



Report To: Licensing Act 2003 Sub-Committee

Date: 13 January 2025

Subject: Application for a Premises Licence - Mo's Indian Cuisine, 1 Victoria Road, Mablethorpe, LN12 2AF (Miss Sally Hewson)

Purpose: To consider an application for a premises licence in respect of Mo's Indian Cuisine, 1 Victoria Road, Mablethorpe, LN12 2AF. The application has received a representation from Lincolnshire Police.

Key Decision: Not Applicable.

Report Of: Donna Hall - Group Manager Public Protection.

Report Author: Adrian Twiddy – Ast. Licensing Officer

Ward(s) Affected: Mablethorpe

Exempt Report: **NO** - However, a confidential evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. The evidence pack is exempt from publication – the pack is not for publication by virtue of Paragraphs 1, 2 & 7 of Part I of Schedule 12A of the Local Government Act 1972.

Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005 enables the Licensing Authority to hear confidential matters in private session. Lincolnshire Police have been requested by the Licensing Team to notify this Authority in advance of the hearing date whether or not they will be asking the Licensing Authority to consider holding any part of the licensing hearing in confidential / private session.

Summary

This report considers an application by Miss Sally Hewson for a premises licence in respect of Mo's Indian Cuisine, 1 Victoria Road, Mablethorpe, LN12 2AF.

Lincolnshire Police have submitted a representation in relation to the premises licence application. In the representation the Police have indicated that they have no confidence

in Sally Hewson's ability to promote the licensing objectives – in particular, the prevention of crime and disorder objective.

The Police are asking the Licensing Authority to give serious consideration to the refusal of the premises licence application.

Recommendations

The Sub-Committee must consider the application for a premise licence and having regard to the representation made by Lincolnshire Police, take such of the steps mentioned below (if any), as they consider appropriate for the promotion of the licensing objectives. The steps are:

- To grant the licence subject to:
 - Conditions consistent with the operating schedule accompanying the application, which have been modified to such extent as the Licensing Authority considers appropriate for the promotion of the licensing objectives, and
 - Any mandatory licence conditions.
- To exclude from the scope of the licence any licensable activities to which the application relates.
- To reject the application.

If none of the above steps are considered appropriate the premises licence application should be granted in the form it was made.

Reasons for Recommendations

The Licensing Authority must hold a hearing to consider the representation submitted by Lincolnshire Police - unless the premises licence application is withdrawn by the applicant or all parties agree that a hearing is not necessary.

All parties within the licensing process must seek to promote the licensing objectives as defined under the Licensing Act 2003.

The 2003 Act sets out the steps which the Licensing Authority may take when considering a representation regarding a premises licence application.

Other Options Considered

Not Applicable - Under the terms of the Licensing Act 2003 this Authority must consider the representation and the premises licence application.

1. Background

1.1 **Applicant:** Miss Sally Hewson.

1.2 **Application:** The application, subject of this Report, is an application for a new premises licence under the terms of Section 17 of the Licensing Act 2003. The premises has not previously held a premises under the 2003 Act. The previous use of the premises was a licensed betting premises.

1.3 **Premises:** Mo's Indian Cuisine, 1 Victoria Road, Mablethorpe, LN12 2AF. The premise is a new restaurant operating in Mablethorpe.

1.4 **Designated Premises Supervisor (DPS):** The proposed DPS for the site is Miss Sally Hewson whose personal licence was issued by this Authority in March 2010.

2. Report

2.1 The premises licence application seeks to permit the supply of alcohol for consumption on the premises and the provision of late night refreshment. The applicant also wishes to provide regulated entertainment in the form of recorded music.

2.2 A plan showing the location of 1 Victoria Road, Mablethorpe, LN12 2AF, is attached at **Appendix 1** of this Report. A site plan of the premises, submitted by the premises licence applicant, is attached at **Appendix 2** of this Report.

2.3 The requested licensing hours are:

Supply of Alcohol (For Consumption on the Premises)

Monday to Sunday 1200 to 2330 Hours

Late-Night Refreshment

Sunday to Thursday 2300 to 2345 Hours

Friday & Saturday 2300 Hours to Midnight

Recorded Music (Indoors)

Sunday to Thursday 1200 to 2330 Hours

Friday & Saturday 1200 Hours to Midnight

2.4 As required under the terms of the Licensing Act 2003 the premises licence application has been advertised in the local newspaper and also outside the premise. Details of the application were also displayed on the Council's website. Persons, including those living and/or operating businesses in the vicinity of the premise, and the Responsible Authorities (e.g. Lincolnshire Police, Trading Standards, Health and Safety, etc.), were permitted to submit representations regarding the licence application. Any representation must relate to one or more of the licensing objectives:

- The prevention of crime and disorder
- Public safety

- The prevention of public nuisance
- The protection of children from harm

The closing date for representations was 16 December 2024.

