



Licensing Sub-Committee

Notice of a Meeting to be held in the Council Chamber Civic Centre, Tannery Lane,
Ashford, Kent TN23 1PL on Tuesday 22nd March 2011 at 10.00 am

The Members of this Committee are:-

Cllrs. Mrs Blanford, Goddard, Holland
Reserve Cllr Mrs Martin

Agenda

Page
Nos.

1. **Election of Chairman**
2. **Apologies/Substitutes** – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii) and Appendix 4
3. **Declarations of Interest** - Declarations of Interest under the Code of Conduct adopted by the Council on the 24th May 2007 relating to items on this agenda should be made here. The nature as well as the existence of any such interest must also be declared
4. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 5th October 2010

Matters for Decision

5. St Mary the Virgin Church of England Church, Church Yard, Ashford, Kent, TN23 1QG - Application from an existing licence holder to vary the premises licence
 - (a) Clarification and Determination of Equal Maximum Time to be allocated to each party
 - (b) To note withdrawal of any representations
 - (c) The Hearing of the case

KL/4th March 2011

Ashford
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Please refer to the Guidance Notes on the procedure to be follows at this meeting as attached to this Agenda

If you know the appellant(s) and have a possible conflict of interest or have any queries concerning the Agenda please contact Kirsty Liddell on 01233 330499



Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **5th October 2010**.

Present:

Cllr. Feacey (Chairman);

Cllrs. Mrs Blanford, Norris.

Also Present:

Cllr. Holland

Licensing Manager, Legal Advisor, Environmental Control Officer, Member Services & Scrutiny Support Officer.

199 Election of Chairman

Resolved:

That Councillor Feacey be elected as Chairman for this meeting of the Licensing Sub-Committee.

200 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 5th July 2010 be approved and confirmed as a correct record.

201 Five Bells, The Street, Brabourne, Ashford, Kent, TN25 5LP – Application from an existing licence holder to vary the premises licence.

The Chairman opened the meeting and welcomed all those present. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Manager then gave a brief summary of his report. The application had been made by an existing licence holder to vary a premises licence. The application to vary the Premises Licence was contained in Appendix A of the agenda papers, along with a site plan, showing the proposed area for licensable activities. The application had been made in the proper manner. Representations had been received hence the determination coming before Members.

The premises was 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. Since the applicant took over the premises, substantial refurbishment work to the premises had been undertaken. The premises was located in a small hamlet approximately two miles from Brabourne Lees. There were residential properties in close proximity and the premises itself was at the end of an adjoining terrace of properties. The premises currently had 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 was contained in Appendix G of the agenda papers. The variation application proposed 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 proposed 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 proposed to add plays, films, indoor sporting events, live and recorded music, performance of dance, facilities for making music and dancing. Late night refreshment had 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 were Sunday to Wednesday 08:00 – 00:30 and Thursday to Saturday 08:00 – 01:30.

Additional material had been submitted from the applicant and two of the interested parties had sent additional letters which had been distributed to all interested parties prior to the meeting. The applicant had suggested amendments to the application in his correspondence, however Members should consider the application in its current form unless advised by the applicant that he wished to amend the application.

Records showed that one Temporary Event Notice had been used at the premises in August 2009, by the previous licence holders. There had been no noise complaints received by the Council since the current licence holders had been responsible for the premises. The Council did receive one noise complaint regarding amplified music in December 2005, but this was before the applicants held the premises licence.

The Licensing Manager advised that two additional letters from interested parties had been received within time to report to the Licensing Sub-Committee. These were distributed to all those in attendance at the meeting and a five minute break was given to enable all attendees to read through the additional letters.

Under Section 35(5) of the Licensing Act 2003, representations were relevant if they were about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) were made by an interested party or responsible authority within the prescribed period, were not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious. The representation from the Environmental Health Officer was provided at Appendix C of the agenda papers. The Officer had 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 had concerns that any music played outside the premises would cause a nuisance. A copy of her letter was provided in Appendix D of the agenda papers.

Eighteen interested parties had made representations. A summary of these representations was provided in Appendix E of the agenda papers and copies of the letters were contained in Appendix F of the agenda papers. All of the representations

were from parties living in the area. The representations had a number of common themes in terms of the licensing objectives and they could be summarised as follows:

- The prevention of public nuisance was 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 was 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 was responsible for these issues under the Licensing Act 2003.

