

**Agenda Item No:**

**Licence Reference**    **WK/200906637**

**Report To:**            **LICENSING SUB COMMITTEE**

**Date:**                 **3 SEPTEMBER 2009**

**Report Title:**        **Licensing Act 2003 - Application for a premises licence –**

**Ashford (Kent) Rugby Club, Kinney's Field, Kinney's Lane, Kennington, Ashford, Kent, TN24 9RD.**

**Report Author:**      Licensing Manager



**Summary:**

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type:    **Application for a premises licence**

Applicant:            **Ashford (Kent) Rugby Club**

Premises:            **Ashford (Kent) Rugby Club, Kinney's Field, Kinney's Lane, Kennington, Ashford, Kent, TN24 9RD.**

Members are asked to determine whether to grant the premises licence.

**Key Decision:**        NO

**Affected Wards:**    Bybrook

**Recommendations:**    **The Committee is asked to determine the application and decide whether to grant the premises licence.**

**Policy Overview:**      The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

**Financial Implications:**    The costs associated with processing the application are taken from licensing fee income.

**Other Material Implications:**    **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

**LEGAL:** Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

**Exemption Clauses:** Not applicable

**Background Papers:** None

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**Contacts:**

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Ashford (Kent) Rugby Club, Kinney's Field, Kinney's  
Lane, Kennington, Ashford, Kent, TN24 9RD.**

### **Purpose of the Report**

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type:    **Application for a premises licence.**

Applicant:            **Ashford (Kent) Rugby Club**

Premises:            **Ashford (Kent) Rugby Club, Kinney's Field, Kinney's  
Lane, Kennington, Ashford, Kent, TN24 9RD.**

### **Issue to be Decided**

2. Members are asked to determine whether to grant the premises licence.

### **Background**

#### ***The Licensing Objectives***

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

#### ***Application details***

4. The application is for a premises licence.
5. See Appendix A for the application for a premises licence, along with a plan. The application has been made in the proper manner.
6. Representations have been received hence the determination coming before Members.

#### ***Additional steps***

7. The applicant states within section P of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed variation is granted.
8. The conditions put forward by the Licensing Manager as taken from section P of the application form are as given within Appendix E. Note it is the responsibility of the Licensing Authority to prepare conditions that are "consistent" with the operating schedule (s.18).

9. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation, it may not issue a licence with conditions that are illegal.

### ***Representations from Responsible Authorities***

10. No representations were received from the responsible authorities, although the Environmental Protection Officer & the Senior Environmental Health Officer proposed a number of additional conditions, which the applicant has agreed to adopt. These are:

In respect of all outside events the Licence Holder will ensure that the licensing authority is notified a minimum of six weeks before any licensable event, and will provide the following information:

- A description of the event
- The type of activities
- Hours of operation
- Event capacity
- A site plan showing relevant features in relationship to the neighbourhood
- Details of noise control measures for any events with amplified music
- A list of key members of the organising team and their responsibilities

In addition to the above any outside events likely to attract more than 500 people the licence holder will:

- Ensure that a public safety risk assessment is undertaken and recorded.
- Ensure that a risk management strategy is in place, including a copy of the risk assessment and the site safety rules
- Comply with the reasonable safety requirements of the Licensing Authority and other public authorities.
- The Licence Holder will ensure that all fire extinguishers, alarm systems and emergency lighting are tested and re-certified annually. Such certification will be maintained at the licensed premises and will be available for inspection.
- The Licence Holder will ensure that the electrical installation is tested and re-certified every three years. Such certification will be maintained at the licensed premises and will be available for inspection.
- The Licence Holder will ensure that all gas burning appliances and related pipe work are tested and re-certified annually. Such certification will be maintained at the licensed premises and will be available for inspection.

- The Licence Holder will ensure that any work recommended by the engineer to maintain the above systems in a satisfactory condition will be carried out and documentation provided when asked requested.

