

Report of	Meeting	Date
Director of People and Places	Licensing Act 2003 Sub-Committee	15 September 2010

## **APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003, FOR THE PARKVILLE HOTEL AND TRUFFLES RESTAURANT**

### **PURPOSE OF REPORT**

1. To enable Members to determine an application for a variation of the premises licence for the Parkville Hotel and Truffles Restaurant 174 Preston Road, Whittle-le-Woods, Chorley, PR6 7HE.

### **RECOMMENDATION(S)**

2. Members are recommended to consider the application and any representations made by relevant authorities or interested parties and after considering those representations determine the application for the purpose of the premises licence for Parkville Hotel and Truffles Restaurant.

### **EXECUTIVE SUMMARY OF REPORT**

3. The Council has received an application from Marsden Rawsthorn/Hardwick's Solicitors on behalf of Ford Hotels Limited, under Section 34 of the Licensing Act 2003 for the Variation of the Premises licence for the Parkville Hotel and Truffles Restaurant at 174 Preston Road Whittle-le-Woods. The application is attached as appendix 1. The application seeks to vary the existing licensable provisions to :

- E Live music Monday to Sunday, 08.00 – 03.00 indoors and out.
- F Recorded Music Monday to Sunday, 08.00 – 03.00 indoors and out.
- H Anything of a similar description to that falling within (e), (f) or (g) Monday to Sunday 08.00 – 03.00 indoors and out.
- I Provisions of facilities for making music - Monday to Sunday, 08.00 – 03.00 indoors and out.
- J Provisions of facilities for dancing - Monday to Sunday, 08.00 – 03.00 indoors and out.
- K Provision of facilities for entertainment of a similar description to that falling within I or J, Monday to Sunday, 08.00 – 03.00 indoors and out.
- L Late night refreshment Monday to Sunday 00.01– 00.00 indoors and out (23.00 – 05.00).
- M Supply of alcohol Monday to Sunday 01.00 – 00.00 on and off the premises.
- O Hours the premises are open to the public Monday to Sunday 01.00 – 00.00.

4. The application seeks to remove existing conditions contained in Annex 1 and Annex 2 (a) of the Premises licence currently in force; this is attached at appendix 2.

P (This section describes the steps to be taken by the Premises Licence holder to promote the 4 licensing objectives),

a) General

These premises are to be used primarily for fine dining as a wine bar. Families are to be encouraged and the facilities are aimed at the higher end of the market.

b) The Prevention of Crime and Disorder,

CCTV to be installed with the approval of Lancashire Police within 31 days. Recording to be retained and made available to police. Think 21 policy to be implemented. Any events purely music and alcohol led consideration to be given for SIA door staff. Premises to be a member of local pub watch. No all inclusive drinks offers to be available.

c) Public Safety,

The premises will be fully certificated i.e. Fire safety ECT.  
Incident book to be maintained.

d) The Prevention of Public Nuisance.

Provision to be made to ensure that these premises are run in an orderly manner. Signs to be displayed asking people to leave the premises in an orderly manner. Noise from entertainment to be monitored by DPS and adjusted accordingly, 30 minutes before closing music to be played at a lower volume and tempo. All outside areas used for consumption of alcohol shall cease to be used after midnight (this has now been amended to 23.00 hrs).

All external windows and doors other than for entry and egress shall remain closed after midnight when premises are open to the public. (A further condition has been agreed with the applicant which states; All doors and windows shall remain closed during the provision of regulated entertainment other than for entry and egress).

The DPS to monitor functions and record any actions in a daybook.

The DPS to monitor noise levels at the nearest noise sensitive location.

e) The protection of Children from Harm.

Children will only attend the premises with their parents and an ID policy will operate for 18 years old. Staff will be trained in this regard.

5. Representations from the Responsible Authorities.

There are no representations from the responsible authorities.

6. Lancashire Constabulary did raise representation towards this application, they have engaged with the applicant with regards to matters relating to this application with regards to The Prevention of Crime and Disorder, and are now satisfied that the operating schedule addresses the concerns raised, the representations have now been withdrawn.

7. The Council's Environmental Health Officer (Noise Pollution) has made the following comments with regards to noise complaints made towards the premises:

"Further to your consultation on the above premises, we have received 2 complaints in total relating to noise, both from the same complainant. The investigations have shown that the complaints have been unfounded. Conditions have been agreed with the applicant and included in the application, which should ensure no noise nuisance from the premises. Therefore I have no representation to make with regard to this application."

