

APPLICATION TO DETERMINE A TRANSFER AND DPS VARIATION: FALLING LANE LOCAL STORE, 115 - 117 FALLING LANE, WEST DRAYTON, UB7 8AG

Committee	Licensing Sub-Committee
Officer Contact	Mark McDermott, Residents Services
Papers with report	Appendix 1 - Transfer Appendix 2 - Variation of Designated Premises Supervisor Appendix 3 - Representation from Metropolitan Police Appendix 4 - Premises Licence
Ward name	Yiewsley

1.0 SUMMARY

To consider applications for a Transfer and Variation of the Designated Premises Supervisor for Falling Lane Local Store, 115 - 117 Falling Lane, West Drayton, UB7 8AG. This Licence was revoked following a review by the Trading Standards Service on the 16 April 2019 and the current Licence Holder Mr Inderjit Singh has appealed this decision and it is due to be heard at Uxbridge Magistrates Court on 25 and 26 November 2019.

2.0 RECOMMENDATION

That the Licensing Sub-Committee consider the experience and knowledge of the applicant to ascertain his ability to uphold the licensing objectives, having regard to the Government's guidance issued under s182 of the Licensing Act 2003.

3.0 APPLICATION

Jagdeep Singh Khaneja has applied for a Transfer of Premises Licence and Variation of the Designated Premises Supervisor into his name as **Appendix 1 and Appendix 2**, respectively.

4.0 CONSULTATION

4.1 Closing date for representations

29th October 2019.

5.0 REPRESENTATIONS

5.1 RESPONSIBLE AUTHORITIES

There is a representation from the Metropolitan Police appended as **Appendix 3**.

Responsible Authority	Ground for Representation	Appendix
Metropolitan Police	Prevention of Crime and Disorder	Appendix 3

5.2 No other representations received.

6.0 BACKGROUND INFORMATION

6.1 Premises licence

The shop is currently trading under the authority of a Premises Licence for premises known as Falling Lane Superstore and is attached as **Appendix 4**. Mr Inderjit Singh has been the Licence Holder and Designated Premises Supervisor since 14 August 2013. This Licence was revoked and is currently subject to an Appeal by the current Licensee.

6.2 Description of the Premises

The premise is a newsagents, off-licence and convenience store located on a parade of shops on a busy stretch of road.

6.3 Licensable Activities currently authorised at the premises

<u>Activity</u>		<u>Premises licence</u>
Sale of alcohol	Consumption off the premises	√

6.4 Licensable activity and opening hours currently authorised at the premises

	Hours for the sale of alcohol	Opening hours
Monday	08:00 - 23:00	08:00 - 23:00
Tuesday	08:00 - 23:00	08:00 - 23:00
Wednesday	08:00 - 23:00	08:00 - 23:00
Thursday	08:00 - 23:00	08:00 - 23:00
Friday	08:00 - 23:00	08:00 - 23:00
Saturday	08:00 - 23:00	08:00 - 23:00
Sunday	08:00 - 23:00	08:00 - 23:00

7.0 OFFICER'S OBSERVATIONS

Observations

This is an application from Mr Jagdeep Singh Khaneja. The applicant is applying as an individual to transfer the premises licence into his name and to also vary the Designated Premises Supervisor into his name. A representation has been received from the Metropolitan Police on the grounds of Crime and Disorder.

Previously, Mr Khaneja applied for a New Premises Licence for these premises that was refused on 22 January 2019 by the Licensing Sub Committee, who considered that granting a licence to Mr Khaneja would undermine the Licensing Objectives. Mr Khaneja has appealed this decision and it is due to be heard at Uxbridge Magistrates Court on 25 and 26 November 2019.

8.0 Relevant sections of S.182 Guidance

The Guidance issued by the Secretary of State under S182 of the Licensing Act 2003 states:

The purpose of the Guidance

At paragraph 1.7, "This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality."

Determining actions that are appropriate for the promotion of the licensing objectives

At paragraph 9.42, "Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be."

At paragraph 9.43, "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."

Specification of new designated premises supervisors

At paragraph 4.31, "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 4.52 to 4.65 of this Guidance."

At paragraph 4.32, "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. The

DPS' personal address should not be included in the summary form in order to protect their privacy."

At paragraph 4.33, "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."

Police objections to new designated premises supervisors

At paragraph 4.39, "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."

At paragraph 4.40, "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."

Transfers of premises licences

At paragraph 8.99, "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 in all cases, and the Home Office (Immigration Enforcement) if the licence authorises the sale of alcohol or provision of late night refreshment. Where it is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police and the Home Office (Immigration Enforcement) 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 8.21 to 8.28 applies."

At paragraph 8.100, "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 or the Home Office (Immigration Enforcement) 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."

At paragraph 8.101, "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. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement)

have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers."

At paragraph 8.102, "Such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police or the Home Office (Immigration Enforcement) 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 or the Home Office (Immigration Enforcement)."

9.0 Relevant sections of the Licensing Policy

4.0 General Principles and the Role of the Licensing Authority

At paragraph 4.1, "The role of the Licensing Authority is to ensure control of the licensable activities at licensed premises, qualifying clubs, temporary events and the conduct of the personnel involved with the licensable activities as required under the Act."

14.0 Representations

At paragraph 14.1, "This policy will not seek to exclude any rights enshrined in the Act or any other legislation for applicants or those making representations against applications. Each application and representation will be treated on its merits taking into account the legislation, the Guidance issued under section 182 of the Licensing Act 2003 and this policy."

16.0 Decision Making and Licensing Hearings

At paragraph 16.4, "A Licensing Sub-Committee will sit to hear all applications for premises licences, club premises certificates, interim authorities, provisional statements, designated premises supervisors and personal licences which have attracted relevant representations from either a 'responsible authority' or 'other person'."

10.0 Legal Considerations

When considering licence applications the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder.
- Public Safety.
- Prevention of public nuisance.
- Protection of children from harm.

The Sub-Committee must ensure that all licensing decisions:

- Have a direct relationship to the promotion of one or more of the four licensing objectives;
- Have regard to the Council's statement of licensing policy;
- Have regard to the Secretary of State guidance; and
- Must not be subject to a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.

The Sub-Committee is advised that when considering applications for a transfer and variation of Designated Premises Supervisors, regard must be had to any relevant

representations that are made before taking such steps (if any) as it considers necessary for the promotion of the licensing objectives.

The steps are:

- Grant the application.
- Refuse the application.

Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

Finally, the Sub Committee is reminded that its obligation, as stated in the officer recommendation is to **consider the experience and knowledge of the applicant to ascertain his ability to uphold the licensing objectives. In particular, the Sub Committee must consider whether the concerns it expressed at its meeting on 22 January 2019 remain or whether the applicant has since then acquired suitable experience and knowledge to demonstrate that he can uphold the licensing objectives if he becomes Designated Premises Supervisor.**