

**Subject:** Determination Hearing – School  
Street Mini Market, Stacksteads, Bacup

**Status:** For Publication

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**Report to:** Licensing Committee

**Date:** 18<sup>th</sup> September 2008

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**Report of:** Licensing Manager

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## 1. PURPOSE OF REPORT

- 1.1 To advise members of an application for a premises licence under section 17 of the Licensing Act 2003, to which representations have been received.
- 1.2 To request that members determine the application in accordance with the provisions of the Licensing Act 2003.

## 2. THE LICENSING OBJECTIVES

- 2.1 Members are reminded of the licensing objectives as follows:
  - a. The prevention of crime and disorder
  - b. Public Safety
  - c. The prevention of public nuisance
  - d. The protection of children from harm

## 3. THE APPLICATION

- 3.1 The application is for a premises licence to be granted under the Licensing Act 2003 and is appended at Appendix A. The application was received by the licensing authority on 30<sup>th</sup> July 2008.
- 3.2 The premises does not currently hold a premises licence and to my knowledge, has not previously held a premises licence under the Act and this application is therefore for a new premises licence.
- 3.2 The application proposes the following:
  - m. **The supply of alcohol (Off Sales only)**  
Between 0530 hours and 2230 hours Monday to Sunday.
  - o. **Opening hours of the premises**  
Between 0530 hours and 2230 hours Monday to Sunday.

- 3.3 The steps that the applicant intends to take to promote the four licensing objectives are detailed at section P of the application as appended at Appendix A.
- 3.4 The applicant has detailed the description of the premises as, 'A double fronted shop premises currently operating as a news agent, lottery and general grocers. The property has recently been upgraded and extended doubling the sales area.'

#### **4. BACKGROUND**

- 4.1 On 6<sup>th</sup> June 2008, an application for a premises licence to be granted under the Licensing Act 2003 was received by the licensing authority from Mr P Iqbal. Due to a failure to comply with the requirements of Regulations 25 and 27 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, the application was declared invalid on 3<sup>rd</sup> July 2008. Representations had been received in respect of the application and those representations were duly declared invalid on 3<sup>rd</sup> July 2008.
- 4.2 On 9<sup>th</sup> July 2008, an application for a premises licence to be granted under the Licensing Act 2003 was received by the licensing authority from Mr P Iqbal. Due to a failure to comply with the requirements of Regulation 26 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, the application was declared invalid on 24<sup>th</sup> July 2008. Representations had been received in respect of the application and those representations were duly declared invalid on 24<sup>th</sup> July 2008 and notified in writing on 8<sup>th</sup> August 2008.
- 4.3 On 30<sup>th</sup> July 2008, an application for a premises licence to be granted under the Licensing Act 2003 was received by the licensing authority from Mr P Iqbal.
- 4.4 The individuals referred to at 4.1 and 4.2 were notified in writing on 8<sup>th</sup> August 2008 that the representations could not be deemed relevant representations under the Act as there was not a current application pending. Those individuals were advised that a further application had been received and should they wish for their representations to stand on the current application, they should notify the licensing office in writing.
- 4.5 The letters requesting that the representations stand on the current application were received within the representation period, namely 21<sup>st</sup> August 2008.
- 4.6 There are therefore two relevant representations from interested parties in respect of this application.

#### **5. RELEVANT REPRESENTATIONS**

- 5.1 There have been no representations from the responsible authorities.

