

REPORT TO	ON
Licensing Panel	28 October 2019



TITLE	REPORT OF
Review of Premises Licence	Interim Monitoring Officer

Is this report confidential?	No
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PURPOSE OF THE REPORT

1. To provide an overview of the application and inform members of the relevant parts of statute and guidance relating to the review application.

RECOMMENDATIONS

2. Members are requested to:

Note the content of the report; and conduct the hearing in accordance with the hearing procedure and determine what steps are appropriate to promote the Licensing objectives.

CORPORATE OUTCOMES

3. The report relates to the following corporate priorities: *(tick all those applicable)*:

Excellence, Investment and Financial Sustainability	
Health, Wellbeing and Safety	X
Place, Homes and Environment	X

Projects relating to People in the Corporate Plan:

Our People and Communities	
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BACKGROUND TO THE REPORT

4. On 3rd April 2019 Officers attended S & D Convenience Store on Leyland Lane, Leyland on a routine visit and spoke with a staff member called Ian Whittle. Officers found that the store had in fact been taken over by new owners some months previously. The licence was still in the previous owner’s name and had not been transferred. Officers were able to speak to the owner’s wife Feni Patel on the phone whilst still in the store and advised the lady that the licence must be transferred by the end of the week.

Officers made two further calls to the new owners of the business to chase what was happening with the transfer of the licence. On 14th May 2019 officers decided to hand deliver

a letter to the premises outlining the concerns the licensing authority had over who was running the premises. The licence was still in the old occupier's name and the DPS had not been changed since October 2018 when Mr Sumitkumal Patel took over the premises. A copy of the letter is attached to this report title Appendix D.

On 22nd May 2019 both required applications to transfer the licence and change the DPS, were finally received transferring the licence and the position of DPS into Mr Patel's name.

Following concerns raised by the police on 5th July 2019, a licensing officer attended the premises. Mrs Patel was running the store and was asked to produce copies of staff training regarding under age sales and refusal logs. Mrs Patel wasn't able to provide any evidence the staff had been trained or evidence of any refusal of sales to under age customers. Mrs Patel was given a verbal warning about the breaches disclosed and given 7 days to rectify the deficiencies.

On 23rd July 2019 officers again visited the premises to follow up on the visit on 5th July to check the required documents were in place. Records of staff training were produced to licensing officers by Mr Patel for all the staff he had advised worked at the premises. Mr Patel explained to officers that the refusal system was a manual process through the till system which printed off a void transaction receipt which should then be completed by hand by employees.

This system seemed overly complex for staff to follow along with the fact that it would be easy to forget to log the tear off slips or even fail to print them off. Officers were left with a clear impression that the competence of the licence holder was limited at best and further guidance and assistance was required.

During this visit Mr Patel, the licence holder mentioned an idea he had regarding the sale of alcoholic slush. Officers asked him to put the idea on hold until further information could be obtained.

On 29th July 2019 officers had observed via social media that, the premises was advertising the sale of alcoholic slush even though Mr Patel had been asked to put the idea on hold until further information could be obtained.

Mr Patel was contacted by phone by a Licensing Officer and concerns over what containers would be used with reference to the fact Mr Patel only has a licence for Off Sales so can't sell alcohol in open container (as a bar with on sale would) and what measures would be taken to ensure that the alcoholic slush would not be sold to children considering that Mr Patel also has a second slush machine that sells non-alcoholic slush.

Photos via email were sent in by the licence holder showing containers that were unsuitable. It was of a design and construction that meant a customer was being served a drink ready to consume. A similar comparison would be serving a bottle of beer but removing the top before service. Following this, the licence holder took the comments on board and came back with an alternative container which was more appropriate.

Mr Patel's licence states the following conditions with relation to open containers and under age sales:

Proof of age checks to ensure no sale of alcohol to under age persons.

OFF-LICENSED CONSUMPTION

Alcohol shall not be sold in an open container or be consumed in the licensed premises.

On the 16th August 2019 the Police and Licensing Officers performed a test purchase exercise. A 16 year old male was sent into the premises to try to purchase alcohol. He was sold a large 620 ml bottle of peroni and a pink gin alcoholic slush which was served to him in one of the open containers.

