

Licensing Acts Panel



Report of Head of Housing and Environment

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To: Licensing Acts Panel

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Police objection to an application for transfer of a premises licence under Section 42 of the Licensing Act 2003, New News, 49 Reading Road, Henley on Thames, Oxfordshire.

Recommendation(s)

1. That the panel consider the police objection to the application for the transfer of the premises licence, and decide whether to:
 - (a) Grant the application for the transfer of the premises licence to Mr Hussain
 - or
 - (b) Reject the application for the transfer of the premises licence to Mr Hussain if it considers it appropriate to do so for the promotion of the crime prevention objective.

1.0 Purpose of report

- 1.1 To present the Licensing Panel with the application for the transfer of the premises licence for New News, 49 Reading Road, Henley on Thames, Oxfordshire to Mr Monawar Hussain and the objection received from Thames Valley Police, who object to the transfer of the premises licence, in order that the panel can determine the application made under Section 42 of the Licensing Act 2003.

2.0 Strategic objectives

- 2.1 The relevant strategic objective is that of 'invest in the district's future'. The relevant corporate priority is that of 'maintain low levels of crime and anti-social behaviour'.

3.0 Background

- 3.1 The Licensing Act 2003 ('the Act') established a single integrated scheme for licensing premises which are used for the supply of alcohol, regulated entertainment, late night refreshment or permission to carry on some of these activities. In the Act these activities are referred to collectively as the 'licensable activities'.
- 3.2 Any assessment of licensable activities under the Act must consider and promote the four licensing objectives:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance and
 - the prevention of children from harm
- 3.3 An application for the transfer of an existing premises licence under Section 42 of the Act is normally a straightforward licensing procedure and is dealt with as an administrative matter. As part of the application process, the applicant is required to give notice of the application to the police.
- 3.4 Under Section 42 (6) of the Act where a chief officer of police is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must serve notice to the Licensing Authority within fourteen days of receiving the application.
- 3.5 When a valid objection under Section 42 (6) is received from the police and the objection has not been withdrawn, the matter it must be referred to the Licensing Acts Panel for a hearing to determine the application.
- 3.6 An application to transfer a premises licence under the Licensing Act 2003 was received by the South Oxfordshire District Council licensing ("the Licensing Authority") from Mr Monawar Hussain on 30 April 2018 (Appendix 1).
- 3.7 Mr Hussain has applied to transfer premises licence 12493 for New News, 49 Reading Road, Henley on Thames, Oxfordshire, RG9 1AB into his name from the current licence holder Mr Muhammad Naeem. Records show Premises Licence 12493 was granted to Mr Naeem on 20th December 2012.

- 3.8 In this case the request to transfer was to have immediate effect and was administered by the Licensing Authority accordingly. By virtue of Section 43 of the Act the premises licence has effect during the “application period” as if the applicant were the holder of the licence. The application period began when the application was received by the Licensing Authority and ends when the application is granted, or if it is rejected, at the time the rejection is notified to the applicant. Therefore, if a decision is made to appeal the Panel’s decision at the Magistrates Court the “application period” will continue until the determination by that court.
- 3.9 On 14 May 2018 the Licensing Authority received a notice under Section 42 (6) of the Act from Thames Valley Police in objection to this application, including a detailed account of their reasons (Appendix 2). These reasons are considered by the licensing officer to be a valid objection under the Act.
- 3.10 In such cases, if a subsequent objection against the transfer is received from the police within the legal timeframe (14 days), the matter must be placed before a Licensing Acts Panel to determine the application under Section 44 (5) of the Act.
- 3.11 The applicant and the police have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. The applicant has declared that he taken all reasonable steps to contact Mr Naeem without success.

4.0 Options

- 4.1 (a) To grant the transfer of this premises licence to Mr Hussain
- or
- (b) To reject the application for the transfer of the premises licence to Mr Hussain if it considers it appropriate to do so for the promotion of the crime prevention objective
- 4.2 Whatever option is decided upon, clear reasons should be given for the decision.

5.0 Financial implications

- 5.1 A decision made by the Licensing Acts Panel is subject to appeal at the Magistrates Court and/or by way of judicial review. Should the applicant or the police wish to appeal against the decision of the council, the council would incur costs although the court may decide to award costs if the council’s decision is upheld.

6.0 Legal considerations

- 6.1 The Licensing Act 2003 is now the only process to licence and control premises for all forms of entertainment, late night refreshment and the retail sale of alcohol.
- 6.2 The transfer process is laid down in statute and allows for a police objection notice in exceptional circumstances, it should be made under the crime prevention objective. If a relevant objection notice is served by the police on the Licensing Authority, a hearing must be held.
- 6.3 The Home Office has issued guidance under Section 182 of the Licensing Act 2003. This guidance is provided to Licensing Authorities to assist them in carrying out their functions. The latest edition is dated April 2018.
- 6.4. South Oxfordshire District Council has developed, published and reviewed its Joint Statement of Licensing Policy as required by the Licensing Act 2003.
- 6.5 The Human Rights Act 1998 requires public bodies to ensure everything they do is compatible with convention rights and makes it unlawful for a public authority to act incompatibly with those rights. When determining applications for the review of an existing licence, the panel will be aware of human rights considerations, specifically Part 1, Article 6, right to a fair trial. The key elements of this include:
- the right to a fair hearing
 - the right to a public hearing
 - the right to a hearing before an independent and impartial tribunal
 - the right to a hearing within a reasonable time.
- 6.6 The hearing of all applications is subject to the principles of natural justice.
- 6.7 Section 17 of the Crime and Disorder Act 1998 states, 'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to exercise its various functions with due regard to the likely effect of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area.'
- 6.8 Under Schedule 5 part 1 of the Licensing Act 2003 any person aggrieved by the decision in respect of the review application may appeal to a Magistrates' Court within 21 days of the date of the decision.
- 6.9 Both the applicant and the police have the right to appeal any decision of the Licensing Acts Panel to the Magistrates Court with respect to this application for transfer of the licence.

Risks

- 7 None identified.

Other implications

8 None.

Conclusion

- 9.1 This report provides information submitted by Thames Valley Police. The Panel must determine this application with a view to promoting the relevant licensing objectives.
- 9.2 The panel must, having heard all the evidence submitted by the parties at the hearing, take into account the Licensing Act 2003, the Secretary of State's guidance issued under Section 182 Licensing Act 2003, and the council's Statement of Licensing Policy to determine if any or all the licensing objectives have been undermined.
- 9.3 If the panel conclude that any or all of the licensing objectives have been undermined, then they should consider what measures are necessary and proportionate in order to ensure that those licensing objectives are promoted. The options available for the panel to consider are set out at paragraph 4.1 above.

Background Papers

10. None.