

Licensing Sub-Committee 2

Tuesday, 15th December, 2020 at 10.00am

On Microsoft Teams

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Agenda - Public Session

(Meeting open to the public and press)

1. Apologies for absence.
2. To report the appointment of any substitute Members for this meeting of the Sub-Committee.
3. To receive any declarations of interest under the Members' Code of Conduct.
4. To confirm and sign the minutes of the meetings held on 20th October, 2020 as a correct record.

The following application is to be considered under the provisions of the Licensing Act 2003:-

5. Application for Grant of a New Premises Licence -16 Gorge Road, Sedgley (Pages 1 to 5)
6. To consider any questions from Members to the Chair where two clear days notice has been given to the Monitoring Officer (Council Procedure Rule 11.8).



Chief Executive

Dated: 3rd December, 2020



Distribution:

Councillor M Evans (Chair)
Councillors J Baines and P Drake

CC. Councillor P Miller (Substitute for Councillor M Evans)
Councillor E Taylor (Substitute for Councillor J Baines)

Please note:

- This meeting will be held virtually by using Microsoft Teams. The meeting will be held live via the Internet link.
- This is a formal Council Sub-Committee and it will assist the conduct of business if participants speak only when invited by the Chair.
- The Chair reserves the right to adjourn the meeting, as necessary, if there is any disruption or technical issues.
- All participants should mute their microphones and video feed when they are not speaking.
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Licensing Sub-Committee

Chair's Announcement

Welcome to this virtual meeting. This is a formal Council Sub-Committee. The public proceedings will take place live on the Internet. The public proceedings will be recorded for future viewing.

It will assist with the conduct of business if participants speak only when invited. I shall adjourn the meeting if necessary if protocol is not observed.

Members of the public are welcome to view the proceedings but should not make contributions until they are invited in line with our procedure.

All Members of the Sub-Committee have received the reports and associated documents in advance and had the opportunity to read them. The public reports are published on the Internet.

All participants should mute their microphones and video feed when they are not speaking.

Please remember to unmute your microphone and switch on your video feed when it is your turn to speak. Speak clearly and slowly into your microphone.

Anyone wishing to speak should indicate using the 'raise your hand' button on Microsoft Teams. I will invite people to speak at the appropriate time.

If you do not have the hand button, please type your request to speak in the chat function. Please note that the 'chat' function is monitored and has a full audit trail and anyone found to be misusing this function will be removed from the meeting.

Please note that when the Sub-Committee adjourns to make a decision, all participants except our Legal Advisor and Democratic Support Officers will be asked to leave the meeting. Our decision and the reasons for it will be communicated to all parties as soon as possible after the hearing.

Finally I ask for everyone's patience with the use of the technology. I apologise in advance if we experience any unforeseen difficulties which we shall try to resolve expediently.

I shall now follow the agenda items.



**Minutes of the Licensing Sub-Committee 2
Tuesday, 20th October, 2020 at 10.00 am
on Microsoft Teams**

Present:

Councillor M Evans (Chair)
Councillors J Baines and P Drake

Officers:-

B Hughes – Assistant Team Manager - Waste and Fleet Care (Directorate of Public Realm),
R Clark – Solicitor and L Jury – Democratic Services Officer (Directorate of Finance and
Legal).

1 **Declarations of Interest**

No Member made a declaration of interest in accordance with the Members' Code of Conduct.

2 **Minutes**

Resolved

That the minutes of the meeting held on 3rd March, 2020, be approved as a correct record and signed.

3 **Transfer of Premises Licence and Variation of Designated Premises Supervisor – Spar Stores, 53-56 Lapwood Avenue, Kingswinford, West Midlands**

A report of the Acting Director of Public Realm was submitted for the transfer of a Premises Licence and Variation of Designated Premises Supervisor in respect of the Spar Stores, 53-56 Lapwood Avenue, Kingswinford, West Midlands.

The following persons were in attendance at the meeting in respect of the application:

Mr S Panchal of Personal Licence Courses UK Ltd - Representative of Mr R Kapoor
Mr Rajinder Singh Kapoor - Applicant
Mr D Craig – Barrister – Representative of Mr R Kapoor
Katie Turley - West Midlands Police
Donna Jenkins - West Midlands Police
Kerry Mullings, Licensing Enforcement Officer

Following introductions, the Assistant Team Manager - Waste and Fleet Care presented the report on behalf of the Council.

