

Report to	Licensing sub committee 21 June 2013	Item
Report of	Head of citywide services	3
Subject	Licensing Act 2003: Application to vary a premises licence to specify an individual as designated premises licence holder under the Licensing Act 2003 and application to transfer premises licence to be granted under the Licensing Act 2003 - 31 St Stephens Road Norwich NR1 3SP	

Purpose

Members are asked, in accordance with the delegation of licensing functions contained in the Norwich City Council Statement of Licensing Policy (Licensing Act 2003) to consider applications to vary a premises licence to specify an individual as designated premises supervisor (“DPS”) and to transfer a premises licence under the Licensing Act 2003 (“the Act”) in respect of 31 St Stephens Road Norwich NR1 3SP, following the receipt of a notice of objection from Norfolk Constabulary.

Recommendation

That members determine the applications to vary a premises licence to specify an individual as designated premises supervisor (“DPS”) and to transfer a premises licence under the Licensing Act 2003 (“the Act”) in respect of 31 St Stephens Road Norwich NR1 3SP, following the receipt of a notice of objection from Norfolk Constabulary, in accordance with the:

- Licensing Act 2003;
- the crime prevention licensing objective
- the notice of objection received from Norfolk Constabulary
- guidance issued under Section 182 of the Licensing Act 2003; and
- Norwich City Council Statement of Licensing Policy.

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

None.

Ward/s: All wards

Cabinet member: Councillor Stonard – Environment, development and transport

Contact officers

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Background documents

None

Report

Application to vary a premises licence to specify an individual as designated premises licence holder under the Licensing Act 2003

1. An application to vary the premises licence for 31 St Stephens Road Norwich so as to specify Mehmet Sert as the DPS has been made by the holder of the premises licence, Ali Capti.
2. This application has been submitted in accordance with the provisions of Part 3 of the Act and associated Regulations.
3. Mehmet Sert is the holder of a personal licence, number 09/01681/PERS issued by Norwich city council. He has consented, in writing, to being specified as the DPS.
4. The applicant has also applied to have this application taken immediate effect in accordance with Section 38 of the Act.
5. A copy of the application is attached as Appendix A.

Representation by Chief Officer of Police

6. Where a Chief Officer of Police is satisfied that the exceptional circumstances of a case are such that granting the application would undermine the crime prevention objective, he must give the licensing authority a notice stating the reasons he is so satisfied
7. The police have given such a notice and state in it that their concerns relate to the fact that the proposed DPS has admitted to being the owner of the premises and being involved in managing the premises whilst underage sales have taken place and counterfeit liquor was found at the premises. The applicant has also previously received a fixed penalty notice for selling to an underage person.
8. A copy of the police letter of representation is attached at appendix B to the report.

Guidance issued under section 182 of the Licensing Act 2003

9. The updated statutory guidance which came into force in October 2012 refers to specifications of DPS's and police objections in paragraphs 4.18 to 4.29. Members may wish to refer to these extracts from the statutory guidance when determining this application:

SPECIFICATION OF NEW DESIGNATED PREMISES SUPERVISORS

4.18 Every premises licence that authorises the sale of alcohol must specify a 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. Guidance on such applications is set out in paragraphs 4.33 to 4.46 of this Guidance.

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.

4.20 To specify a DPS, the premises licence holder should normally submit an application to the licensing authority (which may include an application for immediate interim effect) with:

- a form of consent signed by the individual concerned to show that they consent to taking on this responsible role, and
- the relevant part (Part A) of the licence.

4.21 If they are applying in writing, they must also notify the police of the application. If the application is made electronically via GOV.UK or the licensing authority's own electronic facility, the licensing authority must notify the police no later than the first working day after the application is given.

4.22 The premises licence holder must notify the existing DPS (if there is one) of the application on the same day as the application is given to the licensing authority. This requirement applies regardless of whether the application was given by means of an electronic facility, or by some other means.

4.23 The general guidance in Chapter 8 on electronic applications applies in respect of new applications.

4.24 Only one DPS may be specified in a single premises licence, but a DPS may supervise two or more premises as long as the DPS is able to ensure that the licensing objectives are properly promoted and that each premises complies with licensing law and licence conditions.

