

Agenda Item No:

Licence Reference **WK/201408638**

Report To: **LICENSING SUB COMMITTEE**

Date: **13 NOVEMBER 2014**

Report Title: **Licensing Act 2003 - Application for a variation of a premises licence for **The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ.****

Report Author: Licensing Support Officer



Summary:

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

Application type: **Application from an existing licence holder to vary the premises licence under the provisions of section 35(3)(a) to the Licensing Act 2003**

Applicant: **Mr Ufuk Sen**

Premises: **The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ.**

Members are asked to determine whether to grant the variation of the premises licence.

Key Decision: NO

Affected Wards: Beaver (Ashford) Ward

Recommendations: **The Committee is asked to determine the application and decide whether to grant the variation to the premises licence.**

Policy Overview: The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

Financial Implications: The costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

LEGAL: Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

Exemption Clauses: Not applicable

Background Papers: None

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Report Title: Licensing Act 2003 - Application to vary a premises licence The Crusader, Brookfield Road, Ashford, Kent, TN23 4EZ

Purpose of the Report

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

Application type: **Application to vary a premises licence**

Applicant: **Mr Ufuk Sen**

Premises: **The Crusader, Brookfield Road, Ashford, Kent
TN23 4EZ**

Issue to be Decided

2. Members are asked to determine whether to grant the variation of the premises licence.

Background

The Licensing Objectives

3. The licensing authority must carry out its functions under the Licensing Act 2003 Section 4 (1) with a view to promoting the licensing objectives namely:
 - the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm

Application details

4. The application is made by an existing licence holder to vary a premises licence. It should be noted that the current licence holder has only been at the premises since 25 September 2014.
5. See Appendix A for the application to vary a premises licence. The application has been made in the proper manner.
6. The applicant has applied to vary the premises licence to add the off sale of alcohol to match the existing hours for the on sale of alcohol as follows:

Sunday to Wednesday 10:00 – 23:30
Thursday to Saturday 10:00 – 01:30
Bank Holidays, Christmas Day & New Years Day 10:00 – 01:00

Off sales will be able to be made from the premises or with food orders upon delivery. Payment for alcohol delivery will be made online or over the phone.
7. In addition the applicant has applied for late night refreshment as follows:

Sunday to Wednesday 23:00 – 23:30
Thursday to Saturday 23:00 – 01:30

8. One representation has been received hence the determination coming before Members.

Additional steps

9. The conditions put forward by the licensing department are taken from section M of the application form and are as given within Appendix C. Note it is the responsibility of the Licensing Authority to prepare conditions that are “consistent” with the operating schedule (s.18).
10. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation. Also it may not issue a licence with conditions that are illegal.

Representations from Responsible Authorities

11. No representations have been received from responsible authorities.

Representations from Other Parties

12. One of the Ward Councillors has made a representation and a copy of the email is contained in Appendix B. The representation concerns the potential for increased noise within the vicinity of the premises.
13. It is also stated within the representation that issues have previously been raised directly with the Ward Councillors, about people gathering in the area, which the licensing team were not aware of.
14. Licensing has had three complaints (but all relating to the previous licence holder) from members of the public, all regarding loud music. The most recent being August 2014 and the others date back to July 2012 and January 2011.
15. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an other person or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.
16. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority 25 September 2014 and the last date for receipt of relevant representations was 23 October 2014. A notice was placed on the premises and advertised in the local paper.

Relevant premises history

17. The premises is a relatively large public house situated on Brookfield Road.
18. The current licence holder has only been operating the business since 25 September 2014 and there have been no complaints during this short time.
19. The current premises licence is attached in Appendix E but is summarised below:

	Alcohol On Sales	Films, Indoor Sporting Events	Live Music	Recorded Music	Other Entertainment	Opening Hours
Sun	10:00 – 23:30	12:00 – 00:00	12:00 – 22:30	12:00 – 23:00	10:00 – 00:00	10:00 – 00:00
Mon	10:00 – 23:30	10:00 – 00:00	10:00 – 23:00	10:00 – 00:00	10:00 – 00:00	10:00 – 00:00
Tue	10:00 – 23:30	10:00 – 00:00	10:00 – 23:00	10:00 – 00:00	10:00 – 00:00	10:00 – 00:00
Wed	10:00 – 23:30	10:00 – 00:00	10:00 – 23:00	10:00 – 00:00	10:00 – 00:00	10:00 – 00:00
Thu	10:00 – 01:30	10:00 – 01:30	10:00 – 00:00	10:00 – 01:00	10:00 – 01:30	10:00 – 01:30
Fri	10:00 – 01:30	10:00 – 01:30	10:00 – 00:00	10:00 – 01:30	10:00 – 01:30	10:00 – 02:00
Sat	10:00 – 01:30	10:00 – 01:30	10:00 – 00:00	10:00 – 01:30	10:00 – 01:30	10:00 – 02:00
	Bank Holidays, Christmas Day & New Years Day 10:00 - 01:00					

General

20. Members attention is drawn to the following matters:
 - All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
 - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
 - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or other party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
 - The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the appropriateness to impose conditions due to the representations raised. It may then only impose such conditions as are appropriate to promote the licensing objectives arising

out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.

- Where problems have occurred, the application for the new licence will afford an opportunity for responsible authorities and other parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
- The conditions put forward within this report are suggested on the basis of:
 - information contained within the application form;
 - representations and
 - on those measures currently in existence.
- The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance, perhaps affecting a few people living locally, as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity of other parties living and working in the area of a licensed premises. Public nuisance may also arise as a result of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder.

Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered appropriate following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence.

- The Guidance states “the conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out 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 which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.”
- It is perfectly possible that in certain cases, because the test is one of appropriateness, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

Decision options

- Grant the application without modifications to the proposed conditions
- Modify the conditions of the licence
- Reject whole or part of the application

Consultation

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

Implications Assessment

22. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

Human Rights

23. 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 D.

Handling

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

Conclusion

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

APPENDIX C
CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

Additional conditions which have been volunteered by the applicant, on the application, and would be added to the licence if the variation is granted:

General – All Four Licensing Objectives

The Licence Holder will work with the police and local authority to provide a safe environment for customers.

The Licence Holder will ensure there is no underage drinking by the use of verification methods and to encourage sensible drinking.

The Licence Holder will encourage customers to leave quietly.

The Prevention of Crime & Disorder

The Licence Holder will ensure that all sales for delivery orders are made at the premises, online or over the telephone.

The Licence Holder will ensure that age verification checks are completed before handing over a delivery that includes alcohol and that the customer is advised of acceptable forms of identification at the time of ordering.

Public Safety

The Licence Holder will work closely with the local police to improve public safety.

APPENDIX D - 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.