It was reported that a premises licence had initially been issued on 26th September 2005 and had been transferred on 1st May 2008. The current licence holder was Mr Valjeet Singh and the Designated Premises Supervisor (DPS) was Mrs Jashin Kaur Sethi. It was noted that on 30th September 2019, an application for the review of the premises licence had been received from the Public Protection Manager (Food and Consumer Safety), on the grounds of the prevention of crime and disorder and the protection of children from harm.

Representations in support of the application for review were received from the HM Immigration Department, Licensing Authority, Public Health and West Midlands Police (WMP).

It was noted that on the 9th December, 2019, prior to the Committee hearing, an application had been received from Personal Licence Courses UK Ltd on behalf of Mr Valjeet Singh, the then Premises Licence Holder (PLH), for the variation of the premises licence to specify Mrs J Sethi as DPS. The review of the licence was considered by the Licensing Sub-Committee on 10th December, 2019 and the Committee resolved that the licence be revoked. The premises were currently operating under the premises licence held by Mr Valjeet Singh pending an appeal to the Magistrates Court.

On the 11th December, 2019, WMP raised objections to the application for variation of DPS and the application was considered by the Licensing Sub-Committee on the 21st January 2020, where the Committee resolved that the application be refused and an appeal to the decision is also pending. The Assistant Team Manager – Waste and Fleet Care reported that both matters were to be heard in the first week of January 2021 at Walsall Magistrates Court.

On 14th September, 2020, Personal Licensing Courses UK Ltd, made a further application on behalf of Mr Valjeet Singh (PLH) for the variation of DPS and the transfer of the premises licence into the name of Mr Rajinder Singh Kapoor. Subsequently, on 28th September, 2020 representations were received from WMP, and it was noted that their representations were supported by the Licensing Authority.

Ms D Jenkins and Ms K Turley presented the representations of the WMP, outlining their objections to the transfer of the premises licence and variation of the DPS.

It was reported that the premises had closed earlier that year following the premises licence revocation on 10th December, 2019 and a refusal of the variation of DPS on 21st January, 2020. However, WMP noticed that the premises had reopened with new signage stating that it was under new management.

As a result, a Licensing Enforcement Officer visited the premises on 9th September 2020, to carry out a compliance check. It was reported that during the visit, staff were evasive and vague and two males on the premises, claiming to be the owners, were reluctant to give the officer their details. Therefore, a further visit was undertaken on 14th September 2019, where two female staff members were in attendance and confirmed that they did not have the full names of the owners and had been asked to call them by their nicknames. One of the staff also stated that a male member had left the premises above the shop whilst the visit was in operation.

The female staff member was asked to contact the new owner and contact was made with Mr Panchal, the Licensing Consultant acting on behalf of the premises. Mr Panchal was advised to submit a transfer of premises licence and a variation of the DPS within twenty-four hours. It was noted that the paperwork had been received by the Licensing Authority the following day, transferring the premises licence and varying the DPS to Mr Rajinder Singh Kapoor.

A further visit was made by WMP on 15th September, 2019, where a friend of the owner, advised that Mr Rajinder Singh Kapoor lived in London and was unable to attend. When questioned about the other two males that had been present during a previous visit, the friend stated that they were only friends visiting the premises. However, when shown a copy of the staff rota by the female member of staff, their names appeared to be on the rota.

The friend was advised to contact Mr Panchal to arrange a meeting with the Police the following week. It was noted, however that Mr Panchal did not make contact until 12th October, 2019, when a meeting was scheduled with Mr Panchal, Mr Rajinder Singh Kapoor and his brother and business partner, at Brierley Hill Police Station. During the meeting the applicant stated that neither himself or his brother would be working at the premises, however, they visited the shop two to three times a week and resided in the flat above the premises on their visit. The applicant stated that he had not seen a copy of the premises licence and he was not aware of any of the conditions on the licence. He was also not aware of the history of the premises, which included the revocation of the premises licence and the refusal of the variation of the DPS, both pending appeals. The applicant stated that the female member of staff that the Officers had met at the premises on their visit, would be managing the premises in their absence, and that neither himself or his brother were aware of the surnames of their members of staff.



