

## **LICENSING ACT COMMITTEE**

TUESDAY, 20TH NOVEMBER, 2018, ON THE RISE OF THE  
GENERAL LICENSING COMMITTEE

CROSS ROOM, CIVIC CENTRE, WEST PADDOCK, LEYLAND PR25  
1DH

### AGENDA

#### **1 Apologies for Absence**

#### **Minutes of Licensing Act Committee**

- 2 Minutes of meeting Tuesday, 24 July 2018 of Licensing Act Committee** (Pages 3 - 6)

#### **Minutes of Licensing Act Panels**

- 3 Minutes of meeting Thursday, 19 July 2018 of Licensing Panel** (Pages 7 - 10)

- 4 Minutes of meeting Monday, 20 August 2018 of Licensing Panel** (Pages 11 - 14)

- 5 Minutes of meeting Tuesday, 28 August 2018 of Licensing Panel** (Pages 15 - 20)

- 6 Delegation of Powers to Sub-Committee** (Pages 21 - 34)

Report of the Head of Licensing attached.

Heather McManus  
CHIEF EXECUTIVE

Electronic agendas sent to Members of the Licensing Act Committee Councillors Barbara Nathan (Chair), Jacqui Mort (Vice-Chair), Jane Bell, Malcolm Donoghue, Mary Green, Harry Hancock, Jon Hesketh, Ken Jones, Mike Nathan, David Watts and Paul Wharton

The minutes of this meeting will be available on the internet at [www.southribble.gov.uk](http://www.southribble.gov.uk)

Forthcoming Meetings  
Time Not Specified Date Not Specified -

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**MINUTES OF LICENSING ACT COMMITTEE**

**MEETING DATE** Tuesday, 24 July 2018

**MEMBERS PRESENT:** Councillors David Suthers (Chair), Barbara Nathan (Vice-Chair), Jane Bell, Harry Hancock, Jon Hesketh, Ken Jones, Jacqui Mort, Alan Ogilvie, David Watts and David Wooldridge

**OFFICERS:** Mark Marshall (Licensing Manager), Tasneem Safdar (Senior Solicitor) and Dianne Scambler (Governance and Member Services Team Leader)

**OTHER MEMBERS:** Chris Ward (Licensing Officer) (Licensing Officer)

**PUBLIC:** 0

**7 Apologies for absence**

An apology was received from Councillor Paul Wharton.

**8 Minutes - Licensing Act Committee**

RESOLVED: That the minutes of the Licensing Act Committee meeting held on 19 September be confirmed as a correct record for signing by the Chair.

**9 Minutes - Licensing Panels**

RESOLVED: That the Licensing Panel meetings held on 21 September 2017 and 1 March 2018 be confirmed as a correct record for signing by the Chair.

**10 Declarations Of Any Interests**

There were no declarations of any interests.

**11 Updated Hearing Guidance**

The Head of Licensing presented a report that sought permission to update the guidance in relation to the hearings process in respect of Licensing Panel hearings.

The updated guidance was appended to the report.

One of the substantial changes is the use of the Regulation 8 notice to be returned to the Authority in advance of a hearing. This is a standard requirement set out in the Licensing Act 2003 (Hearings) Regulation 2005.

RESOLVED: (Unanimously) to approve the updated Guidance in relation to the Hearings process, in respect of Licensing Panel Hearings under the Licensing Act 2003.

## **12 Delegation of Powers as a Responsible Authority**

The Head of Licensing presented a report that sought the granting of delegated authority to the Head of Legal Services, to act as a Responsible Authority on behalf of the Licensing Authority.

Section 7 of the Licensing Act 2003 makes the Licensing Committee responsible for discharging the licensing functions of the Licensing Authority. This includes the power to delegate.

The delegated authority will allow the Licensing Authority to make representations and submit applications for licence reviews. The Licensing Authority has never previously called a review on any premises and therefore in the past, this delegation was not required.

As a result of no formal delegation being in place, a recent Standing Order 35 procedure had to be initiated and signed off by the Chair on 25 June 2018, to allow the Licensing Authority to call for a review of a premises in its own right, as a Responsible Authority. The new power will allow an appropriate officer to exercise this right.

RESOLVED: (Unanimously)

1. That delegated authority be granted to the Head of Legal Services to act as a Responsible Authority on behalf of the Licensing Authority.
2. That the General Licensing Committee recommend full Council to adopt the delegation.

## **13 Centre Approval with BIIAB**

The Head of Licensing submitted a report to inform the Committee on the success of obtaining Centre Approval to deliver the Personal Licence Course.

The Licence Service had recently applied to the BIIAB (British Institute of Innkeepers) to become a training provider for the personal licence qualification which is a mandatory requirement for anyone wishing to apply for a personal licence.

The dates of the courses have now been organised and will be advertised shortly. All Members of the Committee are welcome to complete the course.

The report was noted.

## **14 Use of Standing Order 35 Procedure**

The Head of Licensing presented a report to Committee that provided an update on the use of Standing Order 35.

Members were informed that on 25 June, it had been necessary to invoke the Standing Order Procedure 35 in order for a Licensing review to be initiated by the Licensing Authority. The review was served on the Licence holder, Naaz Indian Restaurant, and a hearing to consider the application will be arranged in due course.

The report was noted.

Chair

Date

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**MINUTES OF LICENSING PANEL**

**MEETING DATE** Thursday, 19 July 2018

**MEMBERS PRESENT:** Councillors David Suthers (Chair), Jane Bell and Barbara Nathan

**OFFICERS:** Mark Marshall (Head of Licensing), Andrew Howard (Senior Environmental Health Officer), Tasneem Safdar (Senior Solicitor) and Dianne Scambler (Governance and Member Services Team Leader)

**OTHER MEMBERS AND OFFICERS:** Justin Abbotts (Licensing Officer) and Chris Ward (Licensing Officer)

**PUBLIC:** 11

**7 Apologies for absence**

None, all Members were present.

