

CENTRAL BEDFORDSHIRE COUNCIL

Record of a **LICENSING SUB COMMITTEE** hearing convened under The Licensing Act 2003 (Hearings) Regulations 2005 and held in Committee Room 2, Watling House, Dunstable on Tuesday, 26 May 2015

1. **Licensing Sub-Committee Composition**

Cllrs: K M Collins
K Janes
N Warren

2. **Election of Chairman**

Councillor N Warren was elected Chairman for the meeting.

3. **Welcome and Introductions**

The Chairman welcomed attendees to the meeting and introduced the other members of the Sub-Committee. The Council officers present then introduced themselves.

4. **Apologies for Absence**

There were no apologies for absence.

5. **Members' Interests**

There were no declarations of interest.

6. **Name of Applicant**

Mr Tayyab Mushtaq.

7. **Premises Address**

Unique, 25-27 High Street North, Dunstable, Bedfordshire, LU6 1HX.

8. **Names of Parties (including the premises user, observers and persons who have made any relevant representations together with any persons representing each party)**

Parties in Attendance:

Cllr K Collins (Central Bedfordshire Council)

Cllr K Janes (Central Bedfordshire Council)
Cllr N Warren (Central Bedfordshire Council)

Mrs M Bissett – Licensing Officer (Central Bedfordshire Council)
Mr L Manning – Committee Services Officer (Central Bedfordshire Council)
Mrs L McShane – Legal Services Manager – Commercial (Central Bedfordshire Council)

Mrs E Nee – Licensing Officer (Mid County) (Bedfordshire Police)

Mr T Mushtaq (Premises Licence Holder and Designated Premises Supervisor of Unique)

Mr D Dadds – Barrister (Dadds LLP Licensing Solicitors)

Observers:

Cllr T Nicols (Central Bedfordshire Council)

Mrs V Clark – Licensing Co-ordinator (Central Bedfordshire Council)

PC L Mitchell (Bedfordshire Police)

Miss C Allen (Unique)

Mr C Welch – Personal Licence Holder (Unique)

9. **Names of Parties submitting representations and indications of their representations**

Bedfordshire Police objected to the variation of the Designated Premises Supervisor at Unique, 25-27 High Street North, Dunstable, Bedfordshire, LU6 1HX on the basis that it would undermine the following Licensing Objectives:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance.

10. **Procedure for the Hearing of Applications under the Licensing Act 2003**

The procedure for the hearing of applications made under the Licensing Act 2003 was noted.

11. **The Four Licensing Objectives**

The four Licensing Objectives were noted.

12. **Designated Premises Supervisors**

An extract from chapter 4 of the revised guidance issued under Section 182 of the Licensing Act 2003 which related to new Designated Premises Supervisors was noted.

13. **Application for Variation of the Designated Premises Supervisor at Unique, 25-27 High Street North, Dunstable, Beds**

The Chairman explained that the Sub-Committee was required to determine an application made under the Licensing Act 2003 for the variation of a Designated Premises Supervisor at Unique to which an objection had been received from Bedfordshire Police.

Given the presence of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12 A of the Local Government Act 1972 within Appendix B to the report of the Head of Public Protection, a brief discussion took place on whether the observers present at the meeting be allowed to remain for training purposes should the resolution to exclude the press and public be passed. All parties agreed that the observers be allowed to remain in the meeting room.

14. **Exclusion of Press and Public**

It was resolved that in accordance with Section 100A of the Local Government Act 1972 the Press and Public be excluded from the meeting when considering the application for a variation of a Designated Premises Supervisor on the grounds that consideration of the item was likely to involve the disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Act.

15. **Application for Variation of the Designated Premises Supervisor at Unique, 25-27 High Street North, Dunstable, Beds**

The Sub-Committee considered a report from the Head of Public Protection which asked Members to determine an application by the Premises Licence Holder at Unique for the variation of the Designated Premises Supervisor (DPS) to enable him (the Applicant) to also undertake the DPS role. The Licensing Officer explained that only the police could raise an objection to the application. In relation to this point, the Sub-Committee was aware that the police objection and the reasons for it were set out within exempt Appendix B to the Head of Public Protection's report.

A brief exchange of information took place in response to a query from the Chairman to the Licensing Officer and a question by the Applicant's barrister.

There were no further questions or points requiring clarification by the Licensing Officer.