## **6. INTERESTED PARTIES**

- 6.1 A resident from Newchurch Road has made a representation on this application to vary a premises licence. The representation is appended at Appendix B.
- 6.2 This representation appears to be made on the basis that the application will undermine the following licensing objectives:
- a. The prevention of crime and disorder
  - b. The prevention of public nuisance
- 6.3 The representation is not wholly irrelevant or apparently frivolous and I have no evidence that the representation is vexatious.
- 6.4 Members are reminded that material consideration is a matter for development control and does not fall within the Licensing Act 2003.
- 6.5 This interested party has returned their regulation 8 form notifying the licensing authority that they do not intend to attend the hearing nor do they intend to be represented at the hearing by anyone else.
- 6.6 A second resident from Newchurch Road has made a representation on this application to vary a premises licence. The representation is appended at Appendix C.
- 6.7 The representation appears to be made on the basis that the application will undermine the following licensing objectives:
- a. The prevention of crime and disorder
  - b. The prevention of public nuisance
- 6.8 The representation is not wholly irrelevant or apparently frivolous and I have no evidence that the representation is vexatious.
- 6.9 Members are reminded that commercial need is a matter for the applicant.
- 6.10 The representation makes reference to the “local pub” selling cheap drink and the nuisance and disturbance caused as a result. Members are reminded that the Licensing Act 2003 contains a review mechanism whereby interested parties or responsible authorities may apply for a review of a premises licence where problems are occurring.
- 6.11 This interested party has returned their regulation 8 notifying the licensing authority that they do not intend to attend the hearing nor do they intend to be represented at the hearing by anyone else.

## **7. POLICY CONSIDERATIONS**

- 7.1 In determining the application, members must give appropriate weight to:

- a. the steps that are necessary to promote the licensing objectives;
  - b. the representations (including supporting information) presented by all the parties;
  - c. the statutory guidance issued under section 182 of the Act;
  - d. the licensing authority's statement of licensing policy
- 7.2 Members should have regard to the statutory guidance issued under section 182 of the Licensing Act 2003.
- 7.3 The relevant extracts from the Statement of Licensing Policy made from 7<sup>th</sup> January 2008 to 6<sup>th</sup> January 2011 are detailed below and are numbered as they appear in the Statement of Licensing Policy document.

## **2. LICENSING OBJECTIVES**

- *the prevention of crime and disorder*
- *public safety*
- *the prevention of public nuisance; and*
- *the protection of children from harm*

2.1 *The licensing objectives are of equal importance and are the only matters which may be taken into account by the licensing authority.*

2.2 *In executing our functions, we will consider the Licensing Act against a backdrop of other legislation, which may impact on the promotion of the licensing objectives.*

*This will include the,*

- *Crime and Disorder Act 1998 as amended by the Police Reform Act 2002*
- *Human Rights Act 1998*
- *Health & Safety at Work Act 1974*
- *Environmental Protection Act 1990*
- *Anti-Social Behaviour Act 2003*
- *Race Relations Act 1976*
- *Race Relations (Amendment) Act 2000*

2.3 *We desire to create an environment where local people and visitors to our areas will have better opportunities to enjoy their leisure time in safety without fear of violence, intimidation or disorder whilst on or in the vicinity of licensed premises.*

2.9 *The Guidance requires that a Licensing Authority considers such applications from a neutral standpoint. If relevant representations are made, for example by local residents or the Police, they will be considered fairly. Those making representations genuinely aggrieved by a positive decision in favour of the Local Authority will generally be entitled to appeal to the Magistrates' Court and thereby receive an independent review of any decision.*

- 2.10 *We will endeavor to carry out our licensing functions in a way that*
- *ensures public safety*
  - *supports well managed premises where licence holders actively promote the licensing objectives and display sensitivity to the potential impact of licensable activities on local residents and other businesses*
  - *protects residents' quality of life*
- 2.11 *We will have regard of how littering and fouling, noise, street crime and the capacity of the Council's infrastructure, resources and police resources impact on the licensing objectives.*
- 2.15 *We desire to strike a balance between allowing people to enjoy their leisure, at the times and in the manner they wish to, and ensuring the licensing objectives are not undermined.*
- 2.16 *Licensing is about regulating licensable activities on licensed premises, in qualifying clubs and at temporary events within the definitions of the Act, and the conditions attached to the various authorisations will be focused on matters which are in the control of applicants and licence holders. Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises. Licensing law will however be a key aspect of a holistic approach to the management of the evening and night time economy in town centres.*
- 2.17 *We will therefore focus upon the direct impact of the activities taking place at or in the vicinity of licensed premises on members of the public living, working or engaged in normal activities in the vicinity of those places.*

