

**Agenda Item
No:**



**ASHFORD
BOROUGH COUNCIL**

Licence Reference Report To: **WK/201008243
LICENSING SUB COMMITTEE**

Date: **16TH SEPTEMBER 2010**

Report Title: **Licensing Act 2003 - Application from an existing licence holder to vary the premises licence - Five Bells, The Street, Brabourne, Ashford, Kent, TN25 5LP**

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 under the provisions of section 35(3)(a) to the Licensing Act 2003**

Applicant: **Mr John Rogers & Mrs Alison Rogers**

Premises: **Five Bells, The Street, Brabourne, Ashford, Kent, TN25 5LP**

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

Key Decision: NO

Affected Wards: Brabourne & Smeeth (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

Report Title: **Licensing Act 2003 - Application from an existing licence holder to vary the premises licence for the Five Bells, The Street, Brabourne, Ashford, Kent, TN25 5LP**

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: **Mr John Rogers & Mrs Alison Rogers**
Premises: **Five Bells, The Street, Brabourne, Ashford, Kent, TN25 5LP**

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, along with the site plan, showing the new area for licensable activities. 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 B. 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

10. 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.
11. 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 17th August 2010 and the last date for receipt of relevant representations was therefore 15th September 2010.

Representations from Responsible Authorities

12. The representation from the Environmental Health Officer is provided at Appendix C.
13. The Officer has met with the applicant at the premises to discuss the application. Following the meeting the Officer wrote to the applicant expressing her concerns that music played inside should be controlled and the permitted hours reduced. In addition the Officer has concerns that any music played outside the premises will cause a nuisance. A copy of her letter is provided in Appendix D.

Representations from Interested Parties

14. 18 interested parties have made representations. A summary of these representations is provided in Appendix E. Copies of the letters are contained in Appendix F.
15. All of the representations are parties living in the area.
16. 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 is raised with reference to the applicants request to add live and recorded music both inside and outside the premises and the effect the potential noise nuisance may cause.

- The prevention of public nuisance in reference to the request for extended hours with customers leaving the premises later and the potential noise nuisance this may cause.
 - The prevention of crime and disorder objective is raised with reference to the behaviour of an increased number of customers leaving the premises later at night.
 - The semi rural nature of the area.
 - The potential of customer parking on the surrounding roads and the potential for increased traffic which may cause a nuisance to those interested parties who have made representations. Members may wish to consider whether the applicant is responsible for these issues under the Licensing Act 2003.
17. One representation was received after the 15th September, but was rejected as outside the consultation period. The points made were similar to those made in the above representations.

Relevant premises history

18. The premises is a traditional-style public house situated on The Street in East Brabourne. An application to transfer the premises licence was made in April 2010, along with an application to vary the designated premises supervisor. Both were granted, as there were no objections from the Police. Since the applicant took over the premises, substantial refurbishment work to the premises has been undertaken.
19. The premises is located in a small hamlet approximately two miles from Brabourne Lees. There are residential properties in close proximity and the premises itself is at the end of an adjoining terrace of properties.
20. The premises currently has a premises licence, permitting the sale of alcohol both on and off the premises Monday to Saturday 10:00 – 23:00 and Sunday 12:00 – 22:30 with seasonal variations for Good Friday and Christmas Day. A copy of the current premises licence is contained in Appendix G.
21. Members will be aware that this is a converted licence from the Magistrates' Court issued Justice's Licence, which was not varied in 2005, when most public houses took the opportunity to change their permitted hours.
22. The variation application proposes to extend the hours for all licensable activities to 08:00 to 00:00 Sunday to Wednesday and 08:00 – 01:00 Thursday to Saturday. It proposes to increase the licensable area to include the whole outside area of the premises for all licensable activities (except for indoor sporting events). The application proposes to add plays, films, indoor sporting events, live and recorded music, performance of dance, facilities for making music and dancing. Late night refreshment has also been applied for with the hours Sunday to Wednesday 23:00 – 00:00, Thursday to Saturday 23:00 – 01:00. The proposed new opening hours are Sunday to Wednesday 08:00 – 00:30 and Thursday to Saturday 08:00 – 01:30.

23. Summary of application:

Monday	08:00 – 00:00
Tuesday	08:00 – 00:00
Wednesday	08:00 – 00:00
Thursday	08:00 – 01:00
Friday	08:00 – 01:00
Saturday	08:00 – 01:00
Sunday	08:00 – 00:00
Non-standard times: Christmas Eve, Boxing Day, New Year's Eve & Bank and Public Holidays until 01:00.	

24. Records show that one Temporary Event Notice has been used at the premises in August 2009, by the previous licence holders. There have been no noise complaints received by the Council since the current licence holders have been responsible for the premises.
25. The Council did receive one noise complaint regarding amplified music in December 2005, but this was before the applicants held the premises licence.
26. In the 1990's the premises had a public entertainment licence.

Options

General

27. 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

28. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider whether the suggested conditions contained within the Environmental Protection Officer’s representation:
 - a) All external doors and windows must be kept closed, other than for access and egress, when music is played (recorded or live, amplified or not) and the music will not be audible outside the premises and will cease at 23:30.
 - b) Performances of music or speech will only be permitted in the garden area on 2 occasions in a calendar year. Any such performances will cease at 21:30.
29. 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:
 - a) The playing of amplified music in outside areas of the premises is not permitted, or is restricted to a specified number of events and to a specified time.

