

LICENSING ACT 2003 SUB-COMMITTEE

MONDAY, 26TH JANUARY 2015, ON THE RISE OF THE GENERAL LICENSING SUB COMMITTEE IN THE COUNCIL CHAMBER

AGENDA

APOLOGIES

1 **DECLARATIONS OF ANY INTERESTS**

2 **PROCEDURE**

General procedure points and hearing procedure for the meeting (enclosed)

(Pages 3 - 6)

3 **SECTION 37 OF THE LICENSING ACT 2003: APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS A PREMISES SUPERVISOR**

(Pages 7 - 18)

Report of the Director Public Protection, Street Scene and Community (enclosed)

4 **ANY URGENT BUSINESS PREVIOUSLY AGREED WITH THE CHAIR**

GARY HALL
CHIEF EXECUTIVE

Electronic agendas sent to Members of the Licensing Act 2003 Sub-Committee Councillor Marion Lowe (Chair) and Councillors Mike Handley and John Walker.

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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 it's 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**REVIEW OF PREMISES LICENCE****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 APPLICATION AND RELEVANT REPRESENTATIONS**3. QUESTIONS TO LICENSING OFFICER FOR CLARIFICATION FROM:**

- Sub Committee
- Applicant (Lancashire Police)
- Relevant representations – interested parties
- Premises Licence holder or representative

4. APPLICANT OR REPRESENTATIVE OUTLINES APPLICATION (LANCASHIRE POLICE)**5. QUESTIONS TO THE APPLICANT AND WITNESSES (LANCASHIRE POLICE) FROM:**

- Sub Committee
- Relevant representations – interested parties
- Premises Licence holder or representative.

6. RELEVANT REPRESENTATIONS – INTERESTED PARTIES**7. QUESTIONS TO THE RELEVANT REPRESENTATIONS – INTERESTED PARTIES FROM:**

- Sub Committee
- Applicant or representative (Lancashire Police)
- Premises Licence holder or representative

8. PREMISES LICENCE HOLDERS REPRESENTATIONS

- Premises Licence Holder (or representative) will present their case

9. QUESTIONS TO THE PREMISES LICENCE HOLDER AND WITNESSES FROM:

- Sub Committee
- Applicant or representative (Lancashire Police)
- Relevant representations – interested parties

10. APPLICANT OR REPRESENTATIVE TO SUM UP (LANCASHIRE POLICE)**11. RELEVANT REPRESENTATIONS – INTERESTED PARTIES TO SUM UP**

12 **PREMISES LICENCE HOLDER OR REPRESENTATIVE TO SUM UP**

13 **DECISION MAKING**

- All parties retire whilst Sub-Committee makes decision

14 **NOTICE OF DECISION**

- Parties re-admitted and Chair announces decision and reasons



Report of	Meeting	Date
Director of Public Protection, Street Scene and Community	Licensing Act 2003 Sub-Committee	26 January 2015

SECTION 37 OF THE LICENSING ACT 2003; APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS A PREMISES SUPERVISOR

PURPOSE OF REPORT

- To bring to the attention of Members an application received from Mr Sirwan Darkala of 57 Caroline Street, Preston PR1 5UY in respect of an application to vary a Premises Licence to specify a premises supervisor under Section 37 of the Licensing Act 2003.

RECOMMENDATION(S)

- Members are recommended to consider the contents of the report and any representations received and determine whether or not to grant the application.

EXECUTIVE SUMMARY OF REPORT

- On 18 December 2014 Chorley Council received an application from Mr Sirwan Darkala made under section 37 of the Licensing Act 2003 to vary a Premises Licence to specify a premises supervisor at the premises licence number PLA0396 known as K & M Deli at 90 Market Street, Chorley. (The premises is known locally as the Polish delicatessen and is popular with the resident Polish community). Lancashire Constabulary made representation toward the application on 30 December 2014 in respect that the applicant Mr Darkala who is also the proposed Designated Premises Supervisor, has offences recorded against him which are not spent in relation to the Rehabilitation of Offenders Act 1974.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities	X	An ambitious council that does more to meet the needs of residents and the local area	

BACKGROUND

- On 18 December 2014 Chorley Council received an application from Mr Darkala to vary a Premises Licence to specify a premises supervisor made under section 37 of the Licensing Act 2003. The application was made in the correct manner and contained the following:

The Fee, the proposed premises supervisor consent form, within the application the Section 38 provision has been selected; this allows the application to have immediate effect. The Application is attached as **Appendix 1**.