The Applicant's barrister introduced himself. He explained that the Applicant had become the DPS with immediate effect on 15 April 2015, the date of his application. The barrister reminded the Sub-Committee that a DPS was required under the Licensing Act and that the DPS acted as the point of contact for the Responsible Authorities so that any problems that arose at licensed premises could be quickly dealt with. The barrister then drew the Sub-Committee's attention to the Licensing Act's requirement that the police could only object to the designation of a new DPS where, in exceptional circumstances, they believed the appointment would undermine the crime prevention objective. The barrister stated, however, that the police objection to his client undertaking the DPS role was without any foundation as the Applicant had not been found guilty of any criminal offence. Further, the police had failed to provide supporting evidence, for example in the form of witness statements, for the reasons they had given for their objection to the application. As such he believed the criteria of 'exceptional circumstances' had not been met. He then suggested possible reasons why accusations had been made by other persons against his client. The barrister added that his client, whilst acknowledging that he occasionally drank whilst at Unique, had not broken any law by doing so. Nonetheless, his client had undertaken to refrain from drinking on the premises in future.

In response to a comment by the Chairman the Applicant's barrister stressed that any police objection in relation to the designation of a new DPS could only be made in exceptional circumstances. He believed the police had failed to interpret this requirement of the Licensing Act correctly and the 'exceptional circumstances' did not exist.

The Chairman referred to the allegations regarding the Applicant's behaviour set out within the police report and asked the Applicant's barrister if he felt they met the requirement for 'exceptional circumstances'. In response the Applicant's barrister reiterated that the police report contained various allegations and a claim that the crime prevention objective had been undermined but there was a lack of any supporting evidence.

The Applicant's barrister responded to Members' requests for clarification.

No witnesses were called and no new documentary evidence introduced (no notification of either had been given).

The Police Licensing Officer referred to the allegations relating to the Applicant's behaviour set out within Appendix B to the report of the Head of Public Protection. She added that the Applicant had admitted to her that he had no prior experience in running a pub or club.

The Police Licensing Officer began to refer to additional information but an objection was raised by the Applicant's barrister on the grounds that no prior notification had been given of the content. The objection was confirmed by the Council's Legal Services Manager – Commercial and upheld by the Sub-Committee.

Members obtained clarification regarding the operational relationship between the various types of licence holder and the role of the action plans drawn up by the police.

No witnesses were called and no new documentary evidence introduced (no notification of either had been given).

The Chairman invited closing submissions.

The Applicant's barrister stated that the police concerns about his client's alleged behaviour were insufficient to justify their objection. No criminal activity had taken place and there was no evidence, including witness statements, to support the police claims that the crime prevention objective would be undermined should the Applicant be appointed as the DPS at Unique. He added that, should the police believe that the situation required it, they should seek a review using the established procedure. The barrister emphasised that 'exceptional circumstances' were required to justify the police objection to his client's application and these circumstances did not exist. He also believed the objection had been led by other persons for their own benefit. He outlined the current legal position regarding those persons.

The Chairman asked if the Applicant wished to modify or withdraw his application. He replied that he did not.

The Police Licensing Officer wanted to introduce additional information but an objection was raised, confirmed and upheld. She had no further comments.

The Sub-Committee then adjourned to make its decision in private. All attendees left the meeting room with the exception of the members of the Sub-Committee and the Legal Services Manager – Commercial who remained with Members to advise as necessary. The hearing reconvened when the Sub-Committee had finished its deliberations and could announce its decision.

Findings of Fact

- That, on 30 December 2014, Unique was placed on a voluntary Action Plan to resolve issues of the staff and the Applicant drinking on the premises
- That, in considering the evidence from Bedfordshire Police, there had been no link established between the staff and the Applicant drinking on the premises and any crime and disorder.

Decision

That the application for a variation in the Designated Premises Supervisor at Unique should be approved with immediate effect.

In granting the Licence the Applicant was advised that it would be inappropriate for him to drink at the premises when he was on duty as the Designated Premises Supervisor.

In coming to its decision the Sub-Committee had taken into account:

- Section 18 of the Licensing Act 2003, which stated that it must take such steps it considered necessary for the promotion of the licensing objectives
- The Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003
- Central Bedfordshire Council's Licensing Policy
- The merits of the application and the representations (including supporting information) presented by all parties.

Reasons for the Decision

The Licensing Sub-Committee had taken into account representations from Bedfordshire Police but Members did not consider that the representations demonstrated any matters that were so exceptional that they would prevent the Applicant being granted a Designated Premises Supervisor Licence.

The Applicant and his barrister had no questions relating to the Sub-Committee's decision.

(Note: The meeting commenced at 10.06 a.m. and concluded at 11.24 a.m.)