

Agenda

Licensing Sub-Committee Meeting

Date: Tuesday, 10 October 2023

Time 2.00 pm,

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT*

Membership:

Councillors Carole Jackson, Lee-Anne Moore and Tony Winckless.

Quorum = 3

Pages

Information about this meeting

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 9 October 2023.

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1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.
- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the

lifts.

- (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
- (d) Anyone unable to use the stairs should make themselves known during this agenda item.

- 2. Apologies for Absence
- 3. Notification of Chair and Outline of Procedure
- 4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

Part B Report for the Licensing Sub-Committee to decide

- 5. Application for Variation of Designated Premises Supervisor under the Licensing Act 2003 5 - 24

To consider a variation of Designated Premises Supervisor at Best One, 16 Hawthorn Road, Sittingbourne, Kent, ME10 1BB.

Issued on Monday, 9 October 2023

The reports included in Part I of this agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact **DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of this meeting, please visit www.swale.gov.uk

**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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Licensing Sub-Committee Meeting	
Meeting Date	10th October 2023
Report Title	Application for a variation of Designated Premises Supervisor for a premises licence granted under the Licensing Act 2003 for which objections have been received from Kent police
Premises	Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	Members are requested to determine the application on its merits and decide whether to take such steps as Members consider appropriate for the promotion of the licensing objectives

1 Purpose of Report and Executive Summary

- 1.1 To consider an application, for which objections have been received from Kent police, for the variation of a premises licence granted under the Licensing Act 2003 to specify an individual Mr Roopesh Kapoor, as a Designated Premises Supervisor in respect of Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB.

2 Background

- 2.1 The Licensing Act 2003 (the 2003 Act) requires the Council as a licensing authority to carry out its various licensing 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
- 2.3 The 2003 Act requires the council to publish a 'Statement of Licensing Policy' that sets out the policies that will generally apply to promote the licensing objectives when making decisions on applications made under the Act. The council first adopted its Statement of Licensing Policy in 2004 and it has been regularly reviewed in line with legislative requirements ever since. The latest policy was adopted on 1st April 2021. The policy will be available at the meeting for reference purposes and is available to view at <https://swale.gov.uk/news-and-your-council/strategies-and-policies/statement-of-licensing-policy>

- 2.4 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 reason for any departure from it. This would be a key consideration for the courts should departure from the guidance result in a determination which might lead to an appeal or judicial review. The Guidance will be available at the meeting for reference purposes.
- 2.5 A copy of the council's approved procedure for hearing of the Licensing Sub-Committee in relation to an application, along with a copy of the Hearings Regulations has been circulated to all parties prior to the meeting.
- 2.6 The Licensing Sub-Committee 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.

3 Personal licences

- 3.1 The "supply of alcohol" by retail can only be authorised by an individual who holds a Personal Licence under the 2003 Act issued by the licensing authority within whose area they normally reside.
- 3.2 Personal licences are not subject to any conditions or restrictions on use.
- 3.3 The licensing authority must grant the licence if it appears to it that:
- i) The applicant is over 18 years of age;
 - ii) He/she possessed a licensing qualification or is a person of prescribed description;
 - iii) No personal licence held by him/her has been forfeited in the period of five years ending with the day that the application was made; or
 - iv) He/she has not been convicted of any relevant offence or any foreign offence.
- 3.4 Personal licences are valid for the lifetime of the holder unless surrendered suspended, revoked or declared forfeit by the courts. Once granted, the licensing authority which issued the licence remains the "relevant licensing authority" for it and its holder, even though the individual may move out of the area or take employment elsewhere.
- 3.5 The holder of a Personal Licence is under a duty to notify any convictions for relevant offences to the licensing authority and the courts are similarly required to inform the licensing authority of any conviction for a foreign offence. These measures should ensure that a single record will be held of the holder's history in terms of licensing matters.

4 Designated Premises Supervisors

- 4.1 In every premises licensed for the supply of alcohol, a personal licence holder must be specified as the “Designated Premises Supervisor”, as defined in the 2003 Act. This person is expected to have day to day management responsibility for the running of the premises given to them by the premises licence holder.
- 4.2 Only one Designated Premises Supervisor (DPS) may be specified on a premises licence, but a DPS may supervise more than one premises but only as long as they are able to ensure that the four licensing objectives are properly promoted and the premises complies with licensing law and licence conditions.
- 4.3 The police may object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. They must give the licensing authority a notice why they are so satisfied within a period of 14 days beginning with the day on which they are notified of the application.
- 4.4 The police can object where, for example, a particular DPS is first appointed or transferred to a particular premises, and their presence in combination with particular premises gives rise to concerns. The Secretary of State expects that police objections would arise only in genuinely exceptional circumstances.
- 4.5 Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put their arguments. The 2003 Act provides that the applicant may apply for an individual to take up post as DPS immediately, and, in such cases, the issue would be whether the individual should be removed from this post.
- 4.6 The licensing authority, when considering the matter must restrict its consideration to the issue of the crime and disorder objective and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.