8. Representation received from interested parties.

The Council have received nine representations from interested parties, eight of these are from properties within the vicinity of the premises, and one has been received from the Chair of the local Parish Council on behalf of residents.

The issues raised by the representations relate to the licensing objective for;

- The Prevention of Crime and Disorder,
- The Prevention of Public Nuisance,
- Public Safety.

9. Where the representations have been received by the Council in a timely manner the persons making representation were invited to contact the Public Protection Officer to discuss their concerns and offer any remedies they believe would alleviate their concerns. Only one resident made contact to allow for mediation prior to making representation. The outcome of that meeting was not satisfactory to all parties.

10. All parties to this application have been invited to attend the hearing under the Licensing Act 2003 (Hearing) Regulations 2005, to make representation. The representations received are attached as appendix 3.

11. The Committee has the following options:

- (i) to reject the application in part or whole
- (ii) to grant the application
- (iii) to modify the conditions of the licence

## **POLICY AND LEGAL CONSIDERATIONS**

12. Section 4 of the Licensing Act 2003 provides that a Licensing Authority must have regard to its Statement of Licensing Policy and to the guidance issued by the Secretary of State under section 182 of the Act.

13. As members will be aware the four licensing objectives are as follows:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- The protection of children from harm.

14. The Licensing Authority shall determine the application, having had considered the representations that have been made, and having regard to its Statement of Licensing Policy and to the guidance issued by the Secretary of State under section 182 of the Act. Section 35 Licensing Act 2003 is the authority the Licensing Sub-Committee can rely upon with regards to this matter, which is reproduced below.

Section 35, Determination of application under Section 34.

- 1) This section applies where the relevant licensing authority:
  - (a) receives an application, made in accordance with section 34, to vary a premises licence, and
  - (b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.
- 2) Subject to subsection (3) and section 36(6), the authority must grant the application.
- 3) Where relevant representations are made, the authority must—

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
    - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.
  - 4) The steps are:
    - (a) to modify the conditions of the licence;
    - (b) to reject the whole or part of the application;  
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added
  - 5) In this section “relevant representations” means representations which:
    - (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
    - (b) meet the requirements of subsection (6)
  - 6) The requirements are:
    - (a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5) (c) by virtue of section 34(5),
    - (b) that they have not been withdrawn, and
    - (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
  - 7) Subsections (2) and (3) are subject to sections 19, 20 and 21 (which require certain conditions to be included in premises licences).
15. Members must have regard to the Statement of Licensing Policy when determining this application. In particular, member’s attention is drawn to the following paragraphs:

Paragraph 1.3 - The policy provides guidance on the general approach the Council, as Licensing Authority, within the meaning of the Act, will take in terms of licensing, However, each application will be considered separately, on its individual merits.

Paragraph 1.4 - The Statement of Licensing Policy sets out how the licensing objectives will be achieved and to secure the safety and amenity of residential communities whilst facilitating a sustainable entertainment and cultural industry. The Policy recognises both the needs of residents for a safe and healthy environment in which to live and work and the importance of safe and well run entertainment premises to the local economy. Balancing these interests will not always be straightforward and will be guided by the four licensing objectives.

Paragraph 1.5 - This policy does not seek to undermine the right of any individual to apply under the Act for a variety of permissions and as stated above each application will be considered on its individual merits. Nor does the Policy seek to override the right of a person to make representations on an application or seek a review of a licence or certificate. However, the Council in adopting this policy is indicating that a wide range of considerations will be taken into account.

Paragraph 2.2 - Each of the licensing objectives are of equal importance with these objectives.

Paragraph 2.3 - Each of the licensing objectives is of equal importance for the purposes of this policy.

Paragraph 2.4 - This policy statement is designed to deal with matters within the control of the licensee. It focuses on the premises in which each business is carried on and the effect that has on members of the public living, working or engaged in normal activity in the vicinity.

Paragraph 2.5 - Licensing law is not envisaged by the Licensing Authority as a mechanism to control anti-social behaviour by individuals once they are beyond the direct control of the licensee of any premises concerned. Therefore any terms and conditions imposed will be focused on matters within the control of individual Licensees and others granted relevant permissions. These matters will centre on the premises and places used for licensable activities and in the vicinity of the places.

