



HYNDBURN
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**TITLE : LICENSING ACT 2003 DETERMINATION HEARING
TASTE OF ITALY
202 UNION ROAD OSWALDTWISTLE
ACCRINGTON**

TO: LICENSING SUB-COMMITTEE

**TIME: THURSDAY 12 NOVEMBER 2015 AT 1.30PM
QUEEN ELIZABETH ROOM
SCAITCLIFFE HOUSE**

BY : HOWARD BEE, LICENSING MANAGER

1. PURPOSE OF THE REPORT

- 1.1 To advise elected members of the details of an application made under section 17 of the Licensing Act 2003 for a new Premises Licence.
- 1.2 A determination is required under Section 18 of the Licensing Act 2003

2. RECOMMENDATIONS

- 2.1 That the Sub-Committee must, having regard to the representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives:
 - a) To grant the licence subject to any conditions consistent with the operating schedule modified to such extent as the Sub-Committee considers appropriate for the promotion of the licensing objectives and subject to any mandatory condition(s) which must be included in the licence.
 - b) To exclude from the scope of the licence any of the licensable activities to which the application relates; or
 - c) To reject the application.

For these purposes conditions of the licence are modified if any of them if any of them are altered or omitted or any new condition is added

3. THE APPLICATION

- 3.1 An application has been submitted by Cemkay Limited for a new premises licence for Taste of Italy, 202 Union Road, Oswaldtwistle, Accrington, BB5 3EG

A copy of the application is illustrated at **Appendix A**

3.2 The premises is currently a takeaway which closes at 23:00. The applicant is seeking a premises licence to enable the takeaway to extend the hours it can open and offer late night refreshment.

3.4 The applicant is requesting following licensable activities:

ACTIVITY	HOURS APPLIED FOR
Late night refreshment both in and outdoors (i)	Monday – Sunday 23:00 to 02:00

3.5 Hours premises are to be open to the public (L)

ACTIVITY	HOURS APPLIED FOR
Hours premises are open to the public	Monday – Sunday Midday to 02:00

The full application is illustrated at **Appendix A** to this report.

3.6 The applicant has submitted an operating schedule with this application to describe the steps that they intend to take to promote the four licensing objectives. This operating schedule is reproduced directly from the application form. These will become enforceable conditions, should the licence be granted. Additional conditions may be attached to the licence if the committee thinks it appropriate.

The proposed operating schedule –

General

- All staff will be fully trained to understand their responsibilities.

The prevention of crime and disorder

- CCTV system installed to monitor entrances exits and other parts of the premises in order to address the prevention of crime objective.

Public Safety

- The premises will be maintained in a safe manner at all times. All exits will be clear of hazards well trained staff adherence to environmental health requirements.

The prevention of public nuisance

- The external area will be regularly monitored.

The protection of children from harm

- There will be no more than two children allowed in the premises without occupied by their parents

The full operating schedule is illustrated at **Appendix A** to this report.

4. THE REPRESENTATIONS

4.1 I have determined that this is a valid application for a Premises Licence, but there are representations so the issue must, by law, be referred to a hearing by elected members for a determination.

Responsible Authorities

4.2 There were no representations from the Responsible Authorities

Interested Parties

4.3 The Council received one valid representation in the form of a petition containing forty eight names.

A summary of the objections is as follows -

No	Name	Address	Relevance to which licensing objective
1	Petition containing 48 names	various	The prevention of public nuisance

The representations are illustrated in full within **Appendix B**

5. THE LICENSING ACT 2003

5.1 The Licensing Objectives are –

- i) The prevention of crime and disorder
- ii) Public safety
- iii) The prevention of public nuisance; and
- iv) The protection of children from harm

5.2 The Licensing Act 2003 requires you to:

- A) have regard to the Representations and only consider elements of Representations that are about the likely effect of the grant of the premises licence on the promotion of the Licensing Objectives
- B) take only such of the steps as you consider necessary for the promotion of the Licensing Objectives.

5.3 The steps you may take are (a) to modify the conditions of the licence and/ or to reject the whole or part of the Application to vary a Premises Licence.