Members could 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. The Licensing Manager advised the Licensing Sub-Committee that they may wish to request clarification regarding the licence which the applicant was applying for.

Mr Rogers, the applicant, spoke in support of the application. He advised the Sub-Committee that he had made the original application and had responded to the representations that had been made in his subsequent letter which had detailed amendments to the application. Along with his wife he had purchased the Five Bells in April 2010 and whilst he had trained and worked in architectural practice for many years, he was aware of the commercial realities that went hand in hand with owning a public house. The Five Bells had a loyal following and had been treated as a restaurant rather than a public house and had been known to close at 21:30. They now had a broader customer base and had made many improvements to the business, including refurbishment of the kitchen, toilet facilities and front of house and the introduction of a shop and meeting facilities. They wished to introduce alternative forms of trade to enhance the business, such as live music, especially for quieter periods during the week. He assured all those present that they would not consider the use of AWP machines or karaoke. The business would continue to be food dominated.

Managed garden functions would be essential and it was thought that wedding parties, birthday parties and christening celebrations would not be inappropriate to the location as they were part of village life. It was hoped that should the business be successful then people would visit from further afield. He had been aware that the application would be controversial and he had hoped that this debate would be the appropriate place for all to air their concerns.

He advised that he was seeking the support of Ashford Borough Council and hoped that the licence would be granted with sensible conditions. He would demonstrate that he would act as a responsible landlord and advised that he had chosen to vary the licence rather than apply for Temporary Event Notices as he felt that the latter option would have created tension. He was willing to compromise and had indicated this in his letter that had been distributed to all parties. Upon making the application he had spoken to local residents, placed the statutory notice in the window of the premises along with a letter inviting residents to speak him regarding the application so that he could clarify his intentions. He had not lobbied locally for support for the application however he had received a letter from a local resident who lived half way down The Street in Brabourne, the points of which could be summarised as follows:

- The changes made to the public house had led to an increase in business.
- The Five Bells worked in co-operation with the Church St. Mary's in Brabourne and was to host the Church's Harvest Supper.
- It was important at the current time for any business to be 'on the ball'. When the church held a wedding, funeral or confirmation many people preferred a venue close by. It was important for the proprietors to immediately respond to a request rather than wait for the permission of the Local Authority.
- The work that had been carried out to the premises had shown that the Landlords had the community's best interests at heart.
- Noise was not new to Brabourne. Church bells rang at least once a week and there were local celebrations where marquees were erected and music and light affected the area for several hours.

Mr Rogers further advised that the Five Bells was a family run business. If they were unable to develop patronage then they would have to work harder at the weekend. They wanted to increase business by word of mouth and recommendation rather than advertising. He concluded by advising the Sub-Committee that he wanted the Five Bells to make a contribution to the local community and that the revised application that he wished to be considered was that contained within his most recent letter.

The Licensing Manager advised of the process for applying for Temporary Event Notices, the maximum number that could be applied for in a year and that the Police were the only body that could object on the grounds of crime and disorder. He further advised the Sub-Committee that should they decide to grant the application in any form then they may wish to consider the removal of the embedded conditions that had been brought over from the 1960s legislation, 99% of licences had had these removed.

In response to questions from Members, Mr Rogers advised that they had carried out works and had tried to insulate the party wall; however that area tended to be used for dining. When they had redesigned the building they had done so with the intention of music being played at the other end of the bar. The capacity of the car park met the Kent County Council parking standard and the area was now lit and

regularly maintained. The shop sold fresh local produce and the meeting area was often used early in the morning after the school run.

The Licensing Manager outlined the revised application for the Sub-Committee.

Sale and Off-Sale of Alcohol:

Monday	08:00 – 23:00 for those at the bar/00:00 (when eating table meals)
Tuesday	08:00 – 23:00/00:00
Wednesday	08:00 – 23:00/00:00
Thursday	08:00 – 23:00/00:00
Friday	08:00 – 23:00/00:00
Saturday	08:00 – 23:00/00:00
Sunday	08:00 – 23:00/00:00
Non-standard times: Christmas Eve and New Year’s Eve until 00:30.	

Live and Recorded Music

Monday	18:30 – 23:00	One of these days a week
Tuesday	18:30 – 23:00	
Wednesday	18:30 – 23:00	
Thursday	None	
Friday	None	
Saturday	None	
Sunday	15:00 – 22:00	
Non-standard times: Christmas Eve and New Year’s Eve 18:30 until 00:30.		