Paragraph 2.6 - The Licensing Authority considers that every holder of a licence, certificate or permission and designated premises supervisor is responsible for minimising the impact of their activities and anti-social behaviour by their customers within the vicinity of their premises.

Paragraph 5.3 - The policy will not fix the hours during which alcohol can be sold. The Licensing Authority considers that stricter controls regarding noise nuisance may be necessary in more densely populated areas. The grant of a licence will be dependent on the impact of an activity on the licensing objectives.

## **CRIME AND DISORDER**

16. Paragraph 6.1 - Licensed premises, especially those offering late night entertainment, alcohol and refreshment can be a source of crime and disorder problems.

Paragraph 6.2 - The Council is committed to reducing crime and disorder across the Borough through its statutory duty under the Crime and Disorder Act 1998 and the Community Safety Strategy. Statistics from the Community Safety Partnership regarding Crime and Disorder in the Licensing Authority area.

Paragraph 6.3 - The Community Safety Partnership will regularly monitor and review crime statistics within the Borough and their association with alcohol and provide reports to the Licensing Authority where appropriate. The Licensing Authority will give due consideration to any submissions made concerning the impact on crime and disorder of alcohol related problems. The Council may review this Policy where it considers it appropriate to do so.

Paragraph 6.4 - The Council will have particular regard to the likely impact on licensing of related crime and disorder in the Borough particularly when considering the location, impact and the operation and management of all proposed licensed premises and applications for variations.

Paragraph 6.5 - The promotion of the crime and disorder-licensing objective, places a responsibility on licence holders to try and achieve this objective. Applicants will therefore be required to address, in their operating schedules, where appropriate, those measures that have been identified and will be implemented and/ or maintained to reduce or prevent crime and disorder in the vicinity of their premises. The Licensing Authority considers that best practice will be exemplified by the night safe initiative and would recommend that licence holders join this initiative.

Paragraph 6.6 - Where relevant representations are received on the crime and disorder objective, the Licensing Authority may have regard to the following where relevant: (though this is not an exhaustive list):

- Crime prevention measures.

- Physical security features installed in the premises, (this may include CCTV both inside and outside the premises, where alcohol is stored in relation to off licences, the use of toughened drinking glasses).
- Weapon detection and search facilities.
- procedures for risk assessing promotions and events such as ‘happy hours’, drinks promotions, for the potential to cause crime and disorder, and the plans to minimising such risks.
- Adoption of best practice guidance in relation to safer clubbing guide.
- measures to prevent the use or supply of illegal drugs including search and entry policies.
- Employment of licensed door supervisors.
- Participation in other appropriate schemes eg pub watch scheme.
- measures to be taken for the prevention of violence or disorder.

Paragraph 6.7 - The Licensing Authority where relevant representations are made will consider attaching conditions to deter and prevent crime and disorder, if appropriate and necessary and these may include conditions from the model pool of conditions. Certain premises may be required to install CCTV system to an evidential standard should the Council be satisfied it is necessary and /or appropriate to meet the licensing objectives.

Paragraph 6.8 - The Council reserves its right to use its powers to designate areas where alcohol may not be consumed in a public place to meet the Public Safety and Crime and Disorder objectives.

## LICENSING HOURS

17. Paragraph 7.1 - The policy recognises that longer (more flexible) licensing hours can contribute to easing crime and disorder problems by ensuring that concentrations of customers leaving premises simultaneously are avoided thus helping to reduce friction at taxi ranks, private hire offices, fast food outlets etc.

Paragraph 7.2 - Individual applications will be considered on their merits and in general terms a flexible approach will be adopted. Fixed predetermined closing times for particular areas will not form part of the policy and restrictions on trading hours will be considered only where necessary to meet the licensing objectives.

Paragraph 7.3 - The Licensing Authority, however, considers that the risk to disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning as the ambient noise levels will be lower. The Licensing Authority may impose stricter conditions with regard to noise control in areas, which have denser residential accommodation, but each premise will be considered on its individual merits.

