

**Agenda Item No:**

**Licence Reference** LN/020080544

**Report To:** LICENSING SUB COMMITTEE

**Date:** Thursday 24 January 2019

**Report Title:** Licensing Act 2003 - Application is made for the review of the premises licence in respect of The Cod Father, 15 High Street, Ashford, Kent, TN24 8TH on the grounds of the prevention of crime and disorder and public safety.

**Report Author:** Alison Simmonds



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: **The Cod Father, 15 High Street, Ashford, Kent, TN24 8TH**

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 Cod Father, 15 High Street, Ashford, Kent, TN24 8TH 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 Cod Father, 15 High Street, Ashford, Kent, TN24 8TH**

### **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) the 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 and public safety– Incidents of crime and disorder at or associated to the premises, in particular the use of weapons.

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**.

Additional information to support the application was submitted to Licensing on Friday 4<sup>th</sup> January 2019 and is at **Appendix B**.

6. In accordance with the Act the application has been correctly displayed by way of a notice at the premises, displayed from 26<sup>th</sup> November, 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 C**
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) A causal link between disturbance and the licensable activities at the premises
  - b) How staff left the safety of the premises, brandishing weapons and became involved in the disturbance
  - c) How the actions of the staff, the failure of the premises licence holder to uphold the licensing objectives and the lack of cooperation following the incident suggest this presents a risk to public safety in the future.

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.

A meeting was held on Tuesday 23<sup>rd</sup> October 2018 with Mr Ahmadzai, PC Alistair Pringle and Ashford Borough Council's Licensing Officer, Mr Julian Postlethwaite. Mr Ahmadzai gave his account of the evening and PC Pringle proposed the following;

- To reduce the timings for late night refreshment from 0500 to 0430 hours
- Staff to undergo conflict management training
- Security staff be present.

Mr Ahmadzai explained he did not want to alter his timings or his conditions as this would have a negative impact on his business.

A letter detailing the proposals was sent on Friday 26<sup>th</sup> October in which it asked for action to be taken to implement the proposals within 10 days, or Kent Police would consider submitting an application to review the licence. **See Appendix D** On Wednesday 13<sup>th</sup> November an incomplete application was received by Ashford Borough Council to transfer the premises licence to a 3<sup>rd</sup> party. As the application was

incomplete, this was returned. A further transfer application was withdrawn by the applicant following objections by Kent Police

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

- **7<sup>th</sup> October 2018**

At 04.47 hours an Ashford Borough Council CCTV operator made a radio call to Kent Police to advise there was a fight in the High Street involving a number of males. During this altercation, 4 vehicles were damaged and weapons were used.

The Manager of the Codfather was arrested for being in possession of an offensive weapon and has since received a caution for this.

## History

11. The premises is situated on Lower High Street, Ashford, within the town. The current premises licence holder is Mr Sahargul Ahmadzai. It is licensed for late night refreshment only (indoors only). The premises has been licensed since June 2009.

12. The premises licence, as in **Appendix E**, permits the following activities:

<b>Late Night Refreshment</b>		<b>Opening hours</b>	
Sunday	23.00 - 05.00	Sunday	12.00 - 05:00
Monday	23.00 - 05.00	Monday	11:00 - 05.00
Tuesday	23.00 - 05:00	Tuesday	11.00 - 05.00
Wednesday	23.00 - 05.00	Wednesday	11.00 - 05.00
Thursday	23.00 - 05.00	Thursday	11.00 - 05.00
Friday	23.00 - 05.00	Friday	11.00 - 05.00
Saturday	23.00 - 05.00	Saturday	11.00 - 05.00

## 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, (this premises is licensed for late night refreshment only)
- 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

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

**Appendix A:** Application to review

**Appendix B:** Additional information from Kent Police

**Appendix C:** Copy of public notice

**Appendix D:** Kent Police letter to the licence holder

**Appendix E:** Premises Licence

## **HUMAN RIGHTS**

### **Article 8**

Everyone has the right to respect for his private and family life, his home and his correspondence.

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**

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.

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.