6. Members will note the application does not state by whom the application is being made. Officers accepted the application in light of Mr Darkala making a previous application on 3 December 2014 to transfer the premises licence into his name under Section 42 of the Licensing Act 2003.
7. On 30 December 2014 Lancashire Constabulary made representation toward this application in respect that the applicant has offences recorded against him, in that Mr Darkala was found guilty at Preston Magistrates Court on 14 May 2014, the conviction related to "Supplying tobacco products the producer having failed to comply with The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, on 02/10/13 for which he received a £500.00 fine.
8. On 13 January 2015 Lancashire Constabulary provided a detailed explanation of the representation towards the application received, a copy of the representation is attached as **Appendix 2**.
9. The representation received from the Police is in accordance with Section 37(5) LA 03 and as such a hearing is required to determine whether Mr Darkala should occupy the position of DPS of the said premises.

The Legislation

10. Under Section 37 LA 03 the premises licence holder is entitled to apply to vary the premises licence so as to specify the individual named in the application as the premises supervisor. Under Section 37(4) LA03 the premises licence holder must give notice of the application for the Chief Officer of Police for the area within which the premises is located. Under Section 37(5) LA03. Where a Chief Officer of Police notified under subsection (4) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the Licensing Act 2003 licensing objective relating to the Prevention of Crime and Disorder, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.
11. Members should rely on Section 39 Determination of section 37 application when determining this matter, which states;
 - (1) This section applies where an application is made, in accordance with section 37, to vary a premises licence so as to specify a new premises supervisor ("the proposed individual").
 - (2) Subject to subsection (3), the relevant licensing authority must grant the application.
 - (3) Where a notice is given under section 37(5) (and not withdrawn), 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.
 - (4) Where an application under section 37 is granted or rejected, the relevant licensing authority must give a notice to that effect to—
 - (a) the applicant,
 - (b) the proposed individual, and
 - (c) the chief officer of police for the police area (or each police area) in which the premises are situated.
 - (5) Where a chief officer of police gave a notice under subsection (5) of that section (and it was not withdrawn), the notice under subsection (4) of this section must state the authority's reasons for granting or rejecting the application.

(6) Where the application is granted, the notice under subsection (4) must specify the time when the variation takes effect.

That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

S182 Guidance

- 12. Para 4.19 – In every premises licensed for the supply of alcohol, a personal licence holder must be specified at the “Designated Premises Supervisor”, as defined in the 2003 Act. This will normally be the person who has been given the day to day responsibility for running the premises by the premises licence holder.
- 13. Para 4.20 – The Government thinks it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly.
- 14. Para 4.26 – Only one DPS may be specified in a single premises licence, but a DPS may supervise more than one premises as long as they are able to ensure that the four licensing objectives are properly promoted and the premises complies with licensing law and licensing conditions.
- 15. Para 4.27 – The police may object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime and prevention objective. The police can object where, for example, a particular DPS is appointed or transfers into particular premises and their presence in combination with 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 minors (a relevant offence) and then transfers into premises known for underage drinking.
- 16. Para 4.28 – 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 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.
- 17. Para 4.29 – The portability of personal licences from one premises to another is an important concept within the 2003 Act. The Secretary of State expects that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on un-exceptional grounds, they should raise the matter with the chief officer of police as a matter of urgency.

IMPLICATIONS OF REPORT

18. This report has implications in the following areas and the relevant Directors’ comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE MONITORING OFFICER

19. In reaching its decision the Licensing Authority must have regard to the Licensing Act 2003, its Statement of Licensing Policy and any guidance issued by the Secretary of State under s182 of Licensing Act 2003 with a view to promoting the licensing objectives. Extracts of the relevant legislation and S182 guidance is set out in the body of the report.

