



Licensing Sub-Committee

Notice of a Meeting to be held in Committee Room 2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on Friday 7th December 2012 at 10.00 am

The Members of this Committee are:-

Cllrs. Davey, Feacey, Shorter
Reserve Cllr. French

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 (see “Advice to Members” overleaf)**

- (a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011 relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the Council Chamber for the whole of that item, and will not be able to speak or take part (unless a relevant Dispensation has been granted).

- (b) Other Significant Interests (OSI) under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the Council Chamber before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) Voluntary Announcements of Other Interests not required to be declared under (a) or (b), i.e. announcements made for transparency reasons alone, such as:
- membership of outside bodies that have made representations on agenda items, or
 - where a Member knows a person involved, but does not have a close association with that person, or
 - where an item would affect the well-being of a Member, relative, close associate, employer, etc, but not his/her financial position

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute an OSI].

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG's Guide for Councillors, at <http://www.communities.gov.uk/documents/localgovernment/pdf/2193362.pdf>
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found with the papers for that Meeting.
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Head of Legal and Democratic Services and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

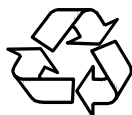
4. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 5th September 2011 1 – 11

Matters for Decision

5. Platform 5, 117 Station Road, Ashford, Kent – Review of 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/27th Nov 2012 _____

Please refer to the Guidance Notes on the procedure to be followed 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 September 2011**

Present:

Cllr. Goddard (Chairman);

Cllrs. Chilton, Marriott

Also Present:

Cllrs. Hodgkinson, Shorter.

Licensing Manager, Environmental Control Officer, Environmental Control Officer, Environmental Health Manager (Environmental Protection), Legal Advisor, Member Services & Scrutiny Support Officer.

Mr J Craig OBE – Applicant.

Mr J Phillips – Applicant's Representative.

Mr R Phillips – Licence Holder.

Mr S Thomas – Licence Holder's Representative.

Mr G Beach – Designated Premises Supervisor.

Mr S Rivington, Dr J Shaw – Interested Parties.

122 Election of Chairman

Resolved:

That Councillor Goddard be elected as Chairman for this Meeting of the Licensing Sub-Committee.

123 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 6th June 2011 be approved and confirmed as a correct record.

124 Richard Phillips Restaurant at Chapel Down, Chapel Down Vineyard, Smallhythe Road, Smallhythe, Tenterden, Kent, TN30 7NG – Review of 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 premises were situated just off Smallhythe Road in a small hamlet, in an area of Outstanding Natural Beauty, within the Chapel Down Winery. There were two premises licences in existence for the Winery. English Wines Group Plc had a licence for the ground floor of the building (the Winery) and the outside area. This licence had not been reviewed and was not up for consideration.

Kentish Dining Rooms Ltd had a premises licence for the first floor of the building (the restaurant) and the outside area. It was this premises licence for Richard Phillips Restaurant that was being reviewed and specifically it was events held outside the building in a marquee which had given rise to the review. The premises licence for the Richard Phillips Restaurant was applied for in April 2008. Following no representations from interested parties or responsible authorities, the premises licence was granted on 16th May 2008.

The premises licence, as contained in Appendix H of the Report, permitted the following activities:

Alcohol Sales (on and off the premises)		Regulated Entertainment (indoors and outdoors)		Late Night Refreshment (indoors and outdoors)	
Sun	08:00 - 02:00	Sun	08:00 - 01:00	Sun	23:00 - 02:00
Mon	08:00 - 02:00	Mon	08:00 - 01:00	Mon	23:00 - 02:00
Tues	08:00 - 02:00	Tues	08:00 - 01:00	Tues	23:00 - 02:00
Wed	08:00 - 02:00	Wed	08:00 - 01:00	Wed	23:00 - 02:00
Thurs	08:00 - 02:00	Thurs	08:00 - 01:00	Thurs	23:00 - 02:00
Fri	08:00 - 02:00	Fri	08:00 - 01:00	Fri	23:00 - 02:00
Sat	08:00 - 02:00	Sat	08:00 - 01:00	Sat	23:00 - 02:00

There was an extension until 02:00 on New Year's Eve for regulated entertainment (music, dancing, etc) and no live or recorded music was permitted outside after midnight.

Complaints of loud music were initially received by the Licensing Authority in October 2010, when it was stated by a neighbour of the premises that weddings had started in 2008, but they were generally 'low key' events with music played at low level and finishing in the afternoon. However in 2010 it was felt that the events had been weekly, generally with very loud music and with the volume turned up at 23.00. The complainant stated he had not been notified of events and the music was audible inside his property. When asked why he had not alerted the Council earlier he stated that he was now concerned as it was so frequent/loud.