**8 Declarations of Interests**

There were no declarations of interest.

**9 Determination of new premises licence application - Weavers Arms, 2 - 4 Spinners Square, Bamber Bridge PR5 6EQ**

The Panel considered for determination an application for a new Premises Licence under section 18 of the Licensing Act 2003. The application was in respect of the Weavers Arms, 2-4 Spinners Square, Bamber Bridge.

Representations were made by three Responsible Authorities, the Planning Section and Environmental Health Department of South Ribble Borough Council and the Lancashire Fire & Rescue Service. There were also eleven representations made by Other Persons.

Director of the Spinners Square Limited, Alan Burdett and Lee Forshaw who had submitted the application were also present at the meeting. Mr Burdett present the case for the applicant.

At the outset it was confirmed that the application had been amended by letter on 17 July 2018. The amended application before the Panel was now in respect of seeking permission to sell alcohol by retail between the hours of 10am and midnight Sunday to Thursday and 10am to 1am on Fridays and Saturdays. The amended application also sought to exclude the offering of recorded music and the provision of making music, which had been applied for on the same terms as the sale of alcohol.

With the permission of the Panel and in accordance with the Council's hearing procedure the Head of Licensing outlined the application.

The applicant, then addressed the Panel. As part of his representations the Panel were provided with three large photographs to support their application at the meeting. Questions were asked.

The representation received from the council's Planning Team was read out to the Panel and an officer from its Environmental Health Team addressed the Panel. Both objected to the application and questions were asked. A number of local residents objecting to the application also addressed the Panel and questions were asked.

Having fully considered the representations (written and oral) made by local residents and the application made by the applicant, the Panel retired to reach its decision.

In reaching its decision the panel took into account the following:

- both written and oral evidence presented in connection with the hearing
- Licensing Act 2003
- S182 Amended Guidance of the Licensing Act 2003
- South Ribble Borough Council's Licensing Policy

The Panel had concerns in relation to noise and felt that the acoustic assessment did not address the issues of the whole of the premises. They were also of the opinion that the reduction of hours, restricted times for the use of the outside area and any additional sophisticated noise conditions as mentioned in the S182 guidance and the Council's statement of Policy would not address these concerns.

If the Applicant, Responsible Authorities or any person having made a relevant representation was dissatisfied with the outcome of the hearing, then they may challenge the decision of the Panel by making an appeal to the Preston Magistrates Court within 21 days on receipt of this decision.

RESOLVED: (UNANIMOUS)

To refuse the application for a new premises licence for the Weavers Arms, 2-4 Spinners Square, Bamber Bridge PR5 6EQ for the following reasons:

1. The panel considered and noted that public nuisance had a broad common law meaning for the purposes of the 2003 Act, as stipulated in the S182 Guidance at 2.15 -2.21. This could include in appropriate circumstances the reduction of the living and working amenity of persons living in the area.
2. The part of Station Road on which the premises is situated is the narrowest part of road. It is the quieter end of Station Road than the other parts of the road. The area is highly populated with residential properties which are occupied by the elderly and by families with children. The representations made by other persons were extremely relevant as these are the people that live or work in the area and understand its intricate matters.
3. In regards to the noise from the premises itself, it troubled the panel that the acoustic assessment did not address the issues of the whole of the premises. They took a

great point of note of the EH officer who had provided valuable detailed information of the flanking noise but also the fact that a building blocking a line of sight does not address the issue of noise at the outside of the premises. The panel considered all the options it had available in terms of the reduction of hours, restricted times for the use of the outside area and the volunteered and any additional sophisticated noise conditions as mentioned in the S182 guidance, South Ribble Council's statement of policy, together with the operating schedule. However, having considered in detail all the representations made, the panel were of the view that these would not address the concerns in respect of the noise nuisance.

4. The panel were also concerned with the increase of noise from traffic, and the effect that this would have on the people living in the area. It was also noted that there was no parking facilities available for patrons. The representations provided that there is already limited parking around the area with people parking on pavements. Undoubtedly taxis and delivery vans would have to stop outside the bus stop and cause an obstruction and increase in noise, to an already narrow and busy spot. The panel were also concerned with the close proximity of the decking area of the premises to the bus stop where children congregated and the concern was that this would undermine the protection of children from harm licensing objective. The panel felt that even if they reduced the times for the use of the decking area for drinking, patrons still had to smoke outside, which would cause noise and smoke nuisance to the children and elderly waiting at the bus stop and the residents in the area. The panel were of the view that the amenity of those living and working in the area would be effected significantly.
5. The panel did take into account the fact that the applicants had other successful premises. The panel had no issue with micro-pubs per se. However, the panel were of the view that the location of the premises was not best suited. Premises of the nature requested to be opened would on the balance of probabilities attract public nuisance, which would weigh negatively in undermining the licensing objective.
6. Although the behaviour of an applicant is not linked to the licensing objectives, the panel did feel that the behaviour of Mr Foshaw in sending the letter to Mr Nuttall was bullish in nature and is not what they would expect from a director of an applicant company and vice chair of PubWatch. In some respects, it questioned their minds as to the true character of the individual, which was very different at the hearing. The panel expected licence holders to seek views of responsible authorities and local residents as they are a useful source of advice. They were disappointed that there was friction between the applicant and residents.
7. The panel were of the view that even if they reduced the hours, included the volunteered conditions or imposed more sophisticated conditions this would not address the undermining of the licensing objectives raised by EH, Planning and other persons representations. For the above reasons, the application was refused.