- b) Prominent, clear notices shall be displayed at all exits and in the garden/outside areas, requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- c) The licensee or a nominated representative will receive and respond to complaints.

Legal options open to members

- 30. Members may grant the licence with no modifications to the conditions proposed in the operating schedule, modify the conditions of the licence or reject the whole or part of the application.

Consultation

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

Implications Assessment

- 32. 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

- 33. 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 H.

Handling

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

Conclusion

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

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

APPENDIX B – CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

General - All Four Licensing Objectives

None specified

The Prevention of Crime & Disorder

The Licence Holder will be a member of the local pubwatch or equivalent scheme.

Public Safety

The Licence Holder will ensure adequate provision of fire alarms, smoke detectors and emergency lighting. Regular checks of these safety features will be made and a record kept of their inspection.

The Prevention of Public Nuisance

None specified

The Protection of Children From Harm

The Licence Holder will ensure that high management standards are adopted to ensure the protection of children from harm. These standards will be available for inspection by authorised officers.

The Licence Holder will ensure that there are adequate staff on duty at all times to be able to supervise all areas.

The Licence Holder will ensure that staff make and document regular toilet checks.

APPENDIX E – SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES

Name & Address	Representation Details
Mr John Rogers & Mrs Alison Rogers, Five Bells, The Street, Brabourne, Ashford, Kent, TN25 5LP.	Applicant
Tracey Butler, Environmental Control Officer, Civic Centre, Ashford, Kent TN23 1PL	OBJ Prevention of Public Nuisance
Mr Robert Ripley, Clandon Cottage, The Street, East Brabourne, Kent, TN25 5LP.	OBJ Prevention of Crime & Disorder Prevention of Public Nuisance
Mr Brian Raynor & Mrs Gillian Raynor, Kiln End, The Malthouses, Canterbury Road, East Brabourne, Ashford, Kent, TN25 5LL.	OBJ Public Safety Prevention of Public Nuisance
Dr Fred Bridgham, 1 The Street, East Brabourne, Ashford, Kent, TN25 5LP.	OBJ Prevention of Public Nuisance
Mr Julian Paul Stratford, Brabourne Cottage, Canterbury Road, East Brabourne, Ashford, Kent, TN25 5LW.	OBJ Prevention of Crime & Disorder Prevention of Public Nuisance
Mrs Jacqueline Wood, Martlets Farm, Pilgrims Way, East Brabourne, Ashford, Kent, TN25 5LU.	OBJ Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Mr Paul Mc Gee, Longwood, Pilgrims Way, East Brabourne, Kent, TN25 5LU.	OBJ Prevention of Crime & Disorder Public Safety Prevention of Public Nuisance Protection of Children from Harm
Ms Ilinca Cantacuzino, 3 The Street, East Brabourne, Ashford, Kent, TN25 5LP.	OBJ Prevention of Public Nuisance Prevention of Crime & Disorder Public Safety
Dr Andrew Rowell, 3 The Street, East Brabourne, Kent, TN25 5LP.	OBJ Prevention of Public Nuisance Prevention of Crime & Disorder

	Public Safety
Mr N Francis & Mrs D Francis, Applegarth, The Street, Brabourne, Ashford, Kent, TN25 5LP.	OBJ Prevention of Public Nuisance
Mrs S Martin & Mr A Martin, Ivy Cottage, Canterbury Road, East Brabourne, Ashford, Kent, TN25 5LL.	OBJ Prevention of Public Nuisance
Mr Justin Ball, Forge Cottage, Canterbury Road, East Brabourne, Ashford, Kent, TN25 5LL.	OBJ Prevention of Public Nuisance
Mr & Mrs A Gibson, Church Farmhouse, The Street, East Brabourne, Kent, TN25 5LR.	OBJ Prevention of Public Nuisance
Mrs Jean Bates, Lamplands, Pilgrims Way, East Brabourne, Ashford, Kent, TN25 5LU.	OBJ Prevention of Crime & Disorder Prevention of Public Nuisance
Mr John Varrier, Foxburs, East Brabourne, Ashford, Kent, TN25 6LP.	OBJ Prevention of Public Nuisance
Dr Richard Poynter, The Oast House, Canterbury Road, East Brabourne, Ashford, Kent, TN25 5LL.	OBJ Prevention of Public Nuisance
Mr J & Mrs C Mayland, The Wheelwrights, East Brabourne, Ashford, Kent, TN25 5LW.	OBJ The Prevention of Public Nuisance The Protection of Children from Harm
Mr R & Mrs K Embleton-Smith, Orchard Cottage, The Street, East Brabourne, Ashford, Kent, TN25 5LP.	OBJ Prevention of Crime & Disorder Prevention of Public Nuisance
Mr Ian Highland, Downlands, Pilgrims Way, East Brabourne, Ashford, Kent, TN25 5LU.	OBJ Prevention of Public Nuisance Prevention of Crime & Disorder Public Safety

APPENDIX H - HUMAN RIGHTS

Article 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

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

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.

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.