

Subject: Determination Hearing – Tricks & Treats (Haslingden)

Status: For Publication

Report to: Licensing Sub-Committee

Date: 31st May 2011

Report of: Public Protection Manager

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 at shop premises situated at 27 Deardengate, Haslingden. It currently trades as a joke shop and the applicant stated in a previous, invalid, application that he wishes to change it to the style of a convenience store. The application was received by the licensing authority on 31st March 2011 and is appended as Appendix A.
- 3.2 The application was amended in order to correct an error made by the applicant. The application as per Appendix A showed the request for the supply of alcohol as starting at one minute before noon and ending at midnight.
- 3.3 The applicant amended this request and the letters of amendment are appended at Appendix B & C.
- 3.4. There was a previous application made on the 23rd February 2011 which was invalidated because of errors in the way that the applicant advertised his application.
- 3.5. The application proposes the following:

M. The supply of alcohol for consumption off the premises
Between 0000 hours and 2359 hours on Monday to Sunday.

O. Opening hours of the premises
Between 0600 hours and 0000 hours on Monday to Sunday.

3.6. The application would effectively enable the applicant to sell alcohol 24 hours a day, 7 days a week but between midnight and 6am the public would not have access to his premises. I understand that the intent of the applicant is to provide a delivery service to customers ordering alcohol between midnight and 6am.

3.7. 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.

4. RELEVANT REPRESENTATIONS

4.1. On 9th April 2011, the Licensing Authority received a representation from Councillor Gladys Sandiford. This representation was declared relevant by the Public Protection Manager. This representation is appended at Appendix D.

4.2. On 11th April 2011, the Licensing Authority received a representation from Councillor Granville Morris. This representation was declared relevant by the Public Protection Manager. This representation is appended at Appendix E.

4.3. On 12th April 2011, the Licensing Authority received a representation from the Chief Officer of Police. This representation was declared relevant by the Public Protection Manager. This representation is appended at Appendix F.

4.4. The Chief Officer of Police has returned the Regulation 8 form notifying the Licensing Authority that he intends to attend the hearing and does not intend to be represented by anyone else.

5. INTERESTED PARTIES

5.1 Councillors Sandiford and Morris are interested parties by virtue of their submission of relevant representations as detailed at 4.2 and 4.3.

5.2 At the time of writing, these interested parties had not returned their Regulation 8 form.

6. POLICY CONSIDERATIONS

6.1 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.
- 6.2. Section 4 of the Licensing Act 2003 provides that in carrying out its functions, a licensing authority must have regard to guidance issued by the Secretary of State under section 182 of that Act. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as the licensing authority has properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.
- 6.3 The relevant extracts from the Statement of Licensing Policy made from 7th January 2011 to 6th January 2014 are detailed below and are numbered as they appear in the Statement of Licensing Policy document.
- 4.1 *The licensing objectives are:*
- 4.1.1 *The prevention of crime and disorder;*
 - 4.1.2 *Public safety;*
 - 4.1.3 *The prevention of public nuisance; and*
 - 4.1.4 *The protection of children from harm*
- 4.2 *The licensing objectives are of equal importance and are the only matters which may be taken into account by the licensing authority.*
- 4.3 *We will endeavour to carry out our licensing functions in such a way as to:*
- *Ensure public safety*
 - *Support 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*
 - *Protect the quality of life of residents*
- 4.4 *We will have regard to how littering and fouling, noise, street crime and the capacity of the Council's infrastructure, resources and police resources impact on the licensing objectives.*
- 4.5 *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.*

- 4.6 *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..*
- 5.1 *We consider each licensing objective to be of equal importance. They will be considered in relation to matters centred 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.*
- 5.2 *We consider that a well drafted and specific operating schedule indicates the applicant's understanding and willingness to meet the responsibilities of a licence holder under the Act.*
- 5.3 *We consider that a blank or sparsely completed operating schedule gives the impression that the applicant has not given sufficient thought to the responsibilities of a licence holder.*
- 5.4 *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.*
- 5.5 *We will not seek to limit the number of licensed premises simply because any interested party or responsible authority consider that there are enough licensed premises to satisfy demand. Need is a commercial decision for the applicant.*
- 9.1 *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 applicant's assessment of risks relating to the promotion of the licensing objectives.*
- 9.2 *Flexible licensing hours will be important to ensure that the concentration of customers leaving premises simultaneously are avoided, minimising the possible sources of friction at fast food outlets and taxi ranks, thereby reducing the potential for violence and disorder and fear of such.*
- 9.3 *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.*
- 9.4 *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.*
- 9.5 *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.*

9.6 *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 force in relation to the area where the premises are situated.*

9.7 *We will not impose any obligation under the 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.*

10.1 *We will not generally restrict child access to premises beyond that stated in the Act or regulations unless to prevent physical, moral or psychological harm to children in individual premises. We will consider the individual merits of each application and the style in which the premises trade.*

10.2 *We will have particular concern in respect of children where;*

- *entertainment or services of an adult or sexual nature are commonly provided;*
- *there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;*
- *there are premises with a known association with drug taking or dealing;*
- *where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines); or*
- *where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.*

10.3 *Applicants for licences will normally consider child access in their risk assessments and operating schedules and may volunteer appropriate model conditions in their applications.*

10.4 *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.*

7. THE DECISION

7.1 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.

7.2 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.

7.3. 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.

8. CRIME & DISORDER

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

9. WARDS AFFECTED

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

Background Papers	
Document	Place of Inspection
Statement of Licensing Policy	Council Offices or via www.rossendale.gov.uk
Statutory Guidance issued under Section 182 of the Licensing Act 2003	Council Offices or via www.homeoffice.gov.uk

Appendices	
Document	Appendix Number
Application for the grant of a premises licence	<i>A</i>
Applicant's first letter	<i>B</i>
Applicant's second letter	<i>C</i>
Representation 1	<i>D</i>
Representation 2	<i>E</i>
Representation 3	<i>F</i>