



## Licensing Sub-Committee

Notice of a Meeting to be held in the Council Chamber, Civic Centre, Tannery Lane,  
Ashford, Kent TN23 1PL on Thursday 3<sup>rd</sup> April 2014 at 10.00 am

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The Members of this Sub-Committee are:-

Cllrs. Feacey, Marriott, Shorter  
Reserve Cllr. Davey

### Agenda

- |   | <b>Page<br/>Nos.</b> |
|---|----------------------|
| 1. <b>Election of Chairman</b>  |                      |
| 2. <b>Apologies/Substitutes</b> – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii) and Appendix 4              |                      |
| 3. <b>Declarations of Interest:-</b> To declare any interests which fall under the following categories, as explained on the attached document: | 1                    |
| a) Disclosable Pecuniary Interests (DPI)  |                      |
| b) Other Significant Interests (OSI)  |                      |
| c) Voluntary Announcements of Other Interests   |                      |
| See Agenda Item 3 for further details   |                      |
| 4. <b>Minutes</b> – To approve the Minutes of the Meeting of this Sub-Committee held on the 28 <sup>th</sup> February 2013                      | 3 – 6                |

### Matters for Decision

- |   |        |
|---|--------|
| 5. The Old Prince of Wales, New Street, Ashford, Kent, TN24 8UU – Application for the Review of the Premises Licence. | 7 – 79 |
| (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.  |        |

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KL/21 Mar 14

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

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

**Declarations of Interest (see also “Advice to Members” below)**

- (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 meeting for that item (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 meeting 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 disclosed under (a) and (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 either an OSI or in some cases a DPI].

**Advice to Members on Declarations of Interest:**

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/240134/Openness\\_and\\_transparency\\_on\\_personal\\_interests.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf) plus the link sent out to Members at part of the Weekly Update email on the 3<sup>rd</sup> May 2013.
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, with revisions adopted on 17.10.13, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (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.

## Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **28<sup>th</sup> February 2013**.

### Present:

Cllr. Mrs Bell (Chairman);

Cllrs. Chilton, Shorter

### Apology:

Cllr. Feacey

### Also Present:

Cllr Smith

Licensing Officer, Licensing Support Officer, Legal Advisor, Senior Member Services & Scrutiny Support Officer

Mr Austen – Applicant

Ms Arts, Mrs Bray – Interested Parties.

## 348 Election of Chairman

### Resolved:

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

## 349 Barbers Arms, 169 Bridge Street, Wye, Kent, TN25 5DP – Application for a Premises Licence

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

The Licensing Officer then gave a brief summary of the report. The application was for a premises licence at the above address in premises previously used as a barber shop. The application proposed to permit on and off sales of alcohol and the playing of recorded music from 11:00 – 23:00 Monday to Saturday and 11:00 – 22.30 on Sundays with no seasonal variations or non-standard timings applied for. The application stated that the premises would be a micro bar selling real ale and wine. The Licensing Officer ran through the additional steps that the applicant intended to take in order to promote the four licensing objectives if the proposed application was granted and the conditions put forward by the Licensing Authority. He reminded the Sub-Committee that it was the responsibility of the Licensing Authority to prepare conditions that were consistent with the operating schedule. He stressed that while a

Licensing Authority had no discretion to add or modify a condition where there was no relevant representation, it may not issue a Licence with conditions that were illegal.

With regard to representations, the Licensing Officer advised that under Section 35(5) of the Licensing Act 2003, representations were relevant if they were about the likely effect of the grant of the licence on the promotion of the licensing objectives and were made by an interested party or responsible authority within the prescribed period, and were not withdrawn or, in the opinion of the Licensing Authority, frivolous or vexatious. He further advised that the prescribed period for the receipt of such representations in this case was during a period of 28 consecutive days starting on the day after the date on which the application was given to the Authority by the Applicant. In this case the application was given to the Authority on the 4<sup>th</sup> January 2013 and the last date for receipt of relevant representations was 1<sup>st</sup> February 2013. The Licensing Officer advised that two parties had made representations, both of whom lived in apartments above the premises. Copies of the letters were contained within the papers. No representations had been received from responsible authorities. The representations could be summarised as follows: - the fear of crime and disorder due to drunkenness; the worry that the proposal would lead to further noise and nuisance in the area due to music from the premises and increased levels of traffic in the area; and the fact that there were already a number of licensed premises in the location.

