

DECISION NOTICE

LICENSING ACT 2003 – TO CONSIDER AN APPLICATION FOR THE TRANSFER OF A PREMISES LICENCE AND THE VARIATION OF A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS DESIGNATED PREMISES SUPERVISOR FOR MACE CONVENIENCE STORE, FLEET ROAD GARAGE, 36 FLEET ROAD, HOLBEACH, PE12 8LA

PRESENT

Members of the Panel:
Councillor H J W Bingham (Chairman) Councillor A Casson Councillor G T D Rudkin
Officers:
H Lawson (Licensing Officer) H Wright (Assistant Licensing Officer)
In attendance:
Daven Naghen (Maples Solicitors) (Legal Advisor to the Panel) Arunmolithevan Balamuhunthan (Applicant) Parathithas Vijayaratnam (Applicant's Business Partner) Michael Kheng (Applicant's Licensing Consultant) Duncan Craig (Applicant's Barrister) G McConville (Lincolnshire Police)

The Panel considered the application for the transfer of a premises licence and the variation of a premises licence to specify an individual as designated premises supervisor for Mace Convenience Store, Fleet Road Garage, 36 Fleet Road, Holbeach, PE12 8LA.

DECISION

The Panel considered the written and verbal evidence presented by all parties, in arriving at this determination.

The Panel took due notice of the Licensing Act 2003, and the Regulations made under it, in particular sections 37-39 and 42-44, the guidance issued under Section 182 of the Licensing Act 2003 and South Holland District Council's Statement of Licensing Policy.

The Panel noted that both the applicant and the Police made submissions on both applications together and in line with this have produced a single decision notice however the Panel did consider both applications separately.

The Panel accept that exceptional circumstances are required for the Police to object to a transfer application or an application to vary the licence to specify an individual as Premises Supervisor. The Police stated that these were exceptional

circumstances, and the test is to reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.

The Police rely upon the fact that two illegal workers were found working at the premises on the 5th October 2022. There is also a suggestion of breaches of the relevant legislation regarding vapes that were displayed for sale in the premises. The Police query whether certain wine may have been smuggled due to the price it was being sold for. The Panel has disregarded the issue of the wine giving the benefit of the doubt to the applicant over that issue.

The applicant suggests that manual checks were done upon the workers however on the day of the visit Mr Vijayarajnam tried to suggest to the Police they were not working and the applicant at the hearing conceded they were paid in cash despite working 20 to 40 hours per week.

The Panel took account of the applicant's unblemished record at his other premises although the applicant accepted he was equally responsible for the business on the 5th October 2022. In terms of a DPS, the Panel felt that at a premises where significant problems had been uncovered it was not appropriate to have a designated premises supervisor splitting their time between two premises leaving the person who had largely been responsible for the previous failings in charge when he was not there. As such, having regard to the Police notice, the Panel rejects the application considering it appropriate for the promotion of the crime prevention objective to do so.

Regarding the transfer application it was surprising to note that there had been no previous transfer into the name of this applicant or his business partner despite a suggestion that they had together been running these premises for a number of years. As was noted by both parties this was not a review hearing and so the choice was simply whether to accept the application or reject it and there was no power to consider adding conditions to address any concerns.

It should be stressed that this decision does not close the premises but simply means that they will not be able to sell alcohol due to the fact the licence was previously surrendered and so the result of this decision is that the licence lapses. There is nothing to prevent any party in due course applying for a new licence at these premises.

Again, having regard to the Police notice, the Panel rejects the application considering it appropriate for the promotion of the crime prevention objective to do so.

RIGHT OF APPEAL

Under Schedule 5 of the Licensing Act 2003 there is a right of appeal to the Magistrates Court. Any appeal must be commenced by notice of appeal given by the Appellant to the Magistrates Court within 21 days beginning with the day on which the Appellant was notified by the Licensing Authority of the decision appealed against.

Signed: Councillor H J W Bingham (Chairman of the Panel)
Date: 12 December 2022



