

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: 20th November 2015 at 10am
Report Author: Mohammad Bauluck – Licensing Officer
Subject: Domino Pizza, 1&2 Limes Place, Preston Street, Faversham, ME13 8PQ

Purpose and summary of report:

To consider an application, to which representations have been made, for a new Premises Licence under the Licensing Act 2003 – application reference number FAV/SWALE/189/0643

Recommendations:

The Committee is asked to determine the application and decide whether to grant a licence. Members are 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.

Contacts: Mohammad Bauluck at mohammadbauluck@swale.gov.uk
Telephone: 01795 417 364

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. The Policy is also available on website. The link is <http://www.swale.gov.uk/assets/Licensing/Licensing-Policy-Leaflet.pdf>

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 Act 2003 SubCommittee , if relevant representations are made by a responsible authority or other person.

A copy of the Council's approved procedure for hearings of the Subcommittee 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: Domino Pizza, 1&2 Limes Place, Preston Street, Faversham, ME13 8PQ

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 Zaan (UK) Ltd, Director Babar Mumtaz, in respect of the premises Domino Pizza, 1&2 Limes Place, Preston Street, Faversham, ME13 8PQ (**Appendix A and B**) in respect of which thirteen (13) representations (**Appendix C**) has been received from other persons.

The Planning Department have made representations - **Appendix D**.
The Police made representations but these were withdrawn following the applicant's agreement to amend the operating schedule to include suggested conditions **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) 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 18th September 2015 an application was received from Babar Mumtaz but was validated with a payment on 21st September 2015 for the grant of a premises licence under section 17 of the Licensing Act 2003 in respect of premises Domino's Pizza at 1&2 Limes Place, Preston Street, Faversham. The application is for provision of Late Night Refreshment The proposed hours of operation are:

Sunday – Thursday 23:00 – 00:00 (midnight)
Friday – Saturday 23:00 – 02:00

Opening Hours

Sunday – Thursday 11:00 – 00:00 (midnight)
Friday – Saturday 11:00 – 02:00

- 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. There is no proposed Designated Premises Supervisor as no sale of alcohol will take place

Representations

1. 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, it would be in breach of planning conditions to operate beyond 00:00 – representation is shown at **Appendix D**

The fact that a grant of a premises licence would permit activity under the Licensing Act 2003 after the end time of a condition restricting planning consent is not impossible of itself. Any activity that took place would remain in breach of planning condition and subject to planning enforcement until such time as any variation of planning condition were applied for and granted. Licensing and Planning are two separate regulatory regimes and there is no power in licensing to refuse a matter simply because planning consent is not yet in place. Planning considerations relate mainly to land use and licensing ones to the operation of a premises, however, some considerations may be similar. This committee will consider objections in relation to the licensing objectives only.

- **Environmental Pollution** – Swale Borough Council – No representations
- **Kent County Council Public Health** – No representations.
- **Kent Police** - Applicant has agreed to amend his operating schedule to include conditions requested by the Police – **Appendix E**

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.
 - a) Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale and supply of alcohol occurs.

- b) 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 28 days and handed to Police upon reasonable request.
 - c) 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.
 - d) 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. The Licence holder shall erect and maintain clear and prominent notices displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
 3. Premises must close to visiting customers from 00:00 hours (midnight) on Friday and Saturday and thereafter operate a home delivery service only.
 4. That pull down blinds be fitted in the windows of the premises and that at 00:00 hours blinds be pulled down such that it appears to the passing public that the premises is closed.
 5. That signage, no smaller than A3 size be placed on the entrance of the premises adverting that it is closed to visiting customers from 00:00 hours(midnight).

2. Other Persons

There have been 13 valid representations received from other persons. Their comments are shown as **Appendix C**

The content of some representations put forward did not contain sufficient information related to impact on the 4 licensing objectives.

As a result of this, a representation form was sent to give them an opportunity to clarify their objections.

Other person	Licensing Objective	Associated Documents	Appendix
1. Mrs J Phillips	Public Nuisance Crime and Disorder	Letter	C
2. Michael & Jayne Kent	Public Nuisance Public Safety Crime and disorder Protection of Children	Letter Rep form	
3. Dr J Hogan	Public Nuisance and disorder	Rep form	
4. Miss Alison Baxter	Public Nuisance	Letter	
5. Robert L Stanley	Public Nuisance	Letter Rep form	
6. Mr Ciro Ferraro	Public Nuisance	Letter	
7. Jennifer Shepherd	Public Nuisance	Letter	
8. Miss S D Maun	Public Nuisance	Letter	
9. Mr Simon Weston	Public Nuisance Public Safety Crime and Disorder Protection of children	Email	
10. Mr P J Cumberland	Public Nuisance	Letter	
11. William Dickenson	Public Nuisance	Letter	
12. Victoria Dickenson	Public Nuisance	Letter	
13. Miss Jennifer Wong	Public Nuisance	Letter	

3. 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:

Part 1, overview, particularly para 1.3 relationship between licensing and planning.

Appendix 1, Sections 1.1 to 1.4 – These sections set out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

4. Determining the application – Options of the Panel

The Sub Committee 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. 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”.

5. 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.

6. 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

7. Recommendations

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

8. List of Appendices

- Appendix A – Application form
- Appendix B – Plan of premises
- Appendix C – Representation (Other Persons)
- Appendix D – Representation from Planning.
- Appendix E – Representation from the Police
- Appendix F – Plan of area
- Appendix G – Order of proceedings

9. 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.