

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Licensing Panel

Date: February 2019

Reporting officer: Emily Lane-Blackwell, Licensing Officer

Subject: Consideration of Application for a variation of a Premises Licence for MRH Gravesend, 100 Old Road West, Gravesend, Kent DA11 0LR

Purpose and summary of report:

To assist Members to determine an application, to which representations have been made, for the variation of a premises licence under the Licensing Act 2003 – Application reference 19/00004/LAPL02

Recommendations:

1. Members are requested to determine the application on its merits

1. Introduction

- 1.1 The Licensing Panel is asked to determine an application for a variation of a premises licence under the Licensing Act 2003 in respect of the premises known as MRH Gravesend, 100 Old Road West, Gravesend, Kent DA11 0LR
- 1.2 The Licensing Act 2003 (the 2003 Act) requires the Council (as licensing authority) to carry out its various functions so as to promote the following four licensing objectives:
 - the prevention of crime and disorder
 - the protection of public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 1.3 The 2003 Act requires the council to publish a 'Statement of Licensing Policy' that sets out the policies the council will generally apply to promote the licensing objectives when making decisions on applications made under the Act. The council adopted its Statement of Licensing Policy on 20 December 2004. As required by section 5 of the Act, this policy has since been subject to periodic revisions with the current policy set to expire on 2 January 2024. The Policy will be available at the meeting for reference purposes.

- 1.4 Under the 2003 Act, licensing authorities must, in carrying out their functions, have regard to guidance issued by the Secretary of State under section 182. The Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Provided that the licensing authority has properly understood and considered the Guidance, it may depart from it when it has reason to do so. However, as the licensing authority is under a duty to have regard to the Guidance, it will need to give full reasons for any departure from it. This would be a key consideration for the courts should departure from the Guidance result in a determination which gives rise to an appeal or judicial review. The Guidance will be available at the meeting for reference purposes.
- 1.5 A copy of the council's approved procedure for hearings of the Panel in relation to an application, along with a copy of the Hearing regulations has been circulated to all parties prior to the meeting.
- 1.6 The Licensing Authority must, under the Act, refer any application for hearing to the Licensing Panel where relevant representations are made by a responsible authority or an interested party.
- 1.7 The Panel is reminded that the Human Rights Act guarantees the right to a fair hearing for all parties in the determination of their civil rights. The act also provides for the protection of property which may include licences in existence, and the protection of private and family life

2. Background

- 2.1 The premises converted their licence to a premises licence under the Licensing Act 2003 and were granted a licence for the sale of alcohol on 24 November 2005.
- 2.2 A copy of their current licence is attached as Appendix 2
- 2.3 There is a hair dresser to the east of the forecourt and residential properties on the north, west and east sides of the premises. Gravesend Cemetery and a piece of green land are located to the south.

3. The Application

- 3.1 On 3 January 2019 an application was received from Winckworth Sherwood LLP on behalf of Malthurst Petroleum Limited for the variation of a premises licence under section 34 of the Licensing Act 2003 in respect of the premises at 100 Old Road West, Gravesend, Kent DA11 0LR
- 3.2 The application is for:
 - 3.2.1 Off sales of alcohol Monday to Sunday 24 hours, and
 - 3.2.2 Late night refreshment between 23:00 and 05:00
- 3.3 Section 16 of the statutory application form asks applicants to describe the steps they intend to take to promote the four licensing objectives. Where an application has been properly made and no responsible authority or other person has made a relevant representation, or where representations are made and subsequently withdrawn, these proposals are 'converted' in the form of clear and enforceable

licence conditions which, together with the Mandatory Conditions, make up the premises licence conditions.

- 3.4 A copy of the application, which includes the operating schedule that details the steps the applicant intends to take to promote the licensing objectives is shown as Appendix 3.