Chair

Date



**MINUTES OF LICENSING PANEL**

**MEETING DATE** Monday, 20 August 2018

**MEMBERS PRESENT:** Councillors David Suthers (Chair), Jacqui Mort and Jane Bell

**OFFICERS:** Dave Whelan (Legal Services Manager/Interim Monitoring Officer), Chris Ward (Licensing Officer) and Dianne Scambler (Governance and Member Services Team Leader)

**OTHER MEMBERS AND OFFICERS:** Mark Marshall (Head of Licensing) (Interested Party)

**PUBLIC:** 0

**10 Apologies for absence**

Councillor Jane Bell replaced Councillor David Wooldridge on the Committee.

**11 Declarations of Interests**

There were no declarations of interest.

**12 Review of Premises Licence - Naaz Indian Restaurant, 1 Club Street, Bamber Bridge, PR5 6FN**

The Panel met to carry out a review hearing in respect of Naaz Indian Restaurant, 1 Club Street, Bamber Bridge, PR5 6FN pursuant to the provisions of Section 52 of the Licensing Act 2003. The application for the review of the premises licence was brought by the Council's Head of Licensing, Mark Marshall on behalf of the Licensing Authority.

No representations had been received in respect of the application.

The Premises Licence holder and Designated Premises Supervisor Gulshan Miah and his brother Dilshan Miah were in attendance.

Chris Ward, the Licensing Officer took the Panel through the contents of the Committee report and confirmed that all procedural and notice requirements for the Review hearing had been satisfied.

The Head of Licensing, Mark Marshall then explained the reasons why the review of the premises had been brought. The Head of Licensing explained that he had concerns that two of the four Licensing objectives were not being met – namely the prevention of crime and disorder and public safety. Questions were asked by the Panel.

The applicant and his brother both addressed the Panel. They had indicated that they would not open the premises up again until all necessary remedial work had

been carried out and all conditions satisfied. Questions were asked by the Panel, the Head of Licensing and the Interim Monitoring Officer.

In reaching its decision the panel took into account the following:

- Both Written and Oral Evidence presented in connection with the hearing
- Licensing Act 2003
- S182 Amended Guidance of the Licensing Act 2003
- South Ribble Borough Council's - Licensing Policy

The Panel noted that there had been a number of attempts to resolve issues at the premises on an informal basis – without success. It was to be regretted that the commencement of a formal review of the premises was needed to enable a solution to be brought forward to the issues that had been experienced.

The Panel's decision was to remove those existing conditions set out in Annex 2 of the premises licence and replace them with the following:

1. A Challenge 25 proof of age policy shall be implemented and adhered to. Any person who looks or appears to be under the age of 25 shall be asked to provide identification that they are over the age of 18. The following are the only forms of identification acceptable:

- i) A recognised proof of age scheme accredited under the British Retail Consortium's Proof of Age Standards Scheme (PASS).
- ii) Photo driving licence
- iii) Passport
- iv) Official ID card issued by HM Forces or European Union bearing a photograph and date of birth of the holder.

If no suitable identification is provided the sale of alcohol to them will be refused.

- 2 All staff involved in the sale of alcohol shall receive suitable training in relation to the proof of age scheme to be applied upon the premises. All staff receive regular refresher training at intervals of at least 6 months. Records to evidence this will be made available to officers upon request.
- 3 Suitable signage will be displayed to specify the Challenge 25 policy is in place.
- 4 CCTV must be installed internally and externally at the premises and must comply with the following:
  - i) Appropriate signage alerting customers to CCTV recording must be displayed in conspicuous positions on the premises.
  - ii) The CCTV system must be installed, maintained and operated to the reasonable satisfaction of Lancashire Constabulary.
  - iii) The system must record all hours the premises are open to the public.
  - iv) Recordings must display the correct date and time.
  - v) Digital recordings must be held for a minimum period of 21 days.
  - vi) A staff member who is conversant with the operation of the CCTV system will be on the premises at all times the premises are open to the public. This staff member will be able to show Police, Responsible Authorities or an authorised person recent data or footage with the absolute minimum of delay when requested and provide footage in a viewable format within 48 hours of request, with minimum delay.
  - vii) The licence holder must notify the Police licensing unit on any occasion when the CCTV is to be inoperative for a period in excess of 1 working day and shall provide a

certificate from a competent person stating the reason for the system being inoperative and the measures which have been taken to satisfy the conditions of this licence.

viii) Bi-annually documented maintenance checks by a suitably qualified CCTV engineer must be made of the CCTV system to ensure that the system is in good working order and is operating in compliance with the conditions of this licence.

5 At least one Personal Licence holder will be available while the supply or sale of alcohol is being undertaken (whose identity will be known to all other staff engaged in the supply or sale of alcohol) except in the case of emergency.

6 Another staff member will be nominated to act for the Designated Premises Supervisor, in their absence, whose identity is known by all other staff when such absence occurs.

7 Records must be kept on the premises for each member of staff and include the following:

- i) Documented evidence of their right to work in the UK, including copy of their passport
- ii) Any relevant qualifications, for example food hygiene or Personal Licence
- iii) Authority from the licence holder to work at the premises and the date which their employment commenced

These records will be made available to the Police, relevant authority or authorised person on request.

8 All staff members must be identifiable by means of either a set uniform or clearly displaying a badge on their person identifying them as a staff member.

9 The primary purpose of the premises will be that of a restaurant / bistro / cafe serving food; the sale of alcohol will be ancillary to this use.

