

**Agenda Item No:**

**Licence Reference**      **LN/201300967**

**Report To:**                      **LICENSING SUB COMMITTEE**

**Date:**                              **16 SEPTEMBER 2015**

**Report Title:**                      **Section 53A Licensing Act 2003 – Summary review of a premises licence for The Auction House, 7 New Street, Ashford Kent, TN24 8TN**

**Report Author:**                      Interim 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 a summary review for a premises licence under the provisions of section 53A to the Licensing Act 2003**

Applicant:                      **Chief Officer of Police, Ashford**

Premises:                      **The Auction House, 7 New Street, Ashford Kent, TN24 8TN**

To advise elected members of a valid 'Application for a Summary Review of a Premises Licence' under Section 53A of the Licensing Act 2003 has been received.

**Key Decision:**                      NO

**Affected Wards:**                      Victoria

**Recommendations:**      **The licensing Sub-Committee is asked to determine an application for summary review of a premises licence made under section 53A of the Licensing Act 2003.**

**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.

**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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## **Agenda Item No.**

**Report Title:**             **Application is made for a summary review for a premises licence under the provisions of section 53A to the Licensing Act 2003, namely; The Auction House, 7 New Street, Ashford Kent, TN24 8TN.**

## **Purpose of the Report**

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

Application type:       **Application for a summary review of a premises licence**

Applicant:               **Chief Officer of Police, Ashford**

Premises:               **The Auction House, 7 New Street, Ashford, Kent, TN24 8TN**

## **Issue to be Decided**

2. Members are asked to determine an application for summary review of a premises licence made under section 53A of the Licensing Act 2003, at the premises known as The Auction House, 7 New Street, Ashford TN24 8TN

## **Background**

### ***The Premises***

3. The Auction House has a premises licence granted under the provisions of the Licensing Act. The premises Licence authorises the following licensable activities:

Live music, Recorded music and other entertainment (Indoors)

- Sunday to Saturday                                 08:00 - 03:00

Sale or Supply of Alcohol (on and off sales, indoors)

- Sunday to Saturday                                 11:00 - 03:00

Late Night Refreshment (Indoors)

- Sunday to Saturday                                 23:00 - 03:00

The opening hours of the premises are shown on the premises licence as:

- Sunday to Saturday                                 8:00 - 03:00

A copy of the premises licence is attached at Appendix A.

## ***The Licensing Objectives***

4. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

## ***Application details***

5. The Licensing Authority received on 19 August 2015 an application for a summary review of a premises license from the Chief Officer of Police. The police considered that the premises was associated with serious crime.
6. The application was correctly submitted by the chief officer of police for the area and accompanied by a certificate from a senior police officer, stating that in their opinion the premises was associated with serious crime.
7. The application and certificate required can be found at Appendix B and C respectively.
8. On receipt of such an application the licensing authority, must arrange a hearing to determine the application for a full review of the premises licence within 28 days commencing the day following the day on which the application was received.
9. In accordance with the requirements of section 53A of the Act and regulation 39A, Licensing Act (Premises licences and club premises certificates) Regulations 2005, a public notice was displayed by the Licensing Authority at or near the premises and at the Civic Centre, and a copy placed on the Council's website for a period of no less than seven consecutive days commencing 20 August 2015.
10. Before determining the application for full review of the premises licence, the Licensing Authority must hold a hearing to consider the application and any representations received. Providing that the representations are relevant to the promotion of the licensing objectives and in the case of those made by other persons are not frivolous or vexatious.
11. Notwithstanding the requirements outlined above, in accordance with the requirements of Section 53B of the Licensing Act 2003, a meeting of the Licensing Sub-Committee was held on 21 August 2015, to consider whether it was necessary to take interim steps pending the review of the licence.
12. At the interim steps meeting which took place on 21 August 2015, the following decision was made:
  - All non bottled drinks to be provided in plastic or polycarbonate glasses. Bottled drinks to be decanted into plastic or polycarbonate glasses or provided in plastic bottles. No glass vessels or bottles to be on the bar or in the public area at any time.
13. The sub committee considered that the interim steps proffered by the police namely interims steps 1, 2, 3 and 5 as detailed on the application (Appendix B) were in fact covered by the existing licence but were not currently being

adhered to. The committee felt that as such to add the same to the licence would be duplication.

