

Agenda Item No:1 **1 – Summary of Report**

Licence Reference **17/01684/LAPRE**
Report To: **LICENSING SUB – COMMITTEE**
 (UNDER THE LICENSING ACT 2003)

Date: **12TH JUNE 2017**

Report Title: **CAPITOL EXPRESS, 11 SNOWDON PARADE, SNOWDON**
 AVENUE, MAIDSTONE, KENT, ME14 5NS

Application to: Vary a premises licence to specify an individual as
 designated premises supervisor under the Licensing Act 2003

Report Author: **Lorraine Neale**

Summary: 1. The Applicant – Snowden Food Store Limited

 2. Type of authorisation applied for: To vary a premises licence to specify
 an individual as designated premises supervisor under the Licensing
 Act 2003. (Appendix A)

 3. Grounds of police objection: It is the opinion of the Police that the
 licensing objectives would not be upheld if Bulent Ok becomes the
 designated premises supervisor, the variation changes a name on
 paper but does not change the ethos at the premises.(Appendix B)

Recommendations: **The Committee is asked to determine the application and decide**
 whether to vary the licence.

Policy Overview: The decision should be made with regard to the Secretary of State's
 Guidance and the Licensing Authority's Statement of Licensing Policy
 under the Licensing Act 2003. Where the decision departs from Policy or
 Guidance the departure must be directed solely at the attainment of the
 licensing objectives, and that such departure be supported by proper
 reasons.

Other Material **HUMAN RIGHTS:** In considering this application it is necessary to
Implications: consider the rights of the applicant.

Background Papers: Licensing Act 2003
 Home Office Guidance Document issued under section 182 of The
 Licensing Act 2003
 Maidstone Borough Council Statement of Licensing Policy

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Application to: Vary a premises licence to specify an individual as Designated Premises Supervisor under the Licensing Act 2003

Purpose of the Report

The report advises Members of an application to vary a premises licence to specify an individual as Designated Premises Supervisor under the Licensing Act 2003, made by Snowden Food Store Limited, in respect of the premises Capitol Express, 11 Snowdon Parade, Snowdon Avenue, Maidstone, Kent, ME14 5NS to which a representation has been received from the Kent Police, a copy of which is shown in the appendices at the end of this report.

Issue to be decided and options

Members must, having regard to the application and the police objection notice, decide whether to grant the application or reject the application if members consider it necessary for the promotion of the crime prevention objective to do so.

The relevant statutory provisions are section 37 to 40 inclusive of the Licensing Act 2003.

The Home Office Guidance at paragraphs 4.31 – 4.41 is relevant, particularly paragraphs 4.39 – 4.41 which states:

4.39 The police may object to the designation of a new premises supervisor 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 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.

Background

1. The application to vary the premises licence to specify an individual as designated premises supervisor is attached at Appendix A.

2. The objection notice of the police is attached at Appendix B.
3. **Members are advised that they may only reject the application if members consider it necessary for the promotion of the crime prevention objective to do so.**
4. The relevant section of **The Guidance issued under section 182 of The Licensing Act 2003** is **Chapter 4: paragraphs 4.31 – 4.41**
5. There is no particular relevant chapter within the Licensing Authority's Statement of Licensing Policy.
6. Members of The Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to co – operate in the reduction of crime and disorder in the Borough.

Section 17 of the Crime and Disorder Act 1998 states:

“Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”

Implications Assessment

7. The decision should be made with regard to Home Office Guidance. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.
8. **Human Rights:** While all Convention Rights must be considered, those which are of particular relevance to the application are:
 - Article 8 - Right to respect for private and family life
 - Article 1 of the First Protocol - Protection of Property
 - Article 6(1)- Right to Fair Hearing
 - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices.

Conclusion

9. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

List of Appendices

10. Appendix A Application Form
- Appendix B Police objection notice
- Appendix C Premise Licence
- Appendix D Plan of the Premises
- Appendix E Plan of the area
- Appendix F Human Rights Articles
- Appendix G Order of Proceedings

Appeal

11. **The applicant or the Chief Officer of Police may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. Allany appeals must be lodged with the Magistrates' Court. Parties should be aware that they may incur an Adverse Costs Order should by bring an appeal.**

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