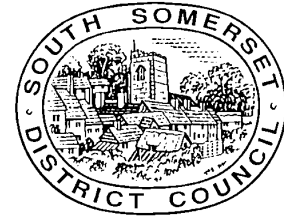


South Somerset District Council

Notice of Meeting



Licensing Sub Committee

Making a difference where it counts

Friday 20th March 2015

10.00 am

**Council Chamber B
Council Offices
Brympton Way
Yeovil
BA20 2HT**

(disabled access is available at this meeting venue)



Members listed on the following page are requested to attend the meeting.

The public and press are welcome to attend.

If you would like any further information on the items to be discussed, please ring the Agenda Co-ordinator, **Jo Morris, Democratic Services Officer**, website: www.southsomerset.gov.uk

This Agenda was issued on Thursday 12 March 2015.

Ian Clarke, Assistant Director (Legal & Corporate Services)

**This information is also available on our website
www.southsomerset.gov.uk**



INVESTORS IN PEOPLE

Licensing Sub Committee Membership

Nick Colbert

David Norris

David Recardo

South Somerset District Council – Council Plan

Our focuses are: (all equal)

- Jobs – We want a strong economy which has low unemployment and thriving businesses
- Environment – We want an attractive environment to live in with increased recycling and lower energy use
- Homes – We want decent housing for our residents that matches their income
- Health and Communities – We want communities that are healthy, self-reliant and have individuals who are willing to help each other

Members Questions on reports prior to the Meeting

Members of the Committee are requested to contact report authors on points of clarification prior to the Committee meeting.

Information for the Public

Meetings of the Licensing Sub Committee are held as required in the Council Offices, Brympton Way.

Licensing Sub Committee agendas and minutes are published on the Council's website www.southsomerset.gov.uk

The Council's Constitution is also on the web site and available for inspection in council offices.

Further information can be obtained by contacting the agenda co-ordinator named on the front page.

Licensing Sub Committee

Friday 20 March 2015

Agenda

Preliminary Items

1. Declarations of Interests

In accordance with the Council's current Code of Conduct (adopted July 2012), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting. A DPI is defined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012 No. 1464) and Appendix 3 of the Council's Code of Conduct. A personal interest is defined in paragraph 2.8 of the Code and a prejudicial interest is defined in paragraph 2.9. In the interests of complete transparency, Members of the County Council, who are not also members of this committee, are encouraged to declare any interests they may have in any matters being discussed even though they may not be under any obligation to do so under any relevant code of conduct.

2. Procedure to be followed under the Licensing Act 2003 when a notice of objection to a proposed Designated Supervisor (DPS) has been received (Pages 1 - 4)

3. Objection Notice received in respect of an application to vary a Designated Premises Supervision (Pages 5 - 7)

Agenda Item 2

Procedure to be followed under the Licensing Act 2003 when a notice of objection to a proposed Designated Premises Supervisor (DPS) has been received

Pre meeting Prior to the start of the Hearing the Democratic Services Officer will check that any person wishing to address the Sub-Committee is either:

The Holder of the Premises Licence or their authorised representative or
The Chief of Police or their representative

Where there is any doubt about the person's eligibility to address the Sub-Committee, the Democratic Services Officer will seek advice from the Legal Officer(s)

1. **The Chairman will introduce:**

- members of the Sub-Committee (which will be made up of three District Councillors)
- the officers present
- the Parties and their representatives (if any)

The Chairman will ask, before starting the Hearing, if the Notice of Objection has been withdrawn.

2. At the start of the hearing **the Chairman will advise: -**

- all Parties of the reason for the Hearing and the procedure to be adopted.
- that where a Party wants another person to appear at the Hearing they must ask permission (under Regulation 8(2)) although such permission will not be unreasonably withheld. No permission is needed where the other person is acting only as the Party's representative.
- that if any Party wishes to ask the Sub-Committee to consider documentary or other information at the hearing, which was not provided before the Hearing, then all Parties must consent.
- that if any Party does not attend or is not represented at the hearing, the Hearing can go ahead but the Sub-Committee will consider the application to Vary the Premises Licence to Specify a DPS, Notice of Objection and any supporting information from either party received by the statutory deadline.
- that in some circumstances, the Hearing may be adjourned, where the Sub-Committee consider the public interest demands it.

