

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Monday 25th November 2013 at 10am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor C Crofts (Chairman) Councillor G McGuinness Councillor Mrs S Smeaton
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer Marie Malt – Licensing Enforcement Officer
Legal Advisor:	Emma Duncan
Premises:	Kubus, 119 London Road, King's Lynn, PE30 5ES
Applicants:	Mr Salari Mr Mustafah (not present)
Responsible Authorities:	Tony Grover, Licensing Officer, Norfolk Constabulary

1. WELCOME AND APOLOGIES

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a variation of a premises licence to specify an individual as a Designated Premises Supervisor (DPS).

There were no apologies for absence.

2. ITEMS OF URGENT BUSINESS

There were none.

3. DECLARATION OF INTERESTS

There were none.

4. TO CONSIDER AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS A DESIGNATED PREMISES SUPERVISOR IN RESPECT OF KUBUS, 119 LONDON ROAD, KING'S LYNN

The Chairman introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Emma Duncan and explained her role. The applicant introduced himself along with the representative from Norfolk Constabulary. Both

parties confirmed that fifteen minutes was sufficient to present their case. It was clarified that the applicant's name was incorrectly detailed in the report and should read Mr Salari.

5. THE PROCEDURE

The Legal Advisor outlined the procedure that would be followed at the hearing. It was highlighted that the Responsible Authorities would present their case first followed by the applicant.

6. THE APPLICATION

At the invitation of the Chairman, the Licensing Enforcement Officer presented the report and explained that every premises licence that authorised the sale of alcohol must specify a Designated Premises Supervisor (DPS). This would normally be the person who had been given day to day responsibility for running the premises by the premises licence holder. The only exception was for community premises which had successfully made an application to remove the usual mandatory conditions set out in the 2003 Act.

Kubus, London Road, King's Lynn held a premises licence which authorised the 'sale of alcohol' for consumption 'off' the premises between the hours of 9am and 11pm Monday to Sunday. The premises was subject to the following eight conditions:

Under Section 19(2) of the Licensing Act 2003, no supply of alcohol may be made under the premises licence at a time when there was no Designated Premises Supervisor in respect of the premises licence, or at a time when the Designated Premises Supervisor did not hold a Personal Licence or his Personal Licence was suspended.

- (a) Under Section 19(3) of the Licensing Act 2003 every supply of alcohol under the premises licence must be made or authorised by a person who holds a Personal Licence.
- (b) The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
- (c) A refusal book shall be maintained to record all instances/persons that have been refused the sale of alcohol. The book shall be made available to the police and authorised officers of the Borough Council upon reasonable request.
- (d) Either (i) security blinds or (ii) security shutters or (iii) permanent robust infilling of window areas on the internal side of any glazing must be installed to protect all glazing forming part of the shop windows and front

and rear doors OR (iv) security display cages must be used for the storage and display of your alcohol stock within the shop area. Other windows or skylights must be protected using the benefit of internal security bars.

- (e) External doors must be secured by using internal security shutters installed at the premises. Any single external electronic switching mechanisms controlling security shutters must be secured to walls without exposing any wires and by using at least 4 x substantial anchor bolts. Any switch housings must be secured with a substantial padlock.
- (f) Any alcohol on display in the shop must be in a position that provides staff with the easiest surveillance opportunities and control. Spirits must be adjacent to the service counter and served to customers.
- (g) A CCTV system must be installed at the premises. Cameras will be positioned to provide cover of the front entrance and alcohol displays. A TV monitor must be positioned for staff to clearly view areas they cannot supervise and the cameras themselves should be robust and tamper proof. The CCTV system must be regularly maintained and shop staff must be trained to use it. The System must have hard drive storage facility of at least 14 days worth of images and be stored securely away from the Shop Floor. Clear signage must be displayed in the shop informing visitors that a CCTV Recording System in place. A certificate of installation must be available for inspection upon reasonable request.

