

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.

<b>Confidential report</b> Please bold as appropriate	Yes	<b>No</b>
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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.

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