4. Representations

- 4.1 At any stage during the 28 day consultation period a responsible authority, a Councillor or an interested party, may make representations in connection with any of the licensing objectives provided that the grounds are relevant to the licensing objectives and are not deemed to be vexatious, frivolous or repetitive.

- 4.2 Representations have been received from responsible authorities as follows:

4.2.1 Police – Kent Police made the following comments:

‘Kent Police have no concerns with regards to how the premises currently operates but are opposed to the proposal of it becoming a 24 hour operation. The premises is located in a residential area. It is likely that the extension of the operation at this premises to become a 24 hour service will cause a disturbance to residents. The granting of a 24 hour licence at this location is likely to make the premises an attractive proposition in the early hours of the morning to persons on their way home from one of the many bars and restaurants located in the town centre. This increases the risk of incident or disturbance caused by persons attending the premises that are already under the influence of alcohol. Whilst the premises is located in a residential area, the town centre remains only a short walk away. Currently there are no other premises with a 24 hour licence located on this side of town and the area immediate to this premises does not suffer with the same levels or antisocial behaviour and crime and disorder that is currently experienced less than a mile away in the centre of town.

It is inevitable that an amount of disturbance will be generated by customers using this premises should it operate on a 24 hour basis. It is felt that the proposed conditions are not sufficient to promote the licensing objectives and do not alleviate our concerns.’

The Police have contacted the agent for the application with their concerns, but have received no response.

The police have requested that if this licence variation were to be granted that further conditions be added to the operating schedule as follows.

1. No beer, lager or cider above 5.5 % ABV shall be sold at the premises
2. No single cans or bottles of beer, lager or cider shall be sold at the premises
3. The customer entrance door to the premises is to be locked daily between 23:00 to 05:00. During these times all sales must be made via the service window
4. CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions.

- a. Equipment must be maintained in good working order, be correctly time and date stamped, recordings MUST be kept on the hard drive and kept for a period of 30 days and handed to Police upon reasonable request.
 - b. The premises licence holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority upon reasonable request.
 - c. The recording equipment and hard drive shall be kept in a secure environment under the control of the DPS or other responsible named individual.
 - d. In the event of technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to the Police Licensing Officer within 24 hours unless the CCTV will be repaired before that time (licensing.north.division@kent.pnn.police.uk)
5. All persons that sell or supply alcohol to customers must have licensing training.
- a. Training should take place within six weeks of employment and any new employees will be supervised until the training has taken place.
 - b. Training must include:-
 - i. Avoiding sales of alcohol or age restricted products to those under the age of 18.
 - ii. Recognising customers who appear drunk and refusing sale or supply of alcohol
 - iii. Knowing the licensing objectives and having read and understood the licence conditions
 - iv. Being able to produce licences/certificates/permits relevant to the premises in the absence of licence holder/DPS.
 - c. Refresher training should be repeated a minimum of every twelve months or earlier if required due to changes of legislation.
 - d. Training records must be kept on the premises and shall contain the nature, content and frequency of all training.
 - e. Records must be made available for inspection by Police, Police Licensing Officer and authorised officers from the Local Authority upon reasonable request either electronically or hard copy.
6. The License Holder will maintain auditable refusal/incident records.
- a. These records will detail the following;
 - i. Day, Date and Time of Refusal/Incident.
 - ii. Nature of Refusal/Incident and reason.
 - iii. Details of or description of the individual.
 - b. These records will be made available for inspection to any Police Officer, Police Licensing Officer, and Officer of the Local Authority immediately upon demand
7. Clear and legible notices must be prominently displayed requesting customers to respect local residents and leave the area quietly.

The police representation can be found in Appendix 4

4.2.2 Environmental Protection made the following comments:

‘This Service has serious concerns around the extended opening of these premises as follows:

Whilst no complaints have been received from the use of this petrol filling station as it is currently operating, it is considered the extension of operation to 24 hour use will cause noise disturbance due to customers attracted to the area. This will be new noise in an area that is generally residential in nature. Residences affected will include a number of properties on Darnley Road which have rear facades approximately 20 metres away that directly overlook the petrol station forecourt. The noise will include loud conversations, shouting, revving of vehicles, wheel screech, radios etc. There are no other late night opening/24 hour premises operating in the vicinity so this operation will have the potential to attract people from a significant distance including people on their way home from late night opening licensed premises in the town.