Paragraph 7.5 - The Licensing Authority also recognises the principle of 24 hour opening of all licensed premises. However, it considers that longer opening hours may be more acceptable in commercial areas with high levels of public transport. The grant of a licence will in all cases be dependent on the impact of an activity in relation to the licensing objectives.

Paragraph 7.6 - Where relevant representations are received, the Licensing Authority may have regard to the following where relevant (though this is a non exhaustive list);

- the nature of the area where the premises are located (e.g. commercial, residential)
- Arrangements to ensure adequate availability of taxis and private hire vehicles, public transport

- Whether appropriate car parking is readily accessible to premises and whether the use/parking of vehicles would cause a demonstrable adverse impact on the amenity of residents
- whether the licensable activities are likely to cause adverse impact especially on local residents and whether appropriate measures will be put in place to prevent any adverse impact
- in relation to the grant of a new premises licence whether the premises will give rise to a negative cumulative impact on one or more of the licensing objectives

18. In assessing the impact of the activity proposed the Licensing Authority may consider a number of factors inter alia,

- the type and scale of activity, the number and nature of clientele likely to attend
- the levels of noise from the premises, which may be acceptable later in the evening
- the proposed hours of operation
- the levels of public transport accessibility for customers and the likely means of public or private transport that will be used, access to private hire/taxis
- the means of access to the premises e.g. whether on principal pedestrian routes
- the level of car parking demand on surrounding residential streets and its effect on local residents, and movement of traffic
- the cumulative impact of licensed premises in an area and scope for mitigation
- Frequency of the activity

19. Operating Schedules to set out the measures to be taken to ensure that the licensing objectives are addressed. Applicants are also referred to paragraph 6.6.

### **PROTECTION OF CHILDREN FROM HARM**

20. Paragraph 10.1 - The policy does not seek to prevent or limit the access of children to licensed premises unless it is necessary for the prevention of physical, moral or psychological harm to them. The Licensing Authority is committed to protecting children from harm and activities associated with premises that sell alcohol or provide regulated entertainment, May in certain circumstances, give rise to concerns for the health and welfare of children. For the purpose of this Policy, a 'child' is defined as any person who is under the age of 16.

Paragraph 10.2 - The Licensing Authority will not impose any conditions that specifically require access of children to premises and where no limitation is imposed this should remain a matter for the individual licence holder or club premises certificate holder. The Licensing Authority will consider the individual merits of each application. However, the Licensing Authority will have particular concern in respect of children:

- Where there have been convictions of the current management for serving alcohol to minors or those where there is a reputation of under age drinking
- Where there is reputation of drug taking or dealing
- where there is a strong element of gambling on the premises (but not for example, the simple presence of a small number of cash prize gaming machines)
- Where entertainment of an adult or sexual nature is provided (see paragraph 29 for additional information)
- Where the supply of alcohol is the exclusive or primary purpose of the services provided at the premises

Paragraph 10.3 - The Licensing Authority, in such circumstances as outlined above, may consider it necessary to impose a complete prohibition; it is envisaged that this would be rarely imposed. The Licensing Authority would normally be likely to impose requirements such as:

- Limitations on the hours when children may be present.
- age limitations for persons under 18
- limitations or exclusions when certain activities are taking place
- requirements for accompanying adults
- limitations of access to certain parts of the premises when particular licensable activities are taking place
- provision of suitable signage
- Such other conditions or restrictions as may be necessary to achieve the licensing objectives

Paragraph 10.4 - Licensees are not to provide alcohol except as provided for by the Act. The Council expects applicants to consider child access in their operating schedules and volunteer appropriate conditions where relevant. The Council recommends that the following documents should be used as evidence of age:

- Passport
- Photo Card Driving licence issued in the European Union
- Proof of Age Scheme Card (i.e. Portman Group) and schemes which carry the Proof of Age Standard Scheme logo
- Citizen Card supported by the Home Office
- Official ID card issued by HM Forces or a European Union Country bearing a photograph and date of birth of the holder.