Mr Austen spoke in support of the application. He gave the Sub-Committee an outline of the sort of business he wanted to run at the Barbers Arms. It would be a Micro Pub based on the ethos of the successful enterprises that had been developed in Thanet and the surrounding areas in recent years. It would be a small drinking house specialising purely in real ales, but also selling one variety each of red, white and rose wine as well as one cider. He also hoped to be able to provide these drinks as 'off sales' for functions etc. He had chosen Wye as a location for this business due to its good public access arrangements and the interest shown in such a venture when he had assisted at the Wye Beer Festival last year. He regularly worked at such festivals and this had given him good experience. The philosophy of the Micro Pub was the rejection of what modern pub landlords were being forced to do, including having no TVs, no fruit machines, no loud music etc. The only music proposed was of a background nature from an iPod and this would only be in the evenings and played at a reasonable level. The hours he intended to open were 12:00 – 14:00 and 17:00 – 21:00 Tuesday to Thursday; 12:00 - 14:00 and 17:00 – 23:00 Fridays and Saturdays; and 12:00 – 15:00 on Sundays. He intended to close on Mondays. He had applied for the hours of 11:00 – 23:00 following advice from the Licensing Authority so he had flexibility on Bank Holidays and if somebody wanted to have an extra drink post 21:00 during the week for example he would not then be breaking the law. It was his intention though to keep to the above hours. Mr Austen said he did not think his premises would attract the more rowdy element and he was only supplying a niche market (no lager, alcopops etc) and the more popular ales were not very strong (3.5 - 4% alcohol). With regard to parking, the issue was similar to other pubs in the area. There was available parking nearby but he envisaged most of his trade coming by foot or train. He concluded by saying that he would ensure that the Barbers Arms conformed to the four licensing objectives and hoped to forge good links with other businesses in the village and the local community and be a good neighbour.

Mrs Bray, on behalf of Ms Arts then spoke. She said that Ms Arts lived in the flat directly above the premises and could hear any noise emanating from there through the floorboards. She knew that the bar would not be open all day but there was potential for noise throughout the day. There was also potential for noise from the outside seating area and from people going outside to smoke. There were three flats surrounding the premises and the access to those was via an alleyway along the side of the premises. It was a concern to Ms Arts that if she was coming home late at night she might have to negotiate groups of people, potentially drinking and smoking, in the dark on the pavement. She said she appreciated there were various ways to get to the premises, but most would come by car and it was already difficult to park in the area. This would only exacerbate the problem. Mrs Bray said that although she was sure the Landlord would do all he could, there was a concern that drinkers could become rowdy, unpleasant, unreasonable or difficult and that this could be something that would impact on Ms Arts' quality of life, as well as the potential value of her property should she wish to sell. This application appeared to be for something quite low key, but there was nothing to stop this changing in the future and could seemingly become a larger concern without further consultation. She concluded by saying that whilst they did not want to stand in the way of somebody starting a new business, this did have the potential to adversely impact Ms Arts' quality of life and gave her great concern.

The Chairman advised that the other person who made a representation, Mr Moore, had been unable to attend the meeting. His full comments were detailed in the papers and the Sub-Committee had received a further email from him. They had read and digested this. The submission was more in the form of a series of questions than a further representation and many of those questions would be asked during the course of the meeting.

In response to questions from Members Mr Austen clarified the following points: - the doors and access arrangements that would be in place; that he intended to check the level of noise generated by the iPod with residents; that his intention was to continue to seek the niche market of real ale drinkers and he had no intention of ever selling lager, spirits etc; that he had experience of dealing with people drinking at the beer festivals he ran and he would be monitoring people within the premises; and that he had no plans for an outside seating area as mentioned in the original application – this had been removed from the application. He said that in terms of staffing, it would be him plus one other individual to provide cover and processes would be in place to deliver necessary training. He would personally respond to any complaints or comments and he had been advised by the Council's Planning department that the premises was not listed.

During discussion the Licensing Officer clarified that whilst the Parish Council was not a statutory consultee to the Licensing application, Wye with Hinxhill Parish Council had been informed of the application and he knew that there had been discussions with them over the planning aspects. He said he also knew that the Applicant had met with them personally. In response to a question he advised that additional lighting could be added as a Condition to the granting of a licence under the Crime and Disorder objective.

