

BOSTON BOROUGH COUNCIL

LICENSING SUB-COMMITTEE APPLICATION TO VARY THE PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS THE DESIGNATED PREMISES SUPERVISOR

Licence number: 32UBB19011

Applicant: Mrs Nawal Ahmd

Premise: European Food, 43 Wide Bargate, Boston

Proposed DPS: Mr Omid Hatemi

Hearing Date: 1000hrs on 12 December 2019

Summary

This is a report to consider a notice from the Chief Officer of Police objecting to an application to vary the premises licence to specify Mr Omid Hatemi as the Designated Premises Supervisor at European Food, 43 Wide Bargate, Boston, PE21 6SR.

The Licensing Act 2003 requires that the Licensing Sub-Committee determines an application where a notice of objection has been received.

Section 39 of the Licensing Act 2003 states that where a notice is given and not withdrawn the authority must, having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.

The Sub-Committee must give full reasons for either granting or rejecting the application.

1. The Application and History

- 1.1 A Premises Licence was granted on 25 September 2019 for the sale of alcohol at 43 Wide Bargate, Boston. On the original application Mrs Nawal Ahmd was named as the Designated Premises Supervisor. At that time she did not have a personal licence, so the sale of alcohol was not permitted. Since the grant of the licence Mrs Ahmd has not applied for a personal licence.
- 1.2 On 6 November 2019 an application to vary the licence to specify Mr Omid Hatemi as the Designated Premises Supervisor was received.
- 1.3 The application states at part 2 that the applicant wishes the application to have immediate effect under section 38 of the Licensing Act 2003. Section 38 states:

(2) By virtue of this section, the premises licence has effect during the application period as it were varied in the manner set out in the application.

(3) For this purpose "the application period" means the period which-

(a) Begins when the application is received by the relevant licensing authority, and

(b) Ends-

(i) If the application is granted, when the variation takes effect,

(ii) If the application is rejected, at the time the rejection is notified to the applicant, or

(iii) If the application is withdrawn before it is determined, at the time it is withdrawn.

The sale of alcohol is permitted from the date of receipt of the application where it states that the applicant wishes the application to have immediate effect.

- 1.4 A copy of the application, which was correctly completed, is attached at Appendix 1.
- 1.5 For information a copy of the premises licence for European Food, 43 Wide Bargate, Boston is attached at Appendix 2.

2. Notice from the Chief Officer of Police

- 2.1 Where the Chief Officer of Police is satisfied that the exceptional circumstances of the case are such that granting a variation of DPS application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied. Such notice must be given within the period of 14 days beginning with the day on which he is notified of the application to vary the premises licence to specify an individual as the Designated Premises Supervisor.

- 2.2 On 18 November 2019 a notice was received from the Chief Officer of Lincolnshire Police, stating the grounds and reasons for being satisfied that that the exceptional circumstances of the case were such that granting the variation application to specify Mr Hatemi as DPS would undermine the crime prevention objective.
- 2.3 A copy of the objection notice and supporting information provided with the notice is attached at Appendix 3.

3. Considerations

- 3.1 The options available to the Sub-Committee are to either grant or reject the application for variation of the DPS. There are no other options available to the Sub-Committee, such as appending additional conditions to the premises licence. In making its decision, the Licensing Sub-Committee must consider the application and objection notice in accordance with the act and must have regard for and give appropriate weight to:
- The Guidance issued under s.182 of the Act (Relevant extract is attached at Appendix 4).
 - Statement of Licensing Policy with respect to Designated Premises Supervisors (Relevant extract is attached at Appendix 5).
 - The submissions, including supporting information, presented by all parties.
- 3.2 The Sub-Committee's attention is drawn, in particular, to the following paragraphs of the Section 182 Guidance.

Paragraph 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.

Paragraph 10.30 – The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.

Should the Sub-Committee depart from the statutory guidance or the Statement of Licensing Policy reasons for doing so must be given.

- 3.3 In determining the application the Sub-Committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Human Rights Act it is unlawful for a public authority to act in a manner which is incompatible with the European Convention on Human Rights.
- 3.4 The sub-committee, in its decision making, must have due regard to its public sector equality duty under section 149 of the Equality Act 2010. A copy of section 149 of the Act is attached at Appendix 6.
- 3.5 Where no objection to a variation of DPS application is received the licensing authority must grant the application. Where an objection notice has been given and not withdrawn, the authority must, having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so. Rejection of an application must be evidence-based, justified as being appropriate for the promotion of the crime prevention licensing objective and proportionate to what it is intended to achieve.
- 3.6 Whether the application is granted or rejected, notice of that decision must be provided to all parties. The notice must state the authority's reasons for granting or rejecting the application.
- 3.7 If the application is granted the decision notice must specify the time when the variation takes effect. A decision to reject an application takes effect at the time the rejection is notified to the applicant.

4. Appeal

- 4.1 Where the licensing authority rejects the application the applicant, Mrs Ahmd, may appeal against the decision. Where the licensing authority grants the application the Chief Officer of Police may appeal against the decision.
- 4.2 Any appeal must be made within 21 days of the day on which all parties were notified, in writing by the licensing authority, of the decision to be appealed against.

5. List of Associated Papers

Appendix 1	Application to vary DPS
Appendix 2	Copy of Premises Licence
Appendix 3	Notice of Objection from the Chief Officer of Police
Appendix 4	Relevant extract of Section 182 Guidance.
Appendix 5	Relevant extract from the Authority's Statement of Licensing Policy.
Appendix 6	Section 149 – Equality Act 2010