10 No persons under the age of 18 shall be permitted on the premises after 21.00 hours unless accompanied by an adult.

11 The supply of intoxicating liquor will be by waiter / waitress service only and only to persons seated at tables. Meals and substantial refreshment will be available at all times the premises are open to the public.

12. Certification shall be retained at the premises to demonstrate that annual gas and electricity safety checks have been carried out.

The Panel noted the comments that the licence holder had to say about the condition relating to the requirement for staff to either wear a uniform or an identifying badge (condition 8 above) but nevertheless considered such a condition both reasonable and necessary in the circumstances.

The Panel were of the view that the conditions would address the issues raised and promote the licensing objectives. The Panel felt that after careful consideration of the case before them, an appropriate and proportionate decision had been reached.

The Panel considered that it was imperative that prior to the reopening the premises both the Licensing authority and the council's Environmental Health should be invited to inspect the premises to confirm that everything was now acceptable.

All parties at the hearing were advised that if they were aggrieved by the decision, they had a right to appeal the decision to the Magistrates Court within 21 days.

Chair

Date

**MINUTES OF LICENSING PANEL**

**MEETING DATE** Tuesday, 28 August 2018

**MEMBERS PRESENT:** Councillors David Suthers (Chair), Ken Jones and Alan Ogilvie

**OFFICERS:** Mark Marshall (Head of Licensing), Dave Whelan (Legal Services Manager/Interim Monitoring Officer) and Dianne Scambler (Governance and Member Services Team Leader)

**OTHER MEMBERS AND OFFICERS:** Justin Abbotts (Licensing Officer), Chris Ward (Licensing Officer) and Councillor David Howarth (Leader of the Liberal Democrats Group)

**PUBLIC:** 2

**13 Apologies for absence**

None.

**14 Declarations of Interests**

There were no declarations of any interests.

**15 Application for a variation of the Premises Licence relating to the Lime Bar, 42 Liverpool Road, Penwortham**

The Panel met to consider an application for a variation of the Premises Licence relating to the Lime Bar, 42 Liverpool Road, Penwortham pursuant to the provisions of Section 34 of the Licensing Act 2003. In summary the application sought to:

1. remove live music and recorded music as licensable activities
2. alter the permitted opening times and the permitted timings for the sale of alcohol and Late Night Refreshment
3. remove conditions from the operating schedule
4. add alternative conditions to the operating schedule.

A number of representations from members of the public had been received in respect of the application. The council's Environmental Health services team had also initially made representations in respect of the application; however, following discussions with the applicant agreement was reached as the conditions to be imposed on the licence. Accordingly they withdrew their representations.

Carol Rialas was in attendance at the hearing from the applicant's company. The company was represented by Malcolm Ireland from Napthens LLP.

Mr Stephen Crookes – one of the people who had made representations to the application – was also in attendance.

Mark Marshall (the council's Head of Licensing) took the Panel through the contents of the committee report. He explained the background to this application and the procedure that would be followed in the hearing.

Mr Ireland was invited to present the applicant's case. Mr Ireland explained the thinking behind the application. He explained that some of the proposed changes to conditions were designed to tidy up the existing provisions.

Mr Ireland explained the difficulties with the condition that required a vestibule. He further explained that the intention behind the proposals for late night refreshment was to enable the premises to serve hot drinks after 11.00pm.

Mr Ireland explained that the premises was seeking an extra 15 minutes each night for "drinking up" time. At the moment only 15 minutes drinking up each night was permitted. This was considered to be somewhat unusual in the industry.

Mr Ireland explained that the existing conditions only allowed deliveries on a weekday. This was impractical.

Mr Ireland explained that the earlier opening (9.30 each day) was designed to allow the premises to provide breakfasts and hot drinks. Mr Ireland also explained the difficulties with the current condition dealing with the external area. He explained how this situation would be dealt with by the proposed new conditions.

He also made comment on a number of other conditions that it was proposed should be removed and in some cases replaced with new wording – they included conditions relating to the opening of doors and windows, deliveries, waste storage. He also explained the thinking behind why live and recorded music should be removed from the licence.

Mr Ireland then explained the relevance of the Daniel Thwaites vs Wirral Borough Magistrates court case to this application. Important points to be gleaned from this case included: the need for evidence to support any representations that are made and the importance and weight to be given to representations from responsible authorities such as the police.

Mr Ireland then at length went through the representations that had been made in this case and provided his comments on how relevant and/or valid such representations were in his opinion.

Mr Crookes then had his opportunity to speak to the Panel. He took the Panel through the history of the site, He also explained the geographical location. He explained how close the Lime Bar was to so some residential properties. He further explained that the police had objected to the planning application for the Lime Bar. He was very concerned with the proposed increase in hours for the premises. He was also concerned with the proposals for the external area. He considered that the increase in hours could lead to both an increase in crime and disorder and public nuisance. He was further concerned that if you granted longer hours for these premises then other premises in the vicinity would also seek to increase their hours.

Both parties were then given the opportunity to sum up.

Mr Whelan – the council's Legal Services Manager – then gave some general legal advice. He explained that the decision had to be made in the context of the Licensing Act and the statutory guidance pertaining to it. He explained that the Panel needed to focus on what the proposed variations were and assess them against the licensing objectives and decide whether they should be permitted. He explained that it was imperative that the application should be considered solely with regard to licensing issues – some of the representations made were more directly relevant to planning, not licensing.

