

Borough Council of
**King's Lynn &
West Norfolk**



LICENSING COMMITTEE - SUB-COMMITTEE HEARING

Agenda

Kubus
119 London Road
King's Lynn
PE30 5ES

Monday 25th November 2013
10am

VENUE:
Committee Suite
King's Court
Chapel Street
King's Lynn
Norfolk,
PE30 1EX



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Borough Council of
**King's Lynn &
West Norfolk**



King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX.
Telephone: 01553 616275
Fax: 01553 691663

My Ref: RAE/LC
Please ask for: Rachael Edwards
Direct Dial: (01553) 616275
Email: rachael.edwards@west-norfolk.gov.uk

12th November 2013

Dear Member

Licensing Sub-Committee Hearing – 25th November 2013

You are invited to attend a meeting of a Licensing Sub-Committee to commence at **10am on Monday 25th November 2013** in the **Committee Suite, King's Court, Chapel Street, King's Lynn, Norfolk** to consider the business shown below.

Yours sincerely,
Chief Executive

AGENDA

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

2. ITEMS OF URGENT BUSINESS

To determine any other items of business which the Chairman decides should be considered as a matter of urgency pursuant to Section 100B(4)(b) of the Local Government Act 1972.

3. DECLARATION OF INTERESTS

Please indicate if there are any interests which should be declared. A declaration of an interest should indicate the nature of the interest (if not already declared on the Register of Interests) and the agenda item to which it relates. If a disclosable pecuniary interest is declared, the member should withdraw from the room whilst the matter is discussed.

These declarations apply to all Members present, whether the Member is part of the meeting, attending to speak as a local Member on an item or simply observing the meeting from the public seating area.

4. TO CONSIDER AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE TO SPECIFY INDIVIDUAL AS A DESIGNATED PREMISES SUPERVISOR (DPS)

- (a) Procedure that will be followed at the hearing (pages 1-3)
- (b) Report of the Licensing Manager under the Licensing Act 2003 (pages 4 – 8)
- (c) Copy of Norfolk Constabulary's letter dated 29th October 2013 – Appendix One (pages 9 – 12)

Copies to:

Panel Members

**Councillor C Crofts (Chairman),
Councillor G McGuinness
Councillor Mrs S Smeaton**

Officers

**Rachael Edwards (Senior Democratic Services Officer)
John Gilbraith (Licensing Manager)**

Legal Advisor

All relevant parties

Procedure for Determining Licensing Act 2003 Cases

The hearing will be held in public. However, the Borough Council may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public. The hearing is not adversarial but an examination of the facts by the Members of the Committee. All participants must be courteous at all times. All parties will be given equal maximum time which is normally 15 minutes each, in total. Any person may apply for longer time if they immediately notify the Borough Council upon receipt of the Notice of the Hearing and in exceptional circumstances, the Borough Council may extend the maximum time allowed to all parties if the complexity of the application demands. In the event that there are a large number of objections to a particular application, the Borough Council may ask an appropriate number of representatives or a single representative to put forward their views.

Introductions

1. The **Chairman** of the Sub-Committee should read out a statement declaring under which capacity the Committee is sitting.

This Sub-Committee is sitting to consider matters under the Licensing Act 2003.

2. The **Chairman** will introduce himself and the Members of the Committee.
3. The **Chairman** will then introduce and explain the respective roles of
 - (i) the Democratic Services Officer
 - (ii) the Licensing Manager
 - (iii) the Legal Advisor to the Committee
4. **The Chairman** should invite all those present to introduce themselves and ask them to indicate if they wish to speak during the hearing. (Only those persons who have made representations may address the Sub-Committee)
5. Each party will be asked by the **Chairman** whether 15 minutes is sufficient for the presentation of his/her/body's case. (Agreement on the length of time given for each speaker is at the discretion on the Chairman).
6. Please note at any time during the hearing the Legal Advisor or the Licensing Manager may be asked or may offer advice to the Sub-Committee/other parties or ask questions of any party.

The Application for Variation of a Premises Licence to specify individual as a Designated Premises Supervisor

7. The **Legal Advisor** explains the procedure that will be followed at the meeting.
8. The **Licensing Manager** outlines the application to the Committee by presenting the report referring to any relevancy to Licensing Policy and Statutory Guidance.
9. The **Licensing Manager** will invite questions from all parties to clarify the content of the Licensing Officer's report.

