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AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Thursday 3rd August 2017 at 12.00pm
Venue:	Council Chamber
Membership:	Councillors E. Egan, Mumford and Palmer
Officers attending:	Mel Harris - Head of Licensing and Safer Communities Andrew Smith – Corporate Legal Adviser
Committee Enquiries:	Cheryl Salmon, Ext. No. 2454

PART I **(Business to be taken in public)**

- 1. Appointment of Chairman**
- 2. Procedure for the Sub-Committee (as attached)**
- 3. Application to transfer a Premises Licence and vary the Designated Premises Supervisor under Sections 42 and 37 of the Licensing Act 2003 made by Benfleet Tandoori Restaurant, 7 High Street, Benfleet, Essex, SS7 1NA**
- 4. Decision**

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LICENSING SUB-COMMITTEE

PROCEDURE FOR VARIATION

1. Introductions

- a. Chairman introduces Panel Members to the applicant.
- b. Chairman identifies officers and their roles.
- c. Applicant identifies themselves, any representative and any accompanying persons. They also identify who intends to present the case.
- d. Relevant Responsible Authorities identify themselves.
- e. Interested Parties identify themselves.

2. Case summary by Head of Licensing and Safer Communities

See agenda item No. 3

3. The Relevant Responsible Authority(s) Submission

- a. The Relevant Responsible Authority(s) and any witnesses will submit to the Panel the reasons for the hearing in the case before them.
- b. Opportunity for the applicant or representative to question the relevant responsible authority(s) and witnesses on their submissions (note: this is an opportunity to ask questions arising from the submissions – not to make statements – an opportunity comes later when summing up).
- c. Opportunity for Panel Members to question the Relevant Responsible Authority(s) and witnesses on their submission.

4. Interested Parties Submission (if any)

- a. Any interested parties will submit to the Panel the reasons for the hearing in the case before them.
- b. Opportunity for the applicant and the relevant responsible authority(s) to question the interested parties on their submissions.
- c. Opportunity for Panel Members to question the interested parties and witnesses on their submission.

5. The Applicant's Submission

- a. The applicant or their representative will submit their case (to include consideration of any written representations). Witnesses may be called.
- b. Opportunity for relevant responsible authority, followed by interested parties (if any) to question the applicant and any witnesses on their submission(s).
- c. Opportunity for Panel to question the applicant and any of their witnesses on their submission(s).

6. Questions from Panel

Opportunity for any final questions from Panel to either side.

7. Adjournment

Proceedings will be adjourned while the Panel withdraw to consider its decision. During this time the Clerk will accompany the Panel to record the decision. The Committee may request the presence of the Legal Advisor to give them legal advice.

8. Decision

The Panel will reconvene and the Chairman will announce the decision, and:-

1. If approved, give details of any conditions attached to the licence (if any)
2. If refused, give the reasons for refusal

9. Conclusion

The Chairman will close the proceedings

LICENSING SUB COMMITTEE

3 August 2017

Subject: Application to transfer a Premises Licence and vary the Designated Premises Supervisor under Sections 42 and 37 of the Licensing Act 2003 made by Benfleet Tandoori Restaurant, 7 High Street, Benfleet, Essex, SS7 1NA

Report of: Head of Licensing and Safer Communities – Mrs Melanie Harris

1. Purpose of Report

To consider an application to transfer the Premises Licence and application to vary the Designated Premises Supervisor for the Benfleet Tandoori, 7 High Street, Benfleet, Essex

2. Background

The application(s) has been submitted to all Relevant Responsible Authorities and been published on the Council's website.

The current Premises Licence Holder and Designated Premises Supervisor is Bodrul Miah. The applicant is Abdul Alim Chowdhury who has applied to become the new Premises Licence Holder and Designated Premises Supervisor. Mr Abdul Alim Chowdhury, D.O.B 01/01/1963 (place of birth Sylhet, Bangladesh) has provided his home address as 7 Meath Road, Ilford Essex and is known to be the restaurant manager/proprietor of the business since last variation.

A copy of the application to transfer the premises licence is attached as Appendix 1

A copy of the application to vary a premises licence to specify an individual as Designated Premises Supervisor is attached as Appendix 2

A copy of the current premises licence is attached as Appendix 3

3. Representations

A representation was received from the Essex Police County Licensing Officer – County Licensing Hub at Braintree Police Station dated 19 July 2017.

To oppose the application(s) the Police must show that there are exceptional circumstances in that the granting of the application(s) will undermine the crime prevention objective. As such the Police must serve the Police Objection Notice(s) within 14 days of receiving the application(s) which was received by the Licensing Authority on 19 July 2017.

