

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Licensing Panel

**Date:** Monday, 09 September 2019

**Reporting officer:** Emily Lane-Blackwell, Licensing Officer

**Subject:** Consideration of Application for a Premises Licence for McDonalds, Within Asda, Thamesway, Gravesend, Kent DA11 0DG

### **Purpose and summary of report:**

To assist Members to determine an application, to which representations have been made, for the grant of a new premises licence under the Licensing Act 2003 – Application reference 19/00831/LAPL01.

### **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 new premises licence under the Licensing Act 2003 in respect of the premises known as McDonalds, Within Asda, Thamesway, Gravesend, Kent DA11 0DG
- 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 been subject to periodic revisions with the current policy set to expire on 15 April 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 This premises has previously been operated as a restaurant/café under the premises licence for Asda Supermarket.
- 2.2 The Asda store is licensed to be open 24 hours.

## **3. The Application**

- 3.1 On 29 July 2019 an application was received from McDonalds Restaurant Ltd for the grant of a premises licence under section 17 of the Licensing Act 2003 in respect of the premises located in the Asda Store on Thames Way, Gravesend.
- 3.2 The application is for late night refreshment between the following times:
  - 3.2.1 Monday to Sunday 23:00 to 05.00
- 3.3 Part P 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.
- 3.4 A copy of the application, which includes the operating schedule that details the steps the applicant intends to take to address the licensing objectives is shown as Appendix 2

#### **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 There have been no representations received from responsible authorities.
- 4.3 There have been no representations received from members of the public.
- 4.4 On 22 August 2019 a representation was received from Councillor Baljit Hayre. The details of his objection to the application can be seen as Appendix 3

#### **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. Matters to be taken into consideration**

##### 6.1 Local Statement of Licensing Policy Considerations

It is considered that certain policies have a bearing on the application and these are summarised as Appendix 1 to this report.

##### 6.2 Secretary of State Guidance Considerations

It is considered that certain matters have a bearing upon the application and these are summarised as Appendix 1 to this report

##### 6.3 Human Rights

The Panel is reminded that the Human Rights Act 1998 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.

#### **7. BACKGROUND PAPERS**

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

<p><b>Legal</b></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 grant 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><b>Finance and Value for Money</b></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.</p>
<p><b>Risk Assessment</b></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><b>Equality Impact Assessment</b></p>	<p><b>Screening for Equality Impacts</b></p>
	<p><b>Question</b></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><b>Corporate Plan</b></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><b>Crime and Disorder</b></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><b>Digital and website</b></p>	<p>Basic public notices will need updating on the website</p>

<b>implications</b>	
<b>Safeguarding children and vulnerable adults</b>	<b>The Licensing Act requires premises licence holders to promote the licensing objective to protect children from harm.</b> <b>Licensing authorities must play their part in taking the required action against those that doesn't appear to be upholding this objective.</b>