

Public Document Pack

Licensing Sub-Committee

Tuesday, 19th December 2023

Supplementary Information - Agenda Item 7 - Baba Jaga - Decision
Notice DPS Transfer Change

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Notice of Decision

of the Licensing Sub Committee

Date of Hearing:	5 December 2023
Determination Date:	5 December 2023
Notice of Decision:	18 December 2023
Members:	Cllr R Downes (Chair) Cllr S Hamilton Cllr T Hinchcliffe
Legal Officer:	Robert Brown, Principal Legal Officer
Committee Clerk:	Debbie Oldham, Governance Officer
Licensing Officer:	Matthew Nelson, Principal Licensing Officer
Premises:	Baba Jaga 2, 12-14 Strathmore Drive, Harehills, Leeds, LS9 6AB
Applications:	(1) Application to Transfer a Premises Licence (2) Application to Vary a Premises Licence so as to specify an individual as Designated Premises Supervisor
Attendees:	Nabaz Ibrahim Karim (Director of Gusto Market Mini Limited, Premises Licence Holder, and Designated Premises Supervisor) Patrick Robson (John Gaunt & Partners, Solicitor for Gusto Market Mini Limited and for Mr Karim) P.C. Andy Clifford (West Yorkshire Police) P.C. Neil Haywood (West Yorkshire Police)

These applications were brought before the Licensing Sub Committee due to the receipt of relevant representations.

The Licensing Sub Committee considered:

1. Report from the Chief Officer Elections and Regulatory
2. Licensing Act 2003
3. Guidance issued under Section 182 of the Act
4. The relevant licensing objectives
5. Licensing Act 2003 Statement of Licensing Policy 2023-2027
6. Representations received from West Yorkshire Police

Having taken all these matters into account the Licensing Sub Committee resolved to (1) grant the application to transfer the licence, and (2) grant the application to vary the licence so as to specify Mr Karim as the designated premises supervisor.

The reason for this decision is as follows:

Members of the Council's Licensing Sub-Committee (hereinafter referred to as "the Committee") met to consider two applications in respect of Baba Jaga 2, 12-14 Strathmore Drive, Harehills, Leeds, LS9 6AB: (1) an application to transfer the premises licence and (2) an application to vary the licence to specify an individual as the designated premises supervisor ("DPS"). The Committee had read the contents of the document pack in advance of the hearing and the supplementary information.

At the start of the hearing, the parties were asked whether the usual 15 minute time limit for their presentations would suffice or whether they would like to ask for longer. Mr Robson said that he would like 35 to 40 minutes. P.C. Clifford said that he was not requesting longer than 15 minutes. The Chair consulted with the other members of the Committee and said they would allow Mr Robson (and therefore the other parties) 30 minutes. As it transpired, he was subsequently allowed an extension to that limit.

Mr Robson introduced Mr Karim. He said that although Mr Karim's wife and child live in Middlesbrough, Mr Karim had most recently worked at a Costcutter store in London and he had held licences for two other premises, both in Northampton. Mr Robson referred to the character reference from Mr Karim's employment at Costcutter and to an email from Northampton Police stating that there were no issues with Mr Karim. Mr Robson said Mr Karim had no convictions and had never been arrested. He said that Mr Karim had been running the Baba Jaga 2 store for six weeks without incident.

Mr Robson told the hearing that Mr Karim had become acquainted with the previous owner, Mr Rashka, through the online sale of a motor car and had not known Mr Rashka prior to that transaction. Mr Karim had then been made aware that Mr Rashka was looking to sell the business and Mr Karim had decided to purchase it for a low price, subject to Mr Karim taking on its existing liabilities to suppliers, and because it suited Mr Karim's wish to be closer to his family.

According to Mr Robson, Mr Karim had not been told by Mr Rashka about the review of the licence and had been given another reason as to why Mr Rashka wished to sell the business. Mr Robson added that when Mr Karim became aware of the review proceedings, Mr Rashka had told him that there had been some issues with the Police but that it was nothing serious. Another firm of solicitors had been instructed to deal with the lease.

Mr Robson said that Mr Karim had nothing to do with Mr Rashka or his business until he had decided to purchase it and that he had done so entirely in good faith. He said that within days of purchasing the business, a closure notice had been served by Leeds City Council's Anti-Social Behaviour Team ("LASBT"), based on the same issues that had led to the licence review. Mr Karim had immediately closed the shop. Mr Robson said that his firm had also been instructed in relation to the closure proceedings and an adjournment of those proceedings had been agreed, Mr Karim undertaking not to sell alcohol or tobacco in the meantime. Mr Robson said that when he first met Mr Karim it had been apparent that Mr Karim was very angry at Mr Rashka and that had he known the full extent of the issues Mr Karim would probably not have taken the business on at all.

Mr Robson said that following discussions with LASBT and Leeds City Council's Legal Services, a minor variation application had been submitted to add new and more robust conditions to the old-style Justices' Licence conditions. These included a condition that Mr Rashka would have no involvement in the business. Mr Robson said that despite an objection from the Police the Licensing Authority had granted the minor variation application.

The closure order request had been withdrawn and Mr Robson said that the inference was that LASBT was satisfied that Mr Karim was not connected to Mr Rashka. Mr Robson said the fact that there had been no representation from LASBT during the consultation period supported that conclusion.

Mr Robson said that all of the staff had been put through training since Mr Karim had taken on the business. He then referred to paragraph 4.69 of the Statutory Guidance under Section 182 of the Licensing Act 2003, which states:

“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.”

