



## Licensing Sub-Committee

Notice of a Meeting to be held in Committee Room No. 1, Civic Centre, Tannery Lane,  
Ashford, Kent TN23 1PL on Tuesday 1<sup>st</sup> August 2017 at 10.00 am\*

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### \*Please note start time

The Members of this Sub-Committee are:-

Cllrs. Bradford, Feacey, Mrs Webb.  
Reserve Cllr. Krause

## 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: | i                    |
| 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 10 <sup>th</sup> October 2016                       | 1 – 11               |

## Matters for Decision

- |  |         |
|--|---------|
| 5. The Sukaa Ltd T/A, Gurkha Villa, 30 Bank Street, Ashford – Application to vary the Premises Licence | 13 - 67 |
| (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  |         |

KM/DS  
24 July 2017

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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 Morland 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)
- (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 Corporate Director (Law and Governance) 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 **10<sup>th</sup> October 2016**.

### **Present:**

Cllr. Sims (Chairman);

Cllrs. Krause, Pickering.

### **Also Present:**

Cllr. Mrs Webb

Environmental Protection and Licensing Team Leader, Licensing Officer (AS), Licensing Officer (JP), Legal Advisor, Senior Member Services Officer.

PC Alistair Pringle – Licensing Enforcement Officer, Kent Police

Mr and Mrs Kneller – Representing Eastwell Meadows Management Company – Applicant for Review

Mr Cowan – Premises License Holder – The Woolpack.

## **156 Election of Chairman**

### **Resolved:**

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

## **157 Minutes**

### **Resolved:**

**That the Minutes of the Meeting of this Sub-Committee held on the 6<sup>th</sup> July 2016 be approved and confirmed as a correct record.**

## **158 The Woolpack, 26 High Street, Tenterden, Kent, TN30 6AP – Application for Review of the Premises Licence**

The Chairman opened the meeting, welcomed all those present and asked everybody to introduce themselves. Members confirmed that they had read the papers relating to the application. The Chairman explained the procedure to be followed at the meeting.

The Licensing Officer (AS) then gave a brief summary of her report. She said the application to be considered by the Sub-Committee was for the review of the premises licence under the provisions of Section 51 to the Licensing Act 2003. The application had been made by Mr Malcolm Kneller on behalf of the Eastwell Meadows Management Company and she confirmed that the application had been made in the correct manner. A copy of The Woolpack's premises licence and plans were included at Appendix C of the papers and an A3 copy of the plan had been tabled at the meeting.

Representations had been received from Kent Police, Environmental Protection and two members of the public. These were also included with the papers (Appendices D, E, F and G). The grounds for the review as stated by the Applicant was that the noise from events held in the barn/barrelhouse/garden had caused distress and inconvenience to residents and as such the application sought to review and restrict any music events from those areas (not in the main body of the premises). The Licensing Officer concluded by outlining the decision options available to the Sub-Committee.

Mr Kneller, on behalf of the Eastwell Meadows Management Company, outlined the application for a review of the licence. He advised that this had been a 'last ditch effort' by the shareholders and residents following a number of complaints over four years, made since Mr Cowan had taken over at The Woolpack, which he had not acted upon in respect of noise nuisance from the 'shed'. Mr Cowan's answer seemed to be that if people did not like noise "they should not move near to a pub", but he considered this disingenuous. They did not have any issue about noise from the pub itself - it was the old shed which was the area of concern. It had previously been used as a store and the new premises licence holder had turned it in to a music venue. There had also been no other complaints about noise in the 20 years prior to this particular landlord taking over.