3. **The Chairman will ask each Party to confirm receipt** of the following documents:

- Officer's report relating to the case
- The procedure to be adopted during the Hearing
- That the applicant and proposed DPS has received a copy of the Notice of Objection

- Any queries on the procedure or the factual content of the Licensing Officer's report should be dealt with at this point, with the assistance of the legal officer(s), as required.
4. **The Chairman will then ask** the Licensing Officer to present their report.
 5. **The Chairman will inform all present** - that each Party will be given an equal amount of time to put forward their case. This will normally be a maximum of five minutes. However, the Chairman has discretion about the time given to each Party and may vary the time limit where reasonable to do so although reasons will be given and fairness maintained.
 6. **The Chairman will invite:**
 - The representative of the Chief of Police to address the Sub-Committee on matters they have already raised in their Notice of Objection and any supporting information received before commencement of the hearing.

No new information can be presented at the hearing unless all Parties agree; however, where the authority has notified the Party that it requires clarification on any points, this should be provided at this stage.

The Chairman will then invite:

- The applicant to present their case against the Notice of Objection to the Sub-Committee *and finally invite:*
- The Proposed DPS to present their case against the Notice of Objection to the Sub-Committee

The Chairman will permit a Member to seek immediate clarification of a point made by a Party, their representative or any another person permitted to attend where, prior to this point in the Hearing, circumstances arise which make it desirable to do so, provided that the question is relevant and helps the proper conduct of the Hearing. The rules of natural justice will be followed.

No Cross examination will be permitted without the consent of the Sub-Committee and this will only be given where Committee considers that cross-examination is required for it to consider the Notices and any supporting information.

7. **The Chairman will ask** whether anyone has any further relevant comments to make and whether each Party is satisfied with the conduct of the Hearing.
8. **The Chairman will then invite** Members of the Sub-Committee to ask any questions of any of the Parties or any other person permitted by the Sub-Committee to appear at the Hearing.
9. **The Chairman will check with the legal adviser(s) that all relevant points have been addressed before asking the Parties to leave the room while** the Sub-Committee consider its decision in private. Only the

clerk and the legal adviser(s) will remain with the Sub-Committee although only the sub-committee will be making the decision.

10. **Once in private the Chairman will advise the other Members** that they must consider all the information before them in making their decision but will disregard any information which is not relevant to the application or Notice of Objection, and which does not relate to promoting the Licensing Objectives. Members will take account of the Statutory Guidance and the Council's Statement of Licensing Policy. If Members require further information from any Party or any further evidence, they will re-convene the hearing with all Parties able to be present.
11. **The Chairman will ensure, on the Parties return to the Hearing room,** that any legal advice given to the Sub-Committee in private is summarised to the Parties.
12. **The Chairman will notify** all Parties of their decision and the reasons for the decision. The decision will normally be given orally, at the Hearing, in a plain English format to help those attending the Hearing to understand it more easily. This is not the official written Notice of Decision which will be sent to all of the Parties shortly afterwards. If there is insufficient time to communicate this decision in writing before the proposed variation of DPS takes place, the decision will be given in full at the hearing.

Where the Sub-Committee is unable to give a decision at the meeting, **the Chairman will advise all Parties when a decision can be expected.** The decision will be sent to all Parties within the timescales set down in the Regulations.

13. **The Chairman will inform all Parties** of their possible rights of appeal.

NOTES

1. A Party is either the Applicant, the proposed DPS or Chief of Police or the associated representative
2. Where an adjournment is granted, the Sub-Committee will notify the Parties forthwith of the date, time and place to which the Hearing has been adjourned.
3. Under no circumstances must the Parties or their representatives offer Members of the Sub-Committee information in the absence of other Parties. Similarly, Members will not attempt to illicit information from any Party to the Hearing in the absence of the others. Members will not make pronouncements on the merits of the case until all the evidence has been heard. These are essential elements of the rules of natural justice.
4. The Chairman may vary this procedure, as circumstances require but will have regard to the rules of natural justice.
5. The Hearing will normally take place in public.
The Sub-Committee may also require a Party to leave the hearing if that Party is behaving in a disruptive manner. The Sub-Committee can refuse to re-admit the Party or re-admit upon conditions but the Party can nevertheless submit to the Sub-Committee before the end of the Hearing any written information it would have been entitled to submit orally at the Hearing.
6. District Councillors representing the area (District Council Ward) where

the applicant lives, or have declared an interest, will not form part of the Sub-Committee.