The application for a review of the premises licence held by Kentish Dining Rooms Ltd was correctly submitted by Hallett & Co, acting on behalf of Mr Craig, on 15th July 2011 and was contained in Appendix A of the Report. Mr Craig had provided the following information in support of the application:

- The application for a review of the premises licence was based upon the need to resolve ongoing problems associated with excessive noise emitted from events held in a marquee.
- The problems arose in the summer of 2010 and the noise had affected Mr Craig during the daytime and evening. The noise took the form of amplified music and speech from events held in the marquee, from the people attending the event and from people leaving the event.
- Mr Craig had engaged the services of an acoustic consultant, Matthew Lawrence (MRL Acoustics) and had enclosed both his summary findings and the detailed technical report.
- Mr Craig stated that the licence holders had failed to ensure that live music events were of low level amplification and that staff failed to regularly monitor noise levels at events to prevent public nuisance, despite these being conditions attached to the premises licence. He stated that the level of control over noise generation was evidently inadequate and the conditions of the licence needed considerable modification to ensure the relevant licensing objectives were upheld.
- Mr Craig believed that a marquee without adequate sound proofing and situated in close proximity to residents premises was clearly going to create a public nuisance.

In addition to Mr Craig, 14 other residents from Smallhythe, from 10 houses had submitted representations in support of the application for review, these were contained at Appendix B of the Report. The concerns of the residents living in the vicinity of the premises were that they had experienced noise nuisance from music played at the premises, particularly the bass/low frequency sound, and from the voices of those attending events and some had raised concerns about the noise from people leaving the premises. A map showing the location of the residents that had made representations was included at Appendix C of the Report.

In addition to the residents who had supported the review hearing, the Environmental Control Officer had submitted a representation based upon the prevention of public nuisance licensing objective. Her representation, which was contained at Appendix D to the Report, contained a summary of the Council's Environmental Protection

Team's involvement with the premises, following noise complaints first received in October 2010. Following further complaints received during 2011 and observations by Officers and the apparent failure of the premises licence holders or their staff to resolve the noise issues, the Environmental Protection Team had reviewed the case and a Noise Abatement Notice was issued on 27th July 2011, a copy of the Notice was contained at Appendix I of the Report.

A number of additional documents had been sent to all parties following the publication of the agenda papers. The documents were posted on 26th August 2011 and 1st September 2011, all parties confirmed that they had received the documents. A conciliation meeting was held on Friday 2nd September 2011 which had been attended by Mr Craig, Mr R Phillips, Mr G Beach, Mr R Phillip's Business Partners and legal representative. The discussion held at the meeting had been beneficial to all parties and some common ground had been reached. Further discussions had taken place earlier that morning which had further assisted with resolving a number of issues between the Applicant and the Licence Holder.

Mr J Phillips, the Applicant's Representative, apologised to the Sub-Committee for the delay in starting the Hearing. The Licence Holder, Applicant and respective representatives had felt that it would be worthwhile to try to resolve matters prior to the start of the Hearing. He was pleased to say that they had come to an agreement, however whilst both parties were in agreement they were aware that the Sub-Committee would not be bound by this.

Principally the reason for the Review was due to the number of wedding events taking place in the marquee in close proximity to the boundary of Spots House. When events had taken place involving live music the disruption caused had been intolerable. During 2011 there had been 19 wedding events. A Noise Abatement Notice had been served on the premises which resulted in a degree of control over the noise from the events. A recent planning application for the use of the premises had been refused by the Planning Committee and the Development Control Manager had been instructed to take enforcement action to secure the cessation of the use of the land for weddings, functions and events, and to determine the precise requirements and timing of the action to be taken.

A number of draft conditions had been agreed by both parties These conditions were summarised to the Sub-Committee as follows:

General Conditions

- No regulated entertainment to take place other than in the first floor of the premises.
- No amplified speech within the marquee.
- Stage canopy around the marquee to remain in place.
- Sound attenuation within the marquee to be maintained.
- Marquee to close at 21:00 on any day.
- Window locks to be in place and closed when regulated entertainment takes place, save for access and egress.

