

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

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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.