7. Where any irregularity is brought to the attention of the Sub-Committee during the hearing, the Sub-Committee may, if it feels that a Party has been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure that irregularity before it makes its determination. However, any irregularity from a failure to follow this procedure shall not of itself render the proceedings void and any clerical errors may be corrected.
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Agenda Item 3

Objection Notice received in respect of an application to vary a Designated Premises Supervisor

Assistant Director: Laurence Willis, Assistant Director (Environment)
Report Author: Anita Legg – Licensing Officer
Contact Details: anita.legg@southsomerset.gov.uk or 01935 462137

Purpose of the Report

To inform members that an application has been received under the Licensing Act 2003 from the premises licence holder - Mr Michael Anthony Gomez, to vary the Designated Premises Supervisor (DPS) at The Kelway Inn, Somerton Road, Langport TA10 9SJ and further that an objection notice to the proposed variation of this licence has been received from Avon and Somerset Constabulary.

Recommendation

To consider the objection notice in accordance with the options detailed later in the report.

Background

Where the holder of a premises licence (which authorises the supply of alcohol), has applied to vary the licence so as to specify the individual named in the application as the designated premises supervisor; they must also serve a copy of the application on the Chief of Police for the area.

If the Chief of Police is satisfied that the exceptional circumstances of the case are such that the granting of the application would undermine the crime prevention objective, they must give the relevant licensing authority a notice why they are so satisfied within a period of 14 days beginning with the day on which they are notified of the application.

If notice is not received from the Chief of Police (or subsequently withdrawn) the Licensing Authority must grant the application.

In this case, such a notice has been received by the Licensing Authority, who must now hold a hearing to consider it, unless the authority, the applicant and the Chief Officer of Police who gave the notice agree that a hearing is unnecessary.

The notice states that the Police have not been able to contact Ms King (the proposed DPS) from any of the details given and have not therefore been able to carry out any relevant checks. Both Ms King and Mr Gomez were out of the country at the time of the Police visit to the premises where several issues were identified (as below), which they did not feel would be rectified by the proposed change of DPS.

Where the application includes a request that the variation shall have immediate effect, the premises licence has effect during the application period as if it were varied in the manner set out in the application i.e. that this person can act as the DPS during the application period. The application did include this request.

Licensing Objectives

The licensing objectives are to be considered paramount and the Council has a duty to promote these objectives in its decision making process.

Relevant Observations

The premises are currently closed with the locks being changed by the Landlord, which means that neither Mr Gomez nor Ms King can obtain entry.

Further Information

The Police have advised that they received complaints concerning alleged underage sales taking place at the premises; the council have also received a few such complaints, which have been passed to Trading Standards.

The Police also advise that they have identified various breaches of the premises licence and serious safety issues which pose a significant risk to the public, for which the latter resulted in the attendance of the Fire Service and voluntary closure of the premises.

Considerations

In determining the application with a view to promoting the crime prevention objective, the Committee must have regard to and give appropriate weight to the following considerations:

- Any Notice of Objection (including supporting documentation received)
- Guidance issued under s182 of the Act
- The Statement of Licensing Policy published in January 2014
- The steps necessary to promote the licensing objectives
- Human Rights considerations in particular Article 6, Article 8 and Article 1 of Protocol 1

Options

The options available to the committee in this case are as follows:

- Having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.
- Grant the application in any other case.

Right of Appeal

Schedule 5 Part 1 of the Licensing Act 2003 sets out the rights and procedures for making appeals against the decision of the Licensing Authority:

Where a Licensing Authority-

- rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39 the applicant may appeal against that decision
- where an application to vary a premises licence is granted under section 39(2) in a case where the chief officer of police gave a notice under section 37(5)(which was not withdrawn) the chief officer of police may appeal the decision to grant the application.

The appellant commences an appeal by giving a notice of appeal to the designated officer for the Magistrates' court within 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.

On determining the appeal, the court may,

- Dismiss the appeal
- Substitute for the decision appealed against any other decision which could have been made by the Licensing Authority; or
- Remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court.

and may make such order as to costs as it thinks fit.

Background Papers

Licensing Act 2003

The Latest Guidance issued under section 182 of the Licensing Act 2003.

The Statement of Licensing Policy for South Somerset District Council Published January 2014
