bureau check.
- 12.8 Children may also be present at an event as entertainers, and where they are not accompanied by a parent or guardian, the applicant may wish to consider nominating an adult responsible for such child performers at such performances. The applicant should also consider whether a nominated adult should have had an enhanced CRB check.
- 12.9 Applicants may wish to include in their operating schedules arrangements to ensure that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the Licensing Authority itself. The Act provides that it is mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films for the admission of children to the exhibition of any film to be restricted in accordance with the recommendations given to films either by the British Board of Film Classification or by the licensing authority itself.
- 12.10 The following matters will also be considered in relation to the protection of children from harm:
- Whether access of children to cigarette machines is restricted
 - Whether access of children to any gaming machines is restricted
 - Where appropriate, the procedures for ensuring that any customer coming onto the premises is over the age of 18
 - The steps taken to ensure that, where appropriate, 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 protect children from harm

The Licensing Authority considers preventing children from obtaining alcohol from licensed premises to be of great importance in protecting them from harm. Applicants must, therefore, be able to demonstrate that they have in place, satisfactory arrangements to prevent sales of alcohol to children including a recognised or appropriate proof-of-age scheme. The Licensing Authority would be supportive of arrangements, which include incorporating any of the following:

- Passport.
- Photo Card driving licence issued in the European Union
- Proof of Age Standards Scheme Card (PASS)
- 'New type' driving licences with photographs.
- Official ID card issued by the HM Forces or by a European Union country bearing a photo and date of birth of holder

Staff should have received suitable training in relation to the proof of age scheme to be applied upon the premises and records evidencing this should be kept.

12.11 Applicants may wish to indicate in the operating schedule how the protection of children from harm will be addressed. The above items are not intended to be exhaustive, and the applicant should have considered all relevant aspects of the protection of children from harm applicable to the particular premises.

12.12 It is the view of the Licensing Authority that children should not be exposed to entertainments of a sexual nature or to strong language at a too early an age. Conditions may be imposed, if representations are received, aimed at preventing such exposure either intentionally or accidentally. In some premises entertainment of an adult nature may be occasional or restricted to certain times of the day. In these cases, any restrictive conditions to protect children will apply only at these times. When submitting an application, if no reference is made to the provision of adult *entertainment* or services within an operating schedule at "Box N", then the Authority will interpret this to mean that such entertainment will not be provided and a condition to this effect will be applied to the licence

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 for variation of the licence to specify an individual as designated premise supervisor under the Licensing Act 2003, or to reject the application. Members are reminded that they should state the reasons for their decision.