

**ITEM 7                      Tally Ho! High Street, Broughton SO20 8AA –  
Police objection to transfer of Premises Licence**

**1            The application**

- 1.1    The application is by Mr James Moloney of the Tally Ho! public house, High Street, Broughton, Stockbridge SO20 8AA. The applicant has applied for a transfer of the existing Premises Licence to himself as provided for by section 42 of the Licensing Act 2003. As part of the application process the application has been copied to the Police and they have lodged an objection to the transfer. Their reason is that the applicant has been convicted of a “relevant offence” as set out in Schedule 4 of the Act, namely that on 8 March 2005 he was convicted of driving a motor vehicle with excess alcohol. He was fined £190 plus £35 costs, his driving licence was endorsed and he was disqualified from driving for 24 months. It is the view of Hampshire Constabulary that as the applicant has a conviction of this nature, transferring the licence to him would undermine the licensing objective of prevention of crime and disorder.
- 1.2    Hampshire Constabulary are the only persons able to object to such an application thus needing the matter to be determined by a hearing.
- 1.3    The Licensing Act 2003 states that in the case of this type of application, if the chief officer of Police is “satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the authority a notice stating the reasons why he is so satisfied”. The Act further states that where such a notice is given the licensing authority must hold a hearing (unless all parties agree a hearing is unnecessary) and having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so. Details of the Police objection notice are set out in paragraph 4.1 below.

**2            Background**

- 2.1    The Licensing Authority has discretion whether or not to grant the transfer application only if an objection is received from the Police. The Police can only object if they are satisfied that granting the licence would undermine the crime prevention objective and reasons why this would be the case must be given.

### **3 Promotion of the Licensing Objectives**

- 3.1 In this type of application only the licensing objective of prevention of crime and disorder can be considered. The applicant is not required to make any comments in relation to the steps taken to promote this licensing objective. The achievement of the licensing objective of the prevention of crime and disorder must be considered in light of the representation from the Police (see paragraph 4.1 below).

### **4 Relevant Representations – Responsible Authorities**

- 4.1 **Hampshire Constabulary** – The Police are lodging an outright objection to the application as follows: Hampshire Constabulary has an objection to the transfer of premises licence for the Tally Ho, High Street, Broughton to Mr James Alan Moloney. Mr Moloney currently has an unspent relevant conviction under the Licensing Act 2003, namely driving a motor vehicle with excess alcohol, due to the conviction being related to misuse of alcohol, we do not feel Mr Moloney is in a position to be a premises licence holder. Drink driving results in many serious injury and fatal accidents each year, in many of these incidents the victims are innocent 3<sup>rd</sup> parties. The latest records show in 2006 there were 318 drink drive related injury collisions in Hampshire, 3 of which proved fatal and 53 serious. Successive Governments have sought to tackle the menace of drunken drivers with high profile media campaigns and police enforcement initiatives. The licensing trade have a major part to play in this and it is our view that the holder of a premises licence should set a clear example to others regarding responsibilities under the Licensing Act 2003. Hampshire Constabulary believe that allowing Mr Moloney to hold a premises licence would undermine the Prevention of Crime and Disorder objective under the Licensing Act 2003.
- 4.2 No other responsible authorities are entitled to make representations on this application.

### **5 Relevant Representations – Interested Parties**

- 5.1 Interested parties are unable to make representations on this application.

### **6 Policy Considerations**

- 6.1 It is considered that the following extracts from the guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 are relevant.

#### **8.66-8.69 – Transfers of Premises Licences**

A copy of the Secretary of State's Guidance will be provided at the meeting for Members of the Committee. Additional copies can be obtained from the website of the Department of Culture Media and Sport.

- 6.2 It is considered that there is no directly relevant part of the Licensing Authority's own Statement of Licensing Policy which is relevant to this application. That said, some of the matters in the following part of the Policy may indirectly be of relevance:

Part 4 Section A

*Copies of the Statement of Licensing Policy will be provided at the hearing. Copies can also be obtained from the Licensing Section of the Administration Service or downloaded from the Council's website.*

## **7 Observations**

- 7.1 The Committee is obliged to determine this application with a view to promoting the licensing objective of prevention of crime and disorder. In making its decision, the Committee is also obliged to have regard to the national Guidance and the Council's own Statement of Licensing Policy. The Committee must also have regard to the representation made and the evidence it hears. The Committee must take such of the following steps as it considers necessary for the promotion of the licensing objective:

- a) Grant the application.
- b) Reject the application.

The Committee is asked to note that it may not reject the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objective of the prevention of crime and disorder. The Committee should note that paragraph 8.68 of the secretary of State's Guidance states: 'The authority's consideration would be confined to the issue of the crime prevention objective and the hearing should not be permitted to stray into other extraneous matters. The burden would be on the Police to demonstrate to the authority that there were good grounds for believing that the transfer of the licence would undermine the crime prevention objective. The licensing authority must give clear and comprehensive reasons for its eventual determination in anticipation of a possible appeal by either party'.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
New Premises Licence transfer application			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	Nil		
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Report to:	Licensing Sub Committee	Date:	1 <sup>st</sup> August 2008

<b>Brief Description</b>
To determine an application for a transfer of a Premises Licence where the Police have objected.

<u>Have you taken the following into consideration?</u>	Yes/No
Policy Framework/Council's Strategic Priorities	N/A
Key Decisions	N/A
Community Safety Issues	N/A
Equality Issues	N/A
Risk Management	N/A
Environmental Health/Sustainability	N/A
Property/Accommodation Implications	N/A
Is this report confidential?	No

<u>OFFICER CONSULTATIONS</u>	<u>COMMENTS</u>
Chief Executive	
Corporate Director (BS)	

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Corporate Director (CM)		
Finance		
Legal	X	
Personnel		
Other Heads of Service		
Corporate Services Portfolio Holder		
Economic Portfolio Holder		
Environment & Development Portfolio Holder		
Leisure Portfolio Holder		
Social Well Being Portfolio Holder		
UNION		
FINAL APPROVED VERSION	X	

**Statutory Authority**

Licensing Act 2003