Mr Robson said that there are no exceptional circumstances in this case. He said that the thrust of the Police objections to the two applications was simply that a new company had been incorporated so soon after the review application. He said there is no specific evidence of any issues with Mr Karim. He added that if the transfer did not go through then the licence would revert to the previous licensee.

Referring to the apparent concerns the Police had with one of Mr Rashka’s employees having continued to work at the premises after Mr Karim purchased the business, Mr Robson said that the employees had transferred to Mr Karim’s employment by operation of law (the Transfer of Undertakings (Protection of Employment) Regulations 2006), but that particular employee had now left and the Applicant would be happy for a condition to be added to preclude that person from having any involvement in the business.

At that point, the 30 minute period for Mr Robson to make his presentation expired. The Committee agreed to allow him to complete what he had to say. The Legal Adviser pointed out that Mr Robson had not retained any part of his time allocation in which to sum up and/or address any points that might arise out of the Police presentation. Mr Robson said that there was simply no evidence that could sustain an exceptional circumstances refusal of either the transfer of the licence or the appointment of Mr Karim as DPS.

P.C. Clifford addressed the Committee. He told the hearing that LASBT had only withdrawn the closure proceedings because LASBT was aware that the matter was coming before the Licensing Sub-Committee. He told the Committee that he had submitted the review application on 13 October 2023, with a blue notice being put up on 18 October 2023, and Gusto Market Mini Limited being incorporated on 19 October 2023. P.C. Clifford said that because the original application for the review had not been signed, he had had to submit a fresh application and had done so on 30 October 2023.

P.C. Clifford said that the Committee was being asked by the Applicant to believe that an experienced licence holder had not carried out any due diligence before purchasing the business. P.C. Clifford said that all too often he has cause to express concerns about premises in Harehills that are a plague on the community.

P.C. Clifford said that the proposed landlord had been convicted of nine counts of evading duty and sentenced to a term of imprisonment. He described the transfer as a “paper exercise”.

The Committee asked whether there had been any inspections of the premises since Mr Karim had taken over and whether there was any evidence of further issues. P.C. Clifford said that there had been no further visits since the closure proceedings had been initiated. The Committee questioned the parties about the circumstances in which Mr Karim came to purchase the business and the involvement of the transferred employee who had subsequently left the employment.

The Committee also questioned the parties about the person who was due to become the Applicant’s landlord. P.C. Clifford said that while it is entirely plausible that Mr Karim may be innocent but might be placed under pressure to sell cheap illicit tobacco in the future, he felt that the timing of the transfer was more suspicious.

Mr Robson told the hearing that Mr Rashka had wanted the whole transaction completing quickly. He also said that he and his client had only now become aware of the landlord's convictions, having previously understood that the landlord had been abroad.

The Committee took time to discuss the applications and to deliberate.

Decision

The Licensing Sub-Committee unanimously resolved:

- (1) To grant the application to transfer the licence.
- (2) To grant the application to vary the licence so as to specify Mr Karim as the designated premises supervisor.

In reaching its decision, the Committee considered and took into account the contents of, and documentation appended to, the Report of the Head of Elections and Regulatory, including the written representation opposing the applications and the supplementary information. The Committee also had regard to the relevant provisions of the Licensing Act 2003, the Guidance issued under section 182 of the Act and Leeds City Council's Statement of Licensing Policy. The Committee also considered the oral representations, contributions and explanations from Mr Robson and Mr Karim and from P.C. Clifford.

Although there were two separate applications to be determined by the Committee, the objections to each application were effectively based on the same arguments and submissions. For that reason, both applications had been included in a single report and listed to be heard. Neither the Applicant nor West Yorkshire Police had raised any issues with this prior to, or during, the hearing.

In relation to the transfer application, Section 42(6) of the Licensing Act 2003 provides:

"Where a chief officer of police notified under subsection (5) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied."

With regard to the variation application, Section 37(5) of the Act provides:

"Where a chief officer of police notified under subsection (4) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied."

With regard to both applications, the thrust of the objections by West Yorkshire Police was that the outgoing licence holder was connected with serious organised crime and that the incoming licence holder was somehow tainted by that fact and/or that the previous licensee was retaining ultimate control. However, those were assertions which were unsupported by any substantive evidence.

The Police relied on the timing of the incorporation of Gusto Market Mini Limited (shortly after the submission of the review application) as demonstrating some form of collusion between new and old licensees. In the Committee's view, however, the circumstances of the transfer and variation applications was consistent with Mr Robson's explanation; a licensee wishing to cut his losses by disposing of the business in haste when he was facing potential revocation of the licence, coupled with a previously unconnected individual wishing to purchase an established business and to move to the area for personal reasons. The Police presented no actual evidence to refute Mr Karim's assertions.

Mr Karim had an unblemished record and no evidence was produced that demonstrated that the previous licensee retained any beneficial interest in the business. Therefore the Police had failed to

establish that granting either of the applications would undermine the crime prevention objective. They presented no evidence to refute the good character references produced on behalf of Mr Karim.

Right of Appeal

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the sub-committee. You must make this appeal within 21 days of receiving this notice.

Appeals should be addressed to the Magistrates Court at:

**Clerk to the Justices
Leeds Magistrates Court
Westgate
Leeds
LS1 3JP**

and be accompanied by a copy of this notice of decision and the court fee of £75. Cheques should be made payable to HMCS.

Please note – Persons making appeals should be aware that the Magistrates have the power to award costs against any party as a result of appeal proceedings.

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