5.4 Members are also advised that you should take account of the Statutory Guidance to the Act.

5.5 Members are also referred to Hyndburn Licensing Authority's Statement of Licensing Policy

- Section 1 sets out the purpose the policy, namely promoting the four Licensing Objectives.
- Section 6 sets out the Council's approach with regard to the imposition of conditions.

6. LEGAL IMPLICATIONS

6.1 Members are reminded that they should:

- follow the rules of natural justice and the code of conduct for elected members in licensing applications.
- have read or should hear all the facts prior to making a determination.

- Give consideration to the Human Rights Act 1998, in particular:
 - the right to peaceful enjoyment of possessions;
 - the right to a fair and public hearing within a reasonable time;
 - respect for private and family life; and
 - the right to freedom of expression.

Appendices

Appendix A Copy of the application and plan

Appendix B Representations

Appendix C Copy of the licensing Authorities 'Conduct of Hearings Procedures'

Background Papers

The following background papers were used in the preparation of this report.

Licensing Act 2003

Home Office revised guidance issued under section 182 of the Licensing Act, March 2015

Hyndburn Council Licensing Act 2003 Licensing Policy

**APPENDIX A
THE APPLICATION**

**APPENDIX B
REPRESENTATIONS**

HYNDBURN BOROUGH COUNCIL

LICENSING ACT 2003

THE CONDUCT OF HEARINGS

1. Application

- 1.1 All hearings subject to the Licensing Act 2003 (Hearings Regulations) 2005 will be held in accordance with this procedure. Schedule 1 details the hearings which are subject to this procedure.

2. Time of Hearing

- 2.1 Hearings will commence within the times illustrated in Column 2 of Schedule 1, and where the hearing is scheduled to take place on more than one day, it will take place on consecutive working days.
- 2.2 Hearings will normally commence at 1.00 pm on the day of the hearing, but hearings may take place at other times at the discretion of the Chair of the Committee or Sub-Committee appointed to hear the matter.

3. Members of the Committee or Sub-Committee

- 3.1 Where the full Licensing Committee sit to hear an application, the full Committee will sit, excluding a member who:
- a) has sat on a Planning Committee hearing in respect of the premises subject to, or concerned in the Licensing Act 2003 application and/or
 - b) has a personal and prejudicial interest in the application and / or
 - c) has become an interested party by representing the applicant or any interested party prior to the hearing.
- 3.2 Where a Sub-Committee sit to hear an application, it will consist of 3 members of the full Committee and will exclude a member who:
- a) has sat on a Planning Committee hearing in respect of the premises subject to, or concerned in the Licensing Act 2003 application and/or
 - b) has a personal and prejudicial interest in the application
 - c) has become an interested party by representing the applicant or any interested party prior to the hearing.
- 3.3 Members will act in accordance with the Licensing Act 2003. They will have received training under the Act and will also act in accordance with the relevant paragraphs of the Local Authority Co-coordinators of Regulatory Services Guidance on the Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, the Hyndburn Borough Council Member codes of conduct and the requirements of the Standards Board for England and Wales.

4. Opening of a Hearing and Identifying Parties to the Hearing

- 4.1 The Chair of the Committee or Sub-Committee will introduce the members of the Committee or Sub-Committee and will outline the brief purpose of the hearing, person or premises to which the hearing relates, and the legal authority under which the determination will be made.
- 4.2 All parties to a hearing will have been given a Notice of Hearing and Information to accompany a Notice of Hearing, prior to the hearing. The party to the hearing receiving a Notice of Hearing is obliged to return a response notice stating whether:

- a) they intend to attend or be represented at the hearing
- b) they consider a hearing to be unnecessary
- c) they request permission for other persons (other than a representative) to appear at the hearing, and the points upon which that person may be able to give information or assistance.

4.3 The Clerk to the Committee or Sub-Committee will identify in turn, each party to the hearing who is present, and in relation to that party, whether they:

- a) are represented, and if so, who by
- b) have given notice that they consider a hearing unnecessary
- c) have given notice that they wish to withdraw any representation they have made
- d) have given written representations which are before the hearing
- e) have given notice that they seek permission to call any other persons (other than a representative) to appear at the hearing, and the points upon which that person may be able to give evidence on or assistance

4.4 The Chair of the Committee or Sub-Committee will then, in turn, ask each party to the hearing who is present whether:

- a) they wish to verbally withdraw any representations they have made
- b) they intend to introduce any documentary or other information that they have not produced in advance of the hearing

4.5 Where a party does intend to introduce any documentary or other information that they have not produced in advance of the hearing, the Chair of the Committee or Sub-Committee will ask all other parties whether they consent to that evidence or information being introduced. If any party does object, that documentary or other information must not be introduced.