### **3. LICENSABLE ACTIVITY**

- 3.1 *This policy relates to licensable activities. They are:*
- *The sale of alcohol by retail anywhere*
  - *The supply of alcohol by or on behalf of a club to members of the club and their bona fide guests*
  - *The provision of regulated entertainment, namely,*
    - *The performance of a play*
    - *The exhibition of a film*
    - *An indoor sporting event*
    - *boxing or wrestling entertainment outdoors*
    - *The performance of live music*
    - *The playing of recorded music (excluding incidental background music)*
    - *The performance of dance*
    - *Entertainment of a similar description to live music, recorded music or dance*

*where the entertainment takes place in the presence of the public or a section of the public.*

- *The provision of hot food or hot drink at any time between 11 pm and 5 am for consumption on or off the premises.*

*3.4 We will promote the 4 licensing objectives, namely*

- *the prevention of **crime and disorder***
- ***public safety***
- *the prevention of **public nuisance**; and*
- *the **protection of children** from harm,*

*and all our decisions will reflect these objectives.*

*3.5 We consider each licensing objective to be of equal importance. They will be considered in relation to matters centered on the premises or within the control of the licensee. We will objectively consider the direct effect that the carrying on of the licensable activities has in the vicinity of the premises.*

*3.6 Licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the licensee or vicinity of licensed premises.*

*3.7 We will not deter an individual making an application and having that application judged on its individual merits.*

*3.8 We will not deter any person from making representations in respect of any application or seeking a review of a license.*

*3.9 The applicant for a premises licence will be required to demonstrate on the application and accompanying operating schedule, an active role in promoting and supporting the licensing objectives. We will take notice of a health and safety risk assessment submitted as an appendix to the application.*

*3.10 We will also seek to discharge our responsibilities by linking to Government and Council strategies and policies so far as they impact on the licensing objectives.*

*3.11 We will in particular reflect upon;*

- *The Crime and Disorder Reduction Strategy*
- *Existing Enforcement Concordats*
- *The National Alcohol Harm Reduction Strategy*
- *Safer Clubbing*

- *The designated premises supervisor's ability to control and supervise customer behavior.*
  - *The number of people attending the premises*
  - *The customer age profile*
  - *The nature of drinks promotions*
  - *The nature of licensable and other activities provided*
  - *Any evidence of drug or/and alcohol abuse*
  - *The design, character and layout of the premises*
- 3.13 *We recognise that the need for licensed premises is not a matter for licensing authorities but a matter for Planning Committees and commercial market forces.*
- 3.15 *Any conditions attached to premises licenses and club premises certificates will reflect the Licensing Objectives and where appropriate, local crime prevention strategies*
- 3.18 *We are committed to avoid duplication with other regulators and will not impose conditions upon licenses which are already requirements under other legislation*
- 6.1 *The operational regulatory functions of the Planning, Environmental Health and Licensing functions of the Council will be separated to avoid duplication, inefficiency and theoretical conflicts of interest which may be open to legal challenge. We will not allow licensing applications to be a re-run of planning applications.*
- 7.1 *We will consider each application upon its individual merits and the basis of any application will be the draft operating schedule. We welcome risk assessment documents being submitted with operating schedules illustrating the applicants assessment of risks relating to promotion of the Licensing Objectives.*
- 7.3 *We will avoid fixed or artificial early closing times which produce peaks of disorder and disturbance by customers merging into the streets simultaneously. We will balance this with stricter conditions being expected in relation to noise control in areas of dense residential accommodation.*
- 7.4 *Subject to the licensing objectives, we accept the principle of licensable activity taking place over 24 hours and 7 days a week and that off-licence premises may sell alcohol during the whole of their trading hours. No general restriction or limitation on hours in any area is imposed by this statement of licensing policy.*
- 7.5 *The hours requested by the applicant will normally be approved where the applicant can show in their operating schedule that the proposal would not adversely affect the environmental quality, residential amenity and character of any particular area or undermine one or more of the licensing objectives.*