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Mr R Kapoor reported that he had signed a 25-year lease on the premises, however, when the document was inspected, it was noted that it stated that the lease expired in 2024. Mr R Kapoor confirmed that his Solicitors had advised that the lease would automatically renew for 25 years after 2024. The applicant reported that they were the freeholders of the premises, but when investigated, WMP found that the information was incorrect. Mr Kapoor was also unaware of the history of the premises, including the pending appeals, and confirmed that he had been informed about the premises being up for sale by somebody selling sandwiches in one of his other premises.

On a further visit to the premises to carry out a compliance check, it was reported that a number of conditions were not being complied with. A male was in attendance at the premises during the visit, and when asked if he worked in the shop, he did not reply but asked the female staff member for money from the till and left the premises. When questioned, the female staff member stated that she was not aware of the man's name and confirmed that he attended the premises on occasions with Mr R Kapoor. She also confirmed that nobody resided in the flat above the premises, which had contradicted information that Mr R Kapoor had stated in his meeting with the Police.

During the visit, the Closed-Circuit Television (CCTV) was inspected, and it was established that it was not in working order. The female member of staff on the premises, made several attempts to contact Mr R Kapoor but he did not return the calls whilst the Officers were in attendance.

In conclusion, Ms K Turley reported that WMP were objecting to the application as they were not satisfied that Mr Rajinder Singh Kapoor was not linked to the previous management regime. Given the history of the premises and on-going appeals and Mr Kapoor's experience in this trade, in order for the licensing objectives to be upheld, particularly in relation to the Prevention of Crime and Disorder and Protection of Children from Harm, WMP would need to be satisfied that the applicant and his staff members were aware of and adhering to the conditions on the premises licence. During their visits to the premises, and as a result of a meeting with Mr Rajinder Singh Kapoor, they did not believe this to be the case.

Arising from questions raised by Mr Craig, WMP confirmed that Mr R Kapoor had no convictions and they had no evidence that he was associated with the previous management of the premises.

In response to a question raised by the Chair, WMP stated that given the history of the premises, they would expect that the staff member left in charge of the premises would be aware of and be adhering to the conditions of the licence.

In response to a question raised by Mr Craig in relation to the legal standing of the Licensing Authority to make representations, the Assistant Team Manager confirmed that having recently reviewed the Licensing Policy, section 1.8.2 of the guidance stated that licensing authorities were authorised to make representations.

The Licensing Enforcement Officer, in addition to the information that had been submitted to the Sub-Committee prior to the meeting, outlined details of the compliance visit that had been undertaken the previous day with WMP.

It was reported that Officers questioned the female member of staff in attendance on the premises, and although happy to review the conditions of the licence with the officers, commented that she was not the manageress of the premises by title and was not paid to manage the premises. That was again in contradiction to information Mr R Kapoor had given officers in his meeting. On reviewing the conditions, it was noted that condition 3, relating to the refusal register, had not been adhered to as the PLH should have reviewed and signed the register on a weekly basis, and Mr R Kapoor had not adhered to this condition although he had been in situ since 15th September 2019.

Reference was made to condition 4, relating to the CCTV in operation on the premises, noting that it was not in working order and although the female member of staff was able to operate the system when working, she was not aware of the timeframe to retain the recordings made or verify if Mr R Kapoor kept the recordings and reviewed them on a weekly basis. Attempts were made to contact Mr R Kapoor to discuss this matter, however, he was unavailable. All other conditions had been complied with.

Mr Craig, the applicants representative, presented the case on behalf of his client, and in doing so, made reference to legislation with regards to the Police opposing both the transfer of the premises licence and the variation of the DPS, but only in exceptional circumstances and he stated that he did not entirely agree with the Police's reasoning that a premises should not be authorised to sell alcohol simply because a PLH was not intimately involved in the business. It was reported that Mr R Kapoor was of good character and had no criminal convictions. It was noted that although Mr R Kapoor did reside in London, he had purchased the premises and intended to spend two to three days at the premises. It was noted that this was not inconsistent with the responsibility of the PLH and/or the DPS. Section 1.8.2 guidance clearly stated that a DPS did not need to be in attendance on the premises all of the time, and by being the proposed PLH and DPS, Mr R Kapoor would be assuming overall responsibility of the premises and promoting the licensing objectives.

