

LICENSING ACT 2003 - APPLICATION TO VARY THE INDIVIDUAL SPECIFIED AS THE DESIGNATED PREMISES SUPERVISOR IN RESPECT OF THE VAULT, 1 THE ROW, NEW ASH GREEN, LONGFIELD, KENT DA3 8JB

Licensing Sub-Committee - Monday 30 March 2020

Report of Chief Officer Planning & Regulatory Services,

Status For Decision

Key Decision No

Portfolio Holder Cllr. Margot McArthur

Contact Officer Michael Moss (Licensing Partnership Manager) Ext. 7364

Recommendation to Licensing Sub-Committee:

Members are asked to determine whether to allow the application made by Kenneth Kirkman, to vary the Premises Licence to change the individual specified as the Designated Premises Supervisor; members must determine the application in accordance with section 39(3) of the Licensing Act 2003.

Reason for recommendation:

Representation has been made by Kent Police and members are required under the Licensing Act 2003 to carry out the functions of the Licensing Authority with a view to promoting the four Licensing Objectives:

- The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance
 - The Protection of Children from Harm
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Introduction

- 1 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 (Kenneth Kirkman).
- 2 On 25 February 2020 an application was received to vary the premise licence in respect of the 'The Vault, 1 The Row, New Ash Green, Longfield, Kent DA3 8JB'. The application seeks to replace the current Designated Premises Supervisor, Kenneth Kirkman, with Thomas Whipps; exhibited as **Appendix A**.

- 3 Under section 37 of the Act, the applicant was require to send a copy of the application to Kent Police.
- 4 Under section 38 of the Act, the applicant would like the application to have immediate effect.
- 5 Kent Police had 14 days in which to make representation. Representation was received by the Licensing Authority on 10 March 2020. A copy of the representation is exhibited as **Appendix B**.
- 6 The objection has been made because Kent Police believes that granting the application will undermine the licensing objective the prevention of crime and disorder and state:

“If the application was to be granted Kent Police’s view is that Mr Whipps would be DPS on the licence by name only but have no overall responsibility or control over the premises, his lack of control provides Kent Police with little confidence that the licensing objectives would be promoted and upheld. Therefore representations are being made that Mr Whipps is not suitable to be placed on the licence as the designated premises Supervisor.”
- 7 Member must have regard to the representation from Kent Police when they consider the application to vary the Designated Premises Supervisor and must reject the application if they consider it appropriate for the promotion of the crime prevention objective to do so; under section 39 of the Licensing Act 2003.

Background

- 8 Members are advised that on 10 February 2020, Kent Police made an application to review the Premise Licence held by Kenneth Kirkman in respect of ‘The Vault, 1 The Row, New Ash Green, Longfield, Kent DA3 8JB’.

The review application was made under the following grounds:

- the prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance.
- 9 Mr Kenneth Kirkman (Licence Holder) previously held the position of Designated Premises Supervisor since the grant of the licence. Exhibited as **Appendix C**.
 - 10 Kent Police have concerns over Kenneth Kirkman’s approach to fulfilling the responsibilities of this role and was advised to find a suitable replacement, who would be able to deliver the role of Designated Premises Supervisor to an acceptable standard.
 - 11 On 25 February 2020 Mr Kenneth Kirkman (Premises Licence holder) submitted an application in accordance with the provisions of Section 37 of the Licensing

Act 2003. Accompanying the application was a consent form, completed by Thomas Whipps, accepting the responsibilities of the Designated Premises Supervisor; this form is exhibited as **Appendix D**.

- 12 Mr Thomas Whipps holds a personal licence with Thurrock Borough Council (Thurrock Civic Centre, New Road, Grays RM17 6SL) which was issued under reference LN 1870.

Additional Information

- 13 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.
- 14 In summary, the Police object to Thomas Whipps becoming Designated Premises Supervisor following a meeting which was arranged for the 10 March 2020 with Kenneth Kirkman (applicant/ Premises Licence holder) for 11:00am. Kenneth Kirkman did not attend but Kent Police and a representative of the Licensing Authority was able to speak with Mr Whipps (proposed Designated Premises Supervisor) from 11:26am.
- 15 Mr Whipps said he understood, from Kenneth Kirkman, the meeting was taking place on Tuesday 11 March 2020. Mr Whipps said he had never been a Designated Premises Supervisor and was advised that the responsibility will fall to him to ensure the running of the premises.
- 16 Mr Whipps said he had a vague understanding of the previous issues, that he had read the licence but not thoroughly and Kenneth Kirkman had not explained the conditions to him; when challenged on this matter, Mr Whipps responded "that would be helpful". Mr Whipps was also unable to locate a copy of Part A of the Premises Licence (which in hindsight had been returned to Sevenoaks District Council as part of the variation application).
- 17 Kent Police asked Mr Whipps to demonstrate his knowledge of using the CCTV system, but Mr Whipps said he doesn't know how to use it but was going on training at the end of the consultation period, which Kent Police advised was tomorrow and Mr Whipps looked surprised.
- 18 Mr Whipps understand that he will be responsible for the running of the premises and needs to be privy to the conditions imposed on the Premises Licence. He was also advised about the requirement to audit the training of staff where he said he understood there was a responsibility but didn't know the specifics.

Other Options Considered and/or Rejected

- 19 Members are respectfully reminded that where a notice is given under section 37(5) and is not withdrawn, they may consider the following options
- Grant the application if they consider that the promotion of the crime prevention objective will not be undermined
 - Reject the application if they consider that the promotion of the crime prevention objective will be undermined
- 20 In addition, regard shall be had to guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 and Sevenoaks District Council's Statement of Licensing Policy (2015 - 2020).
- 21 The Licensing Authority may depart from its own Policy or the Secretary of State's Guidance if it has good cause but must be able to give full reasons for such a departure.

Key Implications

Financial

There is no fee for the application of a Review, and there are no financial implications arising from this report.

Legal Implications and Risk Assessment Statement.

This Hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005. The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy.

Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Human Rights

Article 6 of the Act provides that where a person's civil rights and obligations are being determined, they are entitled to a "fair trial". The Council complies with Article 6 in that it gives the person the opportunity to state their case, the council

will determine the application within a reasonable period of time and give reasons for the decision.

The Article also provides for the issue to be determined by an independent tribunal. The right of appeal to the Courts against the Council's decision fulfils this.

Conclusions

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.

Members must determine the application in accordance with section 39(3) of the Licensing Act 2003. Members may consider the following options

- Grant the application if they consider that the promotion of the crime prevention objective will not be undermined
- Reject the application if they consider that the promotion of the crime prevention objective will be undermined

Appendices

Appendix A - Application to vary the individual specified as Designated Premises Supervisor

Appendix B - Representation from Kent Police

Appendix C - Premises Licence (The Vault)

Appendix D - Consent form (Thomas Whipps)

Background Papers

None

Richard Morris

Chief Officer Planning & Regulatory Services, Community & Planning Services