



Licensing Act 2003 Sub-Committee

Agenda and Reports

For consideration on

Thursday, 25th June 2009

In Committee Room 1, Town Hall, Chorley

At 2.00 pm



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16 June 2009

Dear Councillor

LICENSING ACT 2003 SUB-COMMITTEE - THURSDAY, 25TH JUNE 2009

You are invited to attend a meeting of the Licensing Act 2003 Sub-Committee to be held in Committee Room 1, Town Hall, Chorley on Thursday, 25th June 2009 commencing at 2.00 pm.

AGENDA

1. **Apologies for absence**
2. **Declarations of Any Interests**

Members are reminded of their responsibility to declare any personal interest in respect of matters contained in this agenda. If the interest arises **only** as result of your membership of another public body or one to which you have been appointed by the Council then you only need to declare it if you intend to speak.

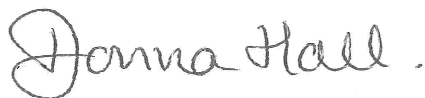
If the personal interest is a prejudicial interest, you must withdraw from the meeting. Normally you should leave the room before the business starts to be discussed. You do, however, have the same right to speak as a member of the public and may remain in the room to enable you to exercise that right and then leave immediately. In either case you must not seek to improperly influence a decision on the matter.

3. **Application to transfer a Premises Licence under Section 42 of the Licensing Act 2003 Relating to the premises known as The Swan with Two Necks, Hollinshead Street, Chorley (Pages 1 - 16)**

To receive and consider the enclosed report of the Corporate Director (Neighbourhoods).

4. **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely



Donna Hall
Chief Executive

Cathryn Barrett
Democratic and Member Services Officer

E-mail: cathryn.barrett@chorley.gov.uk
Tel: (01257) 515123
Fax: (01257) 515150

Distribution

1. Agenda and reports to all Members of the Licensing Act 2003 Sub-Committee (Councillor (Chair) and Councillors Ralph Snape and John Walker for attendance.
2. Agenda and reports to Janet Brereton (Legal Assistant (Licensing and Registration)), Stephen Culleton (Licensing Manager), Bob Beeston (Licensing Enforcement Officer), Zeynab Patel and Cathryn Barrett (Democratic and Member Services Officer) for attendance.

This information can be made available to you in larger print or on audio tape, or translated into your own language. Please telephone 01257 515118 to access this service.

આ માહિતીનો અનુવાદ આપની પોતાની ભાષામાં કરી શકાય છે. આ સેવા સરળતાથી મેળવવા માટે કૃપા કરી, આ નંબર પર ફોન કરો: 01257 515822

ان معلومات کا ترجمہ آپ کی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون

01257 515823

کیجئے:

CHORLEY BOROUGH COUNCIL**LICENSING ACT 2003****SUB-COMMITTEE****GENERAL PROCEDURE POINTS FOR HEARINGS****INTRODUCTION**

The Licensing Act 2003 Sub-Committee will conduct hearings in accordance with the following general principles:

- All parties have a right to a fair hearing.
- Decision-making will be conducted in an open, transparent and accountable way.
- Each application will be determined on its own merits and the decision will be based upon:
 - the merits of the application
 - the promotion of the four licensing objectives
 - the Council's Statement of Licensing Policy
 - the Guidance issued by the Secretary of State for Culture, Media and Sport under Section 182 of the Licensing Act 2003
- the Licensing Authority will only permit licensing decisions to be taken by sub-committee consisting of three members. In the event of one member being unable to attend, the Licensing authority will use its best endeavours to substitute another member, taken from the membership of the Licensing Act 2003 Sub-Committee reserve list.
- the Sub-Committee may disallow cross-examination in exceptional circumstances; this decision will be taken on a case by case basis with a presumption to allow. However, parties are advised that the Sub-Committee wishes to discourage hostile cross examination.
- late representations and evidence will usually only be considered with the agreement of all parties present.
- decisions will generally be taken regardless of whether the applicant/other party is present unless the Sub-Committee consider it necessary in the public interest to adjourn the hearing to a specified date. All notices and representations from absent parties will be considered.
- the Sub-Committee will generally allow parties a maximum of 30 minutes per party to make all relevant Statements. However, the Sub-Committee recognises that in certain circumstances this may be insufficient due to the complexity of the issues involved. In this situation the Sub-Committee will consider representations from those parties involved in the hearing as to the length required to make all relevant statements. The

Licensing Authority respectfully requests that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.