Paragraph 10.5 - The Licensing Authority requires applicants to consider, where relevant, those factors that impact on the protection of children objective, and identify where necessary and appropriate, suitable measures to promote this objective. Applicants may wish to consider, where appropriate:

- arrangements to prevent children acquiring of consuming alcohol
- arrangements to prevent children being exposed to drugs, drug taking, or drug dealing
- arrangements to prevent children being exposed to gambling, or activities of an adult or sexual nature
- steps to be taken to prevent children being exposed to violence or disorder
- arrangements for training staff in relation to the protection of children
- Steps to be taken to prevent children purchasing cigarettes from vending machines and preventing access to Amusement with Prize Machines (except in accordance with the Gaming Legislation)

Paragraph 10.6 - Applicants may volunteer prohibitions and restrictions on their Operating Schedules as a result of their own risk assessments determining that the presence of children is undesirable or inappropriate. Where no relevant representations are made to the Licensing Authority these volunteered prohibitions and restrictions will become conditions attached to the licence or certificate. The Licensing Authority may impose conditions where relevant representations are made if it considers it necessary and/or appropriate including those drawn from the Model Pool of Conditions.

Paragraph 10.7 - The Licensing Authority will also expect applicants, where relevant, to consider how they intend to provide for the supervision of children as unaccompanied customers and as performers providing regulated entertainment. Licence holders should give consideration to the welfare of children as performers in such cases. As a minimum



requirement the Licensing Authority will require an adult to be nominated to be responsible for such child performers.

Paragraph 10.8 - Where large numbers of unaccompanied children are to be present e.g. children's show or pantomime; conditions may be imposed, where relevant representations are received, requiring the presence of an appropriate number of adult staff to ensure public safety and protection of children from harm. The Licensing Authority requires applicants to address those matters in their operating schedules. See paragraph 12.1 for further guidance.

Paragraph 10.9 - The Licensing Authority recognises Lancashire County Council Social Services Department or a future body with the relevant legislative functions of a social services department as being competent to advise on matters relating to the protection of children from harm.

## **CHILDREN AND PUBLIC ENTERTAINMENT**

21. Paragraph 12.1 - Where there is entertainment specifically provided for children (e.g. children's disco) the Licensing Authority would recommend as a minimum:

- an adult member of staff to be stationed in the vicinity of each of the exits, a minimum of one member of staff per 50 children or part thereof
- no standing to be permitted in any part of an auditorium during the performance
- No child unless accompanied by an adult to be permitted in the front row of any balcony.

Paragraph 12.2 - Where relevant representations are made, the Licensing Authority may, if it considers it necessary and/or appropriate attach conditions to licences and permissions to prevent harm to children; these may include those drawn from the Model pool of conditions relating to the Protection of Children from Harm.

## **PREVENTION OF PUBLIC NUISANCE**

22 Paragraph 13.1 - Licensed Premises have significant potential to adversely impact on communities through public nuisances arising from their operation.

Paragraph 13.2 - The Licensing Authority is aware of the importance of the licensed trade to the local economy as well as in cultural and social terms. The Licensing Authority is also concerned to protect the amenity of residents and businesses in the vicinity of licensed premises. 'Vicinity' is not defined in the Act or Guidance issued by the Secretary of State. Whether or not incidents can be regarded, as 'in the vicinity' of licensed premises is a question of fact and will depend on the particular circumstances of the case.

Paragraph 13.3 - The Licensing Authority will interpret 'public nuisance' in its widest sense and include such matters as noise emanating from the premises, light, litter, odour and anti social behaviour where these matters impact on those living or working in an area.

Paragraph 13.4 - Activities that involve public entertainment, drinking or eating, have the potential to impact adversely on their surrounding areas due to noise, litter, and odours. There is also the potential for disturbance caused by those attending licensable activities. Late at night the impact of licensed activities is likely to be more objectionable to residents living close to a licensed activity, as the ambient noise levels are often lower so noise disturbance becomes more noticeable.

Paragraph 13.5 - The policy allows for later opening hours except where there will be an adverse impact on the licensing objectives. In general the Licensing Authority will expect more comprehensive measures to be proposed at late night venues and/or where there has been a history of public nuisance.