4.25 Where there are frequent changes of DPS, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.

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.

4.28 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.

POLICE OBJECTIONS TO EXISTING DESIGNATED PREMISES SUPERVISORS

4.29 The 2003 Act also provides for the suspension and forfeiture of personal licences by the courts following convictions for relevant offences, including breaches of licensing law. The police can at any stage after the appointment of a DPS seek a review of a premises licence on any grounds relating to the licensing objectives if problems arise relating to the performance of a DPS. The portability of personal licences is also important to industry because of the frequency with which some businesses move managers from premises to premises. It is not expected that licensing authorities or the police should seek to use the power of intervention as a routine mechanism for hindering the portability of a licence or use hearings of this kind as a fishing expedition to test out the individual's background and character. It is expected that such hearings should be rare and genuinely exceptional.

Summary

10. Where an application is made in accordance with Section 37 of the Act and where notice is given by the police (and not withdrawn) the authority must hold a hearing to consider it unless the authority, the applicant and the Chief Officer of Police consider that a hearing is unnecessary.
11. After having had regard to the notice, the licensing authority must reject the application if it considers it necessary for the promotion of the crime prevention objective.
12. Schedule 5, Part 1 of the Act sets out the appeal provisions in relation to the application to vary the premises licence in a case where the Chief Officer of Police has given a notice (of objection) which was not withdrawn.
13. Where the licensing authority rejects the application to vary the premises licence to specify an individual as a DPS, the applicant may appeal against the decision.
14. Similarly, the Chief Officer of Police may appeal against the decision to grant the variation and, in both cases, the appeal is made to the Magistrates' Court.

Application to transfer premises licence

15. An application to transfer premises licence number 05/02008/PREMTR in respect of 31 St Stephens Road Norwich NR1 3SP has been received from Mehmet Sert. The applicant has also applied for the application to take immediate effect. The current licence-holder, Ali Capti, has consented in writing for the transfer of the premises licence to Mr Sert. A copy of the application is attached at appendix C to the report.

Representation by Chief Officer of Police

16. Where a Chief Officer of Police is satisfied that the exceptional circumstances of a case are such that granting the application would undermine the crime prevention objective, he must give the licensing authority a notice stating the reasons he is so satisfied.

17. A copy of the police letter of representation in respect of the application is attached at appendix B to the report.

Guidance issued under section 182 of the Licensing Act 2003

18. The updated statutory guidance which came into force in October 2012 refers to transfers of premises licences and police objections in paragraphs 8.93 to 8.29. Members may wish to refer to these extracts from the statutory guidance when determining this application:

TRANSFERS OF PREMISES LICENCES

8.93 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police. Where it is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police no later than the first working day after the application is given. However, the responsibility to notify the DPS remains with the applicant. Otherwise the general guidance on electronic applications set out in paragraphs 8.22 to 8.29 applies.

8.94 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.

8.95 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such objections are expected to be rare and arise because the police have evidence that the business or individuals seeking to hold the licence or business or individuals linked to such persons are involved in crime (or disorder).

8.96 Such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing

expedition to inquire into applicants' backgrounds, it is expected that it would raise the matter immediately with the chief officer of police.

Summary

19. Where an application is made in accordance with Section 42 of the Act and where notice is given by the police (and not withdrawn) the authority must hold a hearing to consider it unless the authority, the applicant and the Chief Officer of Police consider that a hearing is unnecessary.
20. After having had regard to the notice, the licensing authority must reject the application if it considers it necessary for the promotion of the crime prevention objective.
21. Schedule 5, Part 1 of the Act sets out the appeal provisions in relation to the application to vary the premises licence in a case where the Chief Officer of Police has given a notice (of objection) which was not withdrawn.
22. Where the licensing authority rejects the application to transfer a premises licence, the applicant may appeal against the decision.
23. Similarly, the Chief Officer of Police may appeal against the decision to grant the transfer and, in both cases, the appeal is made to the Magistrates' Court.