

Agenda Item No:

Licence Reference WK/200907003

Report To: LICENSING SUB COMMITTEE

Date: 24TH SEPTEMBER 2009

Report Title: **Licensing Act 2003** - Application from an existing licence holder to vary the premises licence -
Arena Live Limited, Unit 5, Eureka Park, Kennington, Ashford, Kent, TN25 4BN

Report Author: Licensing Manager



Summary:

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

Application type: **Application from an existing licence holder to vary the premises licence**

Applicant: **Arena Live Ltd**

Premises: **Arena, Unit 5, Eureka Park, Kennington, Ashford, Kent, TN25 4BN**

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

Key Decision: NO

Affected Wards: Kennington (Ashford)

Recommendations: **The Committee is asked to determine the application and decide whether to grant the variation to 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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Report Title: **Licensing Act 2003 - Application from an existing licence holder to vary the premises licence for Arena Live Limited, Unit 5, Eureka Park, Kennington, Ashford, Kent, TN25 4BN**

Purpose of the Report

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

Application type: **Application from an existing licence holder to grant the variation to the premises licence.**

Applicant: **Arena Live Ltd**

Premises: **Arena, Unit 5, Eureka Park, Kennington, Ashford, Kent, TN25 4BN**

Issue to be Decided

2. Members are asked to determine whether to grant the variation to 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 made by an existing licence holder to vary a premises licence.
5. See Appendix A for the Application to vary a Premises Licence. The application has been made in the proper manner.
6. In respect to the variation, 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 F. 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.
10. The conditions were passed to the applicant for comment on Friday 4th September for comment.

Representations from Responsible Authorities

11. No representations were received from the responsible authorities.

Representations from Interested Parties

12. Three parties have made representations. A summary of these representations is provided in Appendix D. Copies of the letters are contained in Appendix D.
13. All of the representations are parties living in the area to the rear of the nightclub.
14. The representations have two common themes in terms of the licensing objectives and they can be summarised as follows:
 - Loud music coming from the premises at present and concern about the application's request to extend the permitted hours for regulated entertainment until 06:00.
 - The prevention of public nuisance is also raised with reference to the behaviour of customers leaving the premises.
15. 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.
16. 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 29th July 2009 and the last date for receipt of relevant representations was therefore 27th August 2009.

Relevant premises history

17. The premises is a nightclub located on the Eureka Leisure Park, between the cinema and the health club. See Appendix B.
18. A Public Entertainment Licence was first issued to a nightclub at this location in January 2000 and this was converted to a premises licence in 2005. Due to M20 (Ashford) Limited going into administration the licence was closed in 2006.
19. Strawberry Moons Trading Co Limited applied for and were granted a new premises licence for the newly refurbished nightclub in August 2007 and this

permitted the sale of alcohol for consumption on the premises from 11:00 until 04:00 seven days a week.

20. The licence permits regulated entertainment (live and recorded music, performances of dance, other entertainment) and entertainment facilities from 18:00 to 04:00 seven days a week.
21. The licence also permits late night refreshment from 23:00 until 04:00 seven days per week and the opening hours to the public are from 11:00 until 04:30.
22. In January 2009 the licence was transferred to Mr Tom Geylani, who was the Designated Premises Supervisor when the licence was held by Strawberry Moons Trading Co Limited and in July 2009 the licence was transferred to Arena Live Limited, along with an application to vary the premises licence. A copy of the transferred licence is in Appendix C.
23. The application requests the addition of other forms of regulated entertainment to include the exhibition of films, the performance of play, indoor sporting events, boxing and wrestling entertainment. These licensed activities, the current regulated entertainment and the sale of alcohol are proposed until from 11:00 until 06:00 seven days a week. There is also a request for an extension on New Year's Eve until the close on New Year's Day.
24. Late night refreshment is proposed from 23:00 to 05:00 and the opening hours until 06:30, seven days per week, with an extension on New Year's Eve.
25. The application also includes a change to the internal layout and specifically to the removal of one of the bars, which is to be replaced with a stage.
26. The first noise complaints regarding loud music and a bass vibration were received by the Council during October 2008 and after a visit to the complaint and to the nightclub in November, no further complaints were received until March 2009.
27. In March 2009 complaints were received from three neighbours living in Rectory Way regarding noise from the premises and from people leaving the nightclub. Following night time enforcement by a member of the Environmental Protection team in March, letters and visits to the nightclub by the Licensing Manager and the remedial action taken by Mr Tom Geylani, there were no further complaints regarding noise from the premises until it closed in June 2009.
28. On Thursday 27th August the Licence Manager visited and spoke with all three interested parties regarding their representations and informed them of the steps the new licence holders were prepared to take to reduce the noise emanating from the nightclub and possible steps they could take to reduce the public nuisance caused by people leaving the nightclub and cutting through the cemetery and surrounding paths on their way home.
29. The resolution of the representations has not been possible by the time this report was composed.

Options

General

30. 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.

