

Licensing Act Sub Committee

Date of Meeting: 20 November 2020

Report Title: Application for transfer a premises licence under Section 42 of the Licensing Act 2003, Rosanero Restaurant, 83 Mill Street, Macclesfield SK11 6NN

Senior Officer: Frank Jordan - Executive Director Places

1. Report Summary

- 1.1. The report provides details of a police objection to an application to transfer the Premises Licence, under section 42 of the Licensing Act 2003 and outlines the evidence presented in relation to the transfer.

2. Recommendations

- 2.1. The Licensing Act Sub-Committee is requested to determine the application for the transfer of the Premises Licence made by Mr. Kyle Frost-Morgan, in respect of a premises known as:

Rosanero Restaurant
83 Mill Street
Macclesfield
SK11 6NN

- 2.2. The Licensing Act Sub-Committee is requested to consider the application together with the relevant representation and determine, if it is appropriate, to reject the application for the promotion of the prevention of crime and disorder.
- 2.3. Acting in the capacity of Licensing Authority, Members must seek to promote the Licensing Objectives and where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:

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

2.4. Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to the application and the evidence presented by the parties in relation to the Transfer of a Premises Licence application.

2.5. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:

- a) The rules of natural justice;
- b) The provisions of the Human Rights Act 1998.

3. Reasons for Recommendations

3.1. The Licensing Act Sub-Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003 and the Council's Constitution, and provide the key reasons why the recommendation/s has/have been made. Link your reasons into appropriate council policies and corporate objectives.

4. Other Options Considered

4.1. Not applicable.

5. Background

5.1. An application for the transfer of an existing premises licence under Section 42 of the Act is normally a straightforward licensing procedure and is dealt with as an administrative matter. As part of the application process, the applicant is required to give notice of the application to the Police.

5.2. Under Section 42(6) of the Act, where a 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 serve notice to the Licensing Authority within fourteen days of receiving the application.

- 5.3. When a valid objection under Section 42(6) is received from the police and the objection has not been withdrawn, the matter must be referred to the Licensing Act Sub-Committee for a hearing to determine the application.
- 5.4. An application to transfer a premises licence under the Licensing Act 2003 was received by Cheshire East Council (the “Licensing Authority”), from Mr. Kyle Frost-Morgan on 06th October 2020, although payment for the application was not received until 27th October 2020. A copy of the transfer application is attached at **Appendix 1**.
- 5.5. Mr. Kyle Frost-Morgan has applied to transfer the premises licence PR/0183 for Rosanero Restaurant, 83 Mill Street, Macclesfield into his name from the current licence holders Mr. Salvatore Di Maio and Mrs Claire Millar. A copy of the existing Premises Summary and Conditions of Licence is attached at **Appendix 2**.
- 5.6. In this case, the request to transfer was to have immediate effect and was administered by the Licensing Authority accordingly. By virtue of Section 43 of the Act the application has effect during the ‘application period’ as if the application was received by the Licensing Authority and ends when the application is granted, or if it is rejected, at the time the rejection is notified to the applicant. Therefore, if a decision is made to appeal the Sub-Committee’s decision at Magistrates Court, the ‘application period’ will continue until the determination by that court.
- 5.7. On 3rd November 2020 the Licensing Authority received a notice under Section 42(6) of the Act from Cheshire Police in objection to this application, including a detailed account of their reasons. These reasons are considered by the licensing officer to be a valid objection under the Act. **Appendix 3** is a copy of the Police representation together with a copy of an email received by Cheshire East Council’s Licensing Team on 28th August 2020, from the premises licence holder, advising that the business has been sold to Miss. Emma Warne. Also attached are screen shots of online records, lifted from Companies House, that shows Miss Emma Warne as a Director of the business and the name person with significant control over the business.
- 5.8. In such cases, if a subsequent objection against the transfer is received from the police, within the legal timeframe, the matter must be placed before the Licensing Sub-Committee to determine the application under Section 44(5) of the Act.
- 5.9. The applicant and the police have been notified of the hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

5.10. Responsible Authorities:

5.10.1. Cheshire Police have submitted a representation which is set out at Appendix 3.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. In accordance with the provisions of section 18 of the Licensing Act 2003 the Licensing Authority must, having regard to the representations, take such steps (if any) as it considers appropriate for the promotion of the licensing objectives. Section 44(5)(b)i provides that the authority may:

- I. Grant the licence;
- II. Reject the application, if it considers it appropriate, for the promotion of the crime prevention objective to do so.

6.1.3 Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1998 to exercise its various functions, doing all that it can to prevent Crime and disorder, and Anti-Social Behaviour, behaviour adversely affecting the environment as well as the misuse of drugs, alcohol and re-offending in the Local Environment.

6.2. Finance Implications

6.2.1. There are no financial implications.

6.3. Policy Implications

6.3.1. The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.

6.3.2. The Licensing Authority must also have due regard to the guidance issued under section 182 of the Licensing Act 2003.

6.3.3. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.

6.4. Equality Implications

6.4.1. There are no direct equality implications.

6.5. Human Resources Implications

6.5.1. There are no human resources implications.

6.6. Risk Management Implications

6.6.1 The Licensing Sub-Committee will hear representations made on behalf of both the applicant and the 'relevant persons' who have submitted their representations and will make a decision on the basis of the evidence presented to it. The Licensing Act 2003 makes provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People/Cared for Children

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1 There are no direct implications for public health.

6.10. Climate Change Implications

6.10.1. There are no direct implications for Climate Change.

7. Ward Members Affected

7.1. Macclesfield Central – Councillor Liz Braithwaite

7.2. Macclesfield Central – Councillor Ashley Farrall

8. Consultation & Engagement

8.1. Consultation in respect of submitting an application to Transfer a Premises Licence is prescribed in the Licensing Act 2003 and has been fully complied with.

9. Access to Information

9.1. The background papers relating to this report can be made available by contacting the report writer.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Amanda Andrews

Job Title: Licensing Enforcement Officer

Email: amanda.andrews@cheshireeast.gov.uk

Appendix 1 – Application

Appendix 2 – Premises Licence

Appendix 3 - Cheshire Police Representation