

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

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If notice is not received from the Chief of Police (or subsequently withdrawn) the Licensing Authority must grant the application.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