

Agenda Item No: 5
Licence Reference WK/201401104
Report To: LICENSING SUB COMMITTEE
Date: 3RD 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

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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;
 - 18th January 2014
 - 29th December 2013
 - 21st December 2013
 - 1st November 2013
 - 25th September 2013
 - 15th June 2013
 - 27th May 2013
 - 5th 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 15th June 2013
 - PC Chambers – Incident 25th September 2013
 - PC Packman – Incident 25th September 2013
 - PC Hughes – Incident 25th September 2013
 - PC Treadwell – Incident 1st November 2013
 - PC Gisby – Incident 21st December 2013
 - SC Garcia – Incident 21st December 2013
 - SC Minichiello – Incident 21st December 2013
 - PC Blake – Incident 21st 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, 1st October 2012. The current designated premises supervisor (DPS), Mr Chiran Rai, same address as Himali, has been in place since 11th 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 13th August 2012 and 29th 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 29th 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 25th 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.

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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