By way of further explanation of the application for a review, Mr Kneller drew the Sub-Committee's attention to disturbances that had occurred at the premises, a Community Protection Warning (CPW) that had been issued and a Noise Abatement Notice that had eventually been served by the Council in respect of the noise nuisance. He also drew attention to the letter in the papers from The Reverend Canon Lindsay Hammond, the Vicar who lived in the Vicarage immediately adjacent to The Woolpack and was probably the person most adversely affected by the loud music. Several sound recordings had been submitted as part of the application. Whilst not all recordings were listened to at the hearing, Members of the Sub-Committee and the Licence Holder all confirmed receipt of the recordings in advance of the meeting and having heard them prior to the hearing. He drew attention to the following comments made by Trevor Ford, Environmental Protection and Licensing Team Leader in the report, of which he was in full agreement – *"The building itself is not designed as a music venue, nor does it currently possess the particular qualities that would lend itself to be used as a regular music venue. It is predominantly a single skinned shed, and has ill-fitting doors with significant air gaps. Such issues prevent the effective containment and control of sound, and even with the minor improvements such as a sound lobby and acoustic curtains, I am not of the opinion that the building will provide a suitable venue for regular or loud live/recorded music events."*

Mr Kneller concluded by asking that the Sub-Committee modify the licence to exclude the playing of live or recorded music in the barn/barrelhouse building and outside areas.

Mr Cowan, the Premises Licence Holder emphasised to the Sub-Committee that the barn and the ability to use it as a music venue was a key part of his business, which included bar, restaurant, hotel, parking, garden and the barn itself. He advised that he had taken on The Woolpack in 2011 and he and his family had ploughed in £120,000 of their own money and much time and effort to turn around a vacant and 'rat infested' 15<sup>th</sup> Century pub that had fallen in to disrepair. It had also previously had a bad reputation for drug use, underage drinking and violence. Upon taking over the pub, the barn was at that time used by a Boxing Club, but was always part of the overall vision for the business. In 2013 it started to be used for music and steps were put in place to make the area more suitable in this regard, namely 'wool baffles', insulation of sky lights, fitting a door closing device and a new floor. He explained that a full acoustic insulation would be prohibitively expensive, yet he appreciated that further measures could be made and he would like to make improvements when money allowed. He was currently looking for second hand acoustic curtains for the doors and putting in planning permission (as the barn was a listed building) for a lobby for the barn. He was also exploring the possibility of obtaining grant funding for sound insulation through the Kent Invicta Chamber of Commerce.

Mr Cowan indicated that further to the complaints, whilst the initial intention had been to have live music in the barn every Friday and Saturday night, as a compromise and thinking of the wider community, he chose to limit live events to approximately one a month by self-regulation, despite demand for the barn being high and having to turn away bookings. Furthermore, he indicated to the Sub-Committee that not all noise nuisance in the vicinity emanated from his premises, indicating that the Town Hall held events as did the recreation ground, other pubs in the area and there was a nearby flat which held noisy parties. Not all events in the barn were noisy or involved music e.g. food festivals, but these did not generate much income for the pub and the financial viability of the business required for music events.

Mr Cowan concluded that The Woolpack was a community pub and the barn was a great contributor for that community and the local economy. A broad spectrum of people used The Woolpack and the barn covering all demographics and ages. He did not set out to be a nuisance and the premises had a good relationship with the Police. The barn was an impressive and popular space. He referred to a petition signed by 1600 supporters of The Woolpack and the use of the barn. He considered a complete ban on use of the barn for music events would be disproportionate and would affect the survival of his business and therefore asked the Sub-Committee to take no steps to modify the licence.

By virtue of the fact that the plan currently attached to the premises licence and indicated at page 42 of the papers was no longer fit for purpose, the Licence Holder submitted a revised plan that accurately reflected the use of the building previously detailed as 'vaulted store' and now known as 'barn' and was a trade area.

The Sub-Committee then asked questions of Mr Cowan and Mr Kneller. In response Mr Cowan advised that the capacity of the barn was approximately 200 people. He explained the thinking behind some of the measures that had already been implemented in the barn to absorb sound and re-iterated his position that full insulation across the whole building would be prohibitively expensive and that the continuation of events in the barn involving music was vital to the survival of the business. In response to a question Mr Kneller advised that all of the houses in Eastwell Meadows had modern double glazed windows and doors.

