

Classification: Public

Key Decision: Yes

Gravesham Borough Council

Report to: Licensing Hearing Panel

Date: 14 December 2020

Reporting officer: Franco De Fazio

Subject: Consideration of Application for a variation to the premises licence for The Kings Head Sports Bar, 8 - 9 King Street, Gravesend, Kent DA12 2EB

Purpose and summary of report:

To assist Members to determine an application, to which representations have been received, for the grant of a variation to a premises licence under the Licensing Act 2003 - Application reference 20/02683/LAPL02

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 variation to a premises licence under the Licensing Act 2003 in respect of the premises known as The Kings Head Sports Bar, 8 – 9 King Street, Gravesend, Kent DA12 2EB.
- 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.

- 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 licence for this venue has been in existence since the introduction of the Licensing Act in November 2005. And the current owners have held the premises licence since February 2011. The current Premises Licence can be found in Appendix- A and the current Plans in Appendix B.

3. The Application

- 3.1 On 13 October 2020 the application was accepted as complete. The application was submitted by Mr Ismail Sucu for a Variation to an existing Premises Licence under section 34 of the Licensing Act 2003. A copy of this application is at Appendix C.
- 3.2 The application is for:
 - 3.2.1 Screening of sporting events on televisions and the sale and supply of alcohol from a bar in the external patio area at the rear of the premises from 11am until Midnight on Monday to Thursday, 11am until 02:30hrs Friday to Saturday and from 12:00pm until Midnight on Sunday
- 3.3 Part M of the statutory application form (page 15 Appendix C) asks applicants to describe the steps additional or otherwise they intend to take to promote the four licensing objectives in light of the proposed variation.
- 3.4 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 2 November, Licensing received a representation from Environmental Protection in relation to this application. This representation can be found as Appendix E.
 - 4.2.1 The applicants reply to this email on 7 November is attached as Appendix F
- 4.3 On 19 November, we received a representation from Kent Police putting forward a proposal to limit the use of the outside area until 22:00 hours and to amend the existing CCTV condition to include the outside area. This representation can be found as Appendix G.
 - 4.3.1 The applicant's reply to this representation was sent on 24 November and is attached as Appendix H

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
Legal	<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 variation to the 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>
Finance and Value for Money	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.
Risk Assessment	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
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 gdpr@medway.gov.uk.</p>
Equality Impact Assessment	<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>
Corporate Plan	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

Climate Change	N/a
Crime and Disorder	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.
Digital and website implications	Basic public notices are displayed during the consultation period.
Safeguarding children and vulnerable adults	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.