In reaching its decision the Panel took into account the following:

1. Both Written and Oral Evidence presented in connection with the hearing
2. The Licensing Act 2003
3. S182 Guidance of the Licensing Act 2003
4. South Ribble Borough Council – Licensing Policy

The Panel considered the application in the context of the Licensing objectives – in this particular instance the objectives that were most directly relevant were impact on Public Nuisance and Crime and Disorder. Whilst the Panel were sympathetic to some of the concerns articulated by the residents nevertheless they noted that the proposed change of hours (for opening and consumption of alcohol) were relatively modest. They considered the most significant change was an extra hours drinking on a Friday night.

The Panel gave careful consideration to the removal of any requirement for a vestibule to the premises. With regard to this – and all other issues relating to public nuisance – the Panel noted that the council's Environmental Health team had withdrawn their representations to the application on the basis of some agreed conditions being imposed. These conditions had clearly been designed to ameliorate the general situation.

The Panel also gave due weight to the email from the police to the solicitor for the applicant dated the 21<sup>st</sup> of August 2018. In particular it was stated: *“Since the opening of the premise at the end of February 2017 I have not noted any patterns of crime and disorder at the premise and can assure you that if I had, I would have liaised with the owners of the bar. We have a good working relationship with Carol and her team and have found her to be a good operator.”* It was further stated: *“In my opinion, the level of crime and disorder at the premise is very low considering the high footfall of customers at the premise. I cover over 2400 licensed premises in my area and had the Lime Bar been a concern then I would have submitted a Police representation.”*

Thus from the point of view of the Public Nuisance and Crime and Disorder objectives the relevant responsible authorities were both satisfied with what was proposed.

In the context of the above the Panel considered whether any members of the public had produced any evidence sufficient to persuade them to take a different line to these responsible authorities and refuse - either in full or in part – what was being applied for. The Panel concluded that there was no such persuasive evidence. Further the Panel considered that there were no other reasons (relating to the four Licensing objectives) why the variation should not be allowed.

Accordingly it was decided to grant the application in accordance with the application (as amended) and as set out below:

**The Hours granted are as follows:**

Permitted Opening Times

Sunday – Thursday 09:30 to 23:15  
Friday to Saturday 09:30 to 00:15

Sales of Alcohol

Sunday – Thursday 11:00 to 22:45  
Friday to Saturday 11:00 to 23:45

Late Night Refreshment

Sunday – Thursday 23:00 to 23:15  
 Friday to Saturday 23:00 to 00:15

### **Regulated Entertainment**

Live Music and Recorded Music be removed as licensable activities

### **Removed Conditions**

The following conditions in Annex 2 of the premises licence should be removed

Condition numbers 3, 4, 9, 13, 14, 19, and 20

For the sake of clarity all other conditions set out in Annex 2 of the premises licence shall continue to apply.

### **New Conditions**

The following new conditions shall be imposed:

1. The number of customers who are permitted to consume food or drinks in the external area at any one time will be limited to sixty.
2. Customers will not be permitted to take drinks into any external areas after 22:00 each day.
3. Customers will not be permitted to use the garden area to the West of the premises at any time.
4. Signage will be erected in conspicuous positions in external areas of the premises advising customers that causing disturbance or disorder will result in removal from the premises.
5. The premises shall operate and maintain a CCTV system which shall be in use during all times licensable activities are taking place and comply with the following criteria:
  - The system shall cover all entrances and exits of the premises, all external areas, and any areas of the premises used to store alcohol;
  - The focus of the cameras shall be so as to enable clear identification of persons on the premises;
  - The system will be capable of time and date stamping recordings and retaining said recordings for at least 28 days;
  - The Data Controller shall make footage available to a Police officer or other authorised officer where such a request is made in accordance with the Data Protection Act or any subsequent or alternative legislation;
6. written policy on the management of public disorder will be submitted by the premises to the Licensing Authority for approval, such approval not to be unreasonably withheld.
7. Deliveries and waste collection shall only be permitted between 08:00 and 19:00 on weekdays and between 10:00 and 19:00 on Saturdays and Sundays.
8. With the exception of deliveries of beer, there shall be no deliveries made to the rear of the premises.

9. A soft floor surface will be installed on the path to the rear of the premises to ensure that disturbance caused by beer deliveries is minimal.

10. On delivery, beer kegs will be transported to the rear of the premises on a trolley or on a suitable alternative device as opposed to being rolled on the floor.

11. Windows and doors will be kept closed at all times (with the exception of access and egress) except for the windows and doors to the front of the property (adjacent to Liverpool Road), in respect of which the following will apply:

- The main public entrance doors are permitted to be open until 19:00 each day
- The bi-fold doors are permitted to be open until 17:00 each day

12. There shall be no hot food served after 23:00.

All parties at the hearing were advised that if they were aggrieved by the decision, they had a right to appeal the decision to the Magistrates Court within 21 days.

Chair

Date

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REPORT TO	ON
Licensing Act 2003 Committee	20 November 2018



TITLE	REPORT OF
Delegation of Powers to Sub Committee	Head of Licensing

Is this report confidential?	No
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## 1. PURPOSE OF THE REPORT

- 1.1 The purpose of this Report is to inform the Committee of amendments to the Licensing Act 2003 made by the Policing and Crime Act 2017. The amendments give the Licensing Authority powers to suspend or revoke a personal licence – previously only the Magistrates Court had such powers.
- 1.2 Officers are recommending that this Authority confirm that the decision-making powers relating to the suspension or revocation of a personal licence will be undertaken by Sub-Committees of the Licensing Act 2003 Committee. In addition the hearing procedure and timescales that currently apply to contested applications for the grant of a personal licence (as laid down in the Licensing Act 2003 (Hearings) Regulations 2005) will similarly apply to the procedures for decisions on whether to revoke or suspend a personal licence.