Members of staff who were present and working at the time were not included on the written authorisation that had been previously provided to officers. The DPS was then asked to produce copies of refusals to under age customers since the last visit on the 23rd July 2019 where he was told to keep records by licensing officers, he was only able to produce one copy of a refusal.

Mr Patel was asked especially with it being towards the end of the school summer holidays why he had no other copies of refusals. He stated that the people who are under age know not to try and get served at his premises.

On 22nd August 2019. Licensing officers revisited the premises following the failed test purchase on 16th August 2019. Staff training was requested for the members of staff present on the evening of the failed test purchase. No training was on file for the member of staff Joshua Hill who served the underage volunteer and Mr Patel's wife. After further scrutiny it came to light that the training Mr Patel had provided was actually produced by the old licence holder in 2017 and not Mr Patel.

On 07/10/2019 the premises was retested as part of an underage test purchase exercise, the volunteer was a 14 year old female who tried to purchase alcohol in the premises, she was refused the sale.

REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

5. Please see Appendix B and C - Lancashire Constabulary representations in support of the review of the premises licence.

PROPOSALS (e.g. RATIONALE, DETAIL, FINANCIAL, PROCUREMENT)

6. *Determination of an application under Section 52 of the Licensing Act 2003*

Under Section 52 Licensing Act 2003 the Authority must have regard to the application and any relevant representations and take such steps ...(as are outlined below)... if any, as it considers necessary for the promotion of the licensing objectives.

The steps are:-

- a. to modify the conditions on the licence
- b. to exclude a licensable activity from the scope of the licence
- c. to remove the designated premises supervisor
- d. to suspend the licence for a period not exceeding 3 months
- e. to revoke the licence.

Obviously the panel can also choose to do nothing for example if the application is frivolous, vexatious or repetitive and the panel must ensure that any action they take is proportionate to the four licensing objectives.

Numerous paragraphs of the Section 182 Guidance are worthy of mention including;

- 11.10 *Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take*

to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)*
- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence*

11.20 *In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.*

The Council must carry out its licensing functions with the intention of promoting the licensing objectives.

The licensing objectives are:-

- a) The prevention of crime and disorder;
- b) Public safety;
- c) The prevention of public nuisance; and
- d) The protection of children from harm.

The Panel are asked to consider the seriousness of the issues disclosed and deal with this application and take regard of;

1. Its own policy; and
2. Secretary of State Guidance (section 182 of the Licensing Act 2003).

FINANCIAL IMPLICATIONS

7. There are no significant financial implications.

LEGAL IMPLICATIONS

8. The Licensing Authority are under a statutory duty to facilitate the review hearing. When determining the hearing the council must comply with the rules of natural justice. The decision taken by the panel should be appropriate and proportional in addressing any undermining of the licensing objectives. Any party at the hearing has the right to appeal the decision to the magistrates.

COMMENTS OF THE STATUTORY FINANCE OFFICER

9. No further comments.

COMMENTS OF THE MONITORING OFFICER

10. When exercising its powers in this regard the Panel should have due regard to the relevant statutory provisions and associated statutory guidance. It should give careful consideration to all representations made by – or on behalf of the licence holder. It should be seek to be balanced and proportionate in its approach. As ever it must ensure that it acts reasonably throughout – both with regard to the substantive issues but also to procedural matters.

OTHER IMPLICATIONS:

▶ HR & Organisational Development	No implications here
▶ ICT / Technology	No implications here
▶ Property & Asset Management	No implications here
▶ Risk	No implications here
▶ Equality & Diversity	The Council always seeks to exercise its statutory powers and fulfil its duties in a balanced, proportionate and even handed way

APPENDICES

Appendix A - Review Application and associated documents.

Appendix B - Police representation in support of the review application

Appendix C - Warning letter regarding transfer of premises licence

Appendix D – Transfer Warning Letter

LT Member's Name: David Whelan

Job Title: Interim Monitoring Officer

Report Author:	Telephone:	Date:
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