

1 May 2019

Licensing and Appeals Committee

**Licensing Sub-Committee Hearing in respect of an
Application to Vary a Designated Premises Supervisor
Licensing Act 2003**

THE RAJ, 21 KINGS ROAD, BRENTWOOD CM14 4DJ

Report of: Dave Leonard – Licensing Officer

Wards Affected: Brentwood West

This report is: Public

1. Executive Summary

- 1.1 An application has been received from Mr Kalam Ullah to vary a premises licence to specify an individual as a designated premises supervisor to Mr Kalam Ullah at ***The Raj, 21 Kings Road, Brentwood CM14 4DJ***. Essex Police have objected to the variation on the grounds of the Prevention of Crime & Disorder.

2. Recommendation(s)

- 2.1 That the Sub Committee:

Considers this report and appendices together with any oral submissions at the hearing and determines the application to vary a premises licence to specify an individual as designated premises supervisor (DPS) in line with either of the following options:

- **allow the application to vary the premises licence to specify a DPS;**
- **reject the application to vary the premises licence to specify a DPS.**

3. Introduction and Background

- 3.1 Every premises licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder.
- 3.2 The police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective.
- 3.3 S.37 Licensing Act 2003, allows any person entitled to apply for a Premises Licence under 16(1) Licensing Act 2003, to make an application to vary a premises licence to specify an individual as designated premises supervisor.
- 3.4 The premises licence at ***The Raj, 21 Kings Road, Brentwood CM14 4DJ*** was previously held by Badsha Miah.
- 3.5 This application to transfer has interim effect until this objection is determined. This means that the transfer is allowed to take place temporarily until this objection is determined by this committee.
- 3.6 The current premises licence authorises the sale of alcohol for consumption by such a person as an ancillary to his meal on the premises. A copy of the premises licence, together with a plan of the premises & location map, is attached as **Appendix 2**.
- 3.7 On 5 December 2018, Essex Police applied to Review the premises licence under the statutory crime prevention objective that includes the prevention of immigration crime and the prevention of illegal working in licensed premises. The decision of the subsequently convened Licensing Sub-Committee hearing on 24 January 2019 was to revoke the premises licence. An appeal against this decision was received on 13 February 2019 and a hearing date awaits.
- 3.8 On 12 February 2019, Kalam Ullah submitted an online application with the intention to take transfer of the premises licence from Badsha Miah, which had immediate interim effect, and was subject of a separate hearing. On 25 February 2019, Essex Police submitted an objection to the premises licence being transferred to Kalam Ullah on the grounds of the prevention of crime & disorder. A Licensing Sub-Committee hearing was convened on 22 March 2019 & the application was refused. A copy of the application to transfer the premises licence together with the decision notice is attached as **Appendix 4**

4. The Application

- 4.1 On 19 March 2019, an application, with a signed consent, was received from Kalam Ullah to vary the Designated Premises Supervisor, currently Badsha Miah, to Kalam Ullah. Copies of both documents are attached as **Appendix 1**.
- 4.2 On 1 April 2019, Essex Police submitted an objection to the variation of DPS to Kalam Ullah on the grounds of the prevention of crime and disorder. The representation and associated documents are attached as **Appendix 3**.

5. Reasons For Recommendation

- 5.1 These are the options available to the Sub-Committee as provided in the Licensing Act 2003.

6. Consultation

- 6.1 This application has been consulted on in accordance with the requirements of Licensing Act 2003.

7. Statement of Licensing Policy

- 7.1 There are no specific issues arising from this application in relation to the Council's Statement of Licensing Policy.

8. Relevant Sections of the Secretary of State's Guidance

- 8.1 The following Section 182 Guidance relates to applications to change the designated premises supervisor;
- (4.39) The police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a DPS is first specified in relation to particular premises and the specification of that DPS in relation to the particular premises gives rise to exceptional concerns. For example, where a personal licence holder has been allowed by the courts to retain their licence despite convictions for selling alcohol to children (a relevant offence) and then transfers into premises known for underage drinking.
- (4.40) The 2003 Act provides that the applicant may apply for the individual to take up post as DPS immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.

(4.41) The portability of personal licences between premises is an important concept under the 2003 Act. It is expected that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on grounds which are not exceptional, they should raise the matter with the chief officer of police as a matter of urgency.

9. Legal Considerations

- 9.1 The decision made by the committee will take immediate effect; the chief officer of police may appeal against a decision to grant the application. The applicant may appeal the decision to refuse the application.
- 9.3 In determining this application to vary the designated premises supervisor, the Sub-Committee should have regard to the Council's Statement of Licensing Policy and to the guidance issued by the Secretary of State under s182 of the Licensing Act 2003.
- 9.4 The Sub-Committee are advised that the hearing is of a quasi-judicial nature and representations from all parties both written and verbal will form part of matters that are to be considered. Findings on issues of fact should be on the balance of probability.
- 9.5 The Sub-Committee are advised that the final decision should be based on the individual merits of the application & findings of fact made at the hearing.

APPENDICES TO THIS REPORT:

- Appendix 1 - Application to Vary the Designated Premises Supervisor
- Appendix 2 - Copy of the Premises Licence, Premises Plan & OS Map
- Appendix 3 - Copy of Peter Jones' (Essex Police) Representation
- Appendix 4 - Copy of the Application to Transfer the Premises Licence 12/02/19
Plus Licensing Sub-Committee Hearing 22/03/19 Decision Notice.

Report Author Contact Details:

Name: Dave Leonard

Telephone: 01277 312523

E-mail: dave.leonard@brentwood.gov.uk