The Application

The Licensing Enforcement Officer stated that on the 17th October 2013, Mr Farman Omar Mustafah made two applications under the Act as follows:

- (a) Firstly, an application was made under Section 42 of the Act to transfer the premises licence from Mr Soran Khairolah Karim to himself; and
- (a) Secondly, an application was made under Section 37 of the Act to nominate himself as the Designated Premises Supervisor (DPS). Mr Mustafah holds a Personal Licence issued by Peterborough City Council.

Both applications were made 'with immediate effect' which meant that Mr Mustafah became the premises licence holder and DPS from the 17th October 2013.

Representations from the Police

The Licensing Enforcement Officer advised the Sub-Committee that only the Police could object to a transfer of a Premises Licence or a variation to specify a Designated Premises Supervisor.

Norfolk Constabulary were objecting to both applications under the prevention of crime & disorder licensing objective. A copy of their letter of objection dated 29th October 2013 had been attached to the report at Appendix One.

Other Information

On the 31st October 2013, a further application had been made under Section 42 of the Act to transfer the premises licence from Mr Mustafah to Mr Salari. This had also been made 'with immediate effect' which now made Mr Salari the premises licence holder. The Police were not objecting to Mr Salari holding the premises licence and this subsequent transfer nullified the transfer submitted earlier by Mr Mustafah.

Borough Council of King's Lynn & West Norfolk's Licensing Policy

The Licensing Enforcement Officer reminded the Sub-Committee that the current Statement of Licensing Policy had been approved by Full Council on 25th November 2010 and the following extracts which may be relevant to the application:

3.0 Fundamental principles

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this 'Statement of Policy' will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations on an application.

Guidance Issued Under Section 182 of the Licensing Act 2003

Under Section 4 of the Act, Licensing Authorities must have regard to Guidance issued under Section 182 of the Licensing Act 2003. The current Guidance was issued by the Home Office in June 2013 and offered advice to Licensing authorities on the discharge of their functions under the Act.

The following extracts may be relevant to the application and assist the Licensing Sub-Committee:

Licensing Objectives and Aims

- 1.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.
- 1.3 The licensing objectives are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.

Requirements for a Personal Licence

- 4.2 The sale and supply of alcohol, because of its impact on the wider and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment. This is why sales of alcohol may not be made under a premises licence unless there is a DPS in respect of the premises (who must hold a Personal Licence); and every sale must be made or authorised by a Personal Licence holder. The exception is only for those community premises which have successfully applied to remove the DPS requirement.
- 4.3 Any premises at which alcohol is sold or supplied where the requirement for a Personal Licence holder does apply may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a Personal Licence. However, the requirement that every sale of alcohol must at least be authorised by a Personal Licence holder does not mean that the licence holder has to attend or oversee each sale; it is sufficient that such sales are authorised. It should be noted that there is no requirement to have a DPS in relation to a Temporary Event Notice (TEN) or club premises certificate, and sales or supplies of alcohol authorised by a TEN or club premises certificate do not need to be authorised by a Personal Licence holder.

Specification of new Designated Premises Supervisors

- 4.19 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.

Police objections to new Designated Premises Supervisors

- 4.26 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.

- 4.27 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.

Determination

The Licensing Enforcement Officer requested that having regard to the representations received, the Licensing Sub-Committee consider the report and either 'grant' or 'reject' the variation application to specify Mr Mustafah as the Designated Premises Supervisor.

The Sub-Committee were reminded that full reasons for their decision must be given as both the applicants and Police had a right of appeal against that decision to the Magistrates' Court.

There were no questions from the applicant, Norfolk Constabulary or Members of the Sub-Committee.

7. RESPONSIBLE AUTHORITIES CASE

Mr Grover, Norfolk Constabulary presented his case and explained that the Police had made a representation regarding the application on the grounds that the prevention of crime and disorder objective could be undermined if it was granted. He explained that the Kubus Shop at 119 London Road was a small licensed mini market which purports to cater for mainly foreign nationals within King's Lynn. The application had been made by Mr Mustafah as premises licence holder for the premises to vary the licence to specify him as the Designated Premises Supervisor. Mr Mustafah held a current personal licence issued by Peterborough City Licensing Authority. On Monday 28th October 2013, the Police Licensing Officer conducted an enquiry at the Kubus shop in King's Lynn where he found two people working at the premises. The first was a male and the second was a female, both whom gave their names which appeared to be genuine. Both could understand and speak the English language quite competently. On entering the shop, the Licensing Officer found the male to be sitting down below the service counter and talking on his mobile phone. There was no other persons apparent in the shop at the time so there appeared to be a lack of personal supervision or attention to anyone that may have come into the store other than the CCTV system which appeared to be