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

The Sub-Committee then retired to make their decision.

On return the Legal Advisor read out the decision.

**Resolved:**

**That the premises licence be granted and on and off sales of alcohol and the playing of recorded music be permitted from: -**

**11:00 – 23:00 Monday to Saturday**

**11:00 – 22.30 Sunday**

**Subject to the following Conditions:**

- (i) The Licence Holder will ensure that all staff will be trained in the four licensing objectives.
- (ii) The Licence Holder will ensure that anyone who appears intoxicated will not be served and will be asked to leave the premises.
- (iii) The Licence Holder will ask customers to leave the premises quietly and will ensure that any music played at the premises will be of a background level and not audible outside.
- (iv) The Licence Holder will apply the Challenge 21 policy to anyone appearing to be under the age of 21 and purchasing alcohol.
- (v) The Licence Holder and appropriate staff will regularly monitor noise levels outside the premises to ensure that they are not excessive or likely to disturb neighbours.
- (vi) The Licence Holder or a nominated representative shall receive and respond to complaints.
- (vii) No drinks to be taken or consumed outside of the premises.
- (viii) That adequate lighting be provided in the alleyway to the side of the premises to protect the amenity of neighbouring residents.

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

The Sub-Committee also wished to place on record a recommendation that in the sense of being a good neighbour, the Licence Holder should look at options for sound proofing the premises to avoid the potential for nuisance to neighbours and the licence possibly being called in for review in the future.

The Legal Advisor advised the Applicant and Interested Parties that they had a right to appeal to the Magistrates Court within 21 days.

**Agenda Item No:** 5  
**Licence Reference** WK/201401104  
**Report To:** LICENSING SUB COMMITTEE  
**Date:** 3<sup>RD</sup> APRIL 2014



**Report Title:** **Licensing Act 2003 - Application is made for the review of the premises licence in respect of The Old Prince of Wales, New Street, Ashford, Kent, TN24 8UU on the grounds of the prevention of crime and disorder 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 1140 Mitchell Fox on behalf of the Chief Officer of Police.**

Premises: **The Old Prince of Wales, New Street, Ashford, Kent, TN24 8UU.**

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 makes a determination, 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** There are no specific financial implications arising from this

**Implications:** 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.

**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.

**Exemption Clauses:** Not applicable

**Background Papers:** None

**Contacts:** Jack.godley@ashford.gov.uk – Tel: 01233 330722



**Agenda Item No. 5**

**Report Title: Licensing Act 2003 - Application is made for the review of the premises licence in respect of The Old Prince of Wales, New Street, Ashford, Kent, TN24 8UU on the grounds of the prevention of crime and disorder 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 11460 Mitchell Fox on behalf of the Chief Officer of Police**

Premises: **The Old Prince of Wales, New Street, Ashford, Kent, TN24 8UU**

### **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), directs that 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.
4. Representations are only valid where they relate to one of the four licensing objectives, namely:
  - a) the prevention of crime and disorder
  - b) public safety
  - c) the prevention of public nuisance
  - d) protection of children from harm
5. An application for the review of these premises has been received from Kent Police under the objectives of the prevention of crime and disorder and the protection of children from harm. This application was also circulated to other 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). The application is appended at Appendix A.
6. In accordance with the Act the application has been correctly displayed by way of notices at the premises, on the Council's website and on a notice board at the

Council offices at the Civic Centre. A copy of the notice is appended at Appendix B.

7. Before determining the review application, the Council licensing authority must hold a hearing to consider it and any relevant representations received.
8. No representations have been received from any other responsible authorities.
9. 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) Public order disturbances both inside and outside the premises
  - b) The sale of alcohol to persons under 18 years of age
  - c) Controlled drug use within the premises
  - d) The lack of age verification policies
  - e) The ineffectiveness of the premises management
10. This application for a review of the premises licence is based upon the following events;
  - 18<sup>th</sup> January 2014
  - 29<sup>th</sup> December 2013
  - 21<sup>st</sup> December 2013
  - 1<sup>st</sup> November 2013
  - 25<sup>th</sup> September 2013
  - 15<sup>th</sup> June 2013
  - 27<sup>th</sup> May 2013
  - 5<sup>th</sup> May 2013
11. Additional information in the form of witness statements from Police Officers (PC), Special Constables (SC) and Police Community Support Officers (PCSO) have been provided:
  - PCSO Cousins – Incident 15<sup>th</sup> June 2013
  - PC Chambers – Incident 25<sup>th</sup> September 2013
  - PC Packman – Incident 25<sup>th</sup> September 2013
  - PC Hughes – Incident 25<sup>th</sup> September 2013
  - PC Treadwell – Incident 1<sup>st</sup> November 2013
  - PC Gisby – Incident 21<sup>st</sup> December 2013
  - SC Garcia – Incident 21<sup>st</sup> December 2013
  - SC Minichiello – Incident 21<sup>st</sup> December 2013
  - PC Blake – Incident 21<sup>st</sup> December 2013
12. Copies of these statements can be found in Appendix C.
13. The Guidance suggests that where authorised persons and responsible authorities have concerns about problems identified at a 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.

