

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 3rd 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 2nd 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 8th 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.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None.

FINANCIAL IMPLICATIONS

Financial Services have not been consulted as there are no financial implications.

LEGAL IMPLICATIONS

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.

BACKGROUND PAPERS

None

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