

**Classification:** Public

**Key Decision:** Yes

## **Gravesham Borough Council**

**Report to:** Licensing Panel

**Date:** 5 November 2020

**Reporting officer:** Emily Lane-Blackwell

**Subject:** Consideration of Application for a Premises Licence for 69 Stonebridge Road, Northfleet, Kent DA11 9DT

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

To assist Members to determine an application, to which representations have been received, for the grant of a new premises licence under the Licensing Act 2003 - Application reference 20/02036/LAPL01

### **Recommendations:**

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

## **1. Introductions**

- 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 Convenience Store at 69 Stonebridge Road, Northfleet.
- 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 premise is an extension of a building which already holds a premises licence under the Licensing Act 2003. Please refer to the plan in appendix 3b for clarification on this.
- 2.2 Prior to this application the premise has been used as a kebab takeaway without the requirement of a premises licence.

## **3. The Application**

- 3.1 On 11 August the application was deemed complete. The application was submitted by Arcci Designs on behalf of Mr Thurkatharan Murugaiyah for a Nee Premises Licence under section 17 of the Licensing Act 2003.
- 3.2 The application is for:
  - 3.2.1 Off sales of alcohol Monday to Saturday 07.00 to 23.00 and Sunday 08.00 to 22.00.
- 3.3 Part M 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 part of the Premises Licence.
- 3.4 A copy of the application is shown as Appendix 2. A copy of the plans are shown at Appendix 3 a and b.
- 3.5 During the consultation period the applicant is required to advertise their application in a local newspaper. The information in the original public notice was incorrect. We therefore had to begin the consultation period again. This second time the advertising was carried out correctly.

#### **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 provided that the grounds are relevant to the licensing objections and are not deemed to be vexatious, frivolous or repetitive.
- 4.2 On 4 September, we received a representation from a member of public. The detail of this objection can be found as Appendix 4.
- 4.3 On 8 September, we received confirmation from Kent Police and the agent that an agreement had been made. There were four conditions that would be added to the operating schedule. Details of these can be found as Appendix 5.
- 4.3.1 At the beginning of Appendix 5 please note that I informed both parties that condition 4 could not be implemented as it was already covered by legislation. There only conditions 1, 2 and 3 will be added to the operating schedule.

#### **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 sections of the policy are relevant to this application.

*Section 80 talks about how the absence of a Cumulative Impact Policy, doesn't prevent a responsible authority or interested party from making representations on any application on the grounds that the premises may give rise to, or otherwise contribute to cumulative impact.*

- 6.2 Secretary of State Guidance considerations

It is considered that certain matters have a bearing upon the application and these are summarised below:

*9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas.*

*9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:*

- *The steps that are appropriate to promote the licensing objective;*

- *The representations present by all parties;*
- *The Section 182 guidance*
- *It's own statement of licensing policy*

### 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.

IMPLICATIONS	APPENDIX 1
<b>Legal</b>	<p>The Panel have to decide the outcome of the application taking into account the four licensing objectives.</p> <p>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.</p> <p>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>
<b>Finance and Value for Money</b>	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.
<b>Risk Assessment</b>	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
<b>Data Protection Impact Assessment</b>	<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 <a href="#">personal data</a> or <a href="#">special category data</a> or <a href="#">criminal offence data</a>? 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 <a href="mailto:gdpr@medway.gov.uk">gdpr@medway.gov.uk</a>.</p>
<b>Equality Impact Assessment</b>	<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>
<b>Corporate Plan</b>	There are direct links 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

<b>Climate Change</b>	N/a
<b>Crime and Disorder</b>	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.
<b>Digital and website implications</b>	Basic public notices are displayed during the consultation period.
<b>Safeguarding children and vulnerable adults</b>	The Licensing Act 2003 required 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.