

11 February 2014

Report of the Director  
Assets & Environment

**CONSIDERATION OF A REQUEST FROM THE POLICE TO REJECT THE APPLICATION TO TRANSFER THE PREMISES LICENCE IN RESPECT OF EPHEBUS TAKEAWAY 11A CHURCH STREET TAMWORTH STAFFORDSHIRE B79 7DH**

**EXEMPT INFORMATION**

Not applicable

**PURPOSE**

To consider a request from the Staffordshire Police to reject the transfer of the premises licence in respect of Ephesus Takeaway, 11A Church Street, Tamworth Staffordshire, B79 7DH to Mr Mehmet Darioglu.

This application cannot be determined under Officer's delegated powers because the Licensing Act requires that the decision must be made at a licensing hearing provided the objection notice is not withdrawn.

**RECOMMENDATIONS**

**If the objection notice has not been withdrawn, the Sub Committee must take one of the following steps it considers appropriate for the promotion of the crime prevention licensing objective:**

- **Grant the application. This would allow the applicant, Mr Mehmet Darioglu, to become the licence holder; or**
- **Refuse the application. This would remove the applicant, Mr Mehmet Darioglu, from his position as the premises licence holder (with interim effect). The previous licence holder Mr Ali Kulhas would become the premises licence holder again.**

The Police have recommended that this current transfer application be refused.

**EXECUTIVE SUMMARY**

An objection notice was received from the Police on 14 January 2014 by e mail followed by paper copy on 17 January 2014 in response to receipt of a copy of an application to transfer the premises licence to a new licence holder Mr Mehmet Darioglu.

Where an objection notice is given (and not withdrawn) the decision whether or not to allow the transfer cannot be made under Officer's delegated powers. This is because the Licensing Act requires that the decision must be made at a licensing hearing.

## **RESOURCE IMPLICATIONS**

If the decision of the Licensing Sub Committee is appealed against there will be a financial resource implication.

## **LEGAL / RISK IMPLICATIONS**

The following parties are entitled to appeal against the decision of the Licensing Sub Committee. The applicant, Mr Darioglu may appeal against a decision to reject the application and the Police may appeal against the decision to grant the application.

## **SUSTAINABILITY IMPLICATIONS**

The effective regulation of licensing activities contributes to the strategic priority of being healthier and safer in Tamworth.

## **CONCLUSIONS**

The Licensing Sub Committee is obliged to determine this application for transfer of the premises licence with a view to promoting the crime prevention and public safety licensing objectives.

In making its decision, the Sub Committee must consider the Licensing Authority's own licensing policy and have regard to the national guidance. In particular, the Committee should have due regard to paragraph 3.1 of the Statement of Licensing Policy and paragraph 1.17 of the Home Office guidance which state that each application must be considered on its own merits.

## **Background**

A premises licence was first issued in respect of Ephesus 11A Church Street on 24 November 2005. The location of Ephesus is shown shaded in grey on the location plan given in **Appendix 1**. Buildings including residential accommodation are shaded in pink.

Premises licences are used by premises licence holders for the carrying on of licensable activities. A copy of the premises licence issued in respect of Ephesus 11A Church Street Tamworth is given in **Appendix 2**. The only licensable activity permitted by this premises licence is late night refreshment. This licensable activity is the supply of hot food and hot drinks to the customer at any time between the hours of 11pm and 5am. Shops selling cold food and cold drink that is immediately consumable from 11pm are not licensable as providing late night refreshment.

Any person who may apply for a premises licence may apply to the licensing authority for a premises licence to be transferred to them. Section 16 of the Act lists those persons who may apply for a premises licence. This includes any person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates. This person must be over 18 years of age.

The Act provides a mechanism which allows the transfer application to be given interim effect as soon as the licensing authority receives the form, until formally determined or withdrawn. This means that there should be no interruption to normal business at the premises.

Ordinarily, if no objection notice is received from the Police, the licensing authority is required to issue the premises licence after the application period specifying the new licence holder as requested.

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. Guidance on the legislation states that “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).”

There have been a number of recent applications submitted to the Authority to transfer the premises licence for Ephesus 11A Church Street Tamworth. The applications and outcome of each application are summarised in the table at **Appendix 3**.

