

Licensing Sub-Committee	
Meeting Date	22 nd April 2024
Report Title	Consideration of an application for the grant of a new premises licence under the Licensing Act 2003
Premises	East Street Delicatessen,3 East Street, Faversham, Kent ME13 7DH
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	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 one (1) representation objecting to the application has been made by an interested party and representations in support of the application have been made by two (2) 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 East Street Delicatessen,3 East Street, Faversham, Kent ME13 7DH
- 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. <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 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.
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- 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 20th February 2024 an application was received from Nicola Reader for the grant of a premises licence under section 17 of the Licensing Act 2003.
- 3.2 The application is for:
- | | |
|---------------------------------------|---------------|
| Sale of alcohol off the premises only | |
| Monday – Saturday | 10:00 – 17:00 |
| Sunday | 10:00 – 16:00 |
- 3.3 The application form also details that the premises intends to play low-key recorded background music for the same hours. The applicant has clarified that

recorded music is not sought as it is only ever intended to have background music.

3.4 This falls within the criteria of incidental music not requiring to be licensed in accordance with the provisions of the Licensing Act 2003. The s182 Guidance which accompanies the Licensing Act 2003 details this as follows:

- 16.5 There are a number of exemptions that mean that a licence (or other authorisation) under the 2003 Act is not required. This Guidance cannot give examples of every eventuality or possible entertainment activity that is not licensable. However, the following activities are examples of entertainment which are not licensable:
 - Incidental music – the performance of live music or the playing of recorded music if it is incidental to some other activity.

3.4 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.

3.5 A copy of the application is shown as **Appendix I**. A copy of the plans for the premises are shown at **Appendix II**.

4 Representations

4.1 There was a statutory 28-day consultation period which ended on 19th March 2024.

4.2 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.

4.3 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
- Environmental Health, Swale BC – No representations
- Swale Borough Council Planning Area Team – No representations
- Kent Police – Have requested conditions as shown below:

Training

All persons that sell or supply alcohol to customers must have licensing training.

- Training should take place within six weeks of employment and 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 Officer and authorised officers from the Local Authority upon request either electronically or hard copy.

Underage sales

A Challenge 25 proof of age scheme shall be operated at the premises.

Refusal register

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:

1. Day, date & time of refusal.
2. Item refused.
3. Name or description of person refused sale.
4. Reason for refusal.

Each entry is to be checked and signed by the DPS/Licensee no later than 2 weeks after the entry has been made. The register must be made available for police, police licensing officer and authorised officers from Medway Council on demand either electronically or by hard copy.

4.4 It is confirmed that the applicant has agreed to these conditions being included on any granted licence.

- 4.5 There have been one (1) representation against the application received from a member of the public. The representation is made on the basis of 2 of the licensing objectives of prevention of public nuisance, and protection of children from harm. These are shown at **Appendix III**.
- 4.6 There have been two (2) representations in support of the application received from ward councillors. These are shown at **Appendix IV**.

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	The Licensing Sub-Committee must carry out its functions with a view to promoting the four licensing objectives. The procedure for dealing with new premises licence applications is set out in the Licensing Act 2003. 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.

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 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 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:** Representation against the application
- **Appendix IV:** Representations in support of the application

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