Wedding Conditions

- Only DJ/recorded music to be permitted using the house PA system, including noise limiter, set at a level to be agreed with the Environmental Control Officer.
- Noise limiter to be set by Environmental Control Officer that cannot be bypassed without permission.
- No regulated entertainment after 23:00
- Restaurant to close at 23:30 with all patrons to leave the premises at this time.
- The access door of the restaurant to be monitored and to be used for access and egress only.
- The noise limiter to be linked to the door, to ensure that if the door was left open for a period of time then the level of the music would be reduced accordingly.
- No intoxicating liquor to be consumed within the grounds, save for the restaurant and patio after 21:00.
- No more than 12 wedding events to take place between 1st May and 31st August 2012, thereafter no more than 10 wedding events to take place between 1st May and 31st August in any year, with a further 5 wedding events outside this period in any year.
- No more than two events to take place on three consecutive days.
- Music ancillary to wedding events to be played for a maximum of 1 hour on any day.
- All doors and openings to be closed when the marquee is being used, save for access and egress.
- Events held in outside areas, including the marquee, shall be pre-booked and entrance by ticket or invitation only.
- The Designated Premises Supervisor or his nominated representative will monitor, no less than hourly, the noise levels at locations agreed with the Environmental Control Officer.
- A written record of all monitoring must be made available to the Local Authority upon request.
- Any wedding event where regulated entertainment takes place will have a wind down period where there is a reduction in volume.
- A noise management plan, based upon Mr Saunders report on 5th August 2011 and to include car parking arrangements, should be agreed with the Environmental Control Officer and implemented before the first wedding event of 2012.
- The Designated Premises Supervisor shall ensure that clear notices are displayed in the marquee and restaurant requesting patrons to leave quietly, where a DJ is employed he shall make an announcement to this effect.
- There shall be no disposal of bottles or refuse between the hours of 21:00 and 09:00.

Mr J Phillips further advised that the Licence Holder had agreed to make a financial contribution to the Applicant for the expense that he had incurred by applying for a Review of the Premises Licence. Whilst he accepted that the proposed conditions may not meet all of the concerns raised by local residents and the Environmental Control Officer, the Applicant would be content with the outcome should these conditions be imposed by the Sub-Committee.

In response to questions from the Sub-Committee Mr J Phillips advised that the issues surrounding car parking would be dealt with through the noise management plan as there were concerns regarding patrons parking close to the boundary of Spots House and the level of noise created when they left late in the evening. This area would be designated for those patrons who would be leaving their vehicles overnight and so would limit the noise from vehicles in this area. Whilst noise mitigation measures for the staircase (providing access to the first floor restaurant) had been suggested by Mr Saunders, the Applicant was not concerned about this, however Mr S Thomas would address the matter later. He considered that the proposed conditions were both acceptable and reasonable.

The Environmental Control Officer advised the Sub-Committee that she had not become involved until after the 2010 wedding season had taken place. She advised Members that issuing a Noise Abatement Notice was unusual; in fact it was an extreme measure. She had extensively measured noise levels at the premises. A noise limiter could be linked to the restaurant access door however this would depend on the item that was purchased, she confirmed that she would be willing to give advice on this prior to purchase. She also confirmed that she would agree locations for noise testing with the Designated Premises Supervisor. Environmental Protection would continue to periodically monitor the noise levels at the premises in accordance with the Noise Abatement Notice. In respect of the noise management plan the Environmental Control Officer felt that the acoustic damping to the staircase should be included. She requested clarification on the definition of a wedding event for the purpose of the proposed draft conditions.

In response to questions from the Sub-Committee the Environmental Control Officer advised that the situation at Chapel Down could have been handled in a more appropriate manner by the Licence Holder. She had met with the Wedding Organiser prior to the last wedding event held at the premises which resulted in no noise complaints being received.

The Environmental Health Manager (Environmental Protection) further advised that the Noise Abatement Notice applied to the whole of the venue.

Mr S Rivington, an Interested Party, queried why live music could not be played within the restaurant area if a limiter was used. He had experience in this area and was aware of another venue where live bands played and a noise limiter was also used.

The Environmental Health Manager (Environmental Protection) advised that the majority of performers did not like to play live if they were restricted by a noise limiter.

Mr J Phillips felt that the definition of wedding event should include civil partnerships. Whilst they were sympathetic to live musicians the site was a sensitive one and it was felt that recorded music controlled by a limiter would be more appropriate.

Mr S Thomas, the Licence Holder's Representative, felt that paragraph 18 of Mr G Beach's supporting statement summarised the situation that the Licence Holder was in "We all at Chapel Down are concerned about issues that have inadvertently arisen partly due to the fact that we were not able to install everything that we would have liked to have done as quickly as possible. We were placed in the invidious position of letting down people who had an important day booked with us, trying to put in place measures that were the best we could at the time and did feel very thwarted that we could not get the lining installed as quickly as we would have liked."

A number of events that had been held at the premises had not caused any problems, these included cream and steam days, charity events and live bands. It was important to remember that it was only wedding events that had resulted in complaints from neighbours. The herb garden and pagoda provided a romantic setting in which to get married.

