

| <b>Licensing Sub-Committee</b> |  |
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| <b>Meeting Date</b>            | 10 <sup>th</sup> October 2022  |
| <b>Report Title</b>            | Consideration of an application for the grant of a new premises licence under the Licensing Act 2003 |
| <b>Premises</b>                | Cave Hotel & Golf Resort, Brickfield Lane, Boughton, Faversham, Kent ME13 9AJ                        |
| <b>Lead Officer</b>            | Christina Hills, Licensing Team Leader   |
| <b>Classification</b>          | <b>Open</b>  |
| <b>Recommendations</b>         | 1. Members are requested to determine the application on its merits                                  |

## **1 Purpose of Report and Executive Summary**

- 1.1 The report advises Members of an application for a premises licence to be granted under the Licensing Act 2003 in respect of which representations have been made by fifty two (52) interested parties

## **2 Background**

- 2.1 The Licensing Sub-Committee is asked to determine an application for the grant of a new premises licence under the Licensing Act 2003 in respect of premises at Cave Hotel & Golf Resort, Brickfield Lane, Boughton, Faversham, Kent ME13 9AJ.
- 2.2 The Licensing Act 2003 (the 2003 Act) requires the Council (as licensing authority) to carry out its various functions so as to promote the following four licensing objectives:
- the prevention of crime and disorder
  - the protection of public safety
  - the prevention of public nuisance
  - the protection of children from harm
- 2.3 The 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 decisions on applications made under the Act. The council first adopted its Statement of Licensing Policy in 2004 and it has been regularly reviewed in line with legislative requirements ever since. The latest policy was adopted on 1 April 2021. The Policy will be available at the meeting for reference purposes.
- 2.4 Under the 2003 Act, licensing authorities must, in carrying out their functions, 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 any departure from it. This would be a key consideration for the courts should departure from the Guidance result in a determination which gives right to an appeal or judicial review. The Guidance will be available at the meeting for reference purposes.

- 2.5 A copy of the council's approved procedure for hearings of the Licensing Sub-Committee in relation to an application, along with a copy of the Hearings Regulations has been circulated to all parties prior to the meeting.
- 2.6 The Licensing Authority must, under the Act, refer any application for hearing to the Licensing Sub-Committee where relevant representations are made by a responsible authority or an interested party.
- 2.7 The Licensing Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property which may include licences in existence and the protection of private and family life.

### **3 The Application**

- 3.1 On 18<sup>th</sup> August 2022 an application was received from Cave Hotels UK Limited for the grant of a premises licence under section 17 of the Licensing Act 2003 in respect of Cave Hotel & Golf Resort, Brickfield Lane, Boughton, Faversham, Kent ME13 9AJ.

- 3.2 The application is for:

Provision of Live Music, Recorded Music, Performance of Dance (indoors) – after the time that is permitted as part of the Live Music Act 2012 and the Deregulation Act 2015

Monday – Sunday 23:00 – 01:00

Also, from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day

An additional hour on any bank holiday or national holiday and an additional hour when British Summertime begins

Provision of anything of a similar description to live music, recorded music or performance of dance (indoors)

Monday – Sunday 10:00 – 01:00

Also, from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day

An additional hour on any bank holiday or national holiday and an additional hour when British Summertime begins

#### Late Night Refreshment

Monday – Sunday 23:00 – 02:00

Also, from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day

An additional hour on any bank holiday or national holiday and an additional hour when British Summertime begins

#### Sale of alcohol

Monday – Sunday 00:00 – 24:00 for hotel residents and their guests

Monday – Sunday 10:00 – 01:00 for other persons

Also from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day

An additional hour on any bank holiday or national holiday and an additional hour when British Summertime begins

- 3.3 Part M of the statutory application form asks applicants to describe the steps they intend to take to promote the four licensing objectives. Where an application has been properly made and no responsible authority or other person has made a relevant representation, or where representations are made and subsequently withdrawn, these proposals are 'converted' in the form of clear and enforceable licence conditions which, together with the Mandatory Conditions, make up the premises licence.
- 3.4 A copy of the application is shown as **Appendix I**. A copy of the plans for the premises are shown at **Appendix II**. A copy of the proposed conditions included with the application is attached at **Appendix III**.
- 3.5 Members will note that there is a premises licence granted under the Licensing Act 2003 already in existence which is for the same licensable activities and hours as those proposed in this new application. The new licence application seeks to remove the conditions on the existing licence which includes a capacity limit of 160 persons and to introduce new conditions to reflect how the premises wishes to operate. A copy of the existing licence is attached as **Appendix IV**.
- 3.6 Members will also wish to note that regardless of the outcome of this application the existing licence will continue to apply to the premises.

## 4 Representations

- 4.1 At any stage during the 28 day consultation period a responsible authority, a Councillor or an interested party, may make representations provided that the

grounds are relevant to the licensing objectives and are not deemed to be vexatious, frivolous or repetitive.