### ***Representations from Interested Parties***

11. Nineteen parties have made representations. A summary of these representations is provided in Appendix C. Copies of the letters are contained in Appendix D.
12. All of the representations are parties living in the area.
13. The representations have a number of common themes in terms of the licensing objectives and they can be summarised as follows:
  - The prevention of public nuisance and crime and disorder with reference to the behaviour of customers leaving the premises late at night, and the litter problem that results from events.
  - Loud music coming from the premises during previous outside events and concern about the applicant's request for live & recorded music outside the premises and the effect the potential noise nuisance this may cause.
  - The general noise from outside events and the noise that is already a problem from certain events that are held within the club house, that involve music.
  - The inconsiderate parking by visitors to the club on Kinney's Lane causes a nuisance to interested parties. Members may wish to consider whether the applicant is responsible for customers parking their cars when visiting the premises.
14. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.
15. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority on 20<sup>th</sup> July 2009 and the last date for receipt of relevant representations was therefore 18<sup>th</sup> August 2009.

### ***Relevant premises history***

16. The premises combines changing facilities for sports teams with social facilities and is situated within a sports site, consisting of several football and

rugby pitches. The main hall is used for social functions and has bar and kitchen facilities. A location plan is provided in Appendix B.

17. The premises currently has a premises licence also held by Ashford (Kent) Rugby Club which is likely to be surrendered if this application is granted. The applicant's representative contacted the licensing authority as she became the designated premises supervisor in April 2009 and the Police Licensing Officer and the Council's Licensing Manager met with Mrs Norman at the Rugby Club. Given the scale and significance of the proposed changes it was suggested to the applicant that a new premises licence would be the most appropriate course of action.
18. The current licence (AS/LN/020060010) covers the inside area and an area directly outside the premises. The licence permits the sale of alcohol during the times below with extensions on the first Saturday in June until 02:00 (Club Summer Ball) and on Saturday and Sunday of the 1st weekend in September 11:00 till 01:00 (Club Beer Festival).
19. The current licence also permits live and recorded music during the times below with the same seasonal variations as above.

<b>Alcohol Sales (on and off the premises)</b>		<b>Recorded music (indoors and outdoors)</b>	
Sunday	10:00 - 23:00	Sunday	10:00 - 00:30
Monday	11:00 - 00:00	Monday	10:00 - 23:30
Tuesday	11:00 - 00:00	Tuesday	10:00 - 23:30
Wednesday	11:00 - 00:00	Wednesday	10:00 - 23:30
Thursday	11:00 - 00:00	Thursday	10:00 - 23:30
Friday	10:00 - 00:30	Friday	10:00 - 00:00
Saturday	10:00 - 00:30	Saturday	10:00 - 00:30

20. The rest of the licensable activities on the current premises licence are limited to indoors only and include the exhibition of films, indoor sporting events, other entertainment and the facilities for dancing.
21. The new application proposes to permit the sale of alcohol from 10:00 until 02:00 seven days per week, with an extension for the Annual Awards Ball until 03:00, and maximum of 10 times per year licence to be extended from 02:00 - 10:00 for tour departures.
22. The application also proposes the playing of live and recorded music, the facilities for dancing and making music, the showing of films, boxing and wrestling all inside and outside the premises, seven days a week from 10:00 – 02:00. Annual Awards Ball until 03:00 and New Years Eve until close on New Years Day. The facilities for making music and for dancing, and performance of plays are also requested.
23. The application proposes there will be a maximum of 10 outside events with licensable activities per year and extends the area to be covered by licensable activities.

24. The application proposes that late night refreshment be permitted until the 02:00 with extensions on New Years Eve until 05:00, the Annual Awards Ball until 03:00 and up to 10 times per year licence until 05:00 for tour departures.
25. Our records show that the Council has not received any noise complaints since 2003.