- 2.5 Lincolnshire Police have submitted a representation regarding the premises licence application. A redacted copy of the Police representation can be found at **Appendix 3** of this Report. No other representations have been received in relation to the premises licence application.
- 2.6 The representation indicates that Lincolnshire Police have no confidence in Sally Hewson's ability to promote the licensing objectives – in particular the prevention of crime and disorder licensing objective. The representation makes reference to her previous licensing history at other venues in the East Lindsey District. In particular, the representation makes reference to Miss Hewson's time at the Windmill Hotel in Alford, which included a premises licence review hearing held on 10 June 2019. The 2019 review related to the prevention of crime and disorder and public safety licensing objectives. The representation also makes reference to recent incidents concerning illegal workers and absence of right to work checks at a restaurant at 22 Victoria Road, Mablethorpe, LN12 2AQ. Miss Hewson held a supervisory / management role at the 22 Victoria Road business during the period of the aforementioned incidents.
- 2.7 The Police are asking the Licensing Authority to give serious consideration to the refusal of the premises licence application.
- 2.8 The Police representation was accompanied by confidential supporting documentation and evidence. A copy of the confidential evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report. Copies of any evidence pack, submitted by premises licence applicant, in support of their case and any additional evidence submitted by the Police, will also be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report.
- 2.9 Under the terms of the Licensing Act 2003, an operating schedule forms a part of the premises licence application process. The operating schedule outlines what activities are proposed, when these activities will take place, the overall opening hours and how the activities will be managed, particularly in respect of the licensing objectives. A critical part of the operating schedule is the section where the licence applicant describes the steps intended to promote the four licensing objectives. A copy of the applicant's intended steps to promote the licensing objectives can be found at **Appendix 4** of this Report.
- 2.10 The operating schedule includes proposals in relation to:
- Provision of CCTV and CCTV recording facilities at the premises.
 - Provision of a Drugs Policy at the venue.
 - Maintenance of an Incident / Refusals Book.
 - Adoption of the Challenge 25 Proof of Age Scheme.
 - Staff Training.
 - Customer Notices asking customers to leave the premises quietly.

All of the above are steps recommended as good practice in this Authority's Statement of Licensing Policy.

- 2.11 A full copy of the premises licence application will be available for inspection at the licensing hearing if Members wish to do so.
- 2.12 **Guidance Issued by the Home Office Under Section 182 of the Licensing Act 2003:** It is considered that the extracts from the national guidance, shown at **Appendix 5** of this Report, have a bearing upon the premises licence application.
- 2.13 In particular, in relation to a representation made by the Police, the Home Office guidance to Licensing Authorities states that the Police should usually be the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. The guidance goes on to remind the Licensing Authority that it remains incumbent on all Responsible Authorities (including the Police) to ensure that their representations can withstand scrutiny at a licensing hearing.
- 2.14 **Local Policy Considerations:** It is considered that the extracts from the Council's Local Statement of Licensing Policy, shown at **Appendix 6** of this Report, have a specific bearing upon the premises licence application.
- 2.15 **Model Premises Licence Conditions in Relation to Illegal Workers:** If Members are minded to grant the premises licence application, then the Sub-Committee may wish to bear in mind the following conditions from this Authority's Model Pool of Premises Licence Conditions:
- Right to work checks shall be conducted on all potential employees prior to their employment in any capacity at the venue. Checks shall be in accordance with the Home Office Code of Practice for employers as current at that time.
 - The premises licence holder will operate a full digital HR management system where all relevant documents are stored for each individual member of staff. All relevant documents for members of staff will be retained for a period of 12 months post termination of employment and will be made available to Police, Immigration or Licensing Officers on request.
- 2.16 The Home Office Guidance to Licensing Authorities indicates that where appropriate (and following a relevant representation) the Licensing Authority may attach conditions to a premises licence relating to the checking of prospective employees right to work in the UK. The guidance indicates that conditions that are considered appropriate for the prevention of illegal working in licensed premises may include mandating a premises licence holder to undertake right to work checks on all staff employed at the licensed premises, and requiring that a physical copy of any document checked as part of a right to work check is retained at the licensed premises, or a digital copy be immediately accessible from the premises.
- 2.17 The above model conditions are detailed in this Report in light of the recent incidents concerning illegal workers and absence of right to work checks during Miss Hewson's time at 22 Victoria Road, as detailed in the Police representation.

3. Conclusion

- 3.1. The Licensing Act 2003 sets out options which the Licensing Authority can utilise in order to promote the licensing objectives following the consideration of a premises licence application (which has received a valid representation). Any step taken by the Licensing Authority must be appropriate for the promotion of the licensing objectives. The licensing objectives are detailed in Paragraph 2.4 of this Report.
- 3.2. The steps open to the Sub-Committee include refusing to grant the premises licence application. Alternatively, there is the option of rejecting part of the licence application. Such a step or any other amendment to the licence application must only be taken if the Sub-Committee are persuaded that there is clear potential for harm resulting from the use of the premises in the licence application's current form. If the Sub-Committee considers that there is no potential for harm and no steps are necessary, then the licence application should be granted in the form it was made.
- 3.3. The Sub-Committee should examine the potential for harm and if it is satisfied that this is real, it should take sufficient and reasonable measures to prevent this harm from occurring. The Sub-Committee should only refuse the licence application if it is of the opinion that no lesser step would ensure compliance with the licensing objectives.

