

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Licensing Panel
Date: 15 July 2020
Reporting officer: Emily Lane-Blackwell
Subject: Londis, 29 Milton Road, Gravesend, Kent DA12 2RF

Purpose and summary of report:

To determine the application for a review of a Premises licence granted under the Licensing Act 2003. GM/PRE/10/0003 for 29 Milton Road, Gravesend, Kent DA12 2 RF.

Recommendations:

1. Members are request to determine this review on its merits.

1. Introduction

- 1.1 The Licensing Panel is asked to determine an application for a review of Premises Licence granted under the Licensing Act 2003 in respect of the premises known as Londis, at 19 Milton Road, Gravesend, Kent DA12 2RF
- 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:
 - 1.2.1 The prevention of crime and disorder
 - 1.2.2 The protection of public safety
 - 1.2.3 The prevention of public nuisance
 - 1.2.4 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 three yearly 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, it is the duty of all licensing authorities that, in carrying out their functions, they must 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.

2. Background

- 2.1 The premises are known to have operated as an off licence since 2005 when their justice's licence was converted to a premises licence.
- 2.2 In November 2016 Mr Thayatharan became the licence holder and in March 2017 he became the Designated Premises Supervisor
- 2.3 A copy of the existing premises licence is attached as appendix 2

3. The review application

- 3.1 An application for a review of a premises licence under section 51 of the 2003 Act was received on 9 June 2020 from PC Cossar of Kent Police. A copy of the application is shown as appendix 3.
- 3.2 The application relates to all four licensing objectives by continuing to serve street drinkers and person who cause anti-social behaviour through the day and night in and around the area. The premise has also been found in continued breach of the premises licence.

4. Relevant 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 Kent Police – Have made the application
- 4.3 One public representation has been received and can be found at appendix 4.

Matters to be taken into consideration

- 4.4 Local Statement of Licensing Policy Considerations

It is considered that certain policies have a bearing on the application and these are summarised as Appendix 6 to this report.

- 4.5 Secretary of State Guidance Considerations

It is considered that certain matters have a bearing upon the application and these are summarised as Appendix 6 to this report

4.6 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.

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

IMPLICATIONS	APPENDIX 1
Legal	<p>The Licensing Panel is obliged to determine this application with a view to promoting the four licensing objectives. In making its decision, the Licensing Panel is also obliged to have regards to the Secretary of State's Guidance and the Council's adopted Licensing Policy.</p> <p>The Licensing Panel must also have regard to all of the representations made and the evidence it hears and must take such of the following steps as it considers necessary for the promotion of the licensing objectives:</p> <ul style="list-style-type: none"> • Modify or add conditions • Exclude a licensable activity from the licence • Remove the designated premises supervisor • Suspend the licence for a period not exceeding three months • Revoke the licence <p>The Licensing Panel may not modify the conditions or suspend the licence merely because the Panel considers it desirable to do so. Modification or suspension/revocation must actually be necessary in order to promote the licensing objectives.</p> <p>The Licensing Panel is not obliged to take any of the above actions even where there is sufficient reason to do so. It may for instance, decide to take no action or issue an informal warning to the licence holder and/or recommend that certain improvements take place within a specified timescale. Similarly it may revoke a licence at the very first review hearing if the circumstances warrant such action in order to promote the licensing objectives.</p>
Finance and Value for Money	<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>Possible financial impact on the business is dealt with in paragraph 11.23 of the s.182 Secretary of State Guidance. The Guidance makes it clear "temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives".</p>
Risk Assessment	<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>
Data Protection Impact Assessment	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data? A definition of each type of data can be found on the Information Commissioner's Office website via the above links.</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice?</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdp@medway.gov.uk.</p>

	We are following a legal prescribed process.
Equality Impact Assessment	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, The panel decision will be made in accordance with legislation and licensing objectives
	b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No.
	<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>
Corporate Plan	There are direct link to Corporate Objective 1 - People. Enforce high regulatory standards: put customer and employee safety first by ensuring commercial businesses and licence holders are fully compliant with expected legislative standards.
Climate Change	There are no links to climate change.
Crime and Disorder	There are obvious links to community safety and the perception of crime and disorder if a licensed premises, particularly those that supply alcohol, are not managed properly or adequately enforced.
Digital and website implications	Basic public notices will need updating on the website.
Safeguarding children and vulnerable adults	The Licensing Act 2003 requires premises licence holders to promote the licensing objective to protect children from harm. Licensing authorities must play their part in taking the required action against those that don't appear to be upholding this objective.