14. The above decision had immediate effect by the handing to the police and licence holder, written confirmation of the same. A copy can be found in Appendix D. The premises license holder did not make any representations against the interim steps at this stage. As such, they have remained unchanged to date.
15. The application therefore now comes forward for review under Section 53C of the Licensing Act 2003 and the police have since submitted further documentation in support of their application for review of the premises. This includes information regarding the historical events which have happened at the premises and this can be found in Appendix E.
  - In summary, in addition to the 3 serious assaults on 16 August 2015 which resulted in the interim review, a further 25 calls were made to the police from 18 January 2015 – 1 August 2015.
16. The police are requesting that the interim step made pending review, is added as a condition to the licence, namely:
  - All non bottled drinks to be provided in plastic or polycarbonate glasses. Bottled drinks to be decanted into plastic or polycarbonate glasses or provided in plastic bottles. No glass vessels or bottles to be on the bar or in the public area at any time.

In addition Kent Police request the following conditions be added:

- a) The licence holder will ensure that staff are fully trained in responsible sales of alcohol (BIIAB or equivalent) and that training records are kept.
- b) A CCTV system will be designed, installed and maintained in proper working order, to the satisfaction of the licensing authority and in consultation with Kent Police. The system will be:
  - I. Operated by properly trained staff
  - II. Be in operation at all times that the premises are being used for a licensable activity
  - III. Ensure coverage of all entrances and exits to the licensed premises internally and externally
  - IV. Ensure coverage of such other areas as may be required by the licensing authority and Kent Police
  - V. Provide continuous recording facilities for each camera to a good standard of clarity. Such recording will be retained (on disc, hard drive or other immediate retrievable facility) for a period of 30 days and will be supplied to the licensing authority or a police officer immediately on request.
  - VI. The system will be checked and maintained daily to ensure it is in good working order, which should be entered into the incident book.

- c) SIA registered door staff will remain until closing until everyone has left the building and vicinity and the incident book is fully updated.

If any of the above conditions are placed on the licence, members may wish to consider removing/amending existing similar conditions.

17. The review hearing must take place even if the chief officer asks to withdraw his application or representations.
18. Five representations have been made from interested parties in support of The Auction House. Copies are in Appendix F.
19. Members are reminded that representations are only relevant if they relate to one of the licensing objectives. In other words, representations should relate to the impact of licensable activities carried on at the premises, on the objectives themselves.

### ***Decision Options***

20. Options open to the Sub-Committee are as follows -
  - a) To modify the conditions attached to the premises licence. (A condition is modified if it is altered or omitted or any new condition is added);
  - b) To exclude a licensable activity from the premises licence;
  - c) To remove the Designated Premises Supervisor;
  - d) To suspend the premises licence for a period not exceeding three months;
  - e) To revoke the premises licence.

Should the Sub-Committee decide to take either steps a) or b) above, the modification or exclusion can either be on a permanent basis or for a specified period only (not exceeding three months).

21. For Members information paragraph 1.16 of the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 states:

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. 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 standardised 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 2003 Act or other legislation;
  - should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
  - 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
22. Members are advised that the decision of the Licensing Authority will not have effect until the end of the period allowed for the appeal, which is 21 days of the Licence holder being notified of the Licensing authority's determination, or until the disposal of the appeal. An appeal may be made by the premises licence holder, the chief officer of police and /or any other person who made a relevant representation.
23. Accordingly, until such time as the decision comes into effect, the interim steps taken on 21 August 2015 remain in place.

### **Consultation**

24. All relevant parties have followed the consultation procedures required under the Licensing Act 2003 and the application has been advertised accordingly. Ashford Borough Council has invited the applicant, the premises licence holder and other persons who have made representations to attend the hearing.

### **Implications Assessment**

25. 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**

26. 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**

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

### **Conclusion**

28. The Sub-Committee must, having regard to the application for review and any relevant representations, determine and take such steps as Members consider necessary for the promotion of the licensing objectives. Further, 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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