

Agenda Item No:

Licence Reference **WK/200907967**

Report To: **LICENSING SUB COMMITTEE**

Date: **9 OCTOBER 2009**

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

**Double Garage at 9 New Rectory Lane, Park Farm,
Kingsnorth, Ashford, Kent, TN23 3LY.**

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: **Mr Gregory Mayne**

Premises: **Double Garage at 9 New Rectory Lane,
Park Farm, Kingsnorth, Ashford, Kent,
TN23 3LY**

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

Key Decision: NO

Affected Wards: Park Farm

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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Kingsnorth, Ashford, Kent, TN23 3LY**

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: **Mr Gregory Mayne**

Premises: **Double Garage at 9 New Rectory Lane, Park Farm,
Kingsnorth, Ashford, Kent, TN23 3LY**

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 application 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. A representation has been received from the Environmental Control Officer (Appendix B) who visited the premises and subsequently spoke to the applicant regarding her concerns that there was inadequate provision made for the prevention of public nuisance. The concern is regarding the applicant's intention to regularly load and unload the delivery vehicle throughout the night and the fact that this is likely to cause disturbance to the occupiers of the two properties opposite the garage.

Representations from Interested Parties

11. 20 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 use of domestic garage to store alcohol and the potential for break-ins.
 - The concern about antisocial behaviour within the vicinity of the premises and the increased noise in regard to the fact that the application is for 24 hours a day.
 - The prevention of public nuisance with additional noise being generated from the 24 hour delivery service, with the increased movement of vehicles and the regular loading and unloading of the delivery vehicle.
 - The fact that it is a wholly residential area and that residents feel it is an inappropriate place for a business.
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 21st August 2009 and the last date for receipt of relevant representations was therefore 19th September 2009.

Relevant premises history

16. The premises is a detached double garage belonging to the residential property 9 New Rectory Lane and situated within a solely residential close within the Park Farm area. A location plan is provided in Appendix F.
17. The application proposes to permit off sales of alcohol 24 hours a day, seven days a week.
18. The application also proposes the provision of late night refreshment 23:00 – 05:00 seven days a week.
19. The application states that all sales will be made over the telephone or via the internet and that no orders will be allowed to be changed at the point of delivery. Electronic payments only will be taken at point of delivery.

Options

General

20. 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

21. 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:

General - All Four Licensing Objectives

- The Licence Holder will ensure that members of public are not permitted entry to the premises for the purposes of licensed activity.
- The Licence Holder will ensure that the premises is used only for the warehousing and distribution of alcohol sold by via the Internet and over the telephone.

The Prevention of Crime and Disorder

- The Licence Holder will ensure that the alcohol is stored within a secure unit which is itself secured.
- The Licence Holder will ensure that the premises is protected by a suitable security system including alarm mechanisms.
- The Licence Holder will ensure that there is no signage or advertising on the building that identifies the premises as a storage facility for alcohol.

Legal options open to members

22. 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

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

Implications Assessment

24. 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

25. 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

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

Conclusion

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

Contact: Email:	Licensing Manager James.hann@ashford.gov.uk
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APPENDIX C – SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES

Name & Address	Representation Details
Mr Gregory Mayne, 9 New Rectory Lane, Park Farm, Kingsnorth, Ashford, Kent, TN23 3LY.	Applicant
Mr P Lambkin, 2 New Rectory Lane, Park Farm, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr & Mrs Antony David Francis, 16 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs Jeannie Lee, 27 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr Michael Wood, 17 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr & Mrs N Florence, 3 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr Andrew Hodnett, 25 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr & Mrs R Bowen-Nelmes, 29 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr & Mrs P Turner, 28 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs A Gardner, 4 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm

Mr G McPhee, 6 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr G Leonard, 15 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 2LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs T Wardle, 14 New Rectory Lane, Park Farm, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr D Warren, 8 New Rectory Lane, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs V Warren, 8 New Rectory Lane, Park Farm, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr N Filmer, 5 New Rectory Lane, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs R Filmer, 5 New Rectory Lane, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Kingsnorth Parish Council, C/O Mrs D Alsop, 64 Albert Road, Ashford, Kent, TN24 8NU.	Object
Mr M Groombridge, 7 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr R Gardner, 4 New Rectory Lane, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Tracey Butler, Environmental Health, Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, TN23 1PL.	Object Prevention of Public Nuisance

Mrs L Groombridge, 7 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr A Oliver, 30 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs K Oliver, 30 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mrs S Peters, 12 New Rectory Lane, Kingsnorth, Ashford, Kent, TN23 3LY.	Object Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm

APPENDIX E
CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

General – All Four Licensing Objectives

The Licence Holder will ensure that alcohol will only be delivered once an order has been placed.

The Licence Holder will ensure that orders can only be placed via the internet or over the telephone.

The Licence Holder will ensure that payments must be made via an electronic system with no cash being accepted.

The Licence Holder will ensure that no amendments to orders are accepted once the order has been dispatched from the premises.

The Prevention of Crime and Disorder

The Licence Holder will ensure that the delivery vehicle will only contain supplies sufficient to fulfil pre placed orders.

Public Safety

The Licence Holder will ensure that all staff undertake training in legislation relevant to the promotion of the four licensing objectives and commensurate with their work activities.

The Licence Holder will ensure that no-one who appears intoxicated will be able to accept the delivery of alcohol.

The Prevention of Public Nuisance

The Licence Holder will ensure that the noise at the premises is kept to a minimum so as not to disturb the local residents.

The Protection of Children from Harm

The licence holder will through the operation of the recognised 'proof of age' scheme, challenge 21, ensure that any person who appears to be under 21 and is taking delivery of the alcohol will be asked to provide accepted photographic proof of age. This will be limited to a photo driving licence, passport or id card bearing a pass logo.

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.