## 2. CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Excellence and Financial Sustainability	x
Health and Wellbeing	
Place	

## 3. RECOMMENDATIONS

- 3.1 That Members note the amendments to the Licensing Act 2003, made by the Policing and Crime Act 2017, which give the Licensing Authority powers to suspend or revoke a personal licence.
- 3.2 That the Committee confirm that Licensing Sub-Committee panels of the Licensing Act 2003 Committee hold the authority to suspend or revoke a personal licence.

- 3.3 That the hearing procedure and timescales, that currently apply to contested applications for the grant of a personal licence (as laid down in the Licensing Act 2003 (Hearings) Regulations 2005), will apply to the procedures for decisions on whether to revoke or suspend a personal licence.
- 3.4 Approve the general procedure in regards to revoking or suspending a Personal Licence as set out in Appendix A.

#### 4. BACKGROUND

- 4.1 A personal licence allows a person to authorise the sale of alcohol. Every premises where alcohol is supplied under the authority of a premises licence requires a Designated Premises Supervisor (DPS) and such individuals must have a personal licence. Every premises licensed for the sale of alcohol requires at least one personal licence holder. The only exception to this rule is community premises which have been granted a dispensation from the requirement to have a DPS by the Licensing Authority. Club Premises where alcohol is supplied to members rather than being sold are also exempt from this requirement.
- 4.2 The personal licence is designed to ensure that anybody running or managing a business that sells or supplies alcohol will do so in a professional fashion. Once an individual receives their personal licence they can act as the person who authorises sales for any business that sells or supplies alcohol.
- 4.3 Personal licence holders have a duty to notify the relevant Licensing Authority in writing if they have been convicted of a relevant offence. This is a requirement under Section 132 of the Licensing Act 2003. Relevant offences are listed in Schedule 4 to the Licensing Act 2003 (as amended) (Appendix B). Failure by a personal licence holder to notify the Licensing Authority of any relevant convictions is an offence
- 4.4 Previously only the Magistrates Court had the power to revoke or suspend a personal licence where the licence holder had been convicted of a relevant offence. Section 138 of the Policing and Crime Act 2017 has inserted a new section into the Licensing Act 2003 (section 132A). The amendments to the 2003 Act now give this power to Licensing Authorities for convictions received on or after 6 April 2017. The new Section 132A of the Licensing Act 2003 states where a Licensing Authority, which has granted a personal licence, becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or has been required to pay an immigration penalty on or after this date, the Authority has the discretionary power to revoke the licence or suspend the licence for a period of up to six months.
- 4.5 Section 138(2) of the Policing and Crime Act 2017 also amended S10 of the Licensing Act 2003 as follows:-

“In section 10(4)(a) (functions that may not be delegated to an officer) after sub-paragraph (xii) insert—

“(xiii)section 132A(8) and (12) (revocation or suspension of licence by local authority where it becomes

aware of convictions or immigration penalties),”.

This dictates that these discretionary powers to revoke or suspend a licence once the Authority becomes aware that the licence holder has been convicted of a relevant offence cannot be delegated to Officers. However the discretionary nature of the powers allows officer consideration as to whether a personal licence holder should be referred to a hearing for determination to take place. Such considerations will necessarily be carried out on a case by

case basis.

1. Before making a decision regarding the status of a personal licence, the Authority must invite the licence holder to make representations regarding:
  - a. the relevant offence,
  - b. any decision of the Court in relation to the personal licence, and
  - c. any other relevant information (including information regarding the licence holder's personal circumstances).
2. A period of 28 days must be given in order for the licence holder to make the above representations. The proposed procedure is that an Officer will write to the licence holder inviting the representations.
3. Once the relevant information is gathered, licensing officers in consultation with the legal department consider whether it is a case which should be referred to a licensing sub-committee panel hearing.
4. If a decision is made to refer to a sub-committee licensing panel, then a report is prepared with the information gathered and presented at a Licensing sub-committee hearing.
5. Sub-Committee considers case and determines outcome:
  - No further action
  - To issue a warning letter
  - To suspend the personal licence for a period not exceeding 6 months
  - To revoke personal licence
6. If Sub-Committee determines to take no action, send a warning letter or suspend, then officer notifies chief of police and/or Home Office (as appropriate).
7. Any comments, or lack of comments, received from chief of police or Home Office within 14 days must be considered by Sub-Committee and a final decision made. Where those comments request revocation a second Sub-Committee hearing will occur. Where other comments, or no comments, are received Sub-Committee will determine if the original decision stands or if a second hearing will take place
8. Where the chief of police or Home Office have made comments and Licensing Sub-Committee determines an action other than revocation, then they have a right to appeal to the magistrates' court.
9. In all cases, having made their decision Sub-Committee must record the outcome of that decision and the reasons for the decision reached.
10. After the full process and once a final decision has been made, in all cases officers will write to both the personal licence holder and the chief of police / Home Office (as appropriate) confirming the final decision reached by Licensing Sub-Committee and confirming their right to appeal to the Magistrates Court within 21 days. Any suspension or revocation of the licence will not take effect until the end of the period for the submission of an appeal or if an appeal is submitted until such time as the appeal is determined.

Guidance is issued to Licensing Authorities by the Home Office in relation to the processing and review of licences under the Licensing Act 2003. A relevant extract from the current guidance, on the subject of the suspension or revocation of personal licences can be found at Appendix C of this report.

## **5. DELEGATION TO THE SUB-COMMITTEE PANEL**

- 5.1 Section 7.1 of the Licensing Act 2003 states that all licensing functions under the Act are referred to the Licensing Committee.
- 5.2 Section 10 of the Licensing Act 2003 allows the Licensing Committee to delegate any of its functions to a sub committee (a Hearing Panel) or to an officer. However, in respect of the discretionary powers outlined above, these powers can only be delegated to a Hearing Panel.