## **Options**

### ***General***

26. Members attention is drawn to the following matters:
  - All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
  - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
  - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
  - The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
  - Where problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
  - The conditions put forward within this report are suggested on the basis of:
    - information contained within the application form;
    - interested parties representations and
    - on those measures currently in existence.
  - The 2003 Act requires licensing authorities following receipt of relevant representations to make judgements about what constitutes public

nuisance and what is necessary, in terms of conditions attached to specific premises licences to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.
- The Guidance states "the conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's risk assessment which should be undertaken by applicants or clubs before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule that it is proposed to take to promote the licensing objectives."



- It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

### **Legal options open to members**

27. Members may grant the licence with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.

### **Consultation**

28. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

### **Implications Assessment**

29. The decision should be made with regard to the Secretary of 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.

### **Human Rights**

30. 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 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

### **Handling**

31. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

### **Conclusion**

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

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**APPENDIX C – SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES**

Name & Address	Representation Details
B Byrne, 127 Canterbury Road, Kennington, Ashford, Kent, TN24 9QB.	OBJ - Prevention of public nuisance
Mr Sean Bishop, Direct Building Services, 163 Canterbury Road, Kennington, Ashford, Kent, TN24 9QB.	OBJ - Prevention of public nuisance <b>NOT SIGNED</b>
Miss Susan Wright, 3 Stourfields, Kinney's Lane, Ashford, Kent, TN24 9RD.	OBJ - Prevention of public nuisance Prevention of Crime & Disorder
Mr & Mrs J C Padwick, 177 Canterbury Road, Kennington, Ashford, Kent, TN24 9QH.	OBJ - Prevention of public nuisance
Ms Christine Innes, 1 Stourfields, Kinney's Lane, Kennington, Ashford, Kent, TN24 9RD.	OBJ - Prevention of public nuisance Prevention of Crime & Disorder
Mr T I & Mrs S S Yarborough, 13 Christopher Bushell Way, Ashford, Kent, TN24 9PY.	OBJ - Prevention of public nuisance
Mrs Jackie Kemp, 31 Christopher Bushell Way, Kennington, Ashford, Kent, TN24 9PY.	OBJ - Prevention of public nuisance
Mr S Kemp, 31 Christopher Bushell Way, Kennington, Ashford, Kent, TN24 9PY.	OBJ - Prevention of public nuisance Prevention of Crime & Disorder
Mr & Mrs Paul & Trudy Britton, 161 Canterbury Road, Kennington, Ashford, Kent, TN24 9QB.	OBJ - Prevention of public nuisance
Mr R & Mrs S Martyn, 4 Frank Edinger Close, Kennington, Ashford, Kent, TN24 9RB.	OBJ - Prevention of public nuisance
Mr Philip Booth, 3 Frank Edinger Close, Kennington, Ashford, Kent, TN24 9RB.	OBJ - Prevention of public nuisance
Mr & Mrs B&M Rawlings, 2 Stourfields, Kinney's Lane, Ashford, Kent, TN24 9RD.	OBJ - Prevention of public nuisance
Mr & Mrs LJ Casbolt, Hamilton House, Kinney's Lane, Kennington, Ashford, Kent, TN24 9RD.	OBJ - Prevention of public nuisance
Mr & Mrs JV Williams, 14 Frank Edinger Close, Little Burton Farm, Ashford, Kent, TN24 9RB.	OBJ - Prevention of public nuisance

Mr & Mrs A Simpson, 18 Harry Pay Close, Kennington, Ashford, Kent, TN24 9PX.	OBJ - Prevention of public nuisance Prevention of Crime & Disorder
Mr & Mrs J Feldwich, 10 Frank Edinger Close, Kennington, Ashford, Kent, TN24 9RB.	OBJ - Prevention of public nuisance
Mr P Desai, 15 Frank Edinger Close, Kennington, Ashford, Kent, TN24 9RB.	OBJ - Prevention of public nuisance Prevention of Crime & Disorder
Mr & Mrs Alcock, 13 Frank Edinger Close, Kennington, Ashford, Kent, TN24 9RB.	OBJ - Prevention of public nuisance Prevention of Crime & Disorder
Ashford (Kent) Rugby Club, Mrs P Norman, 33 Jemmett Road, Ashford TN23 4QD	Applicant (for correspondence)