During discussion it was clarified that the premises licence only allowed for music to be played 'indoors' therefore any music being played in the garden or other outside areas would be a breach of the licence.

The Police Representative then spoke on his representation. It was clarified that of the 22 calls to the Police related to The Woolpack, none of the incidents were known to have taken place specifically in the barn or outside area to the rear of the premises. There were however two entries on their system outlining visits relevant to music noise and the barn. He said that in both December 2014 and May 2015, during visits, they had noticed that previously discussed improvement works had not started at the barn, however the License Holder had indicated that Enterprise Inns had released money for improvements. Mr Cowan replied that he paid in to a maintenance fund, but that this money may be needed for more urgent repairs and since that conversation the pub had had to have a complete re-wire, therefore funds were diverted. He was responsible for all maintenance/repairs under the lease, which for a 15<sup>th</sup> Century building was an expensive undertaking.

The Environmental Protection and Licensing Team Leader then spoke on his representation. He highlighted the numerous steps that could be made to resolve the issues experienced, all of which were detailed in his representation. He did advise that since service of the noise abatement notice, there had been no reported breaches.

Both Mr Cowan and Mr Kneller then summed up. Mr Cowan said that The Woolpack was a uniquely community spirited pub that offered something for everyone in the community. Not all events in the barn involved loud music and they did not set out to be a nuisance. He accepted it was not a purpose built music venue, but it was a quality space and this is what made it popular. He said he would re-double efforts to resolve matters over and above what he had already done, but considered that the concession already made in respect of holding only 12-15 events a year was significant and that element of self-regulation should be taken in to account. Mr Kneller concluded by reminding the Sub-Committee that whilst the landlord was presenting the pub as being a "community pub" the Vicar and the residents of Eastwell Meadows were in fact also part of the community. They were a community on the estate, the church was a community, and they were all part of the community which should be considered. He confirmed that his position was that this was purely about the barn rather than the whole pub, but the barn should not be used for live or recorded music, despite the measures the premises licence holder had put in place which to date had not been effective.

The Sub-Committee then retired to make their decision.

On return the Chairman read out the Licensing Sub-Committee's decision and reasons.

**Resolved:**

**The licenced area in respect of live music or recorded music shall be amended as follows: -**

**Live or recorded music is prohibited from being played in the barn/barrelhouse building.**

**The Sub-Committee accepted the revised plan submitted by the Premises Licence Holder. The Premises Licence will be amended accordingly to reflect the updated plan**

The decision notice and formal wording read out by the Chairman is appended to these minutes.

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**LICENSING SUB-COMMITTEE**  
**Monday 10<sup>th</sup> October 2016**

**APPLICATION TO REVIEW A PREMISES LICENCE**  
**THE WOOLPACK, 26 HIGH STREET, TENTERDEN, TN30 6AP**

**LICENSING SUB-COMMITTEE DECISION AND REASONINGS**

**NAME AND  
ADDRESS OF  
PREMISES:**

The Woolpack  
26 High Street  
Tenterden  
Kent,  
TN30 6AP

**APPLICANT:**

Mr Malcolm Kneller on behalf of Eastwell Meadows Management Company.

**REASON FOR  
HEARING:**

To determine an application for a review of a Premises Licence.

**DELIBERATION:**

The Licensing Sub-Committee received an application for a review of a premises licence as made by the Eastwell Meadows Management Company. The Licensing Officer introduced the report and the options open to the Sub-Committee.

Mr Kneller, on behalf of the Eastwell Meadows Management Company, outlined the application for a review of the licence. He advised that this had been a 'last ditch effort' following a number of complaints over four years, made since Mr Cowan had taken over at The Woolpack, which he had not acted upon in respect of noise nuisance from the 'shed'. They did not have any issue about noise from the pub itself, it was the shed that was the area of concern. The old shed which had previously been used as a store had, by the new premises licence holder, been turned in to a music venue.