There were a number of conditions put forward that related only to wedding events as these were the events that had caused problems relating to noise. The Licence Holder wished to be a good neighbour and so had agreed to a number of compromises to the premises licence. The wedding business was critical to the survival of the restaurant and was supported by Locate in Kent, Visit Kent and the Chief Executive of Chapel Down. The business supported local tourism and employed local people.

Mr S Thomas advised that the events that had taken place on 19th and 21st August 2011 that had resulted in further complaints regarding noise being put forward were wedding events. The issue surrounding noise had come about due to contractual arrangements between the Bride and Groom and the bands that had been booked for the events. The bands were relocated to the restaurant area however this had still created issues relating to noise. He confirmed that live bands would not be able to be booked for wedding events in the future, this would be made clear to any couples wishing to get married at the premises.

The marquee would cease to be used after 21:00, after this time guests would be escorted to the restaurant area. The Licence Holder was aware that if these issues were not resolved then he would be in breach of the Noise Abatement Notice. Due to a number of commitments the Licence Holder felt that he was unable to spend a significant amount of time at the premises and had taken the decision to bring in a new Designated Premises Supervisor.

In his opinion the definition of wedding event should include civil partnerships, however the renewal of vows was considered to be a private party event. Weddings had taken place at the premises since 2008 however issues relating to noise had not arisen until 2010. Remedial action had been undertaken and the addition of the proposed conditions would meet the public nuisance licensing objective.

Mr S Thomas advised the Sub-Committee that the proposed conditions were agreeable to both the Licence Holder and the Applicant.

In response to questions from the Sub-Committee Mr S Thomas advised that no more than 150 guests would be able to attend a wedding event, this would be monitored by a guest list provided by the Bride and Groom. Whilst there was an opinion that music played during a wedding was ancillary to the event they had wanted to avoid any confusion and so were willing to condition the playing of music during a wedding and limit it to one hour per day. A dedicated mobile telephone would be given to the Designated Premises Supervisor, or in his absence his representative, to ensure that local residents were able to contact the restaurant should any issues arise.

The last wedding held at the premises had been a much quieter affair, and it was fair to say that some of the problems from other events could have been avoided. The proposed noise management plan would identify where patrons could park, the methods of ensuring that patrons were moved from the marquee to the restaurant with limited disturbance and to ensure that patrons left the premises at the close of the event without disturbing local residents.

The Environmental Control Officer felt that noise damping to the staircase leading to the restaurant should be considered as part of the noise management plan. She also felt that the resurfacing of the car park should be considered. Whilst these were areas outside of the Licence Holder's control, she felt that these were longer term measures that could be addressed.

Mr S Thomas advised that whilst the Licence Holder would be prepared to discuss these points with the Landlord they were not within his power to undertake. It was noted however that noise from the staircase had not been an issue for any of the local residents. Once inside the restaurant patrons would not be permitted to go down the staircase unless they were leaving the premises. There would be no consumption of alcohol in the grounds after 21:00.

Dr J Shaw, an Interested Party, addressed the Sub-Committee. She was concerned about the poor management record of events held at the venue. She was also concerned that the wedding venue business was expanding rapidly. She requested clarification of whether the conditions relating to wedding events also applied to stag parties? She felt that only one type of event had been focused upon.

In response to Dr Shaw's question the Licensing Manager replied that the proposals were that no regulated entertainment would be permitted outside the restaurant. This was agreed by Mr S Thomas, with the exception of music ancillary to a wedding ceremony being permitted in the Herb Garden for no longer than 1 hour in any one day, to remove the ambiguity about whether this would constitute regulated entertainment.

All parties agreed to a 45 minute break to enable Mr S Thomas to finalise and print a list of the proposed conditions for the Sub-Committee to consider.

Upon recommencement all parties were handed a copy of the proposed conditions as put forward and agreed by both the Applicant and the Licence Holder.

Mr J Phillips confirmed that the proposed conditions would be in addition to the conditions currently attached to the premises licence.

Dr J Shaw advised that the proposed conditions were comprehensive however it was important to have a good management regime on the site.

Mr R Phillips, the Licence Holder, advised that going forward 'terms and conditions' would be explained fully to prospective Bride and Grooms and these would be set out prior to the confirmation of bookings. All couples that had booked the venue for 2012 had been contacted and advised of the Review. Once a decision had been made individual meetings would be held with couples to explain the implications and if couples felt that they were unable to hold their event at the premises they would get a full refund of their deposit.

The Environmental Control Officer advised that in her opinion the noise management plan would need to be 'signed off' prior to the start of the 2012 wedding season.