#### 4.2 Representations from responsible authorities:

- Kent and Medway Fire and 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
- Swale Borough Council Planning Area Team – No representations
- Environmental Health, Swale BC – Have raised no objections but have asked the applicant to agree to the imposition of the following condition:
  - A noise management plan covering the entirety of the operation shall be submitted for approval to the local licensing authority. The plan shall include but not be limited to examples such as hours of operation and delivery, control from external activities. The plan should include procedures for response to complaints from residents or the local authority. It should include a review mechanism in response to justified complaints. Once approved the plan shall be implemented to the satisfaction of the local licensing authority

At the time of writing this report the applicant has agreed in principle to the addition of such a condition but wishes to modify the wording slightly which has yet to be agreed with officer from environmental health.

- Kent Police – Have requested conditions as shown below which have been agreed by the applicant:
  1. There shall be a personal licence holder on duty on the premises during all externally booked events. At any other time, the need for a personal licence holder to be on duty at the premises will be risk assessed by the Designated Premises Supervisor.
  2. All staff responsible for selling alcohol shall receive training in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act, and conditions of the premises licence within 6 weeks of employment and all new employees shall be supervised until such time as training has taken place. Written records of this training shall be retained for a period of no less than 12 months and made available on request to authorised officers of the Licensing Authority and the Police. Refresher training shall be provided at least every 6 months, or sooner if required.
  3. The Designated Premises Supervisor is to complete a written risk assessment in relation to the requirement for SIA Licensed Door Supervisors at the premises. If door supervisors are required, the risk assessment will detail the times/number of SIA door supervisors to be employed at the premises within this role. The risk assessment will be

retained for a period of no less than 12 months and shall be produced to a Police officer, Police Licensing Officer and authorised officers from the Local Authority upon request.

4. When SIA door supervisors are employed in this role within the premises, clothing or an armband will be worn that is identifiable on viewing CCTV.

- 4.3 There have been fifty-two (52) representations from members of the public. The representations are made on the basis of the licensing objectives of prevention of crime and disorder and prevention of public nuisance, and protection of children from harm. These are shown at **Appendix V**.

## **5 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 to 3.14.4 – These sections set out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.

Section 2.1 to 2.8 – These sections set out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

Section 8 relating to new premises licence applications

Section 17 relating to conditions

## 6 Determining the application – Options of the Sub-Committee

5.1 Members are asked to determine which of the following options they deem appropriate:

- (i) grant a licence as applied for
- (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 designated premises supervisor
- (iv) reject the application

5.2 Members of the Licensing Sub-Committee are reminded of their duty under 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 so-operate in the reduction of crime and disorder in the Borough.

## 6 Implications

| Issue                            | Implications   |
|----------------------------------|--|
| Corporate Plan                   | There are direct links to Priority 3 – 3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.....  |
| Financial, Resource and Property | None unless there is an appeal to Magistrates' Court which proves to be successful, and which could therefore result in costs being awarded against the Council.   |
| Legal and Statutory              | <p>The Licensing Sub-Committee must carry out its functions with a view to promoting the four licensing objectives.</p> <p>The procedure for dealing with new premises licence applications is set out in the Licensing Act 2003.</p> <p>Schedule 5 of the Licensing Act 2003 deals with appeals. Any party to the application has the right to appeal the decision of the Licensing Sub Committee. Such appeal must be made to a Magistrates' Court within 21 days of the Appellant being notified of the decision.</p> |
| Crime and Disorder               | The council has a duty under section 17 of the Crime and Disorder Act 1998 to consider the crime and disorder implications of their  |

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|  | decisions and the Licensing Authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.<br>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 functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area" |
| Environmental Sustainability                                 | No implications   |
| Health and Wellbeing   | No implications   |
| Safeguarding of Children, Young People and Vulnerable Adults | Premises Licence Holders must be 'fit and proper' to operate licensed premises responsibly and uphold the licensing objectives which include 'protection of children from harm'   |
| Risk Management and Health and Safety                        | Departure from the Guidance and Statement of Licensing Policy could lead to an increased risk of appeal. Similarly, if any decision made is not evidence based and proportionate  |
| Equality and Diversity                                       | No implications   |
| Privacy and Data Protection                                  | Normal privacy and data protection rules apply.   |

## 6 Appendices

- 6.1 The following documents are to be published with this report and form part of the report:
- **Appendix I:** Application form
  - **Appendix II:** Plan of premises
  - **Appendix III:** Proposed new conditions to be attached to the premises licence if granted
  - **Appendix IV:** Existing premises licence
  - **Appendix V:** Representations from interested parties

## 7 Background Papers

The Licensing Act 2003  
Guidance issued under Section 182 of the Licensing Act 2003 (as amended)  
Swale BC Statement of Licensing Policy

