

**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

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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 23<sup>rd</sup> 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.