14. 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 incidents and resulting meetings can be found in Appendix D.

### Relevant premises history

15. The premises are situated on New Street, Ashford, within the town, next to the First World War Memorial Tank. There has been a public house in this location for many years and the current premises licence holder is a company named Himali Ltd of 34 Rigden Road, Ashford, Kent, TN23 6JQ. They took over the licence from Ashfield Taverns, 1<sup>st</sup> October 2012. The current designated premises supervisor (DPS), Mr Chiran Rai, same address as Himali, has been in place since 11<sup>th</sup> February 2011.

16. The premises licence, as in Appendix E, permits the following activities:

<i>Alcohol Sales (on the premises only)</i>		<i>Regulated Entertainment</i>		<i>Late Night Refreshment</i>	
Sunday	07:00 - 00:00	Sunday	10:00 - 00:00	Sunday	23:00 - 01:00
Monday	07:00 - 00:00	Monday	10:00 - 00:00	Monday	23:00 - 01:00
Tuesday	07:00 - 00:00	Tuesday	10:00 - 00:00	Tuesday	23:00 - 01:00
Wednesday	07:00 - 00:00	Wednesday	10:00 - 00:00	Wednesday	23:00 - 01:00
Thursday	07:00 - 00:00	Thursday	10:00 - 00:00	Thursday	23:00 - 01:00
Friday	07:00 - 01:00	Friday	10:00 - 01:00	Friday	23:00 - 02:00
Saturday	07:00 - 01:00	Saturday	10:00 - 01:00	Saturday	23:00 - 02:00

17. There is a New Years Eve extension until terminal hour on New Years Day and an extension until 01:00 on Bank Holiday Sundays, Christmas Eve, Boxing Day, St Patricks Day and St Georges Day for regulated entertainment (music, dancing, etc) and the sale of alcohol. This is extended until 02:00 for late night refreshment.

18. Three noise complaints have been received by the Council regarding these premises since the DPS, Mr Rai, came into post. The first two were reported 13<sup>th</sup> August 2012 and 29<sup>th</sup> September 2012, both were resolved by way of words of advice to Mr Hem Gurung, manager of the premises. The other, reported to the Council 29<sup>th</sup> August 2013, was not actioned as the complainant could not be contacted.

## **Hearings Regulations**

34. Regulations governing hearings under the Licensing Act 2003 have been made by the Secretary of State.
35. 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**

36. 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 within 21 days of the determination.

## **Recommendations**

37. That Members carefully consider the application for review and take such steps as detailed in paragraph 39 below that the Sub-Committee consider necessary for the promotion of the licensing objectives.

## **Decision options open to members**

38. 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.
39. 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;
  - 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.
40. 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.

41. 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**

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

## **Handling**

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

## **Conclusion**

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

## **Further Information**

48. An application for a minor variation to the premises licence has been received and is subject of a public consultation up to 25<sup>th</sup> March 2014. This minor variation details a number of conditions put forward on behalf of the premises licence holder, details of which will be made available at the hearing providing no representations are made.

Contact: Email:	Licensing Manager <a href="mailto:jack.godley@ashford.gov.uk">jack.godley@ashford.gov.uk</a>
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## **Summary of Appendices**

**Appendix A:** Application to review

**Appendix B:** Copy of Public Notice

**Appendix C:** Copy of witness statements

**Appendix D:** Summary of incidents and meetings with licence holder and/or DPS

**Appendix E:** Old Prince of Wales' premises licence and plans