It is considered that an amount of disturbance caused by patrons from the 24 hour operation of petrol stations is inevitable and cannot be prevented by condition. Given the residential nature of this area it is considered the introduction of the proposed use is likely to cause public nuisance and this Service therefore intends to formally object to the current application.’

This was sent by Environmental Protection to the agent to discuss. As, again, no response was received, the formal representation was submitted.

The Environmental Protection representations are shown as Appendix 5.

4.2.3 Planning Officer – made the following comments:

‘The hours of use of the petrol filling station are controlled under the planning permission granted under 19980283 as amended by 20000158, currently 0600 to 2300. Planning permission will be required for 24 hours opening and such an approach has been refused in the past.’

The Planning comments are shown as Appendix 6. This information was passed onto the agent and this can be seen in Appendix 7.

4.2.4 Health and Safety (Commercial team) requested an amendment to the operating schedule to include the following:

“A maximum of 35% of the floor area to be used for the display of alcohol.”

The Health and Safety representations are shown as Appendix 8

This was emailed to the agent and was agreed to. This can be found as Appendix

4.2.5 Fire Safety Officer – has made no representation

4.2.6 Child Protection Agency – has made no representation

4.2.7 Trading Standards- has made no representation

4.2.8 Home Office – has made no representations

4.3 There have been no representations received from members of the public.

5. Determining the Application

5.1 The Panel must, when reaching a decision on the outcome of the application, take into account the licensing objectives. Having had proper regard to the matters above the Panel may:

5.1.1 Grant the licence application as applied for;

5.1.2 Modify the conditions of the licence or add any new conditions; or

5.1.3 Reject the whole or part of the application

6. BACKGROUND PAPERS

6.1 Anyone wishing to inspect background papers should, in the first place, be directed to Committee & Electoral Services who will make the necessary arrangements.

<p>Legal</p>	<p>The Panel have to decide the outcome of the application taking into account the four licensing objectives. In accordance with the provisions of the Act, if a licensing authority rejects in whole or in part, an application to vary a premises licence the applicant may appeal against the decision, to a Magistrates’ court within 21 days of being notified of the decision. Similarly, where a person who made relevant representations in relation to the application contends that the licence ought not to have been granted or that different or additional conditions should have been imposed on the licence; they may appeal against the decision, to a Magistrates’ court within 21 days of being notified of the decision.</p>
<p>Finance and Value for Money</p>	<p>None unless there is an appeal about the Panel decision to Magistrates’ Court which proves to be successful and which could therefore result in costs being awarded against the Council. It is therefore important that the Panel provide clear reasons for their decision.</p>
<p>Risk Assessment</p>	<p>Departure from the Guidance and Policy could lead to an increased risk of appeal. Similarly if any decision made is not evidence based and proportionate</p>
<p>Equality Impact Assessment</p>	<p>Screening for Equality Impacts</p> <p>Question</p> <p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p> <p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No</p> <p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
<p>Corporate Plan</p>	<p>There are direct links to Corporate Objective 1 – Safer Gravesham There are indirect links to Corporate Objective 2 – Stronger Gravesham, and Objective 3 – Sustainable Gravesham.</p>
<p>Crime and Disorder</p>	<p>There are obvious links to community safety and the perception of crime and disorder if licensed premises are not run and managed properly or adequately enforced.</p>
<p>Digital and website implications</p>	<p>Basic public notices will need updating on the website</p>
<p>Safeguarding children and vulnerable adults</p>	<p>The protection of children from harm is one of the four licensing objectives that must be promoted.</p>