

**Agenda Item No:** 5  
**Licence Reference** LN/020060064  
**Report To:** LICENSING SUB COMMITTEE  
**Date:** 4<sup>th</sup> April 2018



**Report Title:** **Licensing Act 2003 - Application is made for the review of the premises licence in respect of The Gurkha Villa, 30 Bank Street, Ashford, Kent, TN23 1BA on the grounds of the prevention of crime and disorder and public safety.**

**Report Author:** Julian Postlethwaite

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

**Summary:** Application type: **Application is made for the review of the premises licence under the provisions of section 51 of the Licensing Act 2003.**

Applicant: **Chief Inspector 10040 Andrew Somerville, on behalf of the Chief Officer of Police**

Premises: **Gurkha Villa, 30 Bank Street, Ashford, Kent. TN23 1BA**

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 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 determinations for applications to review.

**Exemption Clauses:** Not applicable

**Background Papers:** None

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**Report Title:**                    **Licensing Act 2003 - Application is made for the review of the premises licence in respect of The Gurkha Villa, 30 Bank Street, Ashford, Kent, TN23 1BA on the grounds of the prevention of crime and disorder and public safety.**

### **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 10040 Andrew Somerville on behalf of the Chief Officer of Kent Police.**

Premises:            **The Gurkha Villa, 30 Bank Street, Ashford, Kent, TN23 1BA**

### **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 out. 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 public safety;
  - The prevention of crime and disorder - There have been three incidents involving violence or criminal damage at or near the premises since April 2017.
  - Public safety – There have been difficulties obtaining CCTV footage following incidents at the premises, and conditions have not been complied with on numerous occasions.

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, Planning authority and the Home Office). The application is appended at **Appendix A**.

6. In accordance with the Act the application has been correctly displayed by way of a notice at the premises, posted on Tuesday 6<sup>th</sup> March 2018, 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. There have been no representations from other Responsible Authorities, or Interested parties.
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) An assault on a member of staff where a customer threw a glass.
  - b) Two incidents of criminal damage, one occurred whilst the premises was closed.
  - c) Poor management, failure to comply with operating conditions, failure to respond to or work with local Police and Licensing authority.
  - d) The ineffectiveness and absence of the designated premises supervisor.

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.

10. This application for a review of the premises licence is based upon the following events:

- **22<sup>nd</sup> April 2017.**

CAD (computer aided dispatch) 22-0093. Member of the public contacted Kent Police at 02:23 hours on the 22<sup>nd</sup> April 2017 – Location: 30 Bank Street, Ashford – Call type 'Fight / 6/7 people smashing glasses.

CAD 22-0096. Member of staff contacted Kent Police at 02:25 hours on the 22<sup>nd</sup> April 2017 – Location: 30 Bank Street, Ashford – Call type 'Fight – have hit staff member – 20 people involved'.

CAD 22-0097. Member of public contacted Kent Police at 02:25 hours on 22<sup>nd</sup> April 2017 – Location 30 Bank Street, Ashford – Call type ‘Abandoned/Request for police’.

CAD 22-0099. Unidentified caller contacted Kent Police at 02:27 hours on the 22<sup>nd</sup> April 2017 – Location: Bank Street, Ashford – Call type ‘Fight/ people fighting now’

• **15th January 2018.**

CAD 15-1346. Mr Chemjong (Manager) contacted Kent Police at 23:48 hours on the 15th January 2018 – Location: 30 Bank Street, Ashford – Call type ‘Criminal damage’

• **16<sup>th</sup> January 2018.**

Member of the public reports a male causing damage to the front of the Gurkha Villa. CCTV confirm male using implement. Male arrested nearby. He denied the offence, Council CCTV footage was not clear enough to confirm the offenders identity. The premises could not provide footage (However this was outside of operating hours and the premises was closed)

11. Since April 2017 Police and Ashford Borough Council Licensing offices have undertaken numerous visits to the premises, and made repeated requests for meetings, downloaded CCTV footage, and administrative paperwork submissions. See **Appendix C** for full details of visits, meetings and communications between Kent Police and staff at the premises. In addition separate visits and communications have been carried out by Licensing officers at Ashford Borough Council.

**Relevant premises history**

12. The premises is situated on Bank Street, Ashford, within the town. The current premises licence holder is Sukaa Ltd T/A the Gurkha villa, the Designated Premises Supervisor (DPS) is Mr Ananda Dewan. The premises has been licensed in previous names since January 2006, and as the Gurkha villa since 2016.
13. The premises licence, as in **Appendix D**, permits the following activities:

<i>Alcohol Sales (Indoors only)</i>		<i>Regulated Entertainment</i>		<i>Opening hours</i>	
Sunday	12:00 - 02:30	Sunday	12:00 - 02:00	Sunday	12:00 - 03:00
Monday	10:00 - 02:00	Monday	11:00 - 01:30	Monday	10:00 - 02:30
Tuesday	10:00 - 00:30	Tuesday	11:00 - 00:00	Tuesday	10:00 - 01:00
Wednesday	10:00 - 01:00	Wednesday	11:00 - 00:30	Wednesday	10:00 - 01:30
Thursday	10:00 - 02:00	Thursday	11:00 - 01:30	Thursday	10:00 - 02:30

<b>Alcohol Sales (Indoors only)</b>		<b>Regulated Entertainment</b>		<b>Opening hours</b>	
Friday	10:00 - 04:00	Friday	10:00 - 03:30	Friday	10:00 - 04:30
Saturday	10:00 - 04:00	Saturday	10:00 - 03:30	Saturday	10:00 - 04:30

### **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**

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

### **Conclusion**

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

### **Further Information**

Contact:	Licensing Officer
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## **Summary of Appendices**

**Appendix A:** Application to review

**Appendix B:** Copy of Public Notice

**Appendix C:** Summary of events

**Appendix D:** Premises licence

**Appendix E:** Worthingtons Letters

**Appendix F:** Human Rights