5.3 South Ribble Council's current Table of Delegations under the Licensing Act 2003 delegates other types of functions where there is representation or objection to a Hearing Panel. This enables the applicant or licence holder to have a fair hearing before a decision is made.

5.4 In order to be consistent with South Ribble Borough Council's current delegations it is recommended that this Committee also delegates the new power to revoke or suspend a personal licence to a hearing panel made up of 3 members of the Committee that deals with licensing matters.

## **6. FINANCIAL IMPLICATIONS**

6.1 Whilst the Council could incur additional costs as a result of an increase in licensing hearings, these are not anticipated to be significant in the context of the Council's overall finances. However any increase in costs would need to be managed within the areas current budget envelope.

## **7. LEGAL IMPLICATIONS**

The relevant statutory provisions and legal procedures are raised in the body of the report and there are no additional legal implications.

## **8. COMMENTS OF THE STATUTORY FINANCE OFFICER**

As set out in section 6 above, any additional costs are expected to be minimal and contained within existing budgets.

## **9. COMMENTS OF THE MONITORING OFFICER**

Failure to have a delegation in place would mean that any cases which potentially could be considered under S138, would have to be dealt with by the full Licensing Committee, rather than a Sub-Committee panel, which would be inconsistent with other functions are discharged by that

## **11. OTHER IMPLICATIONS:**

▶ <b>HR &amp; Organisational Development</b>	None
▶ <b>ICT / Technology</b>	None
▶ <b>Property &amp; Asset Management</b>	None
▶ <b>Risk</b>	None
▶ <b>Equality &amp; Diversity</b>	None

## **12. BACKGROUND DOCUMENTS**

None

### 13. APPENDICES

**Appendix A- Procedure relating to Convictions**

**Appendix B- List of relevant offences**

**Appendix C- Extract from the Sec 182 Guidance**

**N/A**

Report Author:	Telephone:	Date:
Mark Marshall	01772 625401	19 <sup>th</sup> October 2018



## Procedure to Consider Relevant Convictions of a Personal Licence Holder

1. Before making a decision regarding the status of a personal licence, the Authority must invite the licence holder to make representations regarding:
  - a. the relevant offence,
  - b. any decision of the Court in relation to the personal licence, and
  - c. any other relevant information (including information regarding the licence holder's personal circumstances).
2. A period of 28 days must be given in order for the licence holder to make the above representations. The proposed procedure is that an Officer will write to the licence holder inviting the representations.
3. Once the relevant information is gathered, licensing officers in consultation with the legal department consider whether it is a case which should be referred to a licensing sub-committee panel hearing.
4. If a decision is made to refer to a sub-committee licensing panel, then a report is prepared with the information gathered and presented at a Licensing sub-committee hearing.
5. Sub-Committee considers case and determines outcome:
  - No further action
  - To issue a warning letter
  - To suspend the personal licence for a period not exceeding 6 months
  - To revoke personal licence
6. If Sub-Committee determines to take no action, send a warning letter or suspend, then officer notifies chief of police and/or Home Office (as appropriate).
7. Any comments, or lack of comments, received from chief of police or Home Office within 14 days must be considered by Sub-Committee and a final decision made. Where those comments request revocation a second Sub-Committee hearing will occur. Where other comments, or no comments, are received Sub-Committee will determine if the original decision stands or if a second hearing will take place
8. Where the chief of police or Home Office have made comments and Licensing Sub-Committee determines an action other than revocation, then they have a right to appeal to the magistrates' court.
9. In all cases, having made their decision Sub-Committee must record the outcome of that decision and the reasons for the decision reached.
10. After the full process and once a final decision has been made, in all cases officers will write to both the personal licence holder and the chief of police / Home Office (as appropriate) confirming the final decision reached by Licensing Sub-Committee and confirming their right to appeal to the Magistrates Court within 21 days. Any suspension or revocation of the licence will not take effect until the end of the period for the submission of an appeal or if an appeal is submitted until such time as the appeal is determined.

Procedure Drafted by Mark Marshall- 12<sup>th</sup> November 2018. 

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## PERSONAL LICENCE: RELEVANT OFFENCES

1An offence under this Act.

2An offence under any of the following enactments—

(a)Schedule 12 to the London Government Act 1963 (c. 33) (public entertainment licensing);

(b)the Licensing Act 1964 (c. 26);

(c)the Private Places of Entertainment (Licensing) Act 1967 (c. 19);

(d)section 13 of the Theatres Act 1968 (c. 54);

(e)the Late Night Refreshment Houses Act 1969 (c. 53);

(f)section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30);

(g)the Licensing (Occasional Permissions) Act 1983 (c. 24);

(h)the Cinemas Act 1985 (c. 13);

(i)the London Local Authorities Act 1990 (c. vii).

3An offence under the Firearms Act 1968 (c. 27).

4An offence under section 1 of the Trade Descriptions Act 1968 (c. 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.

5An offence under any of the following provisions of the Theft Act 1968 (c. 60)—

(a)section 1 (theft);

(b)section 8 (robbery);

(c)section 9 (burglary);

(d)section 10 (aggravated burglary);

(e)section 11 (removal of articles from places open to the public);

(f)section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;

(g)section 13 (abstracting of electricity);

(h)section 15 (obtaining property by deception);

(i)section 15A (obtaining a money transfer by deception);

(j)section 16 (obtaining pecuniary advantage by deception);

(k)section 17 (false accounting);

(l)section 19 (false statements by company directors etc.);

(m)section 20 (suppression, etc. of documents);

## Appendix B

(n)section 21 (blackmail);

(o)section 22 (handling stolen goods);

(p)section 24A (dishonestly retaining a wrongful credit);

(q)section 25 (going equipped for stealing etc.).