Paragraph 13.6 - On receipt of relevant representations, the Licensing Authority will assess the likelihood of it causing an adverse impact, by generally considering the following factors where relevant:

- the location of the premises (in particular proximity to residential and other noise sensitive premises, e.g. hospitals, nursing homes, hospices and places of worship)
- the type of activities, the number and nature of clientele likely to attend at the time of the application
- the proposed hours of operation
- levels of public transport accessibility for customers either arriving or leaving the premises (including taxis and private hire)
- means of access to premises (whether on principal pedestrian routes)
- the level of car parking demand on any surrounding residential streets and its effect on local residents
- the cumulative impact on licensed premises in an area
- the scope for mitigating an impact i.e. CCTV, door supervisors
- the frequency of an activity
- the design and layout of the premises
- measures taken or proposed to be taken to prevent noise or vibration escaping from the premises e.g. sound proofing, air conditioning and sound limitation devices
- measures taken to prevent unreasonable disturbance by customers/staff arriving and leaving the premises, goods deliveries etc
- measures taken to lessen the impact of parking in the vicinity
- control of operating hours for all or parts of the premises (e.g. gardens, last admission times and 'wind down' periods)
- measures to be taken to prevent drunkenness on the premises
- measures to ensure collection and disposal of litter and waste outside their premises

Paragraph 13.7 - The Licensing Authority when considering an application will take into account previous substantiated nuisance complaints particularly when a statutory notice has been served. Applicants may wish to have regard to the Good Practice Guide on the Control of Noise from Pubs and Clubs produced by the Institute of Acoustics and the British Beer and Pub Association.

Paragraph 13.8 - On receipt of relevant representations, the Licensing Authority, where it considers it necessary and/or appropriate may attach conditions to a licence to prevent public nuisance including those drawn from the Model Pool of Conditions. In particular, it may attach a condition requiring the use of door supervisors licensed by the Security Industry Authority.

Paragraph 13.9 - The Licensing Authority requires Operating Schedules, where relevant to satisfactorily address the issue of public nuisance.

Paragraph 13.10 - The Licensing Authority would also recommend applicants highlight local public transport links and taxi and private hire services within their premises, (including agreeing arrangements with nominated taxi and private hire firms for dropping off and collecting customers).

Paragraph 13.11 - The Licensing Authority, will in accordance with the Guidance, focus on matters within the control of the individual Licence holder. The Licensing Authority accepts that the difficulty that a licence holder has in preventing anti-social behaviour by individuals once they are behind the direct control of the Licence Holder. However, the licensing objection of preventing public nuisance will not be achieved if customers from premises regularly conduct themselves in an anti-social manner to the detriment of local residents or businesses. In addition, the Council has a duty to do all it can to prevent crime and disorder in the Borough under the Crime and Disorder Act 1998.

## **PUBLIC SAFETY**

23 Paragraph 14.1 - The Licensing Authority considers that members of the public when visiting licensed premises, have a right to expect that due consideration has been given to public safety. The Licensing Authority notes that the public safety objective is concerned with the physical safety of people using premises and not with public health which is dealt with in other legislation.

Paragraph 14.2 - The Licensing Authority is committed to ensuring public safety across the Borough by working in partnership with Lancashire Police, Lancashire Fire and Rescue and Licence Holders.

Paragraph 14.3 - Applicants should carefully consider the safety of the premises having regard to the licensable activities that are proposed and to address in the operating schedule, where relevant, how public safety will be achieved. Such measures may include, where relevant to the premises:

- the occupancy capacity of the premises
- age, design and layout of the premises including means of escape
- nature of the licensable activities to be provided, in particular the sale and supply of alcohol
- hours of operation
- customer profile (e.g. age)
- Use of special effects e.g. lasers, pyrotechnics, smoke/foam machines

Paragraph 14.4 - The Act requires a plan of the premises to be supplied with operating schedules showing prescribed information.

The Licensing Authority will take notice of a health and safety risk assessment submitted with an operating schedule.

Paragraph 14.5 - All licensed premises will be risk related according to a Protocol agreed with Lancashire Fire and Rescue. Inspections will be carried out by Lancashire Fire and Rescue in accordance with the Protocol.

Paragraph 14.6 - The Licensing Authority may inspect premises where it considers it appropriate on public safety grounds.

Paragraph 14.7 - On receipt of relevant representations the Licensing Authority may, where it considers it necessary and/or appropriate, impose conditions to secure the public safety objective including those drawn from the Model Pool of Conditions. Any conditions imposed will relate to the particular circumstances of the individual premises and will not duplicate other requirements of the law.

## REVIEWS

24. Paragraph 41.1- The Act 2003 makes provision for the review of premises licences where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring.