Decision options

31. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider the following conditions:
32. The Licence Holder or a nominated representative shall receive and respond to complaints.
33. An acoustic noise report to be submitted to the Licensing Authority within 28 days of the hearing stating the steps taken to minimise any noise breakout and to ensure adherence to the prevention of public nuisance conditions stated in the premises licence.
34. The Licence Holder will ensure acoustic baffling is installed to ensure adherence with existing prevention of public nuisance conditions
35. To alter the condition in the current premises licence for the nightclub to read "The volume of music and sound shall be controlled so that no noise is audible at the façade of neighbouring residential properties."
36. The Licence Holder will take all reasonable steps to ensure that people leaving the nightclub do not use the cemetery and Rectory Way.

Legal options open to members

37. Members may grant the application with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.
38. It is important to note that the application before members concerns the addition of certain forms or regulated entertainment, a change in the plan attached to the licence and the extension of hours to 11:00 – 06:00.

Consultation

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

Implications Assessment

40. 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

41. 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 G.

Handling

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

Conclusion

43. 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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| Contact: | Licensing Manager |
| Email: | james.hann@ashford.gov.uk |

APPENDIX D – SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES

| Name & Address | Representation Details |
|--|-------------------------------------|
| Mr Lemmon 32 Rectory Way, Kennington, Ashford, Kent, TN24 9RE | OBJ – Prevention of public nuisance |
| Mrs Gladstone 14 Rectory Way, Kennington, Ashford, Kent, TN24 9RE | OBJ – Prevention of public nuisance |
| Mr & Mrs Everest 33 Rectory Way, Kennington, Ashford, Kent, TN24 9RE | OBJ – Prevention of public nuisance |
| Arena Live Ltd Unit 5, Eureka Park, Kennington, Ashford, Kent, TN25 4BN | Applicant |

APPENDIX F
CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

Prevention of Crime & Disorder

1. Licensees must take all reasonable steps to eliminate the supply of controlled drugs within the Licensed Premises.
2. A Search Policy detailing the procedure for searching, seizing and disposing of drugs, as agreed with the local Police, must be implemented. The Licensee must ensure that all employees are appraised of these procedures on a regular basis. The Search Policy contained in the conditions below.
3. All drug-related incidents at the Licensed Premises must be reported to the local Police in an agreed format.
4. Licensees, managers and door supervisors employed at the Licensed Premises must receive regular training on licensing regulations, health & safety, first aid, fire safety and drug awareness. Proof of training must be available for inspection at the request of the Licensing Authority and Police.
5. Adequate first aid provisions must be available at all times that the public are on the Licensed Premises. These provisions must include a suitable number of trained first aiders who have awareness of drug related problems, for example, heat stroke, dehydration, anxiety and paranoia, and are capable of dealing with them appropriately.
6. The maximum occupancy figure must not be exceeded and a system must be in place to accurately monitor the number of persons in the Licensed Premises at any one time.
7. Facilities must be provided which are cooler and quieter to enable customers to rest and cool down.
8. Free and unrestricted access to cold drinking water must be available at all times.
9. A regime must be implemented whereby the sanitary conveniences are inspected at regular intervals when the Licensed Premises is open to the public, to ensure that controlled drugs are not being supplied in this area
10. CCTV shall be installed to cover the access and egress of the premises. All cameras shall continually record whilst the premises are open to the public and the video recordings shall be kept available for a minimum of 28 days with time and date stamping.
11. Notices are to be prominently displayed at the entrance to the premises explaining to customers that a search policy is in practice.
12. Random searches to be conducted on a daily basis on all persons entering the premises.

13. There are to be sufficient female staff members on duty to conduct searches of females entering the premises. This is to deter the carrying of drugs into the premises by females.
14. If a customer is found to have drugs on their person, staff are to detain them. A supervisor is to be called immediately and is to verify the item seized as suspected drugs and confirm the quantity in the presence of the detained customer. Two members of staff must remain with the customer at all times from this point until police officers arrive.
15. The customer is to be removed to a secure room within the premises to await the arrival of police officers.
16. The drugs seized are to be placed in police evidence bags, a supply of which can be left at the premises. The attending officers are to confirm the suspected type and quantity of drugs in the presence of the detained customer. Any comments made by the detained person with regard to the seized items are to be noted immediately in the officer's pocket notebook. The customer is to be invited to sign the pocket notebook.
17. Once the attending officers are satisfied that an offence has been committed, it will be important for the offender to be arrested and removed from the premises as soon as possible. This is to prevent the build up of tensions within the premises.
18. The members of staff involved in the detention of the customer are to provide statements prior to the end of their shift. To ensure that correct statements are made a Pro Forma statement will be supplied by the police requiring the staff to merely 'fill the blanks'. (By lowering the amount of work required to be carried out by the staff, it is hoped that reporting of 'finds' to the police will be made, as opposed to discarding of drugs with a warning to the customer.)
19. If drugs, or what appears to be drugs, are located on the premises without an owner, these are to be seized and given straight to a supervisor who will record details, namely time, date and location of find and will place them in police evidence bags and retain in a locked container. Police are to be notified as soon as possible to arrange collection.
20. Any drug-related incident or what appears to be a drug-related incident, occurring outside of the premises is to be reported to the police immediately.

APPENDIX G - 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.