6An offence under section 7(2) of the Gaming Act 1968 (c. 65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).

7An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)—

(a)section 4(2) (production of a controlled drug);

(b)section 4(3) (supply of a controlled drug);

(c)section 5(3) (possession of a controlled drug with intent to supply);

(d)section 8 (permitting activities to take place on premises).

8An offence under either of the following provisions of the Theft Act 1978 (c. 31)—

(a)section 1 (obtaining services by deception);

(b)section 2 (evasion of liability by deception).

9An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c. 2)—

(a)section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc.);

(b)section 170B (taking preparatory steps for evasion of duty).

10An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c. 7)—

(a)section 8G (possession and sale of unmarked tobacco);

(b)section 8H (use of premises for sale of unmarked tobacco).

11An offence under the Forgery and Counterfeiting Act 1981 (c. 45) (other than an offence under section 18 or 19 of that Act).

12An offence under the Firearms (Amendment) Act 1988 (c. 45).

13An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)—

(a)section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);

(b)section 107(3) (infringement of copyright by public performance of work etc.);

(c)section 198(2) (broadcast etc. of recording of performance made without sufficient consent);

(d)section 297(1) (fraudulent reception of transmission);

(e)section 297A(1) (supply etc. of unauthorised decoder).

14An offence under any of the following provisions of the Road Traffic Act 1988 (c. 52)—

(a)section 3A (causing death by careless driving while under the influence of drink or drugs);

(b)section 4 (driving etc. a vehicle when under the influence of drink or drugs);

**(c)section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit).**

15An offence under either of the following provisions of the Food Safety Act 1990 (c. 16) in circumstances where the food in question is or includes alcohol—

(a)section 14 (selling food or drink not of the nature, substance or quality demanded);

(b)section 15 (falsely describing or presenting food or drink).

16An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.

17An offence under the Firearms (Amendment) Act 1997 (c. 5).

**[F118A sexual offence, being an offence —**

(a)listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003 **F2**, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));

(b)an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);

(c)an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).]

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## **Appendix C (Delegation to Sub Committee)**

4.45 The Policing and Crime Act 2017 gives licensing authorities the power to revoke or suspend personal licences, with effect from 6 April 2017. This is a discretionary power; licensing authorities are not obliged to give consideration to all personal licence holders subject to convictions for relevant offences, foreign offences or civil penalties for immigration matters. When a licensing authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months. This applies to convictions received and civil immigration penalties which a person has been required to pay at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017, or the requirement to pay the civil penalty arose after 6 April 2017. Only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017. The process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out at section 132A of the 2003 Act. The decision to revoke or suspend a personal licence must be made by the licensing committee or sub-committee, but the actions required before making a final decision may be made by a licensing officer.

4.46 The licensing authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the offence, until the appeal is disposed of. Where an appeal is not lodged, the licensing authority may not take action until the time limit for making an appeal has expired.

4.47 If a licensing authority is considering revoking or suspending a personal licence, the authority must give notice to the licence holder. This notice must invite the holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also decide to include any other information, for example, about their personal circumstances. The licence holder must be given 28 days to make their representation, beginning on the day the notice was issued. The licensing authority does not need to hold a hearing to consider the representations. Before deciding whether to revoke or suspend the licence the licensing authority must consider any representations made by the licence holder, any decisions made by the court or appellate court in respect of the personal licence of which the licensing authority is aware, and any other information which the licensing authority considers relevant. The licensing authority may not be aware of whether the court considered whether to revoke or suspend the licence, and there is no obligation on the licensing authority to find this out before making a decision themselves. Where the court has considered the personal licence and decided not to take action, this does not prevent the licensing authority from deciding to take action itself. Licensing authorities have different aims to courts in that they must fulfil their statutory duty to promote the licensing objectives, and therefore it is appropriate for the licensing authority to come to its own decision about the licence.

4.48 If the licensing authority, having considered a suspension and revocation and subsequently considered all the information made available to it, proposes not to revoke the licence it must give notice to the chief officer of police in the licensing authority's area, and invite the chief officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime. The chief officer may make representations within the period of 14 days from the day they receive the notice from the licensing authority. Any representations made by the chief officer of police must be taken into account by the licensing authority in deciding whether to suspend or revoke the licence. Convictions may come to light via police in another area, for example if the personal licence holder no longer lives in the area of the licensing authority which issued the licence, or if the offence took place in another police force area. In this instance it would be good practice for the police providing the information to notify the police force in the licensing authority area, because it is the local chief officer who must provide representations if the licensing authority proposes not to revoke the licence. Where the licence holder is convicted of immigration offences or has been required to pay a civil penalty for immigration matters, the licensing authority should notify Home Office Immigration Enforcement and allow representations to be made in the same way.

4.49 The licensing authority must notify the licence holder and the chief officer of police of the decision made (even if the police did not make representations). The licence holder may appeal the licensing authority's decision to revoke or suspend their personal licence. A decision to revoke or suspend the licence does not

take effect until the end of the period allowed for appealing the decision (21 days); or if the decision is appealed against, until the appeal is disposed of.

4.50 If the personal licence holder is a DPS, the licensing authority may notify the premises licence holder once the decision to revoke or suspend the licence has been made if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions. The licensing authority may also notify any person who has declared an interest in the premises under section 178 of the 2003 Act if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions. The licensing authority may invite the premises licence holder to make representations about the personal licence holder before deciding whether to revoke or suspend the licence; this is not a legal requirement and may not be appropriate in all circumstances.