

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.

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