- the Sub-Committee recognises that Regulation 14 requires all hearings should take place in public unless the licensing authority “considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public” in which the applicant, those assisting the applicant or other interested parties can be excluded. In the absence of any criteria in the Licensing Act 2003, the guidance issued under section 182 of the Act or the licensing Regulations, the Licensing Authority has adopted the existing criteria in Schedule 12A of the Local Government Act 1972 for excluding the press and public. The public and press will be excluded when the Sub-Committee is considering an application for a personal licence, where Lancashire Police have lodged an objection notice due to an existing relevant offence(s). Generally, the public and the applicant will be excluded when the Sub-Committee is determining a decision. Once a decision has been made all parties will be readmitted and the Chair will announce the decision and give reasons.
- all parties will be notified of the decision in accordance with any periods set down by the Licensing Act 2003 or where none are prescribed within 5 working days.
- the Sub-Committee has the right to exclude any parties behaving in a disruptive manner at the hearing at its own discretion.

HEARING PROCEDURE

PREMISES/CLUB PREMISES LICENCE APPLICATIONS

1. CHAIR OF SUB-COMMITTEE:

- opens meeting
- introduces Members and Officers
- confirms details of all parties in attendance
- outlines procedure to be followed

2. LICENSING OFFICER OUTLINES THE APPLICATION AND RELEVANT REPRESENTATIONS

3. QUESTIONS TO LICENSING OFFICER FOR CLARIFICATION FROM:

- Sub-Committee
- The Applicant and/or Legal Representative

4. THE APPLICANT AND/OR LEGAL REPRESENTATIVE MAKES REPRESENTATIONS REGARDING HIS/HER APPLICATION

5. QUESTIONS TO THE APPLICANT AND/OR LEGAL REPRESENTATIVE FROM:

- Sub-Committee
- Interested Parties Representative

6. INTERESTED PARTIES REPRESENTATIONS

7. QUESTIONS TO INTERESTED PARTIES FROM:

- Sub-Committee
- The Applicant/ Legal representative

8. INTERESTED PARTIES INVITED TO BRIEFLY SUMMARISE

10. THE APPLICANT/ LEGAL REPRESENTATIVE) INVITED TO SUM UP (IF THEY WISH)

11. DECISION MAKING

All parties retire whilst Sub-Committee makes decision.

12. NOTICE OF DECISION

Parties re-admitted and Chair announces decision and reasons.

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Report of	Meeting	Date
Corporate Director (Neighbourhoods)	Licensing Act 2003 Sub Committee	25 June 2009

APPLICATION TO TRANSFER A PREMISES LICENCE UNDER SECTION 42 OF THE LICENSING ACT 2003 RELATING TO THE PREMISES KNOWN AS THE SWAN WITH TWO NECKS, HOLLINSHEAD STREET, CHORLEY

PURPOSE OF REPORT

1. To enable Members to determine an application to transfer the premises licence for The Swan with Two Necks from Swan Hospitality Ltd to Mrs Denise Hogan in light of representations received from Lancashire Constabulary.

RECOMMENDATION(S)

2. Members are requested to determine the application in consideration of the details contained in the report and any representations made by the applicant or her representative and Lancashire Constabulary.

EXECUTIVE SUMMARY OF REPORT

3. On 13 May 2009, the Council's Licensing team was notified by the Council's Legal team that the company to which the premises licence for The Swan with Two Necks was held by Swan Hospitality Ltd., had been dissolved by Companies House on 12 May 2009 for non production of accounts. In that instance, the premises licence lapses under Section 27 of the Licensing Act 2003. The Designated Premises Supervisor was notified of the situation on the same day and advised that the premise was no longer licensed.
4. On 14 May 2009, an application to transfer the premises licence with respect to The Swan with Two Necks was received by the Licensing Authority. A copy is attached at Appendix 1. This application was made by Kevil's Solicitors, 32 St Thomas's Road, Chorley, PR7 1HZ.
5. On 15 May 2009, Lancashire Constabulary made a representation in respect of this application. With regards to this application, the Police feel that there are exceptional circumstances that would undermine the licensing objective "Prevention of Crime and Disorder" as the stated reason as required at Section 42(6) of the Licensing Act 2003 if the application were granted. These are outlined below, and attached as in Appendix 2:
6. "In 2008 the Police instigated review proceedings against the Swan with Two Necks with a number of recommendations that included the removal of the DPS Denise Hogan. The review was heard in November 2008, the decision of which is the subject of appeal by the premises, which is to be heard at Chorley Magistrates Court in August. The Police still maintain their position with regards to the recommendations made at the initial hearing.

