

REPORT TO LICENSING SUB-COMMITTEE

DATE	2nd July 2018
PORTFOLIO	Regulation
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Licensing Act 2003 Determination of applications to transfer premises licence and to specify a new premises supervisor**PURPOSE**

1. To advise members of a requirement to determine applications to transfer a premises licence under Section 44 of the Licensing Act 2003 and to specify a new Designated Premises Supervisor (DPS) under Section 37 of the Licensing Act 2003

The premises are M&M Food Store, 67-69 Athol Street South, Burnley

RECOMMENDATION

2. Members are recommended to make determinations as required by Regulation 26(2) of the Licensing Act (Hearings) Regulations 2005.

Having considered all relevant facts, the Committee is empowered to either grant the applications or, having regard to the Police objection notice, reject the applications if it considers it necessary for the promotion of the crime prevention objective to do so.

REASONS FOR RECOMMENDATION

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

SUMMARY OF KEY POINTS

4. The premises currently hold a licence which authorises the supply alcohol by retail sale for consumption off the premises.

On the 17th April 2018, the Licensing Authority received an application from Lancashire County Council Trading Standards Service to review the Premises Licence of M&M Food Store, 67-69 Athol Street South, Burnley. The grounds for the application being that the licensing objectives relating to the Prevention of Crime and Disorder are not being observed at the premises. The premises licence holder and DPS at this time was Arshad

Mahmood.

5. On the 5th June 2018, the Licensing Authority received an application from Mrs Rehana Iqbal; the wife of Arshad Mahmood to transfer the premises licence into her name and to specify herself as the new DPS. The applications to transfer and vary the DPS had immediate effect, replacing Arshad Mahmood as premises licence holder and DPS.

On the 6th June 2018 a hearing took place to consider the review application submitted by Lancashire Trading Standards. The committee determined to adjourn the review hearing until after the date of this hearing.

6. On the 5th June 2018 the Chief Officer of Police objected to both applications on the grounds of Crime & Disorder on the basis of new information provided by Lancashire Trading Standards Service relating to the impending prosecution of Rehana Iqbal. Details of this objection are appended at Appendix 'A' of this report.
7. The review application submitted by Lancashire Trading Standards will be the subject of a hearing to be held on 11th July 2018.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

8. Nil

POLICY IMPLICATIONS

9. The following paragraph from Burnley Borough Council's Statement of Licensing Policy agreed by Full Council are relevant to this application:

3.7 Under the Crime and Disorder Act 1998, the authority must exercise its functions, having regard to the likely effect on crime and disorder in its area, and must do all it can to prevent crime and disorder. Where its discretion is engaged, the authority will seek to promote the licensing objective of preventing crime and disorder in a manner which supports the Lancashire County Council Community Safety Action Plan and any local community safety priorities or emerging threats identified Burnley Community Safety Delivery Group (MATAC)

The following paragraphs from the Section 182 Home Office Guidance published in April 2017 are also relevant to this application:

4.39 The police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a DPS is first specified in relation to particular premises and the specification of that DPS in relation to the particular premises gives rise to exceptional concerns. For example, where a personal licence holder has been allowed by the courts to retain their licence despite convictions for selling alcohol to children (a relevant offence) and then transfers into premises known for underage drinking.

4.40 Where the police do object, the licensing authority must arrange for a hearing at which

the issue can be considered and both parties can put forward their arguments. The 2003 Act provides that the applicant may apply for the individual to take up post as DPS immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.

8.98 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police or the Home Office (Immigration Enforcement) raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.

8.99 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.

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

10. None

BACKGROUND PAPERS

11. Burnley Borough Council Statement of Licensing Statement of principles.
Licensing Act 2003.
Guidance to the Licensing Act 2003 issued under Section 182.

FURTHER INFORMATION

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