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Gravesham Borough Council

Report to: Licensing Panel

Date: 8 March 2021

Reporting officer: Lisa Hopson

Subject: Consideration of application for a premises licence for 50 Istead Rise, Kent, DA13 9JF

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 21/00087/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 at 50 Istead Rise, Kent DA13 9JF
- 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 There hasn't been a premises licence in place at this address before.

3. The Application

- 3.1 On 16 January 2021 an application was received from Mr Kunarathnam Sivakaran for the grant of a premises licence under section 17 of the Licensing Act 2003.
- 3.2 The application is for:
 - 3.2.1 Sale of alcohol off the premises 8:00 to 23:00 Monday to Sunday
- 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 the premises licence.
- 3.4 A copy of the application is shown as Appendix 2. A copy of the plans for the premises are shown at 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 provided that the grounds are relevant to the licensing objections and are not deemed to be vexatious, frivolous or repetitive.
- 4.2 On the 1 February 2021 the applicant agreed with Environmental Health to amend their hours in relation to sale of alcohol to:

**8am to 11pm on Monday to Saturday,
10am to 10:30pm on Sundays, and
8am to 10:30pm on Bank Holidays**

This is shown as Appendix 4.

- 4.3 There have been two representations received from members of the public. These can be seen as Appendices 5 and 6

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.

66. "The Licensing Authority understands the view of the Government, but considers that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example, the risk of residents' sleep being disturbed by patrons leaving licensed premises is obviously greater at 02.00 than at 23.00. Residents have a reasonable expectation that their sleep will not be unduly disturbed between the hours of 23.00 and 07:00".

67 "...Providing customers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet."

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:

8.42 states that the applicant should be able to demonstrate through their operating schedule that they understand the layout of the local area, the risk posed to the local area by the proposed licensable activity, local hotspots for crime and disorder and proximity to residential premises

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

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 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 the 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.