working. The Licensing Officer asked the male a number of basic questions and it became apparent that he had a lack of knowledge of the licensing laws and was quite evasive. The male had informed the Licensing Officer that he believed Mr Mustafah had other shops in Peterborough. The male did not hold a Personal Licence. Although he said that he refused the sale of alcohol every day he was unable to produce a refusals book. After suggesting that the other licence holder he worked for must have taken it with him he eventually conceded that there wasn't one and that he doesn't use one (To not to keep a refusals book and not being able to produce it for inspection was a breach of Condition 4 – Annex 2).

The female was in the private room at the rear of the shop and was asked to speak to the Licensing Officer. She was asked a similar series of questions. She did not hold a Personal Licence but did work in the shop and sold alcohol. She had not received any training in the licensing laws by Mr Mustafah and had not been given any authorisation to sell alcohol by Mr Mustafah.

Mr Grover explained that he had since been able to speak to Mr Mustafah and it would appear that:

- Mr Mustafah does not have any other shops in Peterborough; he used to work in a pizza shop in Market Deeping but was now in the process of purchasing a mini market type shop called International Market in Northampton which was twice the size of the King's Lynn shop. He would be the premises licence holder and DPS at that shop. He would be moving to Northampton in about 4 week's time and living in the flat above the shop.
- Mr Mustafah did not own the business at Kubus in King's Lynn. As far as he was aware the previous licence holder was not involved in the business any more. He said that the business was now being run by an acquaintance of his.
- Mr Mustafah said that because his acquaintance did not have a Personal Licence he agreed to "do him a favour" and take on the role of licence holder and DPS until he got his Personal Licence and only for a short period of no more than six weeks.
- Mr Mustafah said that he had agreed to work at the shop on 2 days a week only between 6pm and 10pm because he had not got the time to do anymore as he was sorting out his own business.
- Mr Mustafah conceded that he would have no control over the running of the Kubus shop.

Mr Grover stated that he believed that Mr Mustafah's answers to the Police Licensing Officer demonstrated that he would not have any reasonable amount of responsibility towards the provisions of the Licensing Act 2003 with regard to either of the applications. The Police believed that it was true to say that:

- Mr Mustafah did not realistically assert any effective day to day control regarding the sale of alcohol at the shop as was defined to the roles of Premises Licence Holder or Designated Premises Supervisor.

- Mr Mustafah had not conducted any training of his staff in the licensing laws applicable to the retail sale of alcohol.
- Mr Mustafah had not given any authorisation to his staff to sell alcohol that could be meaningful or effective.
- Mr Mustafah had not given any significant guidance to those working at the Kubus shop regarding due diligence requirements of the staff or the completion of appropriate records for licensing purposes. In essence, he did not know what terms and conditions of the premises licence for the Kubus shop were.

Since the Police's representation had been submitted and the publication of the Agenda, Mr Grover and the Council's Licensing Manager, Mr Gilbraith had visited the shop on 31st October 2013. Mr Mustafah had not been present but Mr Salari had been at the shop and had been accompanied by a local licensing consultant. It had been explained that Mr Salari had recently undertaken the relevant qualification in order to obtain a Personal Licence and had also submitted his application to the Disclosure & Barring Service (DBS) and was awaiting the return of his Certificate. He would then subsequently apply to become the DPS. Mr Grover stated that the Police had no objection to Mr Salari being the Premises Licence holder.

Mr Grover explained that further visits had been carried out to the premises by members of the Council's licensing team and at no time had Mr Mustafah been present at the premises.

In conclusion, Mr Grover stated that the Police believed that their representation showed an exceptional set of circumstances which required being brought to the attention of the Licensing Authority and requested that the application be refused.