5 The Application

- 5.1 An application was received on 24th August 2023 from Mr Roopesh Kapoor who is the Premises Licence Holder for Best One Off-Licence, Hawthorn Road, Sittingbourne, Kent ME10 1BB to vary the premises licence SIT/SWALE/189/0222 by the nomination of a new Designated Premises Supervisor to replace the existing incumbent Vijay Kapoor. A copy of the premises licence is attached as **Appendix I**.
- 5.2 The proposed DPS is Roopesh Kapoor who was granted a personal licence on 23rd August 2023 by Swale BC. His personal licence number is SWALE-PL-2313.

5.3 On 29th August 2023 Kent police served a notice under section 37 of the Licensing Act 2003 objecting to this application on the grounds that it would undermine the crime prevention objective because, as stated in their application:

“On 17th August 2023, prior to receiving this designated premises supervisor (DPS) variation request, Kent Police submitted an application for a review of the premises licence at Best One Hawthorn Road. This was due to Kent Police becoming increasingly concerned that in recent weeks and months the premises has seemingly failed to promote the licensing objectives, in particular those relating to the prevention of crime and disorder and the protection of children from harm. The application for review is still in a consultation period and a date of hearing is yet to be scheduled. Kent Police are such that we seek revocation of the premises licence.

Mr Roopesh Kapoor is the premises licence holder and Mr Vijay Kapoor the designated premises supervisor.

The objections regarding this DPS variation are very much aligned to the evidence and concerns documented within the application for review submitted to the licensing authority on 17th June 2023 and includes:

- Admissions made by Roopesh Kapoor on 27th July that Vijay Kapoor had not worked at the premises for several years, thus operating and conducting licensable activity without a DPS resulting in local authority licensing issuing a S.19 closure notice.
- The reinstatement of Vijay Kapoor as DPS on 27th July seemingly being a paper exercise only.
- The seizure of 86 illegal vape products from the premises during a multi-agency visit made to the premises on 27th July 2023.
- Numerous allegations of underage sales relating to age restricted products namely vapes, being made at the premises.
- Unconfirmed reports that stolen products are sold within the store.
- Breach of premises licence conditions.
- A lack of faith in Roopesh Kapoor’s ability to promote the objectives.

The application for review document covers each of the above points in greater detail, a copy of which we can confirm has been served upon Roopesh Kapoor, hence our reason for only providing bullet points within this specific representation, points that can be elaborated on in a hearing if necessary.

Whilst Vijay Kapoor was the named DPS during the period of time leading to the application for review, by his own admission it was Roopesh Kapoor the premises licence holder that was in day to day control and managing the the premises at that time.

It would even be fair to suggest that the sale of illegal vape products would also undermine and engage the public safety licensing objective.

It is our understanding that Roopesh Kapoor has only very recently undertaken a course to become a personal licence holder which has then enabled him to apply for the position of DPS. The stand alone action that Roopesh Kapoor has undertaken a personal licence course does not alleviate Kent Police concerns or restore our faith in his ability to become a responsible operator or promote the licensing objectives.

Kent Police do not support this variation and request that the application be denied.”

A copy of the police objection is attached as **Appendix II** and **Appendix III**.

6 Determining the application – Options of the Licensing Sub-Committee

- 6.1 The options available to the committee in this case are as follows:
- i) Having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objection to do so.
 - ii) Grant the application in any other case

7 Implications

Issue	Implications
Corporate Plan	<p>The service is an important regulatory function undertaken to ensure the safety of the residents of Swale.</p> <p>There are indirect links to:</p> <p>Priority 3: Tackling deprivation and creating equal opportunities for everyone – 3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.</p>
Financial, Resource and Property	<p>There are no direct financial requirements at this time. There is the possibility of a challenge by way of an appeal.</p>
Legal, Statutory and Procurement	<p>Under the Licensing Act 2003 the Licensing Authority has a duty to exercise licensing control of relevant premises.</p> <p>The Licensing Sub-Committee is obliged to determine this application with a view to promoting the four licensing objectives.</p> <p>In making its decision, the Licensing Sub-Committee is also obliged to have regards to the S182 Guidance that accompanies the Licensing Act 2003 and the council’s Statement of Licensing Policy.</p> <p>The Licensing Sub-Committee must also have proper regard to the Human Rights Act 1998 in respect to the rights of an individual when making decisions that affect them. However, it also has to</p>

