

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: Tuesday 11th August 2015 at 10:00am
Report Author: Mohammad Bauluck - Licensing Officer
Subject: Hardy's Market of 87 Preston Street Faversham Kent ME13 8NU

Purpose and summary of report:

To consider an application, to which a representation has been made, for a new Premises Licence application under the Licensing Act 2003 – application reference number FAV/SWALE/189/0633

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
DCMS 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 general apply to promote the licensing objectives when making 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: Hardy's Market of 87 Preston Street Faversham Kent ME13 8NU

Application for: A premises licence to be granted under the Licensing Act 2003.

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 Mr Hardy Aziz Kerim, in respect of the premises Hardy's Market, 87 Preston Street Faversham Kent ME13 8NU (Appendix A and B) in respect of which 1 (one) representation (Appendix C) from an other person and a petition has been received (Appendix E).

Issues to be decided

1. Members are asked to determine whether to (i) grant 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 condition, (ii) grant excluding any of the licensable activities applied for, (iii) grant refusing to specify a premises supervisor, or (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: and
- iv) the protection of children from harm

3. The Application

- a. On 16th June 2015 an application was received from Mr Hardy Aziz Kerim for the grant of a premises licence under section 17 of the Licensing Act 2003 in respect of premises Hardy's Market at 87 Preston Street Faversham Kent ME13 8NU. The application is for off sales of alcohol. The proposed hours of operation are:

Sale of alcohol (off sales)

Monday – Sunday 06:30 until 00:00 (midnight)

Opening Hours

Monday – Sunday 06:30 until 00:00 (midnight)

- b. 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 as Appendix A
- c. The application has been correctly advertised in the local press and a notice has been displayed for the whole of the consultation period.
- d. The proposed Designated Premises Supervisor is Mr Hardy Aziz Kerim.

Representations

Responsible authorities:

- Kent and Medway Fire & Rescue Service – No representations
- Kent County Council Trading Standards – No representations
- Kent County Council Social services Children & Families – No representations
- Planning Department – Swale Borough Council – No representations
- Environmental Pollution – Swale Borough Council – No representations
- Kent County Council Public Health – No representations.
 - Applicant has agreed to amend his operating schedule to include conditions requested by the Police – Appendix D
 - **Conditions agreed:**
 1. 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, outside the premise, 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 on the hard drive and kept for a period of 30 days and handed to Police upon reasonable request.
 - 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 upon reasonable request.
 - The recording equipment and hard drive shall be kept in a secure environment under the control of the DPS or other responsible named individual.
 - In the event of technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to the Police Licensing Officer within 24 hours unless the CCTV will be repaired before that time (licensing.north.division@kent.pnn.police.uk)
 2. 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.

Training must include:-

- Avoiding sales of alcohol or age restricted products to those under the age of 18.
 - recognising customers who appear drunk and refusing sale or supply of alcohol
 - knows the licensing objectives and have read and understood licence conditions
 - can produce licences/certificates/permits relevant to the premises in the absence of licence holder/DPS.
 - Refresher training should be repeated a minimum of every twelve 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 reasonable request either electronically or hard copy.
3. The licence holder and/or designated premises supervisor shall ensure that at least one personal licence holder is available on the licensed premises while the sale or supply of alcohol is being undertaken at the premises.
 4. The License Holder will maintain auditable refusal/incident records. These records will detail the following;
 - a) Day, Date and Time of Refusal/Incident.
 - b) Nature of Refusal/Incident and reason.
 - c) Details of or description of the individual.
 - d) Each entry is to be checked and signed by the D.P.S on the day of the event.
 - e) These records will be made available for inspection to any Police Officer, Police Licensing Officer, and Officer of the Local Authority immediately upon demand.
 5. All purchases of alcohol must be made through an accredited wholesaler and the Premises

Licence Holders or Designated Premises Supervisor will be required to keep proof of purchases and retained in accordance with HMRC requirements.

6. On the Saturday and Sunday of the Hop Festival:
 - A. There will be no sale of alcohol in glass vessels from the premises; and
 - B. There will be no external advertisement of alcohol promotions at the premises.
- e. There has been 1 valid representation received from a business owner on Preston Street. His comments are shown at Appendix C. There is also a petition signed by 51 people submitted by the same business owner. Their comments are shown at Appendix E.

Responsible Authority / Other person	Licensing Objective	Associated Documents	Appendix
Vishal Joshi	Crime and Disorder Public Nuisance	Letter	C
Petition from Vishal Joshi	Crime and Disorder Public Nuisance	Letter	E

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 2.1 to 2.2 – These sections set out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.

Part 6 - Appendix 1– 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:

1. Grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application; modified to such an extent as the Licensing sub-committee considers appropriate for the promotion of the licensing objectives and any relevant mandatory condition.

2. Exclude from the licence any of the licensable activities applied for.
3. Refuse to specify a person in the licence as premises supervisor.
4. Reject the application.

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
Appendix B – Plan of premises
Appendix C – Representation (Other Persons)
Appendix D – Conditions correspondence
Appendix E – Petition
Appendix F – Plan of area
Appendix G – 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.