There were no questions from the Licensing Enforcement Officer or Mr Salari.

In response to questions from Members of the Sub-Committee, it was clarified that the male previously mentioned worked for Mr Salari. Mr Grover also clarified that he had tried to establish contact with Mr Mustafah on a number of occasions.

8. THE APPLICANT'S CASE

Mr Salari presented his case and acknowledged that it was a complex situation. He had taken the business on some weeks ago on the understanding that the previous licence holder would keep the licence and work in the shop until he obtained his Personal Licence. This arrangement had fallen through. He therefore had asked Mr Mustafah to run the shop because he had a Personal Licence. Mr Salari explained that he had then been urgently called away as a result of a family emergency which complicated the situation. Mr Salari explained that he had undertaken and passed the appropriate course in order for him to obtain a Personal Licence. He was awaiting the return of his DBS Certificate. His employee was also due to undertake the next course in order

for him to also be a Personal Licence Holder. Mr Salari explained that he did not now maintain a refusals book.

In response to questions raised by the Licensing Enforcement Officer, Mr Salari explained that he employed Mr Mustafah in the shop and that he had mainly worked in the evenings, although he acknowledged that his attendance was somewhat erratic. Mr Salari clarified that the refusal book currently had two entries.

In response to questions raised by Mr Grover, Mr Salari stated that Kubus was the first "supermarket" he had run and acknowledged that his knowledge of licensing laws was fairly basic. However, he had been offered some advice from Mr Karim, the previous premises licence holder. Mr Salari explained that he had asked Mr Mustafah to become the DPS whilst he was obtaining his own Personal Licence. He had been unexpectedly called away because of a family emergency and therefore had to subsequently make arrangements over the telephone with Mr Mustafah. He had on his return applied to undertake the relevant course in order to obtain his Personal Licence. Mr Salari acknowledged that although Mr Mustafah should have been working 5 days a week from 9am until 5pm, most days he did not arrive until around 3pm and did in fact miss some days.

In response to questions by Members of the Sub-Committee, Mr Salari confirmed that he did not have any previous experience in running licensed premises. He had taken the business on as his previous employment had not been successful. Mr Salari also explained that he would ensure that his staff were appropriately trained.

9. SUMMING UP

The Licensing Enforcement Officer

The Licensing Enforcement Officer summed up the case and reiterated that the Sub-Committee were requested to consider the application for variation of a premises licence to specify Mr Mustafah as the DPS. She highlighted that a DPS must hold a Personal Licence and was the person specified on the Premises Licence who was responsible for authorising the supply of alcohol. This person must be readily identifiable and would normally be given day-to-day responsibility for running the premises. The Licensing Enforcement Officer requested that having regard to the report, the Police representation and Mr Salari's case, the Licensing Sub-Committee either 'grant' or 'reject' the application. The Sub-Committee were reminded that full reasons for their decision must be given as both the applicant and Police had a right of appeal against that decision to the Magistrates' Court.

Responsible Authority – Norfolk Constabulary

Mr Grover summed up his case stating that in the Police's opinion, they believed it was exceptional circumstances in that the appointment of Mr Mustafah as the DPS would undermine the crime & disorder objective. The

Police were not confident that the role of a DPS would be carried out effectively or seriously enough and not in compliance with the crime & disorder objective.

The Applicant

Mr Salari acknowledged that historically that there had been some errors made in the way the premises had been run but he had learnt from these mistakes and wanted to ensure that the premises was run properly. He had been on the appropriate course to gain his Personal Licence and also now operated a refusals book.

10. OUTSTANDING MATTERS

The Legal Advisor reminded the Sub-Committee that Mr Salari had undertaken the appropriate qualification to become a Personal Licence holder but was waiting the receipt of DBS Certificate. Mr Mustafah did currently hold a Personal Licence and the application had been made to nominate him as the DPS. However, concerns had been raised by the Police that there would not be sufficient day to day control and subsequently the crime and disorder objective would be undermined. The Legal Advisor advised that if the Sub-Committee were minded to refuse the application, the shop would not be permitted to sell alcohol.