The transfer application made on the 25<sup>th</sup> November 2013 was considered at a Licensing Sub Committee hearing on 7 January 2014. The Licensing Sub Committee decided to refuse the transfer application. The effect of this decision was that on the date when Mr Darioglu received the notification of the decision, that being 10 January 2014, the premises licence reverted back to the person who held it before the transfer application was made, Mr Ali Kulhas.

Mr Darioglu has submitted an appeal to the Central and South West Staffordshire Magistrates Court on the 13 January 2014 concerning the above decision. It should be noted that in respect of applications made to transfer a premises licence, the Licensing Act 2003 does not extend the application period to the date when any appeal against the decision is determined by the Magistrates.

The transfer application which is currently under consideration was received by the Licensing Team at Tamworth Borough Council on 10 January 2014. This application was submitted by an agent, NARTS on behalf of the applicant, Mr Mehmet Darioglu. A copy of the application is given at **Appendix 4**. The applicant requested that the transfer take immediate effect. Therefore, the transfer application was given interim effect and Mr Mehmet Darioglu again became the acting premises licence holder on 10<sup>th</sup> January 2014.

On the 14 January 2014, the Staffordshire Police served an objection notice in respect of the application to transfer the licence, requesting the rejection of the applicant. In their opinion, if Mr Mehmet Darioglu was permitted to continue as premises licence holder the Prevention of Crime and Disorder licensing objective would be undermined. A copy of this objection notice is attached at **Appendix 5**.

Members of the Licensing Sub Committee should also be aware that following an incident which occurred in connection with the premises on 20<sup>th</sup> June 2013, and repeated failures to comply with the premises licence conditions Staffordshire Police submitted an application to review the premises licence to Tamworth Borough Council. Mr A Kulhas was the premises licence holder at the time of the incident on the 20<sup>th</sup> June 2013 and when police licensing checks identified failures to comply with premises licence conditions. A review application was received on 14 October 2013. The matter was considered at a Licensing Sub Committee hearing on 28 November 2013. The decision of the Licensing Sub Committee was to revoke the premises licence. When this decision was made, the premises licence holder (with interim effect) was Mr Darioglu. An appeal to the Central and South West Staffordshire Magistrates Court has been made on the 17 December 2013 in respect of this decision.

Where the Police serve a notice objecting to the transfer of a premises licence, and this notice is not withdrawn, the authority must hold a hearing to consider the objection notice.

In making its decision with a view to promoting the licensing objectives in the overall interests of the local community, the Committee is required to give appropriate weight to:

- The steps that are appropriate to promote the prevention of crime and disorder licensing objective ;
- The objection notice and supporting information presented by all parties;
- The national guidance; and
- The Council's own licensing policy.

National Guidance relevant to this case is given in **Appendix 6** of this report. Please refer to **Appendix 7** of this report for a copy of Tamworth Borough Council's Statement of Licensing Policy.

The Licensing Sub Committee must take one of the following steps it considers necessary for the promotion of the licensing objective:

- Grant the application to allow the licence to be transferred to Mr Darioglu; or
- Reject the application to transfer the licence to Mr Darioglu.

If the application is rejected, the applicant, Mr Mehmet Darioglu ceases to be treated as the holder of the licence and the licence reverts to the person who held it before the application was made. The applicant would cease to be the interim premises licence holder when he is notified of the rejection.

### **Right of appeal**

There is a right of appeal against the decision made by this Licensing Sub Committee. Licensing authorities are therefore expected to record in full the reasons for any decision that they make.

The applicant, Mr Mehmet Darioglu, may appeal against a decision to reject the application and the Police may appeal against the decision to grant the application.

Any such appeal must be made to the Magistrates' court within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

On an appeal the magistrates' court may –

- (a) dismiss the appeal,
- (b) substitute for the decision appealed against for any other decision which could have been made by the licensing authority, or
- (c) remit the case to the licensing authority to dispose of in accordance with the direction of the court, and
- (d) may make such order as to costs as it thinks fit.

*“If Members would like further information or clarification prior to the meeting please contact Colin John, Environmental Health Officer  
Telephone: 01827 709429.”  
Email: colin-john@tamworth.gov.uk*

## **Appendices**

Appendix 1	Location plan.
Appendix 2	Premises licence
Appendix 3	Table showing history of transfer applications
Appendix 4	Application to transfer premises licence to be granted under the Licensing Act 2003
Appendix 5	Police Objection Notice
Appendix 6	National Policy Guidance (June 2013)
Appendix 7	Tamworth Borough Council Licensing Policy, 2011-2014

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