In conclusion Mr S Thomas advised that the purpose of a Review was to consider actions that could be taken and to ensure that any actions were necessary and proportionate. He asked that the Sub-Committee imposed the proposed conditions before them as they would safeguard local residents from the problems that had been experienced during 2011. It had been an unpleasant experience for Mr R Phillips and he did not wish to relive or prolong the experience. Mr G Beach, as the new Designated Premises Supervisor, was keen to take the premises forward and ensure that the situation did not reoccur. He invited the Sub-Committee to take the view that the concerns raised by Mr J Craig could be adequately addressed by the proposed conditions.

Mr J Phillips concluded by advising that any conditions imposed by the Sub-Committee should be necessary and proportionate. The Applicant had faced a nightmare that was entirely of the Licence Holders making. He was confident that the proposed conditions would resolve the problems that had occurred during 2011.

The Licensing Manager then summed up the nature of the application and the issues for the Sub-Committee to consider.

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

Resolved:

That the review of the premises licence be granted and the following additional conditions be applied to the licence:

General

- 1. No regulated entertainment other than in the first floor restaurant.**
- 2. No amplified speech will take place in the marquee.**
- 3. A stage canopy shall remain installed within the marquee**
- 4. Sound attenuating lining currently installed in the marquee to be maintained and kept in place;**
- 5. The Marquee to close by 21.00 hours on any given day**
- 6. Window locks to remain fitted to all windows in the restaurant which shall remain closed whenever regulated entertainment is taking place.**

In respect of weddings (which shall be defined to include the traditional bride and groom wedding and also civil partnership celebrations) to be held at the premises:

- 1. Only DJ based entertainment and/or recorded music will be permitted in the restaurant for weddings, using a house PA system, including a noise limiter. Dance floor levels to be agreed with the Local Authority following measurements of the “transfer function” to Spots House.**
- 2. The Noise Limiter shall be set at a level agreed with the Council Environmental Health Officer (EHO) and shall not thereafter be capable of being altered or bypassed without his/her agreement**
- 3. There will be no regulated entertainment in the restaurant after 23.00 hours**
- 4. The Restaurant will close by 23.30 and customers required to leave by that time.**
- 5. The access door to the restaurant to be monitored at all times during music events so that the door to the restaurant remains closed save for access and egress.**
- 6. The premises licence holder will fit a noise limiter that links to the opening of the door.**
- 7. Save for the restaurant, no intoxicating liquor to be consumed within the grounds of the premises after 21.00 hours.**
- 8. No more than 12 wedding events to be held between 1st May and 31st August 2012 Thereafter no more than 10 wedding events will be held between these dates in any given year and outside that period there will be no more than 5 weddings.**

9. In relation to the preceding condition, there shall be no more than 2 such events in 3 consecutive days.
10. Only music ancillary to a wedding ceremony can be played in the Herb Garden and in any event for no longer than 1 hour in any one day.
11. Whenever the marquee is in use all doors, windows and panels to the marquee to remain closed except for access and egress to the marquee.
12. All events in outside areas which shall include any marquee or similar structure shall be pre booked with entrance being permitted to organisers, their bona fide guests and ticket or invitation holders only.
13. The DPS or his nominated representative shall check periodically (no less than hourly) that noise levels are acceptable at locations and levels agreed with the EHO, all such measurements to be taken within the boundary of the Chapel Down site. A written record shall be kept of all such monitoring and made available to the licensing authority upon request.
14. During any regulated entertainment there will be a wind down period of at least 30 minutes when the music played is reduced in volume so as to be discernibly quieter.
15. The Noise management plan regarding guests departing as set out in Mr Saunders' report of 5th August 2011 be implemented by the week commencing 16th April 2012 also to include proposals to minimise any disturbance relating to parking with the agreement of the EHO such agreement not to be unreasonably withheld.
16. The DPS shall ensure prominent and clear display of notices at all exits in the marquee and restaurant requesting customers leave quietly – and where a DJ is employed he will be requested to remind patrons of this.
17. There will be no disposal of bottles and/or rubbish between 21.00 hours and 09.00 the following morning.
18. The Licence Holder will negotiate with the Landlord the implementation of noise attenuation measures as agreed with the EHO to the external steps and landing to the restaurant and implement those measures within two months of receiving permission.

The Licensing Manager be given delegated authority to make minor amendments to the wording of the conditions as necessary.