4.6 The Committee or Sub-Committee will then consider any requests made to call other persons under Paragraph 4.3(e) above, and shall not unreasonably withhold any such permission, having ensured that Paragraph 4.5 above is not undermined by such persons.

4.7 The Clerk to the Committee or Sub-Committee will identify in turn, each party to the hearing who is not present at the hearing and in relation to that party will clarify:

- a) whether there is evidence that they were given Notice of the Hearing
- b) whether that party has given notice that they intend to attend or be represented
- c) whether that party has given notice that they consider a hearing to be unnecessary
- d) whether that party has given notice that they wish to withdraw their representation

4.8 Where a party has given notice that they do not intend to attend or be represented, the Committee or Sub-Committee will state whether they intend to proceed in the absence of that party.

4.9 Where a party has not given such notice has failed to attend or be represented, the Committee or Sub-Committee will then decide whether it is necessary in the public interest to adjourn the hearing to a specified date or hold the hearing in the party's absence. The Committee or Sub-Committee may invite representations from parties present on this issue before making their decision.

4.10 The Committee or Sub-Committee, should it decide to proceed must subsequently consider the application, representation or notice made by a party who does not attend, attaching the appropriate weight of evidence to it.

5. Hearings to be Held in Public

5.1 The hearing shall take place in public although a member of the public, unless a party to the hearing a representative of a party, or a person mentioned under Paragraph 4.3(e) above, shall not be entitled to address the hearing.

- 5.2 The Chair of the Committee or Sub-Committee will invite any applications from parties present in relation to whether it is in the public interest to exclude the public from all or part of a hearing.
- 5.3 Where there are such representations, they will be heard in public and following these, the Committee or Sub-Committee will decide whether the public interest in excluding the public outweighs the public interest in the hearing, or that part of the hearing taking place in public.
- 5.4 Where there are no representations under Paragraph 5.3, then subject to Paragraph 7.8, the whole of the hearing will take place in public. Where there are representations, the Committee or Sub-Committee decision and reasons for it will be given in public, and the Committee or Sub-Committee will also state whether any party or any persons assisting or representing a party are to be treated as a member of the public for this purpose.

6. Commencement of the Hearing

- 6.1 The Chair will explain the procedures that it will follow at the hearing. In particular the Chair will clarify that:
- a) the hearing will take the form of a discussion led by the Committee or Sub-Committee and cross-examination will not be permitted unless the Committee or Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require.
 - b) members of the Committee or Sub-Committee may ask a question of any party or other person appearing at the hearing.
 - c) members of the Committee or Sub-Committee may take into account documentary or other information produced to the authority before the hearing in support of their application, representation or notice. These have been provided to the Committee or Sub-Committee members by the Licensing Manager and need not be repeated at the hearing.
 - d) members of the Committee or Sub-Committee may take into account any new documentary or other information produced to the authority at the hearing with the consent of all other parties (if any) and need not be repeated verbally at the hearing.
 - e) parties will be allocated a maximum equal period to exercise their rights. The Chair will clarify what that time will be and when calculating that time will take account of the number of other persons who have been given permission to speak under Paragraph 4.3(e) above.
 - f) parties will be allowed to clarify points upon which they wish to support their application.
 - g) parties may seek permission to question any other party subject to Paragraph a) above.
 - h) parties may seek permission to address the Committee or Sub-Committee.

7. Procedure

- 7.1 The Licensing Manager (or his representative) will not be a party to the hearing. The Manager will outline the facts of the application and relevant representations received from parties.
- 7.2 The Licensing Manager will then outline the legislation under which a determination is required.
- 7.3 The Licensing Manager will outline:
- a) Relevant parts of the Act
 - b) Relevant subordinate legislation
 - c) Relevant sections from the statutory guidance made under Section 182 of the Act.
 - d) Relevant paragraphs of the Statement of Licensing Policy made under Section 5 of the Act.