Implications

South and East Lincolnshire Councils Partnership

None.

Corporate Priorities

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

Staffing

None.

Workforce Capacity Implications

None.

Constitutional and Legal Implications

1. The Sub-Committee must consider the application for a premise licence and having regard to the representation made by Lincolnshire Police, take such of the steps mentioned below (if any), as they consider appropriate for the promotion of the licensing objectives. The steps are:

- To grant the licence subject to:
 - Conditions consistent with the operating schedule accompanying the application, which have been modified to such extent as the Licensing Authority considers appropriate for the promotion of the licensing objectives, and

- Any mandatory licence conditions.
- To exclude from the scope of the licence any licensable activities to which the application relates.
- To reject the application.

2. The licensing objectives are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

3. Both the applicant and any person / body making relevant representations may appeal any decision made by the Sub-Committee to the Magistrates Court. On determining an appeal, the Court may:

- Dismiss the appeal.
- Substitute for the decision appealed any other decision which could have been made by the Licensing Authority, or
- Remit the case to the Licensing Authority to dispose of in accordance with the direction of the Court.

4. The conditions, proposed in the premises licence application, are modified if any of them are altered or omitted or any new condition is added. Conditions can only be attached to a premises licence if they are considered appropriate for the promotion of the licensing objectives.

5. If consideration is being given to attaching conditions, Members should consider, are the proposed conditions:

- Appropriate;
- Relevant;
- Relevant to the activity/premises/venue;
- Enforceable;
- Precise;
- Reasonable, and
- Achievable.

6. The breach of a premises licence condition is an offence punishable (if the Licensing Authority or Lincolnshire Police are minded to prosecute) by an unlimited fine and/or six months imprisonment.

7. The Licensing Authority's determination of the licence application should be evidence-based. Any decision must be justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

Data Protection

The Appendices to this Report include a redacted copy of the Police representation. The redactions to the representation were made by Lincolnshire Police. An unredacted copy of the representation will be included within the Police's Confidential Evidence Pack.

The Police representation was accompanied by confidential supporting documentation and evidence. A copy of the confidential evidence pack will be forwarded to the Members of the Licensing Sub-Committee under separate cover to this Report.

Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005 enables the Licensing Authority to hear confidential matters in private session. Lincolnshire Police have been requested to notify this Authority in advance of the hearing date whether or not they will be asking the Licensing Authority to consider holding any part of the hearing in confidential / private session.

Financial

The processing of this premises licence application is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved. The premises licence application fee in this case is £190.00.

As with all licence applications it is possible that if a Licensing Committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

Risk Management

There is a theoretical risk of civil action against the Council if they are found not to have exercised due diligence in licensing matters.

Stakeholder / Consultation / Timescales

The representation from Lincolnshire Police was received within the requisite 28-day consultation period.

Reputation

There is a risk that the Council's reputation could be damaged if licensing legislation and guidance are not upheld and applied appropriately.

Contracts

None.

Crime and Disorder

All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area.

Equality and Diversity / Human Rights / Safeguarding

Equality & Diversity: There are no equality implications arising from the recommendations of this Report.

Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The premises applicant is entitled to a fair hearing.

The Human Rights of the wider community are also engaged.

Safeguarding: Councils must consider the need to protect children and vulnerable adults from harm when undertaking licensing functions.

Health and Wellbeing

Not Applicable.

Climate Change and Environmental Implications

Not Applicable.

Acronyms

None.

Appendices

Appendices are listed below and attached to the back of the report:

Appendix 1	Location plan of 1 Victoria Road, Mablethorpe, LN12 2AF.
Appendix 2	Site plan of 1 Victoria Road, Mablethorpe, LN12 2AF.
Appendix 3	Representation Submitted by Lincolnshire Police.
Appendix 4	Extract from Operating Schedule – the Applicant’s Proposed Steps to Promote the Licensing Objectives.
Appendix 5	Relevant Extracts from the Home Office Guidance to Licensing Authorities.
Appendix 6	Relevant Extracts from the Council’s Local Statement of Licensing Policy.

Background Papers

Background papers used in the production of this report are listed below: -

Document title	Where the document can be viewed.
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Home Office Guidance to Licensing Authorities under Sec. 182 of the Licensing Act 2003	
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https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003	
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The Council's Statement of Licensing Policy adopted under the Licensing Act 2003.

<https://www.e-lindsey.gov.uk/article/5539/Alcohol-and-Entertainment>

Chronological History of this Report

A report on this item has not been previously considered by a Council body.

Report Approval

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Approved for publication: Not Required.