Agenda Item No: 5
Licence Reference WK/201207716& LN/020110097



ASHFORD
BOROUGH COUNCIL

Report To: Licensing Sub Committee

Date: 7th December 2012

Report Title: **Licensing Act 2003 - Application is made for the review of the premises licence in respect of Platform 5, 117 Station Road, Ashford, Kent TN23 1EY on the grounds of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.**

Report Author: Licensing Manager

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

Application type: **Application is made for the review of the premises licence under the provisions of section 51 to the Licensing Act 2003.**

Applicant: **Chief Inspector 8252 Martin Bradley on behalf of the Chief Officer of Police.**

Premises: **Platform 5, 117 Station Road, Ashford, Kent TN23 1EY**

To advise elected members of a valid 'Application for a Review of a Premises Licence' under Section 51 of the Licensing Act 2003 has been received and a hearing and determination is required under Section 52(2) of the Act.

Key Decision: No

Affected Wards: Victoria Ward

Recommendations: **That the Licensing Sub-Committee recommended to make a determination, at the conclusion of the Hearing, as required by Regulation 26(2) of the Licensing Act (Hearings) Regulations 2005.**

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: There are no specific financial implications arising from this application. However additional costs may be incurred should

the matter go to appeal.

**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.

**Background
Papers:**

Legal: Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises and this includes determinations for applications to review.
None

Contacts:

james.hann@ashford.gov.uk – Tel: 01233 330721

Report Title: Licensing Act 2003 - Application is made for the review of the premises licence in respect of Platform 5, 117 Station Road, Ashford, Kent TN23 1EY on the grounds of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

Purpose of the Report

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

Application type: **Application is made for a review of a premises licence**

Applicant: **Chief Inspector 8252 Martin Bradley on behalf of the Chief Officer of Police.**

Premises: **Platform 5, 117 Station Road, Ashford, Kent TN23 1EY.**

Issue to be Decided

2. Members are asked to consider an application to review a premises licence received under the provisions of section 51 of the Licensing Act 2003.

Background

3. The Licensing Act 2003 (the Act) consolidated six licensing regimes in a single statute and replaced the previous controls on the sale of alcohol under the provisions of the Licensing Act 1964, introducing the concept of the 'premises licence'.
4. A premises licence is required for any venue where any 'licensable activity' is carried on. Such activities include the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment etc.
5. All pubs, nightclubs, private members clubs, off licences, cinemas, theatres, restaurants and late night takeaways, etc require a licence if a licensable activity is carried on.
6. When the Act came into affect the government included a very clear presumption in favour of businesses in the Licensing Act 2003 since the Act requires that any application should be granted on the terms on which it is applied for, unless any valid representation is made.
7. Where representations are made, the Act suggests that the licensing authority can apply a 'light touch' regulation.

8. This approach is 'balanced' in the Act by provisions which permit a premises licence to be reviewed by the licensing authority, upon receipt of a valid application for review from an interested party or responsible authority.
9. An application for the review of a premises licence must be circulated to the responsible authorities to give them the opportunity to make representations. (police, fire and rescue service, environmental health, trading standards, social services, a health body and the planning authority).
10. Where an application for a review has been accepted by the licensing authority the Act requires that a notice is displayed on the premises, in a position where it can be seen from the outside of the premises, stating that an application to review the premises licence has been made. A notice must also be displayed at the Council's offices and on its website.
11. As well as responsible authorities, any other person can make representations to the licensing authority, regardless of their geographical proximity to the premises.
12. Representations are only valid where they relate to one of the four licensing objectives, namely:
 - a) the prevention of public nuisance
 - b) the prevention of crime and disorder
 - c) ensuring public safety
 - d) protection of children from harm
13. Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.
14. The review application must be considered in the light of the four licensing objectives, the Guidance issued by the Secretary of State and Ashford Borough Council's Statement of Licensing Policy.
15. The Guidance states that licensing authorities should look to the police as the main source of advice on crime and disorder.

Application for a review received

16. Chief Inspector 8252 Martin Bradley, on behalf of the Chief Officer of Police submitted an application for a review of the premises licence held by Platform 5 Limited, 117 Station Road, Ashford, Kent TN23 1EY for the premises known as Platform 5 Limited, 117 Station Road, Ashford, Kent TN23 1EY
17. The application was correctly submitted on 26th October 2012 and can be found in Appendix A.
18. The application for the review relates to the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm licensing objectives.