- e) The time limit in which the Committee or Sub-Committee must make a determination under the law.

7.4 The Licensing Manager or Licensing Authority Solicitor will advise the Committee or Sub-Committee but will not make recommendations or be part of the determination process. They will not retire with the Committee or Sub-Committee members for the purposes of a determination. The Licensing Authority Solicitor may at the request of the Chairman of the Committee or Sub Committee advise the Committee or Sub Committee whilst it is considering its decision.

7.5 Each party to the hearing present will then in turn provide information supporting or clarifying their representations. Each party can at this time seek to exercise their rights under Paragraph 6 above.

7.6 At the conclusion of hearing, the Committee or Sub-Committee may advise all parties of details of representations they have received from parties not present and the weight they intend to attach to that evidence or representation.

7.7 The Committee or Sub-Committee will disregard any information given by a party or any other person to whom permission to appear at the hearing has been given which is not relevant to ;

- a) their application, representation or notice or in the case of another person, the application, representation or notice of the party requesting their appearance, and
- b) the promotion of the Licensing Objectives

or in the case of a hearing to consider a notice given by a chief officer of police, the crime prevention objective only.

7.8 At any time during the hearing the Committee or Sub Committee may exercise the right to exclude the public and the parties from the hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

8 Persons behaving in a disruptive manner

8.1 The Committee or Sub-Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may:

- a) refuse to permit that person to return, or
- b) permit them to return only on such conditions as the Committee or Sub-Committee may specify

but such a person may, before the end of the hearing, submit to the authority in writing any information, which they would have been entitled to give orally had they not been required to leave.

9. Adjournment of Hearing

9.1 The Committee or Sub-Committee may adjourn a hearing to a specified date or arrange for the hearing to be held on specified additional dates where it considers this necessary to consider any representations or notice made by a party.

9.2 It will not adjourn a hearing in such a way to create an effect on the requirements of granting or rejecting an application under Schedule 8 of the Act or a review under Section 167 of the Act.

10 Determinations

10.1 The Committee or Sub-Committee will make its determination at the conclusion of the hearing but in restricted circumstances may make a determination within a period of 5 working days of the last day of the hearing.

11 Notice of Determination

11.1 The Clerk to the Committee or Sub-Committee will issue a notice of determination forthwith to all parties.

12 Record of Proceedings

The Clerk to the Committee will provide for a record of the hearing to be taken in a permanent and intelligible form and kept for 6 years from the date of determination.

SCHEDULE 1

Column 1		Column 2
Provision under which hearing is held.		Period of time within which hearing must be commenced.
1.	Section 18(3) (a) (determination of application for premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c).
2.	Section 31(3) (a) (determination of application for a provisional statement).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 30.
3.	Section 35(3) (a) (determination of application to vary premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 34(5).
4.	Section 39(3) (a) (determination of application to vary premises licence to specify individual as premises supervisor).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 37(5).
5.	Section 44(5) (a) (determination of application for transfer of premises licence).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 42(6).
6.	Section 48(3) (a) (cancellation of interim authority notice following police objection).	5 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 48(2).
7.	Section 52(2) (determination of application for review of premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c).
8.	Section 72(3) (a) (determination of application for club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c).

Column 1		Column 2
Provision under which hearing is held.		Period of time within which hearing must be commenced.
9.	Section 85(3) (determination of application to vary club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c) by virtue of section 84(4).
10.	Section 88(2) (determination of application for review of club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 87(3)(c).
11.	Section 105(2) (a) (counter notice following police objection to temporary event notice).	7 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under section 104(2).
12.	Section 120(7) (a) (determination of application for grant of personal licence).	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 120(5).
13.	Section 121(6) (a) (determination of application for the renewal of personal licence).	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 121(3).
14.	Section 124(4) (a) (convictions coming to light after grant or renewal of personal licence).	20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 124(3).
15.	Section 167(5) (a) (review of premises licence following closure order).	10 working days beginning with the day after the day the relevant licensing authority receives the notice given under section 165(4).