Late Night Refreshment

Monday	23:00 - 00:00
Tuesday	23:00 – 00:00
Wednesday	23:00 – 00:00
Thursday	23:00 – 00:00
Friday	23:00 – 00:00
Saturday	23:00 – 00:00

Sunday	23:00 – 00:00
Non-standard times: Christmas Eve and New Year's Eve until 00:30.	

Outside Events with Live and Recorded Music

Four per year 12:00 until 22:00

Mr Francis, an interested party, spoke in objection to the application. He advised the Sub-Committee that the application was contested on the grounds of public nuisance and safety. The applicant wished to stage events at the Five Bells, the residents of the village did not want this to happen. East Brabourne was a designated conservation area located in a tranquil setting. The owners of the public house should be required to observe the conservation area and realise that the imposition of noise nuisance in the area was unacceptable, a matter which the volume of objections to the application attested to. He felt that the additional letter received from the applicant had been an attempt to sway villagers, he however would never accept noise nuisance emanating from either the establishment or its garden. He questioned why the residents of the village should 'pay a price' to further the commercial success of the business. Patrons of the public house regularly parked on the street which created a source of nuisance to those residents who could not access their dwellings, whilst the applicant stated that he could not control where individuals parked. He further advised the Sub-Committee that his objection to the application bore no malice towards the Five Bells or the owners, in fact he had dined at the establishment on a number occasions since Mr & Mrs Rogers had taken over. He wanted the business to succeed but not at the cost of the tranquillity of the area. He asked the Sub-Committee to reject the application in its totality.

In response to a question from a Member, Mr Francis advised that he had lived in the adjoining property since 2005 and had occasionally been able to hear talking through the wall. When an event which had involved a piano had been held at the premises, which had been located away from the party wall, he had been able to hear the piano over his television set and in an alternative room with the doors closed. He also advised that he could sometimes hear ambient music in his dwelling. He felt that that it was impossible that any music being played in the premises would not be audible in his dwelling.

Ms Cantacuzino, an interested party, spoke in objection to the application. She had been impressed with the improvements to the premises. She advised the Sub-Committee that she was representing three other households who were close neighbours to the Five Bells. The amendments that had been suggested to the application were still unacceptable. The Environmental Health Officer had objected to the application and it was clear that she could see the unsuitability of the requested licence in the location. In the 1990's music evenings had been held at the public house two nights a week, the residents of the village had long memories and some had left the village due to the disruption that this had caused. She felt that whilst the landlord was sensitive to the concerns of the residents he was also being naïve as there was no doubt in anyone's mind that live and recorded music would cause a disturbance to the residents of the village. It was an essential human right

for an individual to enjoy his/her property. If the application was granted then the licence would remain with the Five Bells and should the premises change owners then the new owners could be less scrupulous. She concluded by quoting from Eleanor Roosevelt on the Universal Declaration of Human Rights "Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere."

Mrs Francis, an interested party, added that she had been able to hear the fan in the Five Bells after the sound proofing work had been carried and had drawn this to Mr Rogers attention, she felt that this was an indication of how intrusive live or recorded music would be.

Mr Martin, an interested party, advised that his objection was to the hours proposed by the licence. He wished for it to be recorded that the system had not served the residents of Brabourne or the applicant well in fact it had resulted in an adversary position being created which was a great concern to him. He felt that the advice that had been given to the applicant to apply for all the hours that he may require was disturbing. He further advised that he felt that the public consultation was held at the wrong end of the process.

The Licensing Manager advised that when a licence holder wanted to vary a licence they were advised to apply for the hours that they may wish to use in the future, ultimately it was up to the applicant to decide what was suitable. He understood Mr Martins concerns and would modify the language that was used when advising applicants in the future. He further advised that the application process was laid out in statute and did not operate in the same way as planning where near neighbours were written to. In the case of licensing applications the applicant had to advertise the application at the premises and in the local paper, although alternative additional measures were suggested.