19. All applications for the review of a premises licence require the applicant to state the grounds for the review. In summary the application for a review states the following problems:
 - a) The sale of alcohol to persons under 18 years of age
 - b) The consumption of alcohol by children
 - c) The lack of age verification policies
 - d) The use of unregistered door staff
 - e) The ineffectiveness of the premises' management.
20. This application for a review of the premises licence is based upon events on 30th June, 16th July, 30th September, 5th October and the 19th October 2012.
21. Additional information in the form of witness statements from police officers and special constables have been provided:
 - Special Sergeant Prigmore re: incident on 30th June
 - PC Pickett re: incident on 5th October
 - PC Smith re: incident on 5th October
 - Special Sergeant Prigmore re: incident on 5th October
 - PC Haines re: incident on 5th October
22. Copies of these statements are available in Appendix B.
23. The police have provided a summary of the observations after viewing the CCTV from Platform 5 covering the event on 5th October. This can be found in Appendix C.
24. The Guidance suggest that where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review.
25. A number of meetings have been held with the licence holder by the police and others to inform the relevant parties of the police's concerns and to make suggestions as to appropriate steps to promote the licensing objectives. A summary of these meetings has been provided by the police and can be found in Appendix D.
26. No other representations from other persons or responsible authorities were received during the 28-day notice period.
27. The licensing authority has accepted the application for a review as valid.
28. Following acceptance of the application for a review, the notice which is required to be displayed, was displayed, at the premises of Platform 5 Limited, 117 Station Road, Ashford, Kent TN23 1EY and at the offices of the Council in Tannery Lane and on the Council's website. These notices were checked throughout the consultation period.

29. The licensing authority has complied with the requirements of Section 51 (3)(b) and (d) of the Licensing Act 2003 by advertising the application for a review and inviting representations. A copy of the Public Notice is appended as Appendix E.

Relevant Premises History

30. The premises are situated on Station Road, Ashford, in close proximity to Hustle nightclub and the road leading to Ashford railway station. While there has been a public house in this location for many years, the substantial renovations carried out by the current occupiers in 2010 resulted in a new premises licence being submitted.
31. The premises licence for Platform 5 was applied for by Alert Solutions Limited in January 2011 following no representations from interested parties (as they were termed when the application was made) or responsible authorities, the premises licence was granted on 11th February 2011.
32. The premises licence, as in Appendix F, permits the following activities:

<i>Alcohol Sales (on the premises only)</i>		<i>Regulated Entertainment</i>		<i>Late Night Refreshment</i>	
Sunday	11:00 - 23:00	Sunday	11:00 - 23:00		
Monday	11:00 - 23:00	Monday	11:00 - 23:00		
Tuesday	11:00 - 23:00	Tuesday	11:00 - 23:00		
Wednesday	11:00 - 23:00	Wednesday	11:00 - 23:00		
Thursday	11:00 - 23:00	Thursday	11:00 - 23:00		
Friday	11:00 - 02:00	Friday	11:00 - 02:00	Friday	23:00 - 02:00
Saturday	11:00 - 02:00	Saturday	11:00 - 02:00	Saturday	23:00 - 02:00

33. There is an extension until 02:00 on New Year's Eve for regulated entertainment (music, dancing, etc) the sale of alcohol and for late night refreshment.
34. Since the licence was issued three applications for minor variations have been submitted. Two of these were for changes to layouts in the two bar areas and the third application was made to include the outside area in the permitted area for licensable activities. All three minor variations were granted.
35. One noise complaint was received by the Council regarding an event at Platform 5 on Saturday 4th August 2012. This related to music played in the marquee and was collaborated by the police. The licence holder was advised of the complaint and advised to ensure that the music levels were restricted as to not cause a nuisance.

Options

General

36. Members attention is drawn to the following matters:
- a) All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
 - b) 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.
 - c) The Guidance states that licensing authorities should give considerable weight to representations about child protection matters.
 - d) The various options put forward within this report are suggested on the basis of:
 - information contained within the application form;
 - the responsible authority representation and
 - on those measures currently in existence.
 - e) Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes.
 - f) 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."
 - g) It is therefore perhaps useful to look at the conditions on the current premises licence and see whether they have been adhered to and whether additional conditions may be necessary to promote the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.
 - h) If members, after considering the evidence in front of them and having listened to all parties come to the conclusion that the lack of management is a significant contributing factor, then they may wish to consider conditions that are not influenced by management competence.
 - i) Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the

premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

- j) Conditions on a premises licence are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged in the Secretary of State’s Guidance. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardized and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the Act or other legislation;
 - should be proportionate, justifiable and be capable of being met;
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format.
- k) The premises licence holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and a holographic mark.
- l) It is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if premises have a policy that requires any individual that appears to be under the age of 21 to produce identification.

- m) The main purpose of the 'designated premises supervisor' as defined in the Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder.
- n) The premises licence holder or club premises certificate holder must ensure that staff (in particular staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy applied by the premises.
- o) It should be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises.
- p) The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the Act and conditions attached to the premises licence to promote the licensing objectives.
- q) Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- r) Members are also referred to Ashford Borough Council's Statement of Licensing Policy. The following paragraphs are relevant to this application:

Para 76.

