

**RECORD OF STANDING ORDER 35 DELEGATION
OF URGENT DECISION BETWEEN MEETINGS OF
A COMMITTEE BY THE CHIEF EXECUTIVE
(DELEGATED IF UNAVAILABLE) IN
CONSULTATION WITH PORTFOLIO
HOLDER/COMMITTEE CHAIRMAN**



SMT Member:

David Whelan
Interim Monitoring Officer

Service Group:

Corporate Governance

Portfolio Holder/Chairman:

Cllr Jackie Mort

Portfolio/Committee:

Licensing Committee

Subject:

Settling an Appeal pursuant to Section 181 of the Licensing Act 2003.

Decision:

SO35
To agree that settling the Appeal is a necessary and proportionate step in the circumstances. The licence could be reinstated to allow the sale of alcohol by retail.

Details and Reasoning:

Moss Lane Convenience Store was the respondent to a Review brought pursuant to Section 51 of the Licensing Act 2003. The review was brought by the Licensing Authority on the grounds of undermining one of the following Licensing Objectives, namely;

Public Safety
Prevention of Crime and Disorder and
The Protection of Children from Harm.

A Licensing Act 2003 panel hearing was re-convened on the 27th November 2018, consisting of three members, Councillor Mort (Chair), Councillor Bell and Councillor Wharton, to determine a review application in respect of Moss Lane Convenience Store, pursuant to the provisions of S52 of the Licensing act 2003.

The initial hearing which was held on the 7th November was adjourned because it was not in the public interest to continue the hearing. This was due to the fact that neither the Chair nor Vice Chair of the Committee were available to lead the meeting. Relevant notices by virtue of Regulation 11 of the Licensing Act (Hearings) Regulations 2005, explaining the reason for the extension of time were appropriately served on the parties. Therefore, the hearing was adjourned until the 27th November.

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 as a Responsible Authority.

Representations were also made by one other Responsible Authority, that being the Home Office Immigration Enforcement Team. Mr Karl Swayne of the Immigration Enforcement Section was present.

The Premises Licence Holder (PLH) and Designated Premises Supervisor, Ranga Ratnasekera was in attendance and was represented by Paul Douglas.

Decision

In the circumstances the panel felt that the only appropriate measure was to revoke the licence. Serious criminal activity had taken place at the premises and it was considered that revocation was warranted. Such action was considered to be in the public interest having regard to the twin considerations of prevention and deterrence. Revocation of the premises licence was an appropriate and proportionate response in terms of promoting the licensing objectives.

A full copy of the reasons for the decision are set out in the notice attached as Appendix 1.

The Licence holder submitted an Appeal to the Magistrates against the Licensing Authorities decision and we are at a point in the process where the exchange of documents will be necessary to comply with the Court's Directions.

In early January 2019 the Department was contacted by an interested party who wished to take over the business, his client was an operator from Liverpool who had 2 (off licensed) premises. His intention was to transfer the licence. It was explained that clear severance would be needed, in the form of a new lease which demonstrated that the previous licence holder had no interests in the business before any settlement of the Appeal could even be considered.

The first e mail was received on the 9th January 2019 from Ian Rushton setting out his client's intentions, a copy of the relevant e mail correspondence between Mr Rushton and the Department is attached as Appendix 2.

The Police in Liverpool were contacted and asked to provide a view on the competence of the proposed new operator. They had no adverse information to offer and provided a written overview which is attached as Appendix 3

An application to transfer the licence and vary the DPS has now been received, the Police in Lancashire have no objections and have confirmed the same in an e mail attached as Appendix 4

Conclusion

In circumstances where a licence is refused or revoked a tactic to be aware of is the replacement of the name on the licence to camouflage the fact that the problem hasn't gone away but is no longer in plain sight.

If a licence is transferred but the problem individual still has an equitable interest then we as Authority cannot ensure the

Licensing Objectives will be adequately safeguarded and the prospect of defending an appeal would be more realistic. However in this case there is actual severance from the proposed licence holder and the problematic licence holder. A commercial lease has been drawn up and based upon the background check provide by Merseyside we will have great difficulty attributing the problems caused in the past to the new licence holder. For that reason a settlement of the Appeal should be considered, offering no evidence for the Appeal and agreeing a consent order will save costs and is appropriate in the circumstances.

Wider Implications (including Financial, Legal, Equality and Risk):

Legal implications can be found in the body of the report, if we don't settle this matter the Council may be ordered to pay the costs of the other party.

**Report attached?
Exempt from publication?
If exempt, give reason(s):**

No
No

Signed:

Date:

SMT Member

Date:

Portfolio Holder/
Chairman

THIS DECISION WILL COME INTO FORCE IMMEDIATELY IN ACCORDANCE WITH THE COUNCIL'S CONSTITUTION