

<b>Licensing Sub-Committee Meeting</b>	
<b>Meeting Date</b>	15th February 2023
<b>Report Title</b>	Consideration of an application for the review of a premises licence under the Licensing Act 2003
<b>Premises</b>	Londis Iwade (Nisa), 3 School Mews, Iwade, Sittingbourne, Kent ME9 8UW
<b>Lead Officer</b>	Johanna Thomas, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	Members are requested to determine the application on its merits and decide whether to take such steps as Members consider appropriate for the promotion of the licensing objectives

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

- 1.1 The report advises Members of an application for the review of a premises licence granted under the Licensing Act 2003 made by PC 12319 Alexander Guise on behalf of Kent Police in respect of Londis Iwade (Nisa), 3 School Mews, Iwade, Sittingbourne, Kent ME9 8UW.

## **2 Background**

- 2.1 The Licensing Sub-Committee is asked to determine an application for the review of a premises licence under section 51 of the Licensing Act 2003.
- 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 that 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 1st April 2021. The policy will be available at the meeting for reference purposes and is available to view at <https://swale.gov.uk/news-and-your-council/strategies-and-policies/statement-of-licensing-policy>

- 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 reason for any departure from it. This would be a key consideration for the courts should departure from the guidance result in a determination which might lead 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 hearing 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 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 current Licence**

- 3.1 The current premises licence for Londis Iwade (Nisa), 3 School Mews, Iwade, Sittingbourne, Kent ME9 8UW was granted to become effective on 23<sup>rd</sup> July 2008. The premises licence was transferred to the current premises licence holder Trio Management Ltd on 28<sup>th</sup> February 2013. The Designated Premises Supervisor is Mr Arudchelvam Uthayanam. Mr Uthayanam is also a company director of Trio Management Ltd.
- 3.2 The licence allows for the sale of alcohol for consumption off the premises. The premises licence as issued 28<sup>th</sup> February 2013 and is attached as **APPENDIX I**.

### **4 The Review Application**

- 4.1 An application for a review of the premises licence was received on 4<sup>th</sup> January 2023 from PC 12319 Alexander Guise on behalf of Kent Police.
- 4.2 It is a requirement of the Licensing Act 2003, that the licensing authority advertise the review application, inviting representations from any responsible authority or interested party. The application has been correctly advertised with notices posted at the premises, on the council website and the council offices for the required period of 28 days.
- 4.3 The grounds for the review are in order to promote the licensing objectives of: The prevention of crime and disorder and the protection of public safety and follows the result of an immigration enforcement visit to the premises. The purpose of the visit was to locate any persons working illegally or to locate

persons that may be in the Country unlawfully. During the visit 2 (TWO) members of staff were found to be working illegally by working contrary to the conditions stipulated on their Visas. The review application is attached as **APPENDIX II**.

- 4.4 An employer must check the immigration status of persons they employ under section 15 – 25 of the Immigration, Asylum and Nationality Act 2006. The relevant sections of the Act are attached as **APPENDIX III**
- 4.5 As part of the review application the Police ask for the following:
- Revocation of the Premises Licence
- 4.6 Members are advised that they may only modify premises licences if it is appropriate to promote the licensing objectives.

## **5 Representations**

- 5.1 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 vexatious, frivolous or repetitive.
- 5.2 There have been no representations from responsible authorities or interested parties.

## **6 Determining the application – Options of the Licensing sub-Committee**

- 6.1 Members must, having regard to the application and any relevant representations, take such steps mentioned below as they consider appropriate for the promotion of the licensing objectives. The steps are:
- To take no action;
  - To issue a warning or caution;
  - To modify the conditions of the licence;
  - To exclude a licensable activity from the scope of the licence;
  - To remove the designated premises supervisor;
  - To suspend the licence for a period not exceeding 3 months;
  - To revoke the licence.
- 6.2 Relevant sections of the Guidance issued under section 182 of the Licensing Act 2003 that Members should take into account are:

Chapter 10 Conditions attached to Premises Licences and Club Premises Certificates

Chapter 11 Reviews

- 6.3 Members should also take into account relevant policy statements as contained in the Swale BC Statement of Licensing Policy 2021 – 2026 including specifically section 14: Review of Premises Licence or Club Premises Certificates. This is attached as **APPENDIX IV**.

## 7 Implications

Issue	Implications
Corporate Plan	There are links to Priority 3 – Tackling deprivation and creating equal opportunities for everyone. Point 3.4 states “Ensure that the council plays a proactive role in reducing crime and anti-social behaviour including through the modernisation of CCTV provision.
Financial, Resource and Property	There are no direct financial requirements at this time. There is the possibility of a challenge by way of an appeal.
Legal, Statutory and Procurement	<p>Under the Licensing Act 2003 the Licensing Authority has a duty to exercise licensing control of relevant premises.</p> <p>The Licensing Sub-Committee is obliged to determine this application with a view to promoting the four licensing objectives.</p> <p>In making its decision, the Licensing Sub-Committee is also obliged to have regards to the S182 Guidance that accompanies the Licensing Act 2003 and the council’s Statement of Licensing Policy.</p> <p>The Licensing Sub-Committee must also have proper regard to the Human Rights Act 1998 in respect to the rights of an individual when making decisions that affect them. However, it also has to have regard to the safety and protection of the public and therefore to ensure that the right balance is found.</p>
Crime and Disorder	<p>Section 17 of the Crime and Disorder Act requires local authorities to consider the crime and disorder implications of their decisions and it is the Licensing Authority’s responsibility to co-operate in the reduction of crime and disorder in the Borough.</p> <p>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 can reasonably can to prevent crime and disorder in its area”.</p>
Environment and Climate/Ecological Emergency	No implications

Health and Wellbeing	Anti-social behaviour and noise nuisance can impact on the wellbeing of nearby residents
Safeguarding of Children, Young People and Vulnerable Adults	The protection of children from harm is one of the 4 licensing objectives that underpin the Licensing Act 2003 and must be considered when making decisions on licence applications.
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

## 8 Appendices

8.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Current premises licence – ref: SIT/SWALE/189/0499
- Appendix II: Review Application
- Appendix III: Extract of the Immigration, Asylum and Nationality Act 2006.
- Appendix IV: Extract of Swale BC Statement of Licensing Policy 2021 - 2026

## 9 Background Papers

Licensing Act 2003

Home Office Guidance issued under s.182 of the Licensing Act 2003 (as amended)

Swale BC Statement of Licensing Policy 2021 - 2026