20. The Police and the Applicant have a right of appeal to the Magistrates Court within 21 days pursuant to Part 1, Licensing Act 2003.

JAMIE CARSON
DIRECTOR OF PUBLIC PROTECTION, STREETSCENE AND COMMUNITY

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
S Culleton	5665	9 Jan 2015	***

LICENSING ACT 2003
Section 37



Application to vary a premises licence to specify an individual as designated premises supervisor 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

(1) I/We

being the premises licence holder, apply to vary a premises licence to specify the individual named in this application as the premises supervisor under section 37 of the Licensing Act 2003

Premises licence number

PLA0396

Part 1 - Premises details

Postal address of premises or, if none, Ordnance Survey map reference or description 90 MARKET STREET	
Post town CHORLEY	Postcode PR7 2SF
Telephone number (if any) 01253 244809	

Description of premises (please read guidance note 1)
IT IS A SHOP

(1) Insert full name(s) of premises licence holder

Part 2

Full name of proposed designated premises supervisor

SILWAN DARKALA

Personal licence number of proposed designated premises supervisor and issuing authority of that licence (if any)

P2DA17781
Preston
City Council
01772 906096

Full name of existing designated premises supervisor (if any)

SILWAN DARKALA

Please tick ✓/✗

I would like this application to have immediate effect under section 38 of the Licensing Act 2003

I have enclosed the premises licence or relevant part of it

(if you have not enclosed the premises licence, or relevant part of it, please give reasons why not)

Reasons why I have failed to enclose the premises licence or relevant part of it

You have got it

Please tick ✓/✗

- I have made or enclosed payment of the fee
- I will give a copy of this application to the chief officer of police
- I have enclosed the consent form completed by the proposed premises supervisor
- I have enclosed the premises licence or relevant part of it, or explanation
- I will give a copy of this form to the existing premises supervisor, if any
- 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 3 - Signatures (please read guidance note 2)

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

Signature 

Date 17-12-14

Capacity

For joint application's 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 address for correspondence associated with this application (please read guidance note 5)	
90 MARKET STREET	
Post town Chorley	Postcode PR7 2SF
Telephone number (if any) 07741244809	
If you would prefer us to correspond with you by e-mail your e-mail address (optional)	
BALIC-88@HOTMAIL.COM	

Notes for Guidance

1. Describe the premises. For example the type of premises it is.
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

I also confirm that I am applying for, intend to apply for or currently hold a personal licence, details of which I set out below.

Personal licence number

[insert personal licence number, if any]

PRPA17781

Personal licence issuing authority

PRESTON CITY COUNCIL

[insert name and address and telephone number of personal licence issuing authority, if any]

PRESTON CITY COUNCIL

PR12RL

TOWN HALL, LAOCABEY ROAD PRESTON

01772 906096

Signed



Name (please print) SIRWAN DARWALA

Date 17-12-14

Consent of individual to being specified as premises supervisor

I [full name of prospective premises supervisor] **SIRWAN DARKALA**
 Mr / Mrs / Ms / Miss / Other please state

of [home address of prospective premises supervisor]
**57 CARDINE Street
Preston
PR1 5UY**

hereby confirm that I give my consent to be specified as the designated premises supervisor in relation to the application for

[type of application] **DPS**

by

[name of applicant] **SIRWAN DARKALA**

relating to a premises licence

[number of existing licence, if any] and expiry date **PRPA17781 12/12/2022**

for

[name and address of premises to which the application relates] **SIRWAN DARKALA**
**14 90 MARKET Street
Chorley
PR7 2SF
2SF**

and any premises licence to be granted or varied in respect of this application made by

[name of applicant] **SIRWAN DARKALA**

concerning the supply of alcohol at

[name and address of premises to which application relates]
**SIRWAN DARKALA
90 MARKET Street
Chorley
PR7 2SF**

Chorley Council
Official Receipt

Date 18/12/2014 Time 10:53:50AM
Term 07 Cashier 025

Premises Licence

Reference : 4120/60203
Fund : Misc Income
Audit Num : CHCA07068331
Amount : £ 23.00
Paytype : Cash

>>> THANK YOU FOR YOUR PAYMENT <<<

Please check this receipt and keep it in a
safe place. This is your proof of payment

Chorley Council
Customer Services
PO Box 352
Chorley
PR7 1BD
www.chorley.gov.uk

** COPY RECEIPT ONLY **

APPENDIX 2

Lancashire Constabulary's grounds for making representation with regards to the variation of DPS at K&M Deli, 90 Market Street, Chorley.

