

REPORT TO LICENSING SUB-COMMITTEE

DATE	Friday 17th April 2020
PORTFOLIO	Governance, Law & Regulation
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Licensing Act 2003 Determination of an application for a review of a premises licence

PURPOSE

1. To advise members of the requirement to determine an application for review under Section 52 of the Licensing Act 2003.
2. The premises is Lyndhurst Road Food & Booze, 9 Lyndhurst Road, Burnley, BB10 4ED

RECOMMENDATION

3. Members are recommended to make a determination at the conclusion of the hearing as required by Regulation 26(1) of the Licensing Act (Hearings) Regulations 2005.

Having considered all relevant facts, the Committee is empowered to take any of the following steps which are necessary to promote 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; or
- e. to revoke the licence.

REASONS FOR RECOMMENDATION

4. Members of the Licensing Committee are responsible for determining such applications.

SUMMARY OF KEY POINTS

5. The Licensing Objectives are:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

The premises currently hold a licence a copy of which is attached at Appendix 'A'

The holder of the premises licence and Designated Premises Supervisor is Sarah Hussain, of xx Street Nelson and she holds a Personal Licence which was issued by Pendle Borough Council.

6 On the Thursday 5th March 2020, the Licensing Authority received an application from Sam McConnell, Lancashire Trading Standards to review the Premises Licence of Lyndhurst Road Food & Booze.

The grounds for the application that the licensing objectives relating to the protection of Children from harm is not being observed

The Lancashire Trading Standards say that the premises has failed a test purchase of alcohol, and the current DPS is also the DPS of another premises in Pendle which had its Premises Licence revoked very recently, for a similar offence.

The review application submitted by the Lancashire Trading Standards is appended at Appendix 'B'.

The Licensing Authority has received one other representation from the Lancashire Constabulary a copy of this is attached as Appendix 'C'.

The premises were subject of a review hearing held on the 12th January 2012 triggered by an application made by the Lancashire Constabulary.

At that time the Premises was trading as Pommys Off Licence and was under different management with a different Premises Licence Holder and also a different DPS.

The determination notice relating to this 2012 hearing is attached at Appendix 'D' and the additional conditions added as a result of this hearing are attached at Appendix 'E'

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

7. None

POLICY IMPLICATIONS

8. The following paragraphs from Burnley Borough Council's Statement of Licensing Policy are relevant to this application:

1.3 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.

1.10 We will endeavor to carry out our licensing functions in a way that:

- ensures public safety
- supports well managed premises where licence holders seek to 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.

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1.10 We will endeavor to carry out our licensing functions in a way that:

- ensures public safety
- supports well managed premises where licence holders seek to 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.

3.23 Issues about access of children to premises may give rise to concern:

- where adult entertainment is provided on an occasional basis and is not already licensed under other legislation;
- •where there have been convictions of the current management for serving alcohol to minors;
- •where the premises have a reputation for allowing under-age drinking;
- •where requirements of proof of age is not the norm;
- •where premises have a known association with drug taking or

dealing;

- •where there is a strong element of gambling on the premises; and
- •where the supply of alcohol consumption on the premises is the exclusive or primary purpose of the services provided.

3.27 It is mandatory for premises which sell or supply alcohol to have an age verification policy in place. However, this authority favours the Challenge 25/Check 25 type schemes and such a scheme volunteered as part of an operating schedule will be given the appropriate weight when the authority determines the licence application

3.28 This Licensing Authority is committed to protecting children from harm and supports the programmer of underage test purchases arranged by the Lancashire Trading Standards Service, the Licensing Team and Police. Where underage sales are found, the Licensing Authority supports the appropriate and proportionate use of warnings, responsible retail training, fixed penalty notices, reviews and prosecution as a means of promoting the licensing objectives and enforcing the Licensing Act proportionately.

3.29 In keeping with the Secretary of State's Guidance the Licensing Sub-Committee will treat underage sales as serious criminal activity and will give consideration to the suspension or revocation of a licence if a review is brought in respect of underage sales.

7.7 Where there is evidence that one or more licensing objectives would be undermined, a responsible authority, authorised person or interested party (Since the introduction of the Policing and Crime Act 2009 the definition of "interested Parties" has been extended to include – "a member of the relevant Licensing Authority") has the ability to object to the issue or variation of a licence or request a review of an existing licence.

7.8 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.

9.1 The authority may only impose conditions where relevant representations are made following an application to grant or vary a licence or where a review request is being considered.

9.2 The council recognises that the only conditions that should be imposed on a licence are those which are appropriate and proportionate to the promotion of the licensing objectives. There may be circumstances where existing legislation and regulations already effectively promote the licensing objectives and no additional conditions are required.

9.3 Where conditions are imposed they will be tailored to the individual style and characteristics of the premises and events concerned.

13.4 The holder of a premises licence which includes the sale and supply of alcohol must nominate a Designated Premises Supervisor (DPS). That person will normally have been given day to day responsibility for running the premises. The DPS will also be in possession of a personal licence. The Act does not require the presence of the DPS at all

material times.

13.5 The DPS will be readily identifiable on the premises as a person in a position of authority. No sale or supply of alcohol may be made at a time when no DPS has been specified on the licence or at a time when the DPS does not hold a Personal Licence.

14.1 Where an application for a review of a premises licence is made, we will inform the public of the application for review in accordance with the regulations made under the Act thereby allowing any other responsible authority, authorised person or interested party to also make application at that time.

Human Rights Act Considerations

Members are reminded of the consideration they should give to the Human Rights Act 1998 in particular those rights afforded by Article 6 (right to a fair hearing), Article 1 of the First Protocol (protection of property) and Article 8 (right to respect for private and family life).

DETAILS OF CONSULTATION

9. The statutory consultation has taken place. One representation has been received within this statutory period and this is detailed earlier in this report.

BACKGROUND PAPERS

10. Burnley Borough Council Statement of Licensing Policy.
Licensing Act 2003.

Home Office Guidance issued under Section 182 of the Licensing Act 2003

FURTHER INFORMATION

PLEASE CONTACT:

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