The Environmental Control Officer advised the Sub-Committee that the sound insulation referred to by the applicant was in fact a form of boarding which was not classified as sound insulation. In respect of a music event being held in the garden of the premises she advised that a marquee would not contain noise and so all of the neighbours could be affected by such an event. Environmental Control assessed the potential noise nuisance under specific guidance which was separate to that used by the Licensing Team. A statutory nuisance was deemed to be an activity which unreasonably impacted on the use or enjoyment of neighbouring occupiers premises (and would need to be frequent and unreasonable). If events were permitted at the premises then this could create a statutory nuisance. A statutory nuisance was difficult to prove and involved many hours of visits to the premises and neighbouring properties. She had suggested that all external doors and windows be closed when music was being played and no music should be audible outside of the premises, however the latter part of this would be difficult to achieve. If music were to be permitted at the premises then she requested that no amplification be used, no

drums to be used and a restriction placed on the number of people making music. If the applicant decided to apply for a Temporary Event Notice for an event with music then the Environment Control Team could be called on to investigate if a noise complaint was made. If the Sub-Committee were to permit events outside the premises then she requested that these did not occur on consecutive weekends.

In response to a question from a Member, the Environmental Control Officer advised that there were various forms of sound proofing that could be used at the premises however it would require considerable construction to the party wall from the Five Bells side and the cost and upheaval would not be reflected in the end result. It would be difficult to sound proof the party wall due to the design and construction of the building and its party wall with an immediate neighbour.

Mr Rogers concluded by thanking the Sub-Committee for considering the application.

The Licensing Manager then summed up the nature of the application and the issues for the Sub-Committee to consider. He reminded the Sub-Committee that they may grant the licence with no modifications, modify the conditions of the licence or reject whole or part of the application.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

Resolved:

That the premises licence be granted and the sale of alcohol be permitted from:

Monday to Thursday: 08:00 to 23:00
Friday to Sunday: 08:00 to 23:30

Hours for serving alcohol at tables until 30 minutes after the permitted hours for the sale of alcohol.

Non-standard times: Christmas Eve and New Year's Eve until 00:30.

Opening hours until 30 minutes after the end of the permitted hours for the sale of alcohol.

Live and Recorded Music:

Monday to Wednesday: 18:30 to 23:00

To be held on one of the permitted days per week only.

Non-standard times: Christmas Eve and New Year's Eve 18:30 until 00:30.

Late Night Refreshment:

Monday to Sunday: 23:00 to 00:00

Non-standard times: Christmas Eve and New Year's Eve until 00:30.

Outside Events:

No more than two per year 12:00 to 22:00

Subject to the conditions consistent with the operating schedule set out in Appendix B of the Licensing Manager's report, and the following additional conditions:-

- (i) All external doors and windows must be kept closed, other than for access and egress, when music is played (recorded or live).**
- (ii) Performances of music or speech will only be permitted in the garden area on two occasions in a calendar year. Any such performances will cease at 22:00 and not to be held on consecutive weekends.**
- (iii) Music not to be amplified or to include the playing of drums & not to consist of more than two performers at any one time.**
- (iv) 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.**
- (v) The Licence Holder or a nominated representative will receive and respond to complaints.**
- (vi) The Licence Holder will ensure that all events to be held in the garden of the premises will be notified to dwellings in a half mile radius surrounding the premises a minimum of 14 days before the event.**

Embedded conditions to be removed

The reasons for the imposition of the conditions and for the new terms of the licence is to ensure that the licence complies with the statutory licensing objectives

The Licensing Manager be given delegated authority to amend the wording of the conditions as appropriate.

The Legal Advisor informed those present of their right of appeal to the Magistrates' Court and the Right to Review a Premises Licence. She advised the Applicant that the Sub-Committee had concerns regarding the parking provision and that whilst this was not something that could be controlled by conditions on the licence nevertheless Members wanted the licence holder to try and make sure that the car parking area with the premises was laid out so that maximum use could be made of it by customers.

Queries concerning these minutes? Please contact Kirsty Liddell:
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Agenda Item No: 5
Licence Reference WK/201100669
Report To: LICENSING SUB COMMITTEE
Date: 22ND MARCH 2011



Report Title: **Licensing Act 2003** - Application from an existing licence holder to vary the premises licence -
St Mary The Virgin Church Of England Church, Church Yard, Ashford, Kent, TN23 1QG

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: **St Mary the Virgin Parish Church Council**

Premises: **St Mary The Virgin Church Of England Church, Church Yard, Ashford, Kent, TN23 1QG**

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

Key Decision: NO

Affected Wards: Victoria (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:
Background
Papers:**

