

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Licensing Panel

Date: 10 December 2021

Reporting officer: Emily Lane-Blackwell

Subject: To determine an application for a variation to the premises licence for Rainbow, 68 New Road, Gravesend, Kent DA11 0AE

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.

Recommendations:

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

1. Introduction

- 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 Rainbow, 68 New Road, Gravesend, Kent DA11 0AE.
- 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 The premises licence for this venue has been in existence since the introduction of the Licensing Act 2003 in November 2005 and the current owner, Mr Erdogan, has held the licence all this time. A copy of the current licence can be found as Appendix B and the plan as Appendix C

3. Application

- 3.1 An application for a variation to the premises licence was received on 17 September 2021 from Mr Irfan Erdogan. A copy of this application can be found as Appendix D.
- 3.2 The application is to:
 - 3.2.1 Include off sales of alcohol for online ordering only.
- 3.3 The Licensing Act 2003 requires an applicant to advertise their application to the public. This is done in two ways:
 - 3.3.1 Putting a notice up at the premises; and
 - 3.3.2 Putting a notice in a local newspaper.
- 3.4 Due to some issues with the advertising the consultation period had to begin again on 19 October 2021.

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 objectives and are not deemed to be vexatious, frivolous or repetitive.
- 4.2 On 15 November 2021, Licensing received a representation from Kent Police in relation to this application. This representation can be seen as Appendix E

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.
- 5.2 Having had proper regard to the matters above, the Panel may:
 - 5.2.1 Grant the variation application as applied for;
 - 5.2.2 Modify the conditions of the licence or add any new conditions; or
 - 5.2.3 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 51 states, 'In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective.

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 None

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 the representations and evidence it hears.</p> <p>In accordance with the provisions of the Act, the decision can be appealed to the Magistrates' Court within 21 days of the notification of the decision.</p>
Finance and Value for Money	<p>There are no direct financial requirements at this time. There is the possibility of a challenge by way of appeal</p>
Risk Assessment	
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	<p>There are direct links to Corporate objective 1 Safe Gravesham, there are indirect links to Corporate objectives 2 Stronger Gravesham and 3 Sustainable Gravesham.</p>
Crime and Disorder	<p>There are obvious links to community safety and the perception of crime and disorder if licensabled premises, particularly those that supply alcohol are not managed properly and adequately enforced.</p>

Digital and website implications	Basic notices have been updated on the website.
Safeguarding children and vulnerable adults	<p>The Licensing Act requires premises licence holders to promote the licensing objective to protect children from harm.</p> <p>Licensing Authorities must play their part in taking the required action against those that don't appear to be upholding this objective.</p>