7. Denise Hogan is currently being prosecuted for alleged offences of providing unlicensed activity at the premises under the Licensing Act 2003.
8. On 30 December 2008, Denise Hogan was given an official police caution for selling alcohol to a person under 18 years of age relating to an offence committed at the premises on 21 December 2008.
9. The premise is currently subject to a warning notice of closure under Section 19 Criminal Justice and Police Act 2001 due to the alleged provision of unlicensed activity at the premises.
10. As can be seen there are a number of issues relating to the premises of which Denise Hogan has managerial responsibility and therefore the police make representations against the transfer on this basis.”
11. As Members will be aware, the licensing objectives are as follows:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
12. Where a notice is given under Section 42(6) (and not withdrawn) representation from the Chief Officer of Police, the authority must – (a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice, agree that a hearing is unnecessary, and (b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.
13. Section 4 of Licensing Act 2003 provides that a licensing authority must have regard to its Statement of Licensing Policy and also the guidance issued by the Secretary of State under Section 182 of the Act.
14. The Council’s Statement of Licensing Policy states in Paragraph 34.1:

The Act provides for any person who may apply for a premises licence to apply for a transfer of a premises licence. Where the applicant is an individual, he or she must be aged 18 years or over. Notice of the application must also be given to Lancashire Constabulary.
15. The Chief Officer of Lancashire Police may in exceptional circumstances object to a transfer on the grounds that it undermines the crime prevention objective.
16. The Human Rights Act 1998 makes it unlawful for a local authority to act in a way that is incompatible with the European Convention on Human Rights. The Council will have particular regard to the following convention rights;
 - Article 6 that in the determination of civil rights and obligations everyone is entitled to a fair public hearing within a reasonable time by an independent and impartial tribunal established by law;
 - Article 8 that everyone has the right to respect for his home and family life;
 - Article 1 of the First Protocol that every person is entitled to the peaceful enjoyment of his/her possessions including for example, possession of a licence.

- 17. Where such an objection is made the Licensing Authority will hold a hearing to consider the objection. The Licensing Authority will confine its consideration to the issue of the crime prevention objective. The burden would be on Lancashire Constabulary to demonstrate to the Licensing Authority that there were good grounds for believing that the transfer of the licence would undermine the crime prevention objective.
- 18. There is a right of appeal to the Magistrates Court within 21 days from the date of receipt of the notification of the decision.

CORPORATE PRIORITIES

- 19. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	x
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	

IMPLICATIONS OF REPORT

- 20. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	X
Legal	X	No significant implications in this area	

COMMENTS OF THE CORPORATE DIRECTOR (GOVERNANCE)

- 21. Pursuant to section 44(5), the Authority must reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.
- 22. Notification of determination under section 44 must state the licensing authority's reasons for granting or rejecting the application.
- 23. In accordance with Schedule 5, Part 1, Section 6(2), the chief officer of police may appeal against the decision to grant the application.

ISHBEL MURRAY
CORPORATE DIRECTOR (NEIGHBOURHOODS)

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Jayne Day	5708	09 June 2009	

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[Insert details including name and address of licensing authority and application reference if any]

Application to transfer premises licence to be granted under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I/We DEESE HEAD apply to transfer the premises licence described below under section 42 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number PLCA) 0357.

Part 1 - Premises details

Postal address of premises or, if none, ordnance survey map reference or description: THE SWAN WITH TWO NECKS, HOLLINSHEAD STREET. Post town: CHORLEY, Post code: PR7 1EP. Telephone number at premises (if any):

Please give a brief description of the premises: PUBLIC HOUSE

Name of current premises licence holder: SWAN HOSPITALITY LIMITED

Part 2 - Applicant details

In what capacity are you applying for the premises licence to be transferred to you?

- a) an individual or individuals* [checked] please complete section (A)
b) a person other than an individual *
i. as a limited company [] please complete section (B)
ii. as a partnership [] please complete section (B)
iii. as an unincorporated association or [] please complete section (B)
iv. other (for example a statutory corporation) [] please complete section (B)

- c) a recognised club please complete section (B)
- d) a charity please complete section (B)
- e) the proprietor of an educational establishment please complete section (B)
- f) a health service body please complete section (B)
- g) an individual who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital please complete section (B)
- h) the chief officer of police of a police force in England and Wales please complete section (B)

*If you are applying as a person described in (a) or (b) please confirm:

Please tick yes

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or
- I am making the application pursuant to a
 - statutory function or
 - a function discharged by virtue of Her Majesty's prerogative

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

Mr Mrs Miss Ms Other title (for example, Rev)

Surname: First names:

I am 18 years old or over

Current postal address if different from premises address:

Post Town: Postcode:

Daytime contact telephone number:

E-mail address (optional):

SECOND INDIVIDUAL APPLICANT (if applicable)

Mr Mrs Miss Ms Other title (for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post Town

Postcode

Daytime contact telephone number

E-mail address (optional)

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name
Address
Registered number (where applicable)
Description of applicant (for example partnership, company, unincorporated association etc)
Telephone number, if any
E-mail (optional)

Part 3

Please tick Yes

Are you the holder of the premises licence under an interim authority notice?

