

LICENSING ACT 2003
LICENSING SUB COMMITTEE HEARING

3rd September 2014

Report of the Director
Assets & Environment

Consideration of a request from Staffordshire Police for the removal of the designated premises supervisor from the premises licence in respect of Bar Red (formally known as Casa) Lower Gungate Tamworth Staffordshire B79 7AT.

EXEMPT INFORMATION

None

PURPOSE

For the Licensing Sub Committee to consider an objection notice given by the Chief Officer of Police under Section 37(5) of the Licensing Act 2003 requesting the removal of the designated premises supervisor, Sarah Louise Hopkins, from the premises licence held in respect of Bar Red Lower Gungate Tamworth Staffordshire B79 7AT.

RECOMMENDATIONS

The Licensing Sub Committee must, having regard to the Section 37(5) objection notice served by the police (see Appendix 2), take one of the following steps it considers appropriate for the promotion of the crime prevention objective:

- **Grant the application – this would allow the designated premises supervisor, Sarah Louise Hopkins to continue in her post; or**
- **Reject the application – This would remove the designated premises supervisor from her post.**

EXECUTIVE SUMMARY

An objection notice was received by e mail from the Chief Officer of Police on 5 August 2014 in response to receipt of a copy of an application to vary a premises licence to specify an individual as the designated premises supervisor on that licence. The application under consideration was received by the local authority on the 24 July 2014.

The Chief Officer of Police must object to an application to vary a premises licence to specify an individual as designated premises supervisor if the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective.

The decision whether or not to allow the continuation of Sarah Louise Hopkins in the post of designated premises supervisor has not been made under Officer's delegated powers because the Licensing Act requires the decision to be made at a hearing.

RESOURCE IMPLICATIONS

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

LEGAL/ RISK IMPLICATIONS

There is a right of appeal against the decision made by this licensing committee.

The applicants, Geoffrey Hopkins and James Hopkins being the holders of the premises licence, 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.

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 must determine the variation of designated premises supervisor application with a view to promoting the crime prevention licensing objective.

In making its decision the Licensing Sub- Committee must follow the Licensing Authority's own licensing policy (**Appendix 4**) and the national guidance issued by the Home Office (**Appendix 3**). In particular, the Sub-Committee should have due regard to paragraph 1.17 of the Home Office guidance which states that each application must be considered on its own merits and paragraphs 4.19 to 4.29 of Chapter 4 which specifically relate to the specification of new designated premises supervisors.

BACKGROUND INFORMATION

Premises licences are used by premises licence holders for the carrying on of licensed activities. The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it a greater responsibility than the provision of regulated entertainment and late night refreshment. For this reason if the licence permits the supply of alcohol, the licence holder must appoint a Designated Premises Supervisor. The designated premises supervisor must hold a personal licence. Additionally, every sale of alcohol must be made or authorised by a personal licence holder.

The Designated Premises Supervisor will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. Both the designated premises supervisor and premises licence holder remain responsible for the premises at all times including compliance with the requirements of the Licensing Act 2003.

The premises licence for Bar Red (formally known as Casa) was first granted in November 2006. It was transferred to the current premises licence holders Mr Geoffrey Hopkins and James Hopkins on 24 July 2014. The premises are shown shaded in red on the location plan (**Appendix 5**).

A licence holder can apply to the licensing authority to change the designated premises supervisor. A copy of the *Application to vary a premises licence to specify an individual as designated premises supervisor under the Licensing Act 2003* submitted by the applicants on 24 July 2014 is given in **Appendix 1**.

In this application, the premises licence holders proposed Sarah Louise Hopkins to be the new designated premises supervisor. They requested that this change take immediate effect.

Sarah Louise Hopkins was granted a personal licence on 27 April 2012 by Birmingham City Council. Since the grant of this personal licence Sarah Hopkins has been convicted of offences. A list of the offences is given in the police objection notice (**Appendix 2**).

Ordinarily, if no objection notice is received the licensing authority is required to issue the premises licence specifying the new designated premises supervisor as requested. However, on this occasion, the police served an objection notice requesting the removal of the designated premises supervisor from this post. In their opinion, if this person is allowed to continue in this post the crime prevention objective would be undermined. A copy of this objection notice is attached at **Appendix 2**.

Where a notice is given (and not withdrawn) the authority must hold a hearing to consider the objection notice, confining its deliberations to the crime prevention objective, and take one of the following two steps:

1. allow the designated premises supervisor, Sarah Louise Hopkins, to continue in her post; or
2. remove the designated premises supervisor from her post.

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

- The steps that are necessary to promote the licensing objectives;
- The objection notice (including any supporting information) presented by all parties;
- The Council's own licensing policy; and
- The national guidance;

Licensing authorities are expected to record in full the reasons for any decision that they make.

Local policy considerations

A copy of Tamworth Borough Council's Statement of Licensing Policy can be found in **Appendix 4**.

National Guidance

A copy of the Home Office Amended Guidance issued under Section 182 of the Licensing Act 2003 (June 2014) can be found in **Appendix 3**.

When the Home Office Guidance was amended in 2012 greater weight was given to Police representations. Paragraph 9.12 of the Guidance stipulates that the police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective and the "licensing authority should accept all reasonable and proportionate representations made by the Police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives."

The Licensing Sub Committee must deviate from this national guidance and Tamworth Borough Council's own licensing policy if the facts of the case demand it in the interests of the promotion of the licensing objectives. If the Licensing Sub Committee does depart from the guidance and Tamworth Borough Council's policy it must be able to provide full reasons.

Tamworth Borough Council's policy has not been amended to reflect changes in legislation which took effect in April 2012 and October 2012. The Sub committee may therefore find it necessary to depart from Tamworth Borough Council's own policy.

REPORT AUTHOR

If Members would like further information or clarification prior to the meeting please contact Colin John Telephone: 01827 709 429

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LIST OF BACKGROUND PAPERS

Tamworth Borough Council's *Statement of Licensing Policy 2011 – 2014*

Home Office (June 2014) *Amended Guidance Issued Under Section 182 of the Licensing Act 2003*.

APPENDICES

Appendix 1	<i>Application to vary a premises licence to specify an individual as designated premises supervisor under the Licensing Act 2003</i>
Appendix 2	Police Objection Notice (Section 37(5)).
Appendix 3	National policy guidance
Appendix 4	Local policy guidance
Appendix 5	Location Plan