

Boston Borough Council
Licensing Act 2003
Application for Variation of a Designated Premises Supervisor
Decision Notice

Date of hearing	12 December 2019
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Members of Sub-Committee	Councillor Jonathan Noble Councillor Alison Austin Councillor Stephen Woodliffe
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Applicant(s) Name	Mrs Nawal Ahmd
Premises Address	European Food, 43 Wide Bargate, Boston
Represented by	Mr Shackleston
Date Application Received	6 November 2019
Details of Application	Application for variation of a Premises Licence to specify an individual as the Designated Premises Supervisor under the Licensing Act 2003.

The Parties:

Mrs Ahmd, has applied for variation of the Licence to specify Mr Hatemi as the Designated Premises Supervisor at European Food, 43 Wide Bargate, Boston

The Chief Officer of Police has given notice that he is satisfied that the exceptional circumstances of the case is such that granting the variation of Designated Premises Supervisor would undermine the prevention of crime and disorder licensing objective.

Policy and Guidance:

In reaching its decision, the sub-committee has considered the statutory guidance issued under S182 of the Licensing Act 2003 and Boston Borough Council's Statement of Licensing Policy.

Licensing Objectives:

The sub-committee has found that the licensing objective of the prevention of crime and disorder is relevant to this application.

Decision:

The sub-committee has decided to reject the application to vary the premises licence to specify an individual as Designated Premises Supervisor (DPS).

Reasons: The reasons for the sub-committee reaching this decision are as follows:

The sub-committee has read and heard all of the information before them. The sub-committee heard from the Licensing & Land Charges Manager, Lincolnshire Police, and Mr Shackleston on behalf of the applicant and proposed Designated Premises Supervisor.

The sub-committee is aware of and has taken into account any implications that may arise from the Human Rights Act 1998.

The sub-committee in reaching its decision has had due regard for its public sector equality duty under section 149 of the Equality Act 2010 and consider that in reaching their decision they have fulfilled their duty under the Equality Act 2010.

At the beginning of the hearing, the police made an application under regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005, to exclude the public and press (including the applicant, the proposed DPS, and their representative) from a part of the hearing as they had specific confidential information pursuant to the proposed DPS to present to the sub-committee that could not be made public. The police made a case that whilst they appreciate and acknowledge the applicant's right to a fair hearing, in this instance the public benefit outweighed that right.

In response Mr Shackleston reiterated his client's right to fair hearing, and stressed he hoped the information was not generic, but specific and evidence based.

The sub-committee deliberated in private, and resolved that since the information was specific to the proposed DPS that they agreed with the police that in this instance the public benefit to excluding the public and press outweighed the applicant's right to a fair hearing. The sub-committee granted the police's application to exclude the public and press from a part of the hearing.

In reaching their decision, the sub-committee have had due regard for the information presented to them both publically, and in private. Accordingly, part of the sub-committee's reasoning in reaching their decision will be contained in a confidential decision notice.

During the public part of the hearing, the sub-committee was reminded by Mr Shackleston how the applicant, and the proposed DPS, had previously been before the sub-committee pursuing the grant of a premises licence, which was subsequently granted with the applicant named as the Premises Licence Holder (PLH) and DPS, though she did not yet have a personal licence. Mr Shackleston maintained that the applicant and DPS presented as a husband and wife team, and notwithstanding the premises licence application being in the name of Mrs Ahmd, that the sub-committee granted the premises licence with an awareness that the premises would be run as a family business; indeed both the applicant and proposed DPS were listed at companies house as joint directors.

Mr Shackleston explained how unexpected personal circumstances had led to the proposed DPS obtaining a personal licence and this application now being submitted. He confirmed on behalf of the applicant that all premises licence conditions are being complied with, and that the applicant has now passed the personal licence course, and will get a personal licence herself in the coming future.