**APPENDIX E**  
**CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE**

**Prevention of Crime & Disorder**

1. The Licence Holder will ensure that all those hiring the premises are aware of their responsibility to the various controls necessary to promote the four licensing objectives.
2. The Licence Holder will ensure that the necessary paperwork is completed prior to the event to ensure that the premises is not hired to anyone whose identity is not known.
3. The Licence Holder will ensure that all windows to the main hall will be shielded.
4. The Licence Holder will ensure the alcohol storage area is within a secured cellar and that the bar is fitted with security shutters.
5. The Licence Holder will ensure that the premises is protected by a security system with a call out monitoring system.
6. The Licence Holder will ensure that all key holders have been authorised by at least two members of the committee.
7. The Licence Holder will ensure that outside equipment, such as a marquee, has appropriate overnight security.
8. The Licence Holder will ensure that any money left at the premises when it is not attended by a member of staff will be kept in a safe.
9. The Licence Holder will through the operation of a recognised 'proof of age' scheme ensure that any one who appears to be under 21 and is attempting to buy alcohol or is consuming alcohol on the premises will be asked to provide adequate and accepted proof of age.
10. The Licence Holder will ensure that all bar stewards are trained in the proof of age scheme.
11. The Licence Holder will ensure appropriate supervision for junior club members.
12. The Licence Holder will ensure that any person within the premises who appears to be intoxicated will not be served alcohol and will no longer be permitted to remain on the premises.
13. The licence holder will ensure that during club events a member of staff will be responsible for keeping the outside areas clean.
14. The Licence Holder will employ appropriate drug prevention measures and will adhere to relevant drug related policies as agreed with the Police or other relevant authority.

15. The Licence Holder will ensure that alcohol is obtained from reputable suppliers.

### **The Prevention of Public Safety**

1. The Licence Holder will ensure that the premises is subject to regular inspections to ensure the promotion of the public safety licensing objective.
2. The Licence Holder will ensure the staff are trained in evacuation procedures in case of an emergency.
3. The Licence Holder will ensure the provision of adequate and appropriate first aid equipment and materials on the premises and that there are an adequate number of trained first aiders on duty.
4. The Licence Holder will adhere to all relevant public safety requirements as agreed with the fire service and other relevant authorities.

### **Prevention of Public Nuisance**

1. The Licence Holder will take appropriate steps to prevent public nuisance when holding events.
2. The Licence Holder will ensure adequate signage is in place advising customers to leave the premises quietly and orderly.
3. The Licence Holder will ensure taxi information is available to customers.
4. The Licence Holder will when deemed appropriate use door supervisors. The door supervisors shall be registered with the Security Industry Authority (SIA). The Licence Holder will determine when to use door supervisors having undertaken an appropriate risk assessment. The Licence Holder will liaise with the Police and other relevant authorities as to the need for door supervisors.
5. The Licence Holder will not permit noise from the premises to be audible inside any neighbouring properties.
6. The Designated Premises Supervisor or nominated representative will ensure that the Licensing Authority are provided with their contact number for special events and will available to respond to any complaints promptly.
7. The Licence Holder will ensure that all immediate neighbours are informed of any outside events that will continue after 00:00.
8. There will be a maximum of 10 outside events at the premises per year.

## **The Protection of Children from Harm**

See condition regarding proof of age scheme.

1. The Licence Holder will ensure a minimum ratio of one coach or assistant to every ten children.
2. The Licence Holder will ensure that all coaches, assistants and any staff likely to come into contact with children while working at the premises, will be CRB checked.
3. The Licence Holder will ensure that appropriate policies and procedures are in place to protect children from harm.
4. The Licence Holder will ensure that children do not sit at the bar.
5. The Licence Holder will not allow children onto the premises unless accompanied by a responsible adult or under the supervision of a coach.
6. The Licence Holder will ensure that appropriate proof of age is seen before admittance to any events involving adult entertainment.

## **APPENDIX F - HUMAN RIGHTS**

### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.