The Applicant's Case

10. The **Chairman** then invites the Applicant or his representative to make their case. Witnesses may be called but each will be subject to separate questioning (see below).

Questions

11. Once the Applicant has presented their case, the **Chairman** invites questions to the Applicant or his representative from
 - (i) The Licensing Manager
 - (ii) The Responsible Authorities (or their representative)
 - (iii) Other persons (or their representatives)
 - (iv) Members of the Committee.
12. The **Chairman** will invite questions to the witnesses (if present) from the
 - (i) The Licensing Manager
 - (ii) The Responsible Authorities (or their representative)
 - (iii) Other persons (or their representative)
 - (iv) Members of the Committee

Questions should be relevant to the application and repetition will be discouraged.

The Responsible Authorities Case

13. The Chairman then invites the Responsible Authorities (or their representative) to make their case. Witnesses may be called but each will be subject to separate questioning (see below).

Questions

14. Once the Responsible Authorities has presented their case, the **Chairman** invites questions to the Responsible Authorities (or their representative) from the
 - (i) The Licensing Manager
 - (ii) The applicant (or their representative)
 - (iii) Other persons (or their representatives)
 - (iv) Members of the Committee.
15. The **Chairman** will invite questions to the witnesses from the
 - (i) The Licensing Manager
 - (ii) The application (or their representative)
 - (iii) Other persons (or their representative)
 - (iv) Members of the Committee

Other Persons Case(s)

16. Each of the other persons or their representatives wishing to address the Committee may do so in an order determined by the **Chairman**. They too must be willing to be questioned by other parties in the same order. Local Objectors may not however question each other. Questions should be relevant to the application and repetition will be discouraged.

This will operate as follows:

- each party will present his/her/body's case
- each party's witnesses (if any) will give evidence in support of the party's case

- firstly, each party and, secondly, their witnesses may be questioned by other parties, prior to questioning by Members of the Committee.

17. The Licensing Manager, Applicant (or their representative) and the Responsible Authorities will be invited to ask relevant questions of those parties (or the parties' representatives).

Summing Up

Each party will be allowed 5 minutes to sum up their case. They may comment upon what has been said but no new evidence should be introduced.

18. The **Chairman** then invites the Licensing Manager to sum up his case.

19. The **Chairman** then invites the Responsible Authorities and other parties (or their representative) to sum up their case.

20. The **Chairman** then invites the applicant (or their representative) to sum up their case.

Reaching and Making a Decision

21. **The Chairman** will ask the Council's Legal Advisor to address the Committee on any outstanding matters.

22. The **Chairman** will then thank all those who have spoken and invite the Committee to retire to consider the application, accompanied by the Legal Advisor and Democratic Services Officer (who will take no part in the decision).

23. The Committee will then debate the case presented to them at the hearing and will seek to reach a decision and reasons for their decision.

24. Once a decision has been made, **the Chairman** will invite the **Legal Advisor** to announce in public any legal advice he/she has given in private.

25. **The Chairman** will read out the decision of the application and the reasons for the decision (unless the Committee is unable to reach a determination at the conclusion of the hearing). Where appropriate, **the Chairman** will ask the Licensing Manager/Officer for any comments on their decision prior to any final determination.

26. **The Chairman** will explain that all parties will be notified of the outcome of the decision and reasons for the decision in writing.

27. If the Committee is unable to reach a decision, the **Chairman** will explain that all parties will be notified as soon as possible (but within 5 working days) of the decision and the reasons for such.

NOTE

A decision may be deferred to:-

1. Receive further documentation referred to in the meeting
 2. Enable a site visit to take place
 3. Invite the Applicant or his representative to appear if they had not done so at the meeting (only once)
- No further debate may be heard on further documentation or at a site visit
 - Adjournments should generally be granted if to refuse would deny applicant a fair hearing.

Borough Council of King's Lynn & West Norfolk

Report to Licensing Sub-Committee under the Licensing Act 2003

Date of Hearing: 25th November 2013

Application for Variation of a Premises Licence to Specify Individual as DPS
- Kubus, 119 London Road, King's Lynn, PE30 5ES

Introduction

1. Every premises licence that authorises the sale of alcohol must specify a designated premises supervisor (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.

2. Kubus, London Road, King's Lynn holds Premises Licence Number WNPL009461 which authorises the 'sale of alcohol' for consumption 'off' the premises between the hours of 9am and 11pm Monday to Sunday. The premises is subject to the following eight conditions:

- (a) Under Section 19(2) of the Licensing Act 2003, no supply of alcohol may be made under this premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.