Not applicable

None

Contacts:

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Report Title: **Licensing Act 2003 - Application from an existing licence holder to vary the premises licence of St Mary The Virgin Church Of England Church, Church Yard, Ashford, Kent, TN23 1QG**

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: **St Mary the Virgin Parish Church Council**

Premises: **St Mary the Virgin Parish Church Council, Church Yard, Ashford, Kent, TN23 1QG**

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 applicant has not identified any further steps and so no additional conditions have been put forward by the Licensing Manager. 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

9. No representations were received from the responsible authorities.

Representations from Interested Parties

10. Six parties have made representations. A summary of these representations is provided in Appendix B. Copies of the letters are contained in Appendix C.
11. All of the representations are parties living in the Churchyard area.
 - Five of the representations are written on a “common” letter, with all the representations stating that they object to the grant of the licence due to all four licensing objectives and these can be summarised as follows:
 - Unpleasant behaviour from people attending performances at the Church.
 - Noise associated with events held at the Church, although it is not clear if this is noise from recorded or live music performed at the events or from people attending the events.
 - Concern that people attending events may be involved in “mass-fights and bundles” and other associated crime and disorder.
 - Protection of children from harm.
 - Public safety given poor weather, slippery conditions, trips and falls associated with gravestones and from increased footfall in the area.
 - Current levels of anti-social behaviour in the area, especially in the evenings.
 - In addition one letter refers to potential problems associated with people smoking who are attending events.
12. One representation in support of the application was received after the 23rd February, but was rejected as outside the consultation period. Three representations were received from people living outside the vicinity of the Churchyard and were therefore rejected.
13. 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.
14. 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 25th January 2011 and the last date for receipt of relevant representations was therefore 23rd February 2011.

Relevant premises history

15. The Parish Church of St Mary the Virgin was built in 1280 and is located within an enclosed area in the centre of Ashford. The premises currently has a premises licence, permitting the sale of alcohol both on and off the premises Monday to Sunday 11:00 – 23:00 with no seasonal variations. A copy of the current premises licence is contained in Appendix D.
16. The church does not require a licence for regulated entertainment (which includes the playing of live or recorded music, the performance of plays and the showing of films) as these activities are exempted under the Licensing Act 2003. The exemption requires only that the entertainment is held at a place of public religious worship and it is not necessary that the entertainment is in any way connected with or forms part of any ceremony of religious worship.
17. The variation application proposes to change the layout of the church following building work to alter the church to accommodate more arts based events. There are no changes proposed to the licensable hours or to the permitted licensable activities. The sale of alcohol is permitted within the boundary of the churchyard.
18. The matter before Members therefore is whether the changes to the internal layout of the church are likely to have an impact on any of the four licensing objectives.
19. No complaints regarding the operation of the premises licence for the sale of alcohol have been made to the Council since it was issued in February 2007.
20. Members will be aware that there have been reports of anti-social behaviour made to the Police in the churchyard area, associated with people using churchyard passage (mainly) to cut through and from Tufton Street to the High Street.

Options

General

21. 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 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

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 E.

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 B – SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES

Name & Address	Representation Details
Mr Palmer 15 Church Yard, Ashford, Kent, TN23 1QG	Object Public Nuisance, Crime & Disorder, Protection of Children from Harm and Public Safety
Mrs Howard 17 Church Yard, Ashford, Kent, TN23 1QG	Object Public Nuisance, Crime & Disorder, Protection of Children from Harm and Public Safety
Young 11 Church Yard, Ashford, Kent, TN23 1QG	Object Public Nuisance, Crime & Disorder, Protection of Children from Harm and Public Safety
Mr Adby 14 Church Yard, Ashford, Kent, TN23 1QG	Object Public Nuisance, Crime & Disorder, Protection of Children from Harm and Public Safety
Mr Buchanan Talbot House, 13 Church Yard, Ashford, Kent, TN23 1QG	Object Public Nuisance, Crime & Disorder, Protection of Children from Harm and Public Safety
Mr Cooper Goose & Gridiron, 6 Church Yard Passage, Ashford, Kent, TN23 1QL	Object Prevention of public nuisance, prevention of crime and disorder, protection of children from harm and public safety
Virgin PCC St Mary The Virgin C Of E Church, Church Yard, Ashford, Kent, TN23 1QG	Applicant

APPENDIX E - 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.