- 7.6 *Where there is evidence that one or more licensing objectives would be undermined, a responsible authority, authorised person or interested party has the ability to object to the issue or variation of a licence or request a review of an existing licence.*
- 7.7 *The onus to provide the evidence will always be on the person or organisation making the objection or review application. This burden of proof will not however apply should there be a special saturation policy in being in relation to the area where the premises are situated.*
- 7.9 *We will not impose any obligation under the 2003 Act requiring the holder of a premises licence or club premises certificate to remain open for the entire period permitted by his licence or certificate. If, for example, a public house has no trade on a particular evening, the licence holder is entitled to close the premises.*
- 7.10 *We will however encourage applicants to be realistic in the potential opening hours that they apply for.*
- 7.11 *We acknowledge that the times when an applicant wishes the premises to be open to the public may not be identical to the hours during which licensable activities may take place.*
- 7.12 *We ask applicants to note that in the case of the sale by retail of alcohol (or supply of alcohol by or on behalf of a club to, or to the order of, a member of a club) for consumption on the premises, “consumption” of alcohol is not a licensable activity.*
- 7.13 *Therefore, the authorised period specified in the premises licence, club premises certificate or temporary event notice relates to the period during which alcohol may be sold or supplied.*

## **9. CONDITIONS**

- 9.1 *We will, as far as it is possible to do so, avoid imposing disproportionate and over burdensome conditions on premises. We will not impose standard conditions on premises licences other than mandatory conditions prescribed by the Act. We will adopt a position of reasonableness and proportionality.*
- 9.2 *Following proven objections or reviews, we will consider imposing realistic conditions appropriate to the circumstances of each individual case. We will consider model conditions of best practice and we will also consider other conditions proposed by responsible authorities in any particular case.*
- 9.4.1 *We will however reserve the right to impose any condition which is necessary to promote any of the licensing objectives where an objection to or application for a review of a licence is made.*



## **9. THE DECISION**

9.1 In accordance with Regulation 26(2) of the Licensing Act 2003 (Hearings) Regulations 2005, a decision must be made within the period of 5 working days beginning with the day or the last day on which the hearing was held.

9.2 In accordance with section 18(3)(b) of the Licensing Act 2003, members must having regard to the representations, take such of the steps detailed below as it considers necessary for the promotion of the licensing objectives. The steps are (s18(4)):

- a) to grant the licence subject to –
  - i. the conditions mentioned in subsection (2)(a) 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;
- d) to reject the application.

9.3 Subsection (2)(a) is reproduced here for clarity:

- 18(2)(a) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to –
- a) such conditions as are consistent with the operating schedule accompanying the application, and
  - b) any conditions which must under section 19, 20 or 21 be included in the licence.

## **10. CRIME & DISORDER**

10.1 Without prejudice to any other obligation imposed on it, the Local Authority has a duty to consider crime and disorder implications.

## **11. WARDS AFFECTED**

11.1 The premises are situated within the Stacksteads ward and no other ward is likely to be affected. The ward councillor(s) are not members of the sub committee.

Background Papers	
Document	Place of Inspection
Statement of Licensing Policy	Council Offices or via <a href="http://www.rossendale.gov.uk">www.rossendale.gov.uk</a>
Statutory Guidance issued under Section 182 of the Licensing Act 2003	Council Offices or via <a href="http://www.culture.gov.uk">www.culture.gov.uk</a>

Appendices	
Document	Appendix Number
Application for the grant of a premises licence	<i>A</i>
Representation 1	<i>B</i>
Representation 2	<i>C</i>