The applicant proceeded to amplify the application as made drawing the Sub-Committee's attention to disturbances that had occurred, a Community Protection Warning (CPW) that had been issued and Noise Abatement Notice that had eventually been served by ABC in respect of the noise nuisance. Several sound recordings had been submitted as part of the application. Whilst not all recordings were listened to at the hearing, Members of the Sub-Committee and the Licence Holder all confirmed receipt of the said recordings in

advance and having heard them prior to the hearing. He drew attention to the following comments made by Trevor Ford, Environmental Protection and Licensing Team Leader, of which he was in full agreement – *“The building itself is not designed as a music venue, nor does it currently possess the particular qualities that would lend itself to be used as a regular music venue. It is predominantly a single skinned shed, and has ill-fitting doors with significant air gaps. Such issues prevent the effective containment and control of sound, and even with the minor improvements such as a sound lobby and acoustic curtains, I am not of the opinion that the building will provide a suitable venue for regular or loud live/recorded music events.”*

The applicant concluded by reminding the Sub-Committee that whilst the landlord was presenting the pub as being a “community pub” they were in fact part of the community. They are a community on the estate, the church is a community, they are all part of the community and as such that should be considered. In his conclusion he confirmed that his position was that the barn should not be used for live or recorded music, despite the measures the premises licence holder had put in place which had not to date been effective.

The Premises Licence Holder emphasised to the Sub-Committee that the barn and the ability to use it as a music venue was a key part of his business, which included bar, restaurant, hotel, parking, garden and the barn. He indicated that £120,000 and much time and effort had been ploughed in by his family to turn around a ‘rat infested’ pub that had fallen in to disrepair. Upon taking over the pub, the barn was at that time used by a Boxing Club, but was always part of the overall vision for the business. In 2013 it started to be used for music and steps were put in place to make the area more suitable in this regard, namely ‘wool baffles’, insulation of sky lights and a new floor. He explained that a full acoustic insulation was prohibitively expensive, yet he appreciated that further measures could be made and he would like to make improvements when money allowed. He was currently looking for second hand sound curtains for the doors and putting in planning permission (as the barn is a listed building) for a lobby for the barn to name a few of the improvements.

He indicated that further to the complaints, whilst the initial intention had been to have live music in the barn every Friday and Saturday night, as a compromise and thinking of the wider community, he chose to limit live events to approximately one a month by self regulation, despite

demand for the barn being high and having to turn away bookings. Further, he indicated to the Sub-Committee that not all noise nuisance in the vicinity emanated from his premises, indicating that the Town Hall held events as did the recreation ground, events were held in the field and a nearby flat held noisy parties as well as other pubs in the area. Not all events in the barn were noisy or involved music e.g. food festivals, but these did not generate much income for the pub and the financial viability of the business required for music events.

He concluded that The Woolpack was a community pub and the barn was a great contributor for that community. A broad spectrum of people used The Woolpack and the barn covering all demographics and ages. He did not set out to be a nuisance. The barn was a good space (e.g. when people saw it they said 'wow') and he would double efforts to resolve matters over and above the concession already made in respect of holding only 12-15 events a year. He considered a complete ban on use of the barn for music events would be disproportionate and would affect the survival of his business.

By virtue of the fact that the plan currently attached to the premises licence and indicated at page 42 of the committee papers was no longer fit for purpose, the Licence Holder submitted a revised plan that accurately reflected the use of the building previously detailed as 'vaulted store' and now known as 'barn' and is a trade area. He also referred to a petition signed by 1600 supporters, whilst which was not examined in detail by all parties, it was accepted by all parties that The Woolpack had supporters of the business and use of the barn.