- (f) 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.
- (g) 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.
- (h) 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 is in place. A certificate of installation must be available for inspection upon reasonable request.

The Application

3. 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
 - (b) 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.
4. Both applications were 'with immediate effect' which meant that Mr Mustafah became the premises licence holder and DPS from the 17th October 2013.

Representations from the Police

Only the police can object to a transfer of a premises licence or a variation to specify a DPS.

5. The Norfolk Constabulary are objecting to both the applications mentioned at paragraph 3 above under the prevention of crime & disorder licensing objective. A copy of their letter of objection dated the 29th October 2013 is attached to this report at Appendix 1.

Other Information

6. On the 31st October 2013 a further application was made under Section 42 of the Act to transfer the premises licence from Mr Mustafah into Mr Salari SARHAD. This was also made 'with immediate effect' which now makes Mr Sarhad the premises licence holder. The Police are not objecting to Mr Sarhad holding the

premises licence and this subsequent transfer nullifies the transfer submitted earlier by Mr Mustafah.

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

7. The current Statement of Licensing Policy was approved by full Council on the 25th November 2010 and the following extracts may be relevant to this 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. The current Guidance was issued by the Home Office in June 2013 and offers advice to Licensing authorities on the discharge of their functions under the Act.

8. The following extracts may be relevant to this 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

9. Having regard to the representations received, the Licensing Sub-Committee are requested to consider this report and either 'grant' or 'reject' the variation application to specify Mr Mustafah as the designated premises supervisor.

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

John Gilbraith

Licensing Manager

Environmental Health - Licensing

11th November 2013

Appendixes:

1. Norfolk Constabulary Letter dated 29th October 2013.

Background Papers:

1. The Licensing Act 2003
2. Borough Council's Statement of Licensing Policy (25 November 2010)
3. Guidance issued under Section 182 of the Licensing Act 2003 (June 2013)



CON ST A B U L A R Y

Our Priority is You

The Licensing Dept
Borough Council of King's Lynn & West Norfolk
King's Court,
Chapel Street
King's Lynn.
PE30 1EX.

Date: 29 October 2013

Ref: TG/Lic:

Norfolk Constabulary Licensing Team
4th Floor, Vantage House
Fishers Lane
Norwich
Norfolk
NR2 1ET
Tel: 01603 276020
Fax: 01603 276025
Email: grovera@norfolk.pnn.police.uk
www.norfolk.police.uk
Non-Emergency Tel: 0845 456 4567

Dear Licensing Team,

Application under the Licensing Act 2003

Premises: Kubus, 119 London Road, Kings Lynn. PE30 5ES

Name of applicant: Farman Omar MUSTAFAH

Type of application: Transfer Premises Licence & Variation of the Premises Licence to Specify a DPS

The Police wish to make a representation regarding these applications on the grounds that the Prevention of Crime and Disorder Objective may be undermined if this application is granted.

The Kubus Shop at 119 London Road, Kings Lynn is a small licensed mini market which purports to cater mainly for foreign nationals within Kings Lynn.

Mr. Farman MUSTAFAH has made two applications to the Licensing Authority for the Borough Council of Kings Lynn & West Norfolk with regard to this premise.

The first application is for the Premises Licence to be transferred in Mr. MUSTAFAH's name. The Police had made numerous attempts to contact him to discuss this application with the applicant prior to making an enquiry at the shop in order to confirm the circumstances under which Mr. MUSTAFAH has apparently taken over this business or what right he has to make such an application. It has only been today that Mr. MUSTAFA responded to the Police to discuss the matter. Details of that conversation are given later in this representation.

The second application is made by Mr. MUSTAFAH as Premises Licence Holder for the premises to Vary the Premises Licence to Specify him as the Designated Premises Supervisor. Mr. MUSTAFAH holds a current Personal Licence number 066803 issued by the Peterborough City Licensing Authority.

On Monday 28th October 2013 the Police Licensing Officer conducted an enquiry at the Kubus shop in Kings Lynn where he found the following two persons working at the premises. The first

was a male who gave his name as Jamshid ALI. The second was a female who gave her name as Sara SAWICKA. Both these names appear to be genuine. Both could understand and speak the English language quite competently.

