

Meeting of: LICENSING ACT SUB-COMMITTEE

Date: 1ST APRIL 2014

Report of: LICENSING MANAGER

Reference: WP

Title: THE DIRTY BUDDHA NIGHTCLUB

APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS DESIGNATED PREMISES SUPERVISOR UNDER THE LICENSING ACT 2003

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

- 1. Application Form (pages 4 to 9)**
- 2. Copy of Representation from Lancashire Constabulary (pages 11 to 28)**
- 3. Copy current Premises Licence (pages 29 to 40)**
- 4. Notice of Hearing (pages 41 to 44)**

Details of Application

Minted Leisure Limited, the interim premises licence holder for the above address, has submitted an application under Section 37 of the Licensing Act 2003 to vary the premises licence to specify an individual, namely Mr Matthew Barron, as the designated premises supervisor for the premises known as The Dirty Buddha Nightclub, 25 North Road, Lancaster, with immediate effect.

Details of the above are contained in the application form, which is Document 1 attached to this report.

Representation

Sergeant David Forshaw on behalf of Lancashire Constabulary has given notice under Section 37(5) of the Act that he is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective of the Licensing Act 2003.

Under Section 39(3) of the Act, it is therefore necessary for a hearing to be held to consider the application.

A copy of the notice is included in Document 2.

Notice of Hearing

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.

Matter for Decision

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

This is in accordance with Section 39 (3),(4) (5) and (6) of the Act which provide as follows:

- (3) Where a notice is given under Section 37(5) (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 necessary for the promotion of the crime prevention objective to do so.
- (4) Where an application under Section 37 is granted or rejected, the relevant licensing authority must give a notice to that effect to-
- (a) the applicant,
 - (b) the proposed individual, and
 - (c) the chief officer of police for the police area (or each police area) in which the premises are situated.
- (5) Where a chief officer of police gave a notice under subsection (5) of that section (and it was not withdrawn), the notice under subsection (4) of this section must state the authority's reasons for granting or rejecting the application.
- (6) Where the application is granted, the notice under subsection (4) must specify the time when the variation takes effect.
That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

Members are reminded of the government guidance pursuant to section 182 of the Licensing Act 2003 that deals with police objections to new premises supervisors which states:-

The police may object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a particular designated premises supervisor is first appointed or transfers into particular premises and their presence in combination with particular premises gives rise to exceptional concerns.

The 2003 Act provides that the applicant may apply for the individual to take up post as designated premises supervisor immediately, and therefore the issue is whether the individual should be removed from this post.

Relevant Part of the Council's Statement of Licensing Policy

5.5 The Licensing Authority recognises that it is ultimately for the Designated Premises Supervisor to decide how best to manage the premises. However, the Authority expects that the DPS or another personal licence holder should normally be on the premises when alcohol is supplied. If they are absent from the premises, they will still be ultimately responsible for the actions of those they authorise to permit sales of alcohol.

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 on the grounds of the prevention of crime and disorder whether to grant or reject the application. Members are reminded that they should state the reasons for their decision. If the application is refused, the applicant has the right of appeal against the decision, and if the application is granted, the police have the right of appeal against the decision.