

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)

Date: 30th September 2019 – 10:00

Report Author: Christina Hills – Licensing Officer

Subject: Island Fish Bar, 120-122 High Street, Sheerness ME12 1UB

Purpose and summary of report:

To consider an application, to which representations have been made, for a new Premises Licence application under the Licensing Act 2003 – application reference number SHE/SWALE/189/0729

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

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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 Premises Licence to be granted under the Licensing Act 2003
Island Fish Bar, 120-122 High Street, Sheerness, Kent ME12 1UB

Purpose of the report:

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Merdan Yildirim in respect of premises at Island Fish Bar, 120-122 High Street, Sheerness, Kent ME12 1UB (Appendix A) in respect of which (2) representations have been received from members of the public (Appendix B).

1. Issues to be decided

Members are asked to determine whether to:

- (i) grant a licence subject to conditions consistent with the Operating Schedule modified to such an extent as considered appropriate for the promotion of the licensing objectives and any mandatory conditions,
- (ii) grant a licence but excluding any of the licensable activities applied for,
- (iii) grant a licence but refusing to specify a premises supervisor,
- (iv) reject the application.

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 7th August 2019 an application was made which was fully complete, from Merdan Yildirim for the grant of a Premises Licence under section 17 of the Licensing Act 2003 in respect of premises at Island Fish Bar, 120-122 High Street, Sheerness, Kent ME12 1UB. The proposed activities and hours are as follows:

Late Night Refreshment

Sunday to Thursday	23:00 – 00:00
Friday and Saturday	23:00 – 01:00

Sale of Alcohol

Sunday to Thursday	11:00 – 00:00
Friday and Saturday	11:00 – 01:00

The opening hours of the property are:

Sunday to Thursday	07:00 – 00:00
Friday and Saturday	07:00 – 01:00

- 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 21 August 2019. The consultation period ended on 4 September 2019. The required public notice was correctly displayed during the whole of the consultation period.
- 3.4 The proposed Designated Premises Supervisor is Merdan Yildirim although he has yet to obtain a Personal Licence under the Licensing Act 2003.

3.5 **Representations**

3.6.1 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 – Made representations and sought the attachment of the following conditions to assist in the promotion of the licensing objectives:

1. All person who sell or supply alcohol to customers must have licensing training
Training should take place within six weeks of employment.
Any new employees will be supervised until the training has taken place
Refresher training should be repeated a minimum of every six months or earlier if required due to changes of legislation
Training records must be kept on the premises and shall contain the nature, content and frequency of all training
Records must be made available for inspection by Police, Police Licensing Officers and authorised officers of Swale Council on demand either electronically or hard copy
2. CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.

Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale and supply of alcohol occurs.

Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in date order, and kept for a period of 31 days and handed to Police on demand

The premises licence holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority on demand

The recording equipment and discs/tapes shall be kept in a secure environment under the control of the DPS and other responsible named individual

An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failing's actions taken are to be recorded

In the event of a technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to the Police Licensing Officer immediately (licensing.north.division@kent.pnn.police.uk)

3. No outside area shall be used for consumption of alcohol after 21:00
4. All tables and chairs shall be removed from the outside area by 22:30 each day
5. The premises licence holder or designated premises supervisor must keep a refusal register. Staff to be trained to complete a refusal book/record immediately after the refusal but no later than the end of their shift. The register must be kept on the premises and will detail:

Day, Date and Time of Refusal

Item Refused

Name or description of person refused sale

Reason for refusal

Each entry is to be checked and signed by the DPS/Licensee no later than 1 week after the entry has been made

The register must be made available for Police, Police Licensing Officers and authorised officers from Swale Council on demand either electronically or hard copy

The applicant has agreed to the imposition of these conditions on any granted premises licence and Kent Police therefore withdrew their representation.

- 3.6.2 There have been (2) representation(s) from members of the public. These are shown at Appendix B.

Responsible Authority / Other person	Licensing Objective	Associated Documents	Appendix
Members of the Public	Public Nuisance Public Safety Crime and Disorder Protection of Children from Harm	(2) letters	B

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) Grant the licence application as applied for;
- (ii) Modify the activities or conditions proposed or add any new conditions;
- (iii) Refuse to specify a person in the licence as designated premises supervisor
- (iv) 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 and plan of premises

Appendix B – Representations (Members of Public) against the application

Appendix C - 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