In their public representation the police gave details pertaining to the proposed DPS' links with two gentlemen who are suspected of having links with criminal activity, of Mr Hatemi's involvement with illegal workers, and evidence of Mr Hatemi being encountered working illegally at a premises found to be selling illegal cigarettes. In response, Mr Shackleston and Mr Hatemi explained how in 2016, Mr Hatemi had been staying in Boston and had been found helping out at a friend's premises by way of a favour. It was confirmed that he had no knowledge of the illegal cigarettes found at the premises. Mr Hatemi acknowledged he knew he should not have been working, but he had not been paid, and was doing a favour for a friend who had helped him out.

With regards to an illegal worker identifying him as his 'boss', Mr Hatemi confirmed that whilst he had not initially been able to explain this, but since the premises licence application hearing, he had spoken with the individual who had explained he had rung Mr Hatemi because he'd seen him with Mr Abdulla, and thought they were partners. Mr Hatemi also offered an explanation to the police's statement that he and Mr Abdulla share contact details. He explained how in relation the 18/3/19 incident at 28 High Street, Boston, he was at the premises having a meal when the police arrived, and since he knew Mr Abdulla (who was not at the premises), Mr Abdulla asked him to speak to the police about what happened, and consequently gave his contact details (mobile number and email address) but confirmed he gave Mr Abdulla's name when pressed in questioning.

Additionally during the hearing, both the applicant and Mr Hatemi were pressed to clarify their relationship with Mr Abdulla and Mr Karim.

The applicant confirmed how Mr Abdulla had assisted her and her child to a great extent when she had moved to Boston; and she had not previously wanted to disclose this because she had safety concerns relating to her ex-husband. Mr Hatemi subsequently confirmed to the sub-committee how he has known Mr Abdulla since 2016 but has no business dealings with him, but because of the help he gave his wife, he helps him with translations etc, and how he considers him a friend.

It was confirmed by the applicant that when they purchased the premises from Mr Abdulla, he had said they could pay half, and half later on. Mr Hatemi confirmed he has no relationship with Mr Karim, and Mr Byatt is mistaken in his comments.

The police expressed real concern to the sub-committee of how yet again there was another explanation, and only now further details on the applicant and Mr Hatemi's relationship with Mr Abdulla were known. They suggest that this is because the applicant and Mr Hatemi are aware of the police's concerns relating to Mr Abdulla's links with criminal activity, that they initially attempted to distance themselves from him, instead of being open and honest. It was only at this hearing the extent of their relationship was disclosed and admitted. The police further detailed that Mr Hatemi's email address is being used at Mr Abdulla's premise Facebook page, and expressed that they did not consider Mr Hatemi's explanation regarding the 18/3/19 incident as credible – why would the police speak with a customer instead of staff and why was Mr Hatemi at Mr Abdulla's premises before opening?

In reaching their decision, the sub-committee had due regard for all that they read and heard, including confidential information disclosed during the private part of the hearing, and also of the

relevant parts of the S182 Guidance and the Council's licensing policy, and concluded that given the submissions made, and the evidence presented that Mr Hatemi has close links with criminal activities, namely illegal cigarettes, illegal workers, and individuals with links in criminality at licensed premises.

The sub-committee is satisfied on the balance of probabilities that if Mr Hatemi were allowed to be the DPS at the premises then they have no confidence that he would promote the licensing objective of the prevention of crime and disorder.

On the basis of the publically available evidence the sub-committee felt that the additional explanations and details given by Mr Hatemi as to the extent of his relationship with Mr Abdulla and his involvement with Mr Abdulla's premises, and others known to have links to criminality meant that they could not grant the application.

Appeal Provisions

The Sub-Committee would like to remind the parties that there is a right of appeal to the Magistrates' Court under Section 181 of the Licensing Act 2003. The circumstances in which parties may appeal are detailed in Schedule 5 to the Licensing Act 2003.

The appeal must be commenced by notice of appeal to the Justice's Chief Executive for the Magistrates Court within the period of 21 days beginning with day on which the party was notified by the Licensing Authority of the decision being appealed against (i.e. the date of this decision notice).

Appeal should be made to Lincoln Magistrates' court at 358 High St, Lincoln, LN5 7QA

Upon hearing an appeal the Magistrates' Court may

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

And make such order as to costs it thinks fit.

Signed:

Licensing & Land Charges Manager
On behalf of the Licensing Sub-Committee
Date 17 December 2019