11. DECISION

The Sub-Committee retired to consider their decision in private, accompanied and advised by the Legal Advisor on specific points of law and procedure and the Senior Democratic Services Officer for administration purposes, neither of whom took part in the decision making process. On all parties returning to the room, at the request of the Chairman, the Legal Advisor explained she had offered advice in relation to the crime and disorder objective.

The Chairman read out the decision and reasons for the decision as follows:

APPLICATION

The Borough Council of Kings Lynn and West Norfolk ("the Council"), being the relevant licensing authority, received an application for a Variation of a Premises Licence to specify Individual as a DPS to Mr Farman Omar Mustafah.

During the 28 day representation period, the Council received representations from the following:

RESPONSIBLE AUTHORITIES

Norfolk Constabulary – Letter dated 29th October 2013.

HEARING

On 25 November 2013, a hearing was held to consider the application. The Panel determined the application with a view to promoting the four licensing objectives. It considered this application on its own merits. In reaching its determination, the Sub-Committee had regard to the following matters:

- The relevant parts of the written and oral evidence before them;
- The Council's Licensing Policy
- Statutory guidance issued under the Licensing Act 2003
- The Human Rights Act

The Sub-Committee listened to all the evidence and submissions. It heard from:

- The Licensing Enforcement Officer (Marie Malt)
- Norfolk Constabulary (Tony Grover)
- Mr Sarhad Salari (Applicant)

SUMMARY OF EVIDENCE

The Licensing Officer presented her report.

Norfolk Constabulary presented their objection with reference to their letter dated 29th October 2013. Mr Grover referenced that when he had visited the premises that Mr Ali (who was present) appeared to have very little knowledge of the Licensing Act 2003 and did not record sales (contrary to breach of the licence). This caused Mr Grover to be concerned that offences could be committed without anyone being aware. Mr Grover contacted the Premises Licence Holder, a Mr Mustafah who said that he was doing it as a favour to Mr Ali, who was running the business. He had very little involvement in the business.

Mr Grover then visited the shop again on 31st October; Mr Salari was present with a representative. Mr Salari confirmed that it was his business and that he would be running it. Consequently the licence was transferred to Mr Salari. It was indicated by Mr Salari that Mr Mustafah as the DPS would take a more active role in the running of the business.

Further visits were made and Mr Mustafah has not been present during any of them. As Mr Mustafah did not appear to have any role in the running of the business then the police objected to the application.

The applicant, Sarhad Salari informed the Sub-Committee that the situation was complicated. He had bought the business on the understanding that the previous licence holder would keep the licence and work in the shop until Mr Salari obtained a Personal Licence. This arrangement fell through.

Mr Salari said that he was getting his Personal Licence and that his shopworker (Mr Ali) would have a Personal Licence as well.

In response to questions Mr Salari confirmed that he did not know when Mr Mustafah would be there.

Mr Salari confirmed that he had no experience of operating a licensed premises. That prior to buying the business he had been given information that he needed a Personal Licence. He had asked Mr Mustafah to run the shop because he had a licence.

FINDINGS

The Sub-Committee noted Mr Salari's pending Personal Licence application.

The Sub Committee were of the view that the applicant was well intentioned but that they were concerned about Mr Mustafah's ability to supervise the sale of alcohol in the premises particularly as the applicant was not sure about when he would be present in the premises and Mr Mustafah did not attend the hearing.

The Sub Committee also noted the Police's concern about the lack of control and the impact that this would have on the prevention of crime and disorder objective. They also noted that during the course of the applicant's control of the premises that fundamental conditions such as the requirement for a refusals book had been breached.

Consequently, it is with regret the Sub Committee felt that it must refuse the application.

The Sub-Committee balanced the need of the applicant with the needs the Responsible Authority which had made a representation.

DETERMINATION

The Sub-Committee refused the application.

RIGHT OF APPEAL

There is a right of appeal against this decision to the Magistrates' Court. An appeal must be commenced within 21 days beginning with the day on which you receive notification of the decision. You may wish to seek independent legal advice from a solicitor or the Citizens Advice Bureau regarding this.

The meeting closed at 11.45am