Do you wish the transfer to have immediate effect?

If not when would you like the transfer to take effect?

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

Please tick Yes

I have enclosed the consent form signed by the existing premises licence holder.

If you have not enclosed the consent form referred to above please give the reasons why not. What steps have you taken to try and obtain the consent?

THE CONSENT FORM CANNOT BE SUBMITTED AS THE EXISTING PREMISES LICENCE HOLDER IS A COMPANY THAT HAS BEEN DISSOLVED.

Please tick Yes

If this application is granted I would be in a position to use the premises during the application period for the licensable activity or activities authorised by the licence (see section 43 of the Licensing Act 2003).

Please tick Yes

I have enclosed the premises licence

If you have not enclosed premises licence referred to above please give the reasons why not.

THE PREMISES LICENCE IS NOT ENCLOSED. A REQUEST HAS BEEN MADE FOR A DUPLICATE LICENCE AND THE RELEVANT FEE PAID.

- I have made or enclosed payment of the fee
- I have enclosed the consent form signed by the existing premises licence holder or my statement as to why it is not enclosed
- I have enclosed the premises licence or relevant part of it or explanation
- I have sent a copy of this application to the chief officer of police today
- I understand that if I do not comply with the above requirements my application will be rejected



IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 4 – Signatures (please read guidance note 2)

Signature of applicant or applicant’s solicitor or other duly authorised agent (see guidance note 3). If signing on behalf of the applicant please state in what capacity.

Signature

.....

Date..... 13th MAY 2009

Capacity . APPLICANT

For joint applications signature of 2nd applicant or 2nd applicant’s solicitor or other authorised agent (please read guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

Date.....

Capacity

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)	
SIMON A. ROBINSON KEVILS 32 ST. THOMAS'S ROAD	
Post town GIBRALTAR	Post code F27 1H2
Telephone number (if any) 01257 265711	
If you would prefer us to correspond with you by e-mail your e-mail address (optional) S.robinson@kevlis.net	

Notes for Guidance

1. Describe the premises. For example the type of premises it is, its general situation and layout and any other information which would be relevant to the licensing objectives.
2. The application form must be signed.
3. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
4. Where there is more than one applicant, both applicants or their respective agents must sign the application form.
5. This is the address which we shall use to correspond with you about this application.

Lancashire Constabulary

Licensing Unit, Police Station, St Thomas's Road, Chorley, PR7 1DR

Tel: 01257 246215

Fax: 01257 246217

e-mail: southern-licensing@lancashire.pnn.police.uk



**Lancashire
Constabulary**

police and communities together

Licensing Officer
Chorley Borough Council
Council Offices
Union Street
Chorley
PR5 1DH

15th May 2009

Dear Sir

**RE: APPLICATION TO TRANSFER PREMISES LICENCE, LICENSING ACT
2003.**

Premises :- Swan with Two Necks, 1 Hollinshead Street, Chorley

Transfer of Premises Licence :- Denise Hogan

The Police have received an application for a transfer of the premises licence at the above premises into the name of Denise Hogan.

The Police would make representations against this application believing there are exceptional circumstances that would undermine the prevention of Crime and Disorder objective, these are outlined below;

In 2008 the Police instigated review proceedings against the Swan with Two Necks with a number of recommendations that included the removal of the DPS Denise Hogan. The review was heard in November 2008, the decision of which is the subject of appeal by the premises, which is to be heard at Chorley Magistrates Court in August. The police still maintain their position with regards the recommendations made at the initial hearing.

Denise Hogan is currently being prosecuted for alleged offences of providing unlicensed activity at the premises under the Licensing act 2003.

On 30th December 2008 Denise Hogan was given an official police caution for selling alcohol to a person under 18 years of age relating to an offence committed at the premises on 21st Decemeber 2008.

The premises is currently subject to warning notice of closure under Section 19 Criminal Justice and Police Act 2001 due to the alleged provision of unlicensed activity at the premises.

As can be seen there are a number of issues relating to the premises of which Denise Hogan has managerial responsibility and therefore the police make representations against the transfer on this basis

Yours faithfully

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Police Sergeant 1506

(Licensing)