

LICENSING ACT SUB COMMITTEE

Licensing Act 2003 Premise Licence Review – Mognies Restaurant & Takeaway, 66 Penny Street, Lancaster Determination of Application for the Review of the Premise Licence 4th April 2017

Report of Licensing Enforcement Officer

PURPOSE OF REPORT

To enable Members to determine an application for a review of a Premise Licence under Section 51 of the Licensing Act 2003 submitted by Police Constable Andrew Taylor on behalf of the Chief Constable of the Lancashire Constabulary.

The report is public

RECOMMENDATIONS

The Sub-Committee is requested to consider the application from Lancashire Constabulary for the review of the premise licence, and any submissions made by the premises licence holder.

In accordance with Section 52 (3) and (4) of the Licensing Act 2003, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) to modify the conditions of the licence,
- (b) to exclude a licensable activity from the scope of the licence,
- (c) to remove the designated premises supervisor
- (d) to suspend the licence for a period not exceeding three months,
- (e) to revoke the licence

The matter for decision, therefore, is which, if any, of these steps should be taken.

1.0 Introduction

- 1.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

- 1.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives .
- 1.3 The Chief Constable of Lancashire Constabulary has submitted an application for review of a premises licence under Section 51 of the Licensing Act 2003. The application relates to Mognies Restaurant & Takeaway, 66 Penny Street, Lancaster. A copy of the application is at Appendix No 1. The grounds for submitting the review are based on two of the four licensing objectives, namely;
- The promotion of public safety;
 - The protection of children from harm.
- 1.4 A copy of the premises licence for Mognies Restaurant & Takeaway is attached at Appendix No.2. This licence was granted to the premises on 2nd September 2008.
- 1.5 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. 3.

2.0 Legal Background to Review Application

- 2.1 Under Section 51 (1) of the Licensing Act 2003, a responsible authority or other person may apply to the licensing authority for the review of a licence.

The grounds for review must relate to one or more of the licensing objectives and as Members will be aware, these are:

- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 2.2 An application for review must be copied to the premises licence holder and to the responsible authorities. Once such an application is received, the licensing authority must place a notice at the premises, and there is then a period of 28 days during which representations may be made to the licensing authority.
- 2.3 A copy of the notice which was displayed at the premises during the 28 day period is attached at Appendix No.4. Licensing Enforcement Officers made occasional checks throughout the 28 day period to satisfy that the notice was still in place.
- 2.4 Members are reminded that representations can either be in support of or against an application for review of a premises licence. The representation must relate to the likely impact of the grant of the licence in relation to one or more of the four licensing objectives, namely:
- Public Safety;
 - The prevention of crime and disorder;
 - The protection of children from harm;
 - Prevention of public nuisance.

During the 28 day statutory period for representations none were received in support of the application to review the premise licence nor opposing the application

3.0 **Background information provided by Licensing Authority**

On 15th February 2017 the licensing authority received an application for review of a premises licence under Section 51 of the Licensing Act 2003 from Police Constable Andrew Taylor (2338) on behalf of the Chief Constable of Lancashire Constabulary in respect of Mognies Restaurant & Takeaway, 66 Penny Street, Lancaster.

Following an investigation by Police into allegations made by a child of incidents that had occurred on 7th November 2014, the then licence holder of the premises, Mr Siraj Patel, was arrested five days later on suspicion of engaging in non-penetrative sexual activity with a girl 13-15 years of age. He was given Police bail to enable forensic enquiries to take place and once completed he was charged with the offences that he had been arrested for. Mr Patel subsequently stood trial at Preston Crown Court later that month and was found guilty of sexual offences against a child. On 16th December 2016 Mr Patel was sentenced to 4 years imprisonment and is currently serving that time.

On 1st February 2017 the licensing department received further documentation of a witness statement taken from the victim and this is attached at Appendix No 5.

Police contend there were reasonable grounds upon which to revoke the premises licence that had been in Mr Patel's possession with regard to the protection of children from harm and public safety licensing objectives.

However, Members are advised that following an application submitted by Mrs Savera Siraj Patel on 3rd February 2017 to transfer the premises licence for Mognies Restaurant & Takeaway and the subsequent representation by Police, a hearing took place on 15th March 2017 to determine the outcome. Members of the Sub-Committee believed there was no evidence that Mrs Patel was involved with her husband's criminal activity and accordingly no evidence to suggest that the transfer of the licence to her would undermine the crime and disorder licensing objective. It was therefore granted.

3.1 **Government Guidance under Section 182 of the Licensing Act 2003 in relation to a review hearing following a representation involving Crime and Disorder**

Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;

for the sale and distribution of illegal firearms;

for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;

for prostitution or the sale of unlawful pornography;

by organised groups of paedophiles to groom children;

as the base for the organisation of criminal activity, particularly by gangs;

for the organisation of racist activity or the promotion of racist attacks;

for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;

for unlawful gambling; and

for the sale or storage of smuggled tobacco and alcohol.

It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

- 3.2 Government Guidance under Section 182 of the Licensing Act 2003 in relation to Public Safety and the Protection of Children from Harm is attached at Appendix No. 6 to this report.
- 3.3 The relevant parts of the Council's Statement of Licensing Policy are set out at Appendix No. 7.
- 3.4 **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 Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

4.0 Conclusion

Members should consider the application for review of the premises licence and any steps they consider necessary for the promotion of the licensing objectives.

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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