The Licensing Authority will seek to promote the licensing objective of preventing crime and disorder. It also has a statutory duty under section 17 of the Crime and Disorder Act 1998 to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Para 90.

The Licensing Authority recognises that the promotion of family-friendly environments is a key contributory factor in making a town or village centre welcoming to a variety of people of all ages. The 2003 Act in giving accompanied and unaccompanied children greater access to licensed premises is seen as a positive step, which may bring about a social change in family friendly leisure. Clearly, this relaxation places additional responsibilities upon licence holders. It is also recognised that adults accompanying children also have responsibilities.

Para91.

However the risk of harm to children remains a paramount consideration when determining applications. Whilst the Licensing Authority will not impose restrictive conditions unless there are good reasons to do so, it will consider imposing further limitations where it appears necessary in relation to individual premises to protect children from harm, after receipt of relevant representations.

Para 92.

In all cases the admission of children will be a matter of discretion of the individual licensee or club, within the restrictions imposed by the 2003 Act or on the licence or certificate. In addition the 2003 Act outlines a number of offences related to licensing and children.

Para 93.

This policy cannot highlight every scenario where restrictions may be necessary but examples of premises where concerns will be raised include:

- *Where there are convictions of current members of staff / management for serving alcohol to minors or premises with a reputation for underage drinking*
- *Where the requirement for proof of age identification is not the norm*
- *Where the supply of alcohol for consumption of the premises is the exclusive or primary purpose of the services provided 21*

Hearings Regulations

37. Regulations governing hearings under the Licensing Act 2003 have been made by the Secretary of State.
38. The Licensing Authority has provided all parties with the information required in the Regulations to the 2003 Act including:
 - a copy of the Notice of Hearing;
 - the rights of a party provided in Regulations 15 and 16
 - the consequences if a party does not attend or is not represented at the hearing
 - the procedure to be followed at the hearing.

Appeals

39. The Licensing Act 2003 Section 181 and Schedule 5 makes provision for appeals to be made by the applicant; the holder of the premises licence and those making representations against decisions of the Licensing Authority to the Magistrates' Court.

Recommendations

40. That Members carefully consider the application for review and take such steps as detailed in paragraph 50 below that the Sub-Committee consider necessary for the promotion of the licensing objectives.

Decision options

41. The options available to members are set out in paragraph 45 and 47 below. If members believe steps should be taken to promote the prevention of crime and disorder, the prevention of public nuisance and/or the protection of children from harm they may wish to consider the conditions: requested by Kent Police:
- a) No persons under 18 to be permitted on the premises at any time. Alternatively the committee may wish to consider, that persons under 18 may be permitted on the premises up to 21:00 if accompanied by an adult, and only if they are having a table meal.
 - b) At least one member of door staff per 50 customers on duty from 21:00 on Friday and Saturday nights. The same condition to apply for any organised, ticketed or advertised event on any other night.
 - c) The Licence Holder will ensure that all staff are trained on age awareness and that all staff training records are regularly audited and will be available to all of the responsible authorities at their request.
 - d) The Licence Holder will ensure that an incident book is maintained at the premises and that all staff will be trained in its use. The book will be bound and clearly marked with the following information:
 - Time & date of incident
 - Full description of incident
 - Details of description of any person involved in the incident
 - Any action taken by staff
 - Name of staff member making the entry
 - e) At least one personal licence holder to be on duty at the premises from 18:00.
42. If Members decide it is appropriate for a condition relating to door supervisors to be imposed on the licence the premises licence must include a condition requiring that individual to be licensed by the Security Industry Authority under the 2001 Act, or be entitled to carry out that activity by virtue of section 4 of the 2001 Act.
43. The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the

funding of good and important causes. Members should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Legal options open to members

44. The Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
45. The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
46. However, where responsible authorities such as the have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
47. Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
 - to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - to suspend the licence for a period not exceeding three months;
 - or revoke the licence.
48. In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
49. The Licensing Act 2003 at section 52(11) states that:

“A determination under this section does not have effect –

- a) until the end of the period given for appealing against the decision, or*
- b) if the decision is appealed against, until the appeal is disposed of.”*

Consultation

50. All relevant parties have followed the consultation procedures required under the Licensing Act 2003. 51. 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.

Human Rights

52. 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

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

Conclusion

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

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Summary of Appendices

Appendix A: Application to review

Appendix B: Witness statements

Appendix C: Summary of observations re: incident on 5th October 2012

- Appendix D:** Summary of meetings with licence holder and/or DPS
- Appendix E:** Copy of Public Notice
- Appendix F:** Platform 5's premises licence, with plans
- Appendix G:** Human Rights

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.