

## Swale Borough Council

**Report to:** Licensing Sub – Committee (Under the Licensing Act 2003)  
**Date:** 6<sup>th</sup> August 2019 at 14:00  
**Report Author:** Christina Hills – Licensing Officer  
**Subject:** Queenborough Service Station 265/269 Queenborough Road, Minster,  
Kent ME12 3EW

### **Purpose and summary of report:**

To consider an application, to which representations have been made, for a variation of an existing Premises Licence application under the Licensing Act 2003 – application reference number SHE/SWALE/189/0553

### **Recommendations:**

The Committee is asked to determine the application and decide whether to grant a licence. Members asked to consider the application on its merits.

Background papers: The Licensing Act 2003  
Home Office Guidance Documents issued under Section 182 of the  
Licensing Act 2003 as amended  
Swale Borough Council Statement of Licensing Policy

Contacts: Christina Hills, Licensing Officer  
Email: [chrishills@swale.gov.uk](mailto:chrishills@swale.gov.uk)  
Telephone: 01795 417737

The Licensing Act 2003 Act requires the Council to publish a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the licensing objectives when making a decision on applications made under the Act. The Policy will be available at the meeting for reference purposes.

Under the 2003 Act, it is the duty of all licensing authorities that, in carrying out their functions, they must have regard to guidance issued by the Secretary of State under section 182. The Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Provided that the licensing authority has properly understood and considered the Guidance, it may depart from it when it has reason to do so. However, as the licensing authority is under a duty to have regard to the Guidance, it will need to give full reasons for its departure from it. This would be a key consideration for the courts should departure from the Guidance result in a determination which gives rise to an appeal or judicial review. Should the need arise the Guidance will be available at the meeting for reference purposes.

The Licensing Authority must, under the Act refer any application for hearing to the Licensing Panel, if relevant representations are made by a responsible authority or other person. A copy of the Council's approved procedure for hearings of the Panel in relation to an application, along with a copy of the Hearings Regulations has been circulated to all parties prior to the meeting.

## **Report Title:**

Application for: A variation to an existing Premises Licence granted under the Licensing Act 2003

## **Purpose of the report:**

The report advises Members of an application for a variation of a Premises Licence to be granted under the Licensing Act 2003, made by George Hammond plc, in respect of premises at Queenborough Service Station, 265/269 Queenborough Road, Minster, Kent ME12 3EW (Appendix A) in respect of which one (1) representation has been received from a ward councillor representing his constituents (Appendix C).

### **1. Issues to be decided**

Members are asked to determine whether to:

- (i) Modify the conditions of the licence
- (ii) Reject the whole or part of the licence

### **2. Background**

The Licensing Act requires the Council as licensing authority to carry out its various licensing functions so as to promote the following four licensing objectives:

- (i) the prevention of crime and disorder;
- (ii) the protection of public safety;
- (iii) the prevention of public nuisance;
- (iv) the protection of children from harm

### **3. The Application**

3.1 On 19 June 2019 an application was made which was fully complete, from George Hammond plc for the variation of an existing Premises Licence under section 34 of the Licensing Act 2003 in respect of premises at Queenborough. The application is for the following:

- Extension of hours for sale of alcohol to 24 hours daily. The existing hours on the licence are Monday – Sunday 06:00 until 23:00.
- To make alterations to the premises
- To include a condition “If there is only one member of staff on duty between 00:00 and 05:00, the entrance door to the shop will be closed to customers and any sales between these hours will be made through the night pay window”

3.2 A copy of the application, which includes the operating schedule that details the steps the applicant intends to take to address the licensing objectives is shown at **Appendix A**.

3.3 The application has been correctly advertised in the local press on 26<sup>th</sup> June 2019. The consultation period ended on 17<sup>th</sup> July 2019. The required public notice was correctly displayed during the whole of the consultation period.

### 3.4 Representations

3.4.1 Representations from responsible authorities:

- Kent and Medway Fire & Rescue Service – No representations
- Kent County Council Trading Standards – No representations
- Kent County Council Services Children and Families – No representations
- Kent County Council Public Health – No representations
- Environmental Health – Swale Borough Council – No representations
  
- Kent Police – Have made no representations however they requested a variation to the operating schedule as follows:
  - a) The sale and supply of alcohol between 00:00 and 05:00 daily shall be restricted to service by staff through the serving hatch at the front of the premises.
  - b) No persons other than management, their staff, site service providers and members of emergency services shall be allowed access to the premises other than the forecourt between 00:00 and 05:00 daily.

The applicant responded to Kent Police and proposed the following:

“Between the hours of 24:00 and 05:00 there will be a minimum of two members of staff on duty. In the alternative, if there is only one member of staff on duty between 24:00 and 05:00 the entrance door to the shop will be closed to customers and any sales between these hours will be made through the night pay window”.

The police have agreed to this amended condition as shown at **Appendix B**

3.4.2 There have been one (1) representation) received from a ward councillor representing some of his constituents. This shown at **Appendix C**.

<b>Responsible Authority / Other person</b>	<b>Licensing Objective</b>	<b>Associated Documents</b>	<b>Appendix</b>
Ward Councillor representing	Crime and Disorder	One (1) email	C

## 4. Policy Considerations

The following provisions of the Secretary of State’s Guidance apply to this application:

Chapter 2 – The licensing objectives

Chapter 8 – Applications for premises licences

Chapter 9 – Determining applications

Chapter 10 – Conditions attached to Premises Licences

The following paragraphs of the Council’s Statement of Licensing Policy apply to this application:

Sections 3.1 -3.4, 17.1-8, 17.20-23 – These sections set out the Council’s approach with regard to licensing and details other mechanisms to deal with potential problems.

Section 1.1 to 1.4 – These sections set out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

## **5. Determining the application – Options of the Panel**

The Panel must, when reaching a decision on the outcome of the application, take into account the licensing objectives. Having had proper regard to the matters above the Panel may:

- (i) Modify the conditions of the licence;
- (ii) Reject the whole or part of the application

5.1 Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under the Section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the Licensing Authority’s responsibility to co-operate in the reduction of crime and disorder in the Borough.

**Section 17 of the Crime and Disorder Act 1998** states:

“Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that is reasonably can to prevent crime and disorder in its area”.

## **6. Implications Assessment**

The decision should be made with regard to the Secretary of the State’s guidance and the Council’s Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

## **7. Human Rights**

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

## **8. Recommendations**

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

## **9. List of Appendices**

Appendix A – Application form

Appendix B – Emails between applicant and Kent Police licensing

Appendix C – Representation (Ward Councillor) against the application

Appendix D - Order of proceedings

## **10. Appeals**

The applicant or any other person (objector) may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates' Court. Parties should be aware that they MAY incur an Adverse Cost Order should they bring an appeal