The Police Representative amplified their representation. He said that in 2014 during a visit they had noticed that improvement works had not started at the barn, however the License Holder had indicated that Enterprise Inns had released money for improvements. The Licence Holder indicated that he paid in to a maintenance fund, but that money may be needed for more urgent repairs and since that conversation had to have a complete re-wire, therefore funds were diverted.

The Environmental Protection and Licensing Team Leader amplified his representation. He highlighted the steps that could be made to resolve the issues experienced, of which there were many and detailed in his representation. However since service of the noise abatement notice, there had been no reported breach.

The Sub-Committee considered in detail the representations contained within the committee bundle at pages 62 and 67, which were not expanded upon at the Sub-Committee hearing and were in support of the premises licence holder.

In light of the above, the Sub-Committee considered the following relevant licensing objectives.

### **1. Prevention of Crime and Disorder**

No representations had been made regarding this licensing objective.

### **2. Public Safety**

No representations had been made regarding this licensing objective, however the Sub-Committee noted that the revised plan did indicate fire safety equipment in the new 'barn area'.

### **3. The Prevention of Public Nuisance**

The Sub-Committee had regard to the representations made regarding this objective. It was noted that there was no representations made in respect of groups of people gathering to drink in the vicinity, in the barn, pub or garden etc. It was noted that all concerned the issue of escape of music sound from the barn and the barn alone i.e. no one complained about music noise being emitted from the pub itself. It was noted that there was evidence to suggest that the residents were suffering from the effects of this nuisance from the barn, namely that a CPW had been issued and subsequently a noise abatement notice, a notice that is still in force, has not been appealed.

Further it was noted that the premises licence holder had accepted that there had not been significant refurbishment works to the barn and that none of the £120,000 had been spent on making the barn a suitable venue for live music. Despite the discrepancies in the amount of money that might need to be spent (e.g. £15-20k or £100k) on the barn to bring it up to scratch, the Sub-Committee noted that a considerable amount of work would be needed to be done to alleviate the concerns of residents in respect of noise nuisance and thereby make it a suitable venue. In light of this the Sub-Committee felt that there was no option but to restrict the use of the barn as a live music venue. That said, the Sub-Committee were mindful that a considerable injection of funds culminated from the use of the barn for a music venue, funds that could be used to improve the barn. As such, the Sub-Committee were concerned about restrictions of the use and

the detrimental affect on the business, however they were mindful of the fact that irrespective of the decision made today, the premises licence holder was at liberty to apply for Temporary Event Notices (TEN) in respect of his premises for any activity not permitted by his licence. As such any restriction on the premises licence could be mitigated by the use of a TEN and therefore the self imposed limit of events held by the premises licence holder could be covered by this method until the barn is refurbished to such a degree to make it a suitable part of the premises to hold live or recorded music. At which time a variation to the licence could be applied for. There was of course remaining the main pub as a licenced area in which to hold live and recorded music events, this was not being removed in its entirety from the licence. Therefore the Sub-Committee did not believe that the decision made would have an overly detrimental financial affect on the business and would focus the licence holder's mind on improving the barn to make it fit for purpose.

#### **4. Prevention of Harm to Children**

No representations had been made regarding this licensing objective.

#### **DECISION MADE:**

The licenced area in respect of live music or recorded music shall be amended as follows: -

**Live or recorded music is prohibited from being played in the barn/barrelhouse building.**

The Sub-Committee accepted the revised plan submitted by the Premises Licence Holder. The Premises Licence will be amended accordingly to reflect the updated plan

#### **Additional notes made by the Sub-Committee at the meeting -**

- This licence, like any other licence, is subject to review at the instigation of any Responsible Authority or Interested Person should there be any concerns regarding the operation of, and/or, breaches of the licence.
- Other Persons and Responsible Authorities were reminded that they may apply for a review of this licence "after a reasonable interval" pursuant to section 51 of the Licensing Act 2003.
- Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the 2003 Act.