With regards to the application to vary the DPS at K & M Deli, 90 Market Street, Chorley (reference 14/01495/LAPLA) made by Sirwab MR DARKALA of 57 Cardine St, Preston, Lancashire Constabulary would like to make representations against this variation being made. The grounds for this objection are as follows. On the 14th of May, 2014, MR DARKALA was found guilty at Preston Magistrates court of 'Supplying tobacco products the producer having failed to comply with Regulation 4 to 10 requirements on 02/10/13' for which he received a £500 fine.

The following is the record made by the court :-

1.	14/05/14	PRESTON MAGISTRATES	
1.	SUPPLY TOBACCO PRODUCT THE PRODUCER HAVING FAILED TO COMPLY WITH REGS 4 TO 10 REQUIREMENTS ON 02/10/13 (NO PLEA TAKEN) TOBACCO PRODUCTS (MANUFACTURE PRESENTATION AND SALE) (SAFETY) REGS 2002 s.14		FINE 500.00 VICTIM SURCHARGE 50.00 COSTS 230.00

The above offence comes under the 'Consumer Protection Act 1987' and refers to cigarettes being sold in non-compliant packaging. The regulations referred to are included in 'The Tobacco Products (Manufacture, Presentation and Sale)(Safety) Regulations 2002. (see below).

The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002

- 2002 No. 3041
- Regulation 14
 14. ***(1) No person shall supply any tobacco product in respect of which the producer has not complied with any requirement of regulations 4 to 10 which relates to that product.***
 - (2) Except in relation to products intended for the travel retail sector, paragraph (1) does not apply where a tobacco product is or is to be supplied for consumption outside the United Kingdom.***
 - (3) Where in relation to a brand of cigarettes the producer is required by regulation 6 to provide on the packet a statement of tar, nicotine and carbon monoxide yields notified to him by, or agreed with, the Secretary of State, the producer shall not, after the expiry of a period of three months beginning with the date of expiry of the period of nine months mentioned in regulation 6(4)(a) or (b) or the date of the agreement, supply a packet of cigarettes which does not provide that statement.***

APPENDIX 2

Could the Committee also note than on the initial representations made by Lancashire Constabulary, an incorrect reference was made to the offences being under the Fraud Act :-

“Fraud is a ‘Relevant Offence’ under Schedule 4 of the Licensing Act 2003”

Lancashire Constabulary apologise to the Committee for this error. This was made as the above regulations were believed to involve ‘Excise and Duty’ Fraud at the time of making the representations. On further investigation with Preston Trading Standards, this was found to be incorrect.

With regards to the ‘Revised Guidance issued under section 182 of the Licensing Act 2003’ by the Home Office, Lancashire Constabulary believes that allowing MR DARKALA to become a DPS whilst the offence is ‘un-spent’ would be contrary to the guidance. This guidance states (s 4.27) that ‘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’.

MR DARKALA has recently shown that he is unable to effectively supervise premises in Preston having been convicted of three offences. Although the offences for which he was convicted pertain to the sale of Tobacco, Lancashire Constabulary believes that he may have a propensity to commit similar crimes in relation to alcohol sales. It is also worth noting by the Committee that he has 3 impending prosecutions for like offences, again in the Preston area. These are due to be heard on the 16th of January, 2015 at Preston Magistrates Court and the Committee will be updated as to the result in due course.

Lancashire Constabulary feels that in allowing MR DARKALA to act as a DPS in the above premises, this would undermine all 4 of Licensing Objectives, these being the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. Therefore, Lancashire Constabulary would respectfully seek to put the above before the Chorley Borough Licensing sub-committee for their attention and consideration.

PS2520 Phil Elsdon

SOUTH BCU Licensing department

Lancashire Constabulary