On entering the shop the Licensing Officer found Mr. ALI to be sitting down below the service counter and talking on his mobile phone. There was no other person 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 that appeared to be working. The Licensing Officer asked Mr. ALI a series of questions which are normal for this type of enquiry which are highlighted as follows:

- Mr. MUSTAFAH has other shops in Peterborough.
- Mr. ALI does not hold a Personal Licence.
- Mr. ALI stated that he works all day for Mr. MUSTAFAH at the shop on four or five days a week and travels backwards and forwards to Peterborough each day. He is assisted by his girlfriend Miss SAWICKA.
- He is not sure what the licensing hours for the shop are but that they are closed by 11pm.
- When asked if he has authorisation to sell alcohol he said that Mr. MUSTAFAH had given him permission but he could not produce any written document to confirm this. *(The S182 Guidance to the Licensing Act 2003 suggests that 'best practice' regarding this matter is that authorisations to sell alcohol are given in writing.)*
- He was also unable to say what training Mr. MUSTAFAH had given him regarding the licensing laws applicable to the selling of alcohol although he said he knew what the law was.
- Although he said that refuses 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. *(Not keeping a refusals and not being able to produce it for inspection is a Breach of Condition 4 -Annex 2)*

Miss SAWICKA was in the private room at the rear of the shop and was asked to speak to the Licensing Officer by Mr. ALI. Whilst speaking to Miss SAWICKA and asking her a similar series of questions, Mr. ALI became confrontational and continually interrupted the Licensing Officer suggesting that he was trying to confuse Miss SAWICKA. The Licensing Officer had to be insistent that Mr. ALI did not interfere with Miss SAWICKA's answers. Miss SAWICKA then gave the following responses to the Licensing Officers questions:

- She does not hold a Personal Licence.
- She does work in the shop and sells alcohol.
- She was aware of the Licensing Laws as she has previous licensing experience in supermarkets such as Lidl.
- She has not received any training in the Licensing Laws by Mr. MUSTAFAH.
- She has not been given any authorisation to sell alcohol by Mr. MUSTAFAH.

As mentioned previously the Licensing Officer has now been able to speak to Mr. MUSTAFAH 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 is now in the process of purchasing a mini market type shop called International Market in Northampton which is twice the size of the Kings Lynn shop. He will be the Premises Licence Holder and DPS at that shop. He will be moving to Northampton in about 4 weeks time and living in the flat above the shop.
- Mr. MUSTAFAH does not own the business at Kubus in Kings Lynn. As far as he is aware the previous licence holder is not involved in the business any more. He says that the business is now being run by an acquaintance of his, a Mr. Jamshid ALI.
- Mr. MUSTAFAH says that because Mr. ALI does not have a personal licence he agreed to "do Jamshid a favour" and take on the role of Licence Holder & DPS until Jamshid gets his Personal Licence and only for a short period of no more than six weeks.

- Mr. MUSTAFAH says that has agreed to work at the shop on 2 days a week only between 6pm and 10pm because he hasn't got the time to do anymore as he is sorting out his own business.
- Mr. MUSTAFAH concedes that he will have no control over the running of the Kubus shop.

Mr. MUSTAFAH's answers to the Police Licensing Officer demonstrate that he will not have any reasonable amount of responsibility towards the provisions of the Licensing Act 2003 with regard to either of these applications. The Police believe it is true to say that:

- Mr. MUSTAFAH does not realistically assert any effective day to day control regarding the sale of alcohol at the shop as is defined to the roles of Premises Licence Holder or Designated Premises Supervisor.
- Mr. MUSTAFAH has not conducted any training of his staff in the Licensing Laws applicable to the retail sale of alcohol
- Mr. MUSTAFAH has not given any authorisation to his staff to sell alcohol that can be meaningful or effective.
- Mr. MUSTAFAH has 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 does not know what the terms and condition of the Premises Licence for the Kubus shop are.

The Police believe that the circumstances of this representation show an exceptional set of circumstances which requires being brought to the attention of the Licensing Authority.

The Police therefore submit that the Prevention of Crime and Disorder Licensing Objective is likely to be undermined in the case of both applications and that both applications are refused.

Yours faithfully,

Tony Grover.

Tony Grover.
Licensing Officer.

Copy to:

**Farman Omar MUSTAFAH
36 Winwick Place
Westwood
Peterborough
PE3 7HR**

Premises:

**Kubus
119 London Road,
Kings Lynn.
PE30 5ES**

We will answer letters within 10 working days, where information is available.
Where this is not possible, an explanation will be given for any delay.



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