- In the case of a Premises Licence, an appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

**Agenda Item No:** 5  
**Licence Reference** LN/020060064  
**Report To:** LICENSING SUB COMMITTEE  
**Date:** 1<sup>ST</sup> AUGUST 2017  
**Report Title:** Licensing Act 2003 – Committee hearing to determine an application to vary a Premises licence at Gurkha Villa 30 Bank Street, Ashford, TN23 1BA following an objection by an interested party.  
**Report Author:** Licensing Officer – Alison Simmonds



**Summary:**

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

Application type: **To hear an objection bought under section 34 of the Licensing Act 2003 to vary a premises licence**

Interested party: **Mr Qiang Zheng, 30a Bank Street, Ashford, TN23 1BA**

Premises: **Sukaa Ltd t/a Gurkha Villa, 30 Bank Street, Ashford, TN23 1BA**

To advise elected members that an objection to vary a premises licence has been received and therefore a hearing and determination is required under Section 34 of the Act.

**Key Decision:** NO

**Affected Wards:** Victoria

**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 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 and this includes determining applications to vary the premises licence when an interested party has submitted a valid objection.

**Exemption Clauses:** Not applicable

**Background Papers:** None

**Contacts:** alison.simmonds@ashford.gov.uk

## Agenda Item No. 5

**Report Title:**           **Licensing Act 2003 – Committee hearing to determine an application to vary a Premises licence at Gurkha Villa 30 Bank Street, Ashford, TN23 1BA following an objection by an interested party.**

### **Purpose of the Report**

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

Application type:   **To hear an objection brought under section 34 of the Licensing Act 2003 to vary a premises licence**

Interested party:   **Mr Qiang Zheng, 30a Bank Street, Ashford, TN23 1BA**

Premises:           **Sukaa Ltd t/a Gurkha Villa, 30 Bank Street, Ashford, TN23 1BA**

### **Issue to be decided**

2. Members are asked to consider an objection to vary a premises licence received under the provisions of section 34 of the Licensing Act 2003.

### **Background**

3. The Licensing Act 2003 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. A premises may for the purposes of changing their licensable activities, hours and/or licensing conditions apply to vary their Premises licence.

Following a non-routine visit to the Premises on Wednesday 3<sup>rd</sup> May 2017 with Police Licensing Officer, Alistair Pringle, in order to obtain footage of a recent incident, a meeting was arranged with the licensee for the following day. During the meeting on Thursday 4<sup>th</sup> May, 2017 it became apparent that their CCTV was not immediately available for PC Pringle so arrangements were made for this to be taken to the Police station at a later date. As a result of this, discussions were held with the Premises, Alison Simmonds, Licensing Officer and PC Pringle with concern to the conditions of their licence and premises' ability to meet with such conditions. The conditions of their licence were 'inherited' from previous premises at the address which was a bar/club venue.

A recommendation was made to the Designated Premises Supervisor and licence holder to submit a variation application to their Premises licence so that old, inherited conditions could be removed and new, more relevant, enforceable conditions added.

In addition, a suggestion was made to uniform the timings of their licensable activities.

The application to vary the licence was submitted to Ashford Borough Council on 12<sup>th</sup> June, 2017. As part of the Licensing Act a copy of the application was submitted to responsible authorities (Police, Fire and Rescue Service, Environmental Health, Trading Standards, Social Services, Health & Safety Executive, Public Health England, The Home Office and the Planning Authority). The application was also sent to ward member, Cllr D Farrell. The application is appended at [Appendix A](#).

In accordance with the Act the application was correctly displayed by way of notices at the premises and in a local newspaper. A copy of the notice is at [Appendix B](#).

A copy of the Gurkha Villa's premises licence and plans are at [Appendix C](#).

Representations to the application to vary the licence 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) the protection of children from harm

A representation to hear the application to vary the licence has been received by resident Mr Qiang Zheng of 30a Bank Street, Ashford. ([Appendix D](#)).

