

Report of	Meeting	Date
Director of Legal Services	Licensing Act 2003 Sub-Committee	April 2006

## **APPLICATION BY MR VISHAVNATH PATEL TO TRANSFER PREMISES LICENCE AND VARIATION OF PREMISES LICENCE TO CHANGE DPS OF PREMISES LONDIS, 118 PARK ROAD, CHORLEY**

### **PURPOSE OF REPORT**

1. For Members to determine an application to firstly grant a transfer of a premises licence and secondly to vary a premises licence to specify an individual as a designated premises supervisor.

### **CORPORATE PRIORITIES**

2. There are no specific implications for corporate policies arising from this report.

### **RISK ISSUES**

3. The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation		Regulatory/Legal	<input type="checkbox"/>
Financial		Operational	
People		Other	

4. There is a right of appeal to the Magistrates Court in respect of a decision to refuse a transfer of a premises licence and secondly to vary a premises licence to specify an individual as a designated premises supervisor.

### **BACKGROUND**

5. Mr Patel applied on the 15 March 2006 to firstly transfer a premises licence and secondly to vary a Premises Licence to specify an individual as designated premises supervisor.
6. Mr Patel was granted a personal licence by Chorley Borough Council on 22 November 2005, Licence Number PA0368.
7. Lancashire Police in accordance with Sections 37 (5 and 6) and 42 (5 and 6) have objected to both applications in that the crime prevention objective would be undermined. Sections 37 and 42 are below:

### **37 Application to vary licence to specify individual as premises supervisor**



- (1) The holder of a premises licence may:
  - (a) if the licence authorises the supply of alcohol, or
  - (b) if he has applied under Section 34 to vary the licence so that it authorises such supplies, apply to vary the licence so as to specify the individual named in the application (“the proposed individual”) as the premises supervisor.
- (2) Subsection (1) is subject to regulations under:
  - (a) section 54 (form etc of applications etc);
  - (b) section 55 (fees to accompany applications etc).
- (3) An application under this section must also be accompanied by:
  - (a) a form of consent in the prescribed form given by the proposed individual, and
  - (b) the premises licence (or the appropriate part of this licence) or, if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).
- (4) The holder of the premises licence must give notice of his application:
  - (a) to the chief officer of Police and for the Police area (or each Police area) in which the premises are situated, and
  - (b) to the designated premises supervisor (if there is one),and that notice must state whether the application is one to which Section 38 applies.
- (5) 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 determine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.
- (6) The chief officer of Police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under Subsection (4).

## **42 Application for transfer of premises licence**

- (1) Subject to this section, any person mentioned in Section 16(1) (applicant for premises licence) may apply to the relevant licensing authority for the transfer of a premises licence to him.
- (2) Where the applicant is an individual he must be aged 18 or over.
- (3) Subsection (1) is subject to regulations under:
  - (a) section 54 (form etc of applications etc);
  - (b) section 55 (fees to accompany applications etc).
- (4) An application under this section must also be accompanied by the premises licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.
- (5) The applicant must give notice of his application to the chief officer of Police for the Police area (or each Police area) in which the premises are situated.
- (6) Where a chief officer of Police notified under Subsection (5) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

- (7) The chief officer of Police must give notice within the period of 14 days beginning with the day on which he is notified of the application under Subsection (5).

## **RELEVANT REPRESENTATIONS**

8. The Licensing Authority received the following objection notice from Lancashire Police with regard to the applications. A copy of the notice is attached to this report, the reasons for objections to the applications are as follows:

“The Police have concerns regarding these applications in that the only reason this application has come about is due to the fact that the applicant has been involved in the sale of alcohol to underage persons and as a result had to be spoken to by the Police.

The fact is that the premises has been trading without a DPS for the past six months.

There is evidence as well as information that underage sales have been made at the premises resulting in youths obtaining alcohol and committing crime and disorder due to their drunken behaviour.

There are no processes in place at the premises regarding preventing the sales to underage.

The Police therefore feel that granting both of these applications would undermine the crime prevention objective under the Licensing Act 2003.”

## **LEGAL POSITION**

9. Chapter 17 Section 39 Paragraph 3 (Determination of Section 37 Application) states:

“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 agrees 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.”

10. Chapter 17 Section 44 Paragraph 3 (Determination of Transfer Application) states:

“Where a notice is given under Section 42(6) (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.”

11. The Council’s Statement of Licensing Policy states in Paragraph 25.3:

“the licensing authority, where relevant representations exist, will carefully consider whether the grant of the licence will be in the best interests of the crime prevention objective. It will consider the seriousness and relevance of the conviction(s), the period that has elapsed since the offence(s) were committed and any mitigating circumstances. The Licensing Authority will reject applications on the basis of relevant convictions only where it considers it necessary to promote the licensing objectives.”

12. Section 4 of the 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.

#### **ASSOCIATED PAPERS**

13. Two applications and notice of objection.

ROSEMARY LYON  
DIRECTOR OF LEGAL SERVICES

There are no background papers to this report.

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>	<b>Doc ID</b>
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