It was noted that Mr R Kapoor had been involved in the trade for 10 years and held the licence at a similar premise with another local authority, but he was not the DPS. It was stated that Mr R Kapoor had no connection to the previous owner. It was reported that Mr Kapoor's Solicitors had confirmed the situation with regards to the lease which was currently being drawn up and it was understood that the lease expired in 2024 with an option to renew beyond that date. Although Mr Craig had not seen a copy of the lease it was understood that it had been seen by WMP.

Reference was made to the meeting on 14h October, 2019 and it was acknowledged that Mr R Kapoor should have been more aware of the licencing conditions and it was noted that steps were being taken to rectify those issues, especially with regards to the weekly review of the refusal register and CCTV. It was reported that the female member of staff who was in attendance when the compliance visits were carried out, was about to undertake the Personal Licence course. It was also reported that it was not unusual for the Asian community to adopt nick names.

In conclusion, Mr Craig stated that guidance and the Licensing Act clearly clarified the situation with regards to transferring public licences and variations of the DPS from business to business and there were other mechanisms within the Licensing Act to deal with premises that were not promoting the licensing objectives. In that regard, given the absence of evidence to prove a link with previous management at the premises, and given Mr R Kapoor's good character and experience in the trade, it was requested that the transfer of the premises licence and variation of the DPS be granted.

WMP sought clarification with regards to Mr R Kapoor's responsibilities in relation to his premises in London. In response, Mr R Kapoor, with assistance from his representatives, confirmed that he was the DPS of one premise, but his partner Mr S Singh was DPS in the other. In response, WMP confirmed that this information was in contradiction to information Mr R Kapoor had given them at their recent visit.

In response to several questions raised by the Chair and WMP with regards to Mr Kapoor's understanding of the premises license, its history and conditions, since the license had been transferred to him, Mr R Kapoor, despite assistance from his representative, Mr Panchal, was unable to demonstrate his knowledge of the licencing conditions, often referring to licencing policy. Mr R Kapoor acknowledged that he had been anxious whilst attending this meeting and his English was limited.

Although it was confirmed that the licencing conditions had been sent to all parties prior to the meeting, Mr R Kapoor and Mr Panchal confirmed that they did not have a copy of the licence before them for the Sub-committee. Mr Panchal did, however, confirm that he had explained the history of the premises, and shown a copy of the premises licence to Mr R Kapoor when he had visited his office and he was unsure as to why Mr R Kapoor stated at the meeting on 14th October 2019, that he was unaware of the premises history and had not seen a copy of the licencing conditions.

Both parties presented a summary of their case and in consultation with Members, the Solicitor confirmed that the Sub-Committee's decision would be confirmed by email to all parties later that day.

The parties then withdrew from the meeting to enable the Sub-Committee to determine the application.

Resolved

That, following careful consideration of the information contained in the report submitted and presented at the meeting, the application for the transfer of Premises Licence and Variation of Designated Premises Supervisor in respect of the premises known as Spar Stores, 56-63 Lapwood Avenue, Kingswinford, be refused as the Sub-Committee were not satisfied that the applicant would promote the objective of preventing crime and disorder at the premises.

The applicant would be advised of his right to appeal the decision of the Sub-Committee.

The meeting ended at 11.20am.

CHAIR

Licensing Sub-Committee – 15th December 2020

Report of the Acting Director of Public Realm.

Application for Grant of a New Premises Licence

16 Gorge Road, Sedgley, DY3 1LA.

Purpose

1. To consider the application for the grant of a new premises licence in respect of the premises known as 16 Gorge Road, Sedgley, DY3 1LA.

Recommendation

2. That the Sub-Committee determine the application for the grant of a premises licence in light of the representations raised.