Mr Zheng objected to the application on the grounds of public nuisance. The following statements are excerpts from the objection letter:

- a) *'The restaurant is disturbing my family to such an extent that it is effecting the quality and enjoyment of my home, We have 3 young children all under 11 years old, they are complaining of the noise levels coming from below. We are very reasonable and tolerant and we fully understand the restaurant below is running a business. We don't mind the music up until 11pm but if you were to extend to 3am this would be distastrous and would cause much stress to our young family'*

### **Relevant premises history**

4. The premises are situated on Bank Street, Ashford within the town centre. There has been a licensed premises in this location since 2006 and the current Premises licence holder is a company named Sukaa Ltd. The current designated premises supervisor (DPS), Mr Ananda Dewan has been in position since 25<sup>th</sup> July, 2016. Since 11<sup>th</sup> July, 2016 when Sukaa Ltd t/a The Gurkha Villa became the premises licence holders there has been one complaint relating to noise (pertaining to music and people) which was made on 29<sup>th</sup> June 2017 to the Environmental protection team. The complaint has since been closed after no further reply from the complainant.

5. The premises licence permits the following activities:

<b>Alcohol Sales (on and off sales)</b>	<b>Opening hours</b>	<b>Live and recorded music and facilities for dancing</b>	<b>Exhibition of films</b>
Sunday 1200 – 0230	Sunday 1200 – 0300	Sunday 1200 - 0200	Sunday 12:00 - 02:00
Monday 1000 – 0200	Monday 1000 – 0230	Monday 1100 - 0130	Monday 11:00 - 01:30
Tuesday 1000 – 0030	Tuesday 1000 - 0100	Tuesday 1100 - 0000	Tuesday 11:00 - 00:00
Wednesday 1000 - 0100	Wednesday 1000 - 0130	Wednesday 1100 - 0030	Wednesday 11:00 - 00:30
Thursday 1000 – 0200	Thursday 1000 - 0230	Thursday 1100 - 0130	Thursday 11:00 - 01:30
Friday 1000 – 0400	Friday 1000 - 0430	Friday 1100 - 0330	Friday 10:00 - 03:30
Saturday 1000 – 0400	Saturday 1000 - 0430	Saturday 1100 - 0330	Saturday 10:00 - 03:30

**6. Seasonal variations -Alcohol sales -Non Standard Timings & Seasonal Variations:**

New Year's Eve 11:00 to 04:00 New Year's Day, Christmas Eve 11:00 to 02:30  
 Christmas Day, Bank Holiday Mondays 11:00 to 02:30

**Live Music and Regulated Entertainment (recorded music, performance of dance, facilities for making music, facilities for dancing**

Bank Holiday Mondays until 02:00, Christmas Eve until 02:00, New Year's Eve until 03:30

**7. Hearings Regulations**

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

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.

## **8. Appeals**

The Licensing Act 2003 Section 181 and Schedule 5 makes provision for appeals to be made by 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.

## **9. Recommendations**

For Members to carefully consider the application to vary the Premises licence and take such steps as detailed in paragraph 18 below that the Sub-Committee consider necessary for the promotion of the licensing objectives.

## **10. Decision options open to members**

The Act provides a range of powers for the licensing authority which it may exercise on determining a hearing where it considers them appropriate for the promotion of the licensing objectives.

The steps are—

- (a) To do nothing;
- (b) to modify the conditions of the licence;
- (c) to reject the whole or part of the application;

The requirements are—

(a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)(c) by virtue of section 34(5), (b) that they have not been withdrawn, and (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

## **11. Consultation**

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.

## **12. Handling**

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

## **13. Conclusion**

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

#### 14. Further Information

None

Contact: Email:	Licensing Officer alison.simmonds@ashford.gov.uk
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#### Summary of Appendices

**Appendix A:** Application to vary the Premises licence

**Appendix B:** Copy of Public Notice in paper

**Appendix C:** Copy of The Gurkha Villa's premises licence and plan

**Appendix D:** Representation from the interested party, Mr Zheng