Paragraph 41.2 - At any stage following the grant of a premises licence, a responsible authority or an interested party (such as a resident living in the vicinity of the premises), may request the Licensing Authority review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

Paragraph 41.3 - A review of a premises licence will follow any action by Lancashire Police to close down premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a Magistrates' Courts' determination sent to the Licensing Authority.

Paragraph 41.4 - The Licensing Authority does not have the power to initiate its own review. However, officers of the Council who are specified as responsible authorities under the Act such as Environmental Health Officers may request the Licensing Authority for a review on any matter which relates to the promotion of one or more of the licensing objectives. Any such representations will be treated in the same way as representations made by any other body or individual.

Paragraph 41.5 - In all cases, the representation must relate to a particular premises for which a premises licence is in force and must be relevant to the promotion of the licensing objectives.

Paragraph 41.6 - Representations must be made in writing and may be amplified at the subsequent review or may stand in their own right. Additional representations, which do not amount to an amplification of the original representation, may not be heard at the hearing.

Paragraph 41.7 - Where the request for a review originates from an interested party e.g. a local resident, residents' association, the Licensing Authority has first to consider whether the complaint made is not relevant, vexatious, frivolous or repetitious. Relevance, vexatious and frivolous complaints were dealt with in paragraph 40.

Paragraph 41.8 - A repetitious complaint is one that is identical or substantially similar to:

- a ground for review made in respect of the same premises licence which has already been determined; or
- representations considered by the Licensing Authority when the premises licence was granted; or
- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and
- in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of a licence

Paragraph 41.9 - The Licensing Authority recognises the need to prevent attempts to review licences, following the failure of representations on earlier occasions. The Licensing Authority will judge what is to be regarded as a reasonable interval in these circumstances. The Licensing Authority has regard to the recommendation in the guidance, that more than one review originating from an interested party should not be permitted within a period of 12 months on similar grounds except in compelling circumstances or where it arises following a Closure Order.

Paragraph 41.10 - The Licensing Authority recognises that the promotion of the licensing objectives relies heavily on a partnership approach. The Licensing Authority would

encourage authorised persons and responsible authorities to give licence holders warning of their concerns about problems identified at premises and of the need for improvement.

The Licensing Authority advises licence holders that a failure to respond to such a warning may lead to a responsible authority to request a review.

Paragraph 41.11 - The Licensing Authority will hold a hearing following a request for a review from a responsible authority, interested party or after closure procedures described earlier.

The Licensing Authority will make the licence holder fully aware of the representations received together with supporting evidence in order for the licence holder or his legal representatives to be able to prepare a response.

Paragraph 41.12 - In determining a review, the Licensing Authority has a range of powers it may exercise where it considers them necessary for the promotion of the licensing objectives:

- no action necessary as no steps required to promote the licensing objectives;
- issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time; The Licensing Authority regards such warnings as important mechanisms for ensuring that the licensing objectives are effectively promoted and any warning issued will be in writing to the licence holder.
- to modify the conditions of the premises licence (including adding new conditions, altering/omitting an existing condition);
- excluding a licensable activity from the licence;
- remove the designated premises supervisor,
- suspend the licence for a period of three months;
- to revoke the licence

Paragraph 41.13 - The Licensing Authority in determining what action to take will seek to establish the cause(s) of concern and any action taken will be directed at these causes. Any action taken to promote the licensing objectives will be necessary and proportionate.

## 25. Human Rights Act Implications

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.

## 26. Appeals following a variation of licence under section 35:

- 1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.
- 2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.
- 3) Where a person who made relevant representations in relation to the application desires to contend:
  - (a) that any variation made ought not to have been made, or

- (b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section, he may appeal against the decision.
- 4) In sub-paragraph (3) “relevant representations” has the meaning given in section 35(5).

General provision about appeals under this Part:

- 1) An appeal under this Part must be made to the magistrates' court for the petty sessions area (or any such area) in which the premises concerned are situated.
- 2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.
- 3) On an appeal under paragraph 2(3), 3(2)(b), 4(3), 5(2), 6(2) or 8(2)(a) or (c), the holder of the premises licence is to be the respondent in addition to the licensing authority.
- 4) On an appeal under paragraph 7(3), the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.

JAMIE CARSON  
DIRECTOR PEOPLE & PLACES

There are no background papers to this report.

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Stephen Culleton	5665	3 September 2010	