

Agenda Item No: 6

Licence Reference WK/201903086



Report To: LICENSING SUB COMMITTEE

Date: 19 JUNE 2019

Report Title: Licensing Act 2003 - Application for a premises licence for: The Codfather, 15 High Street, Ashford, TN24 8TH

Report Author: Alison Simmonds

Summary:

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

Application type: **Application for a premises licence**

Applicant: **Khaista Gul Ahmadzai**

Premises: **The Codfather, 15 High Street, Ashford, TN24 8TH**

Members are asked to determine whether to grant the premises licence, with or without additional conditions pursuant to the Act

Key Decision: NO

Affected Wards: Victoria

Recommendations: **The Committee is asked to determine the application and decide whether to grant the premises licence, with or without additional conditions pursuant to the Act.**

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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Purpose of the Report

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

Application type: **Application for a premises licence**

Applicant: **Khaista Gul Ahmadzai**

Premises: **The Codfather, 15 High Street, Ashford, TN24 8TH**

Issue to be Decided

2. Members are asked to determine whether to grant the premises licence, with or without additional conditions pursuant to the Act following representations from Kent Police and the Home Office.

Background

The Licensing Objectives

3. 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

4. The application is for a premises licence for late night refreshment. The premises is situated on Lower High Street, Ashford, within the town
5. The premises previously held a premises licence for late night refreshment, with a shop open for customer purchase/collection, however Licensing Sub-Committee revoked this on 24th January 2019 following an application for review by Kent Police.
6. This application seeks a premises licence for late night refreshment, but does not include the premises being open to the public, that section of the application was marked 'N/A'. Accordingly, a licence (where granted) would limit the operator to providing a delivery only service with no customer collection, without the shop being open to the public and in turn no counter- service.
7. See **Appendix A** for the premises licence application, along with a plan of the internal layout.

8. **Appendix B** details subsequent documentation following the submission of the application, drafted operating schedule conditions, and public notice advertised via the Kentish Express following an advertisement error by the applicant.
9. Kent Police's initial and updated representation along with supporting documents can be found at **Appendix C**. Included in this appendix are details of the prior application for review of a Premises Licence at the premises, including the report to Licensing Sub-Committee and the Committee's decision and reasoning. Kent Police later withdrew their objection on 3 June 2019 upon clarification that the application would not permit the premises to be open to the public for counter or collection service.
10. The Home Office's representation is at **Appendix D**.

Relevant premises operating hours

11. The application proposes to permit:

Late night refreshment	Monday to Saturday 11:00 – 04:30 Sunday 11:00 – 01:00
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12. It should be noted that the application did not seek to apply any hours for the premises to be open to the public. Again it is clarified that a licence (where granted) would limit the operator to providing a delivery only service with no customer collection, without the shop being open to the public and in turn no counter-service.

General

13. 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.
 - In relation to immigration crime, members attention is drawn to paragraph 9.25 of the Licensing Act 2003 section 182 guidance which clarifies that under the Immigration Act 2016 powers are conveyed to Home Office Immigration Enforcement as a responsible authority who exercise powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

Further the following further sections of the Section 182 guidance remain particularly pertinent to immigration crime;

Paragraph 2.6;

The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed

premises... Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

Paragraph 11.18

... licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

Paragraph 11.28

It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Paragraph 13.7

...On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

- 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.

- 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.”

Decision options

14. The steps an authority may take are:

- a) Grant the licence subject to
 - i) Such conditions as are consistent with the operating schedule accompanying the application modified to such an extent as the authority considers necessary for the promotion of the four licensing objectives, and
 - ii) any conditions which must under section 19, 20, or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).
- b) Exclude from the scope of the licence any of the licensable activities to which the application relates.
- c) Reject the application.

Consultation

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

Implications Assessment

16. 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

17. 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 I.

Handling

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

Conclusion

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

APPENDIX I - 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.