

Licensing Sub-Committee Meeting	
Meeting Date	9 th November 2023
Report Title	Consideration of an application for the review of a premises licence under the Licensing Act 2003
Premises	Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB
Lead Officer	Johanna Thomas, Licensing Officer
Key Decision	No
Classification	Open
Recommendations	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 Ian Pickett 12274 on behalf of Kent Police in respect of Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB.

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 hearing 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 Procedure 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 was originally granted on 6th September 2005 to become effective on 24th November 2005 when the Licensing Act 2003 became law. At that time the premises licence holders were Mr and Mrs D Andrews and Mr Denver Andrews was the DPS.
- 3.2 On 22nd October 2009 the licence was transferred, and the premises licence Holders were Roopak Kapoor and Roopesh Kapoor. The Designated Premises Supervisor (DPS) was Vijay Kapoor.
- 3.2 The licence was further transferred into the name of Roopesh Kapoor as premises licence holder on 21st December 2017 and Vijay Kapoor remained as DPS.
- 3.3 On 24th August 2023 an application to vary the DPS was received to nominate Roopesh Kapoor to the role. As allowed by legislation this change took place with immediate effect and the current premises licence which allows for the sale of alcohol for consumption off the premises is attached as **APPENDIX I**. It has been noticed that the opening hours for the premises are not in accordance with the permitted hours for the sale of alcohol and the licence can be amended accordingly as permitted by the Licensing Act 2003 as an administrative error has occurred.
- 3.4 The Licensing Act 2003 allows for a period of 14 days from the date that the DPS variation application is received in which the police can lodge an objection. The police may object to the designation of a new premises

supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective.

- 3.5 An objection to Roopesh Kapoor being DPS at the premises has been received from Kent police citing the same reasons as to why this review application has been served. Their objection is the subject of a separate report to the Licensing Sub-Committee.

4 The Review Application

- 4.1 An application for a review of the premises licence was received on 17th August 2023 from PC Ian Pickett 12274 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 the failure of the premises licence holder to promote the licensing objectives of: prevention of crime and disorder and protection of children from harm and breaches of the premises licence conditions. The review application is attached as **APPENDIX II**.
- 4.4 Witness statements and supporting evidence have been submitted by the following police officers:
- a) PC Ian Pickett – shown as **APPENDIX III**
 - b) PC Andre Smuts – shown as **APPENDIX IV**
- 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 3 representations from responsible authorities and 15 from interested parties as shown below:

- a) Swale BC licensing team leader acting as a responsible authority in support of the review application– shown as **APPENDIX V**
- b) Kent Trading Standards in support of the review application– shown as **APPENDIX VI**
- c) 15 representations have been received from interested parties some of which are support of the review application and others which support the licence holder– shown as **APPENDIX VII**

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 2 Licensing Objectives
- 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 VIII**.

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/189/0222
- Appendix II: Review Application
- Appendix III: Witness Statement PC Ian Pickett
- Appendix IV: Witness Statement PC Andre Smuts
- Appendix V: Representation Swale BC Licensing Team Leader acting as a responsible authority
- Appendix VI: Representation from Oliver Jewell, Kent Trading Standards
- Appendix VII: Representations from interested parties
- Appendix VIII: 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