A copy of the Police Objection Notice against the transfer of Premises Licence to Abdul Alim Chowdhury is attached as Appendix 4.

A copy of the Police Objection Notice against the change of Designated Premises Supervisor to Abdul Alim Chowdhury is attached as Appendix 5.

It is contended by the Police that the applicant is the current manager/proprietor of this premises which was subject to an immigration enforcement operation on 8 June 2017 when five males were found to be illegally working at the premises.

Further the Police contend that right to work checks are not being carried out at the premises and that as the full time manager/proprietor and Personal Licence Holder the applicant would have been aware that these persons had no right to work in the UK but he allowed them to be employed at the restaurant. This would demonstrate a lack of management control, due diligence and a disregard for the law and that Abdul Alim Chowdhury is not a fit and proper person to be considered to be a Premises Licence Holder or the Designated Premises Supervisor under the auspices of the Licensing Act 2003.

4. Designated Premises Supervisors (DPS) – Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2017) states that:

Specifications of Designated Premises Supervisors

- 4.31 *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. The only exception is for community premises which have successfully made an application to remove the usual mandatory conditions set out in the 2003 Act.*
- 4.32 *The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly. For this reason, the name of the DPS and contact details must be specified on the premises licence and this must be held at the premises and displayed in summary form. The DPS' personal address should not be included in the summary form in order to protect their privacy.*
- 4.33 *To specify a DPS, the premises licence holder should normally submit an application to the licensing authority (which may include an application for immediate interim effect).*

- 4.34 *If they are applying in writing, they must also notify the police of the application. If the application is made electronically via GOV.UK or the licensing authority's own electronic facility, the licensing authority must notify the police no later than the first working day after the application is given.*
- 4.35 *The premises licence holder must notify the existing DPS (if there is one) of the application on the same day as the application is given to the licensing authority. This requirement applies regardless of whether the application was given by means of an electronic facility, or by some other means.*
- 4.37 *Only one DPS may be specified in a single premises licence, but a DPS may supervise two or more premises as long as the DPS is able to ensure that the licensing objectives are properly promoted and that each premises complies with the 2003 Act and conditions on the premises licence.*
- 4.38 *Where there are frequent changes of DPS, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.*

Police objections to new designated premises supervisors

- 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 *Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put forward their arguments. 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.

Police objections to existing designated premises supervisors

4.42 The 2003 Act also provides for the suspension and forfeiture of personal licences by the courts and licensing authorities following convictions for relevant offences, including breaches of licensing law. The police can at any stage after the appointment of a DPS seek a review of a premises licence on any grounds relating to the licensing objectives if problems arise relating to the performance of a DPS. The portability of personal licences is also important to industry because of the frequency with which some businesses move managers from premises to premises. It is not expected that licensing authorities or the police should seek to use the power of intervention as a routine mechanism for hindering the portability of a licence or use hearings of this kind as a fishing expedition to test out the individual's background and character. It is expected that such hearings should be rare and genuinely exceptional.

5 Transfers of premises licences – Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2017) states that:

8.97 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police in all cases, and the Home Office (Immigration Enforcement) if the licence authorises the sale of alcohol or provision of late night refreshment. Where it is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police and the Home Office (Immigration Enforcement) no later than the first working day after the application is given. However, the responsibility to notify the DPS remains with the applicant. Otherwise the general guidance on electronic applications set out in paragraphs 8.21 to 8.28 applies.

8.98 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police or the Home Office (Immigration Enforcement) raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.

8.99 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial

to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.

8.100 Such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police or the Home Office (Immigration Enforcement) are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that it would raise the matter immediately with the chief officer of police or the Home Office (Immigration Enforcement).

6. Conclusion

The Licensing Sub Committee should consider the application(s) and Police Objection Notice(s) and assess the suitability of the applicant to be a Premises Licence Holder and Designated Premises Supervisor and any potential breach of the Licensing Objectives as shown below:

Prevention of Crime and Disorder	✓/x
Public Safety	✓/x
Prevention of Public Nuisance	✓/x
Protection of Children from Harm	✓/x

Possible actions

Grant the application(s) as requested	✓/x
Reject the application(s) and give reasons	✓/x

Recommendation

The decision of the Sub Committee is required following proper consideration of the application(s) and any representations made to the Sub Committee.

Resolution Required.

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Background Papers:

Licensing Act 2003

Revised Guidance issued under section 182 of the Licensing Act 2003