Background

3. On the 27th October 2020, an application for the grant of a new premises licence was received from Mr Thomas Elijah Rafferty, in respect of the premises at 16 Gorge Road, Sedgley, DY3 1LA. A copy of that application has been forwarded to the Committee Members and interested parties in accordance with the Licensing Act 2003.
4. The application had the following documents enclosed:-
 - Plan of the premises
 - Correct fee
 - Consent of the DPS
5. The application for a premises licence is as follows:



Supply of Alcohol (off the premises)

Monday to Sunday inc 08.00 until 03.00

6. Confirmation that copies of the application form and supporting documentation have been served on the relevant authorities has been received.
7. Representations have been received from Cllr Tina Westwood which are supported by Cllr Michael Evans. Copies of all representations have been forwarded to the Applicant, Committee Members and Interested parties in accordance with the Licensing Act 2003.

Finance

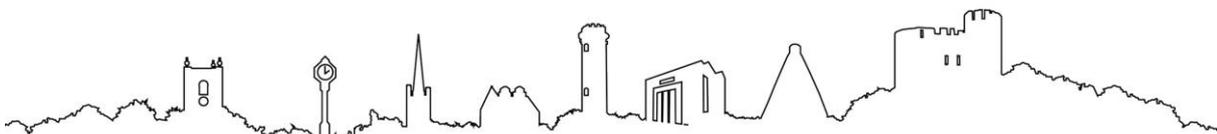
8. There are no financial implications.

Law

9. The law relating to the determination of applications for the grant of a premises licence is governed by the Licensing Act 2003, part 3, section 18.
10. Pursuant to Section 18(3) of the Licensing Act 2003, where a relevant authority has made representations, the Licensing Authority must:-
 - (a) hold a hearing to consider them, unless the authority, the applicant each person who has made such representations agree that a hearing is unnecessary, and
 - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the Licensing objectives.
11. Pursuant to Section 18 (4) the steps are:-
 - (a) to grant the licence subject to:-
 - (i) such conditions as are consistent with the operating schedule accompanying the application modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under section 19, 20 or 21 be included in the licence;



- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
 - (c) to refuse to specify a person in the licence as the premises supervisor;
 - (d) to reject the application
12. Pursuant to Section 23(1) of the Licensing Act 2003 where an application (or any part of an application) is granted under section 18 of the Licensing Act 2003, the Licensing Authority must immediately give notice to that effect to:-
- 1 (a) (i) the applicant
 - 1 (a) (ii) any person who made relevant representations in respect of the application and
 - 1 (a) (iii) the Chief Officer of Police for the police area in which the premises are situated and
 - 1 (b) issue the application with the licence and a summary of it
13. Pursuant to section 23(2) where relevant representations were made in respect of the application, the notice under subsection (1)(a) must state the authority's reasons for its decisions as to the steps (if any) to take under section 18(3)(b).
14. Pursuant to section 23(3) where an application is rejected under section 18, the licensing authority must forthwith give a notice to that effect stating its reasons for the decision, to
- (a) the applicant
 - (b) any person who made relevant representations in respect of the application, and
 - (c) the Chief of Police for the police area or each police area in which the premises are situated
15. Where a Local Authority grant a licence under section 18 pursuant to schedule 5 of the Licensing Act, section 2 the holder of the licence may appeal against any decision:-
- (a) to impose conditions on the licence under subsection (2)(a) or 3(b) of that section, or



- (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor)
16. Where a person who made relevant representations in relation to the application desires to contend:-
- (a) that the licence ought not to have been granted, or
 - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section, he may appeal against the decision.
17. In pursuance of regulation 26(2) of the Licensing Act 2003 (Hearing Regulations 2005) the Licensing Authority must make its determination within 5 working days of the conclusion of the hearing.
18. If the Licensing Authority refuse to grant the application, there is a right of appeal. The appeal under this part must be made to a Magistrates' Court pursuant to schedule 5 section 9 of the Licensing Act 2003.

Equality Impact

19. This report takes into account the Council's policy on equal opportunities.
20. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.
21. There has been no consultation or involvement of children and young people in developing these proposals.

Human Resources/Organisational Development

22. There are no organisational development/transformation implications.

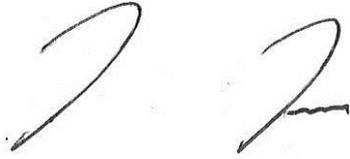
Commercial/Procurement

23. There are no commercial/procurement implications.



Health, Wellbeing and Safety

24. This application falls within the Council's responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.



Garry Dean
Acting Director of Public Realm

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Appendices

None

List of Background Documents

None

