

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: 1st May 2018 at 11:30am
Report Author: Tom Dunn - Licensing Officer
Subject: The Hot Tin Café, St Saviours Church, Whitstable Road, Faversham, Kent, ME13 8BD

Purpose and summary of report:

To consider an application, to which representations have been made, for a new Premises Licence application under the Licensing Act 2003 – application reference number FAV/SWALE/189/0692.

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.

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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: The Hot Tin Café, St Saviours Church, Whitstable Road, Faversham, Kent, ME13 8BD

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 The Hot Tin Café Limited, in respect of the premises The Hot Tin Café, St Saviours Church, ME13 8BD (Appendix A & B). During the consultation period the licensing authority received 23 representations (Appendix C & D) from other people of which 16 are against and 7 are for the grant of the application.

Responsible authorities haven't made representations, however they have agreed amendments to the applicants operating schedule which will form conditions on their licence (Appendix E & F).

1. Issues to be decided

Members are asked to determine whether to (a) 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, (b) grant excluding any of the licensable activities applied for, (c) grant refusing to specify a premises supervisor, or (d) 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:

- a. the prevention of crime and disorder;
- b. the protection of public safety;
- c. the prevention of public nuisance: and
- d. the protection of children from harm

3. The Application

- a. On 27th February 2018 an application was received from The Hot Tin Café Limited for the grant of a premises licence under section 17 of the Licensing Act 2003 in respect of premises The Hot Tin Café at St Saviours Church, Whitstable Road, Faversham, Kent, ME13 8BD. The application was for provision of Sale of Alcohol, Films, Live & Recorded Music, Performance of Dance and anything of a similar nature. The proposed hours of operation are:

Opening Hours

Monday to Sunday – 08:00 to 23:00

Sale of Alcohol

Monday to Sunday – 08:00 to 23:00

Films

Monday to Sunday – 08:00 to 23:00

Plays, Live & Recorded Music and Performance of Dance

The applicant has withdrawn Plays, Live & Recorded Music and Performance of Dance from their application. As per legislation (Live Music Act 2012 & Deregulation Act 2015) these activities have been deregulated for audiences up to 500 people during the hours 08:00 to 23:00. The applicant has confirmed they will not exceed these times or number of people and therefore these activities are not licensable.

- 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 on 8th March 2018. The consultation period was restarted until 5th April 2018 due to the public notice not being on display. The notice has now been displayed for the whole of the consultation period (28 days).
- d. The proposed Designated Premises Supervisor is Romana Bellinger.

4. Representations

a. 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 Health – Swale Borough Council – No representations however they seek the attachment of the following conditions to clarify those proposed in the operating schedule, and assist in the promotion of the licensing objectives. Conditions proposed by the Environmental:
 - 1. A noise management plan shall be in place and agreed with the local authority (Environmental Health). The noise management plan shall be periodically reviewed and/or when significant changes occur in the operation, building or following a complaint. A draft example of the noise management plan is attached at Appendix E.
- Kent County Council Public Health – No representations.
- Kent Police - No representations however they seek the attachment of the following conditions to clarify those proposed in the operating schedule, and assist in the promotion of the licensing objectives. Conditions proposed by Kent Police (Appendix F):
 - 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, 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 31 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. 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. 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.
 3. The Designated Premise Supervisor will undertake a risk assessment in respect of the provision of door supervisors for any unusual events and where deemed appropriate a minimum of 2 door supervisors will be employed.
 4. The License Holder will maintain auditable refusal/incident records. These records will detail the day, date, time of refusal/incident, nature of refusal/incident including reason and details of or description of the individual. 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. 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.
- b. There have been 23 valid representations received from other people, of which 16 are against (Appendix C) and 7 are for the grant of the application (Appendix D).

Other person	Licensing Objective	Associated Documents	Appendix
(1) Denise Toomer	Public Nuisance	Letter	
(2) Christine Matthews	Public Nuisance Crime and Disorder	Letter	

(3) Eldon Hinchliffe	Public Nuisance	Letter	
(4) Emma Lathwell	Public Nuisance	Letter	
(5) Helen Buckingham	Public Nuisance Public Safety	Representation Form	
(6) Lola Rinvoulin	Public Nuisance	Letter	
(7) Martin Collins	Public Nuisance	Letter	
(8) David & Susan Greetham	Public Nuisance	Letter	
(9) Sophie Taylor & Philip Gowing	Public Nuisance Crime and Disorder	Letter	
(10) J Tovell	Public Nuisance Public Safety	Letter	
(11) M Galpin	Public Nuisance	Letter	
(12) R Potter	Public Nuisance Crime and Disorder	Letter	
(13) R Tovell	Public Nuisance	Letter	
(14) S Francis	Public Nuisance	Letter	
(15) Shelia Wyver	Public Nuisance Public Safety	Email	
(16) Martin Long	Public Nuisance Public Safety	Representation Form	
(17) Henry Dagg	In support of the application	Email	
(18) Marian August	In support of the application	Letter	
(19) Matt Dobson	In support of the application	Email	
(20) Peter & Emma Flack	In support of the application	Email	
(21) Mr Perou & Lucy Perou	In support of the application	Email	
(22) Nick Kenny	In support of the application	Email	
(23) Ruby Parker-Barcy	In support of the application	Email	

5. Policy Considerations

The following provisions of the Secretary of State's Guidance apply to this application:

- a. Chapter 2 – The licensing objectives
- b. Chapter 8 – Applications for premises licences
- c. Chapter 9 – Determining applications
- d. Chapter 10 – Conditions attached to Premises Licences

The following paragraphs of the Council's Statement of Licensing Policy apply to this application:

- a. Section 3 General Policy Considerations. This section sets out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.
- b. Section 4 Responsible Authorities and Other Persons. This section sets out the Council's approach to accepting relevant representations.
- c. Section 17 Licence Conditions. This section sets out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

6. 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:

- a. 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.
- b. Exclude from the licence any of the licensable activities applied for.
- c. Refuse to specify a person in the licence as premises supervisor.
- d. 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 1989 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".

7. 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.

8. Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- a. Article 8 – Right to respect for private and family life.
- b. Article 1 of the First Protocol – Protection of Property
- c. Article 6(1) – Right to a fair hearing.
- d. Article 10 – Freedom of Expression

9. Recommendations

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

10. List of Appendices

Appendix A – Application form
Appendix B – Plan of premises
Appendix C – Representation (Other Persons) against the application
Appendix D – Representation (Other Persons) for the application
Appendix E – Conditions attached to the Operating Schedule from Environmental including a draft noise management plan
Appendix F – Conditions attached to the Operating Schedule from the Police
Appendix G – Plan of area
Appendix H – Order of proceedings

11. 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.