	have regard to the safety and protection of the public and therefore to ensure that the right balance is found.
Crime and Disorder	Section 17 of the Crime and Disorder Act requires local authorities to consider the crime and disorder implications of their decisions and it is the Licensing Authority's responsibility to co-operate in the reduction of crime and disorder in the Borough. Section 17 of the Crime and Disorder Act 1998 states: "Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it can reasonably can to prevent crime and disorder in its area".
Environment and Climate/Ecological Emergency	No implications
Health and Wellbeing	Anti-social behaviour can impact on the wellbeing of nearby residents
Safeguarding of Children, Young People and Vulnerable Adults	The protection of children from harm is one of the 4 licensing objectives that underpin the Licensing Act 2003 and must be considered when making decisions on licence applications.
Risk Management and Health and Safety	Departure from the Guidance and Statement of Licensing Policy could lead to an increased risk of appeal. Similarly, if any decision made is not evidence based and proportionate
Equality and Diversity	No implications
Privacy and Data Protection	Normal privacy and data protection rules apply

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Current premises licence SIT/SWALE/189/0222
- Appendix II and Appendix III: Objection to DPS variation received from Kent police

8 Background Papers

Licensing Act 2003

Home Office Guidance issued under s.182 of the Licensing Act 2003 (as amended)

Swale BC Statement of Licensing Policy 2021 - 2026

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Swale Borough Council, Swale House, East Street,
Sittingbourne, Kent, ME10 3HT

Premises licence number
SIT/SWALE/189/0222

Part 1 – Premises details

Postal address of premises, or if none, ordnance survey map reference or description

Hawthorn Road Off Licence
16 Hawthorn Road

Post town	Sittingbourne, Kent	Post code	ME10 1BB
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Telephone number	01795 428847
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Where the licence is time limited the dates

No Limitation

Licensable activities authorised by the licence

Sale of Alcohol

The times the licence authorises the carrying out of licensable activities

Monday – Saturday: 08:00 – 23:00
Sunday: 10:00 – 22:30
Good Friday: 08:00 – 22:30
Christmas Day: 12:00 – 15:00 & 19:00 – 22:30

The opening hours of the premises

Monday – Sunday: 10:30 – 22:30
Christmas Day/Boxing Day/ New Year's Day: Closed

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Off the premises

Part 2**Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence**

Mr Roopesh Kapoor
16 Hawthorn Road
Sittingbourne
Kent
ME10 1BB
Tel No: 07962 355055

Registered number of holder, for example company number, charity number (where applicable)

N/A

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Mr Roopesh Kapoor
16 Hawthorn Road
Sittingbourne
Kent
ME10 1BB

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol

Licence No: SWALE-PL-0183

Issued by: Swale Borough Council

Annex 1 – Mandatory Conditions

Condition 1

No supply of alcohol may be made under this licence:-

- (a) At a time when there is no designated premises supervisor in respect of it or
- (b) At a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

Condition 9

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.

Condition 11

- (1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price, which is less than the permitted price.
- (2) For the purpose of the condition set out in paragraph 1:-
 - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(6);
 - (b) “permitted price” is the price found by applying the formula:- $P = D + (D \times V)$ where:-
 - (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence:-

- (i) the holder of the premises licence
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(7)
- (3) Where the permitted price given by Paragraph (b) of paragraph (2) would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- (4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph (2) on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Annex 2 - Conditions consistent with the Operating Schedule**Condition 1**

- (a) A CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose.
- (b) The CCTV system shall be capable of producing immediate copies of recordings on site. Copies of recordings will either be recorded on good quality videotape or digitally onto CD/DVD or other equivalent medium.
- (c) Any recording shall be retained and stored in a suitable and secure manner for a minimum of 28 days and shall be available, subject to compliance with the Data Protection legislation, to the Police or Officers of the Licensing Authority on request.
- (d) The CCTV system will incorporate a camera covering the entrance door and the licensed areas and will be capable of providing an image which is regarded as identification standard. The precise positions of the cameras may be agreed, subject to compliance with Data Protection legislation, with Police from time to time.
- (e) The system will display, on any recording, the correct time and date of the recording.
- (f) A system will be in place to maintain the quality of the recorded image and a complete audit trail maintained.
- (g) The CCTV system will be maintained so as to be fully operational throughout the hours that the premises are open for any licensable activity.
- (h) Appropriate signage informing customers CCTV is in operation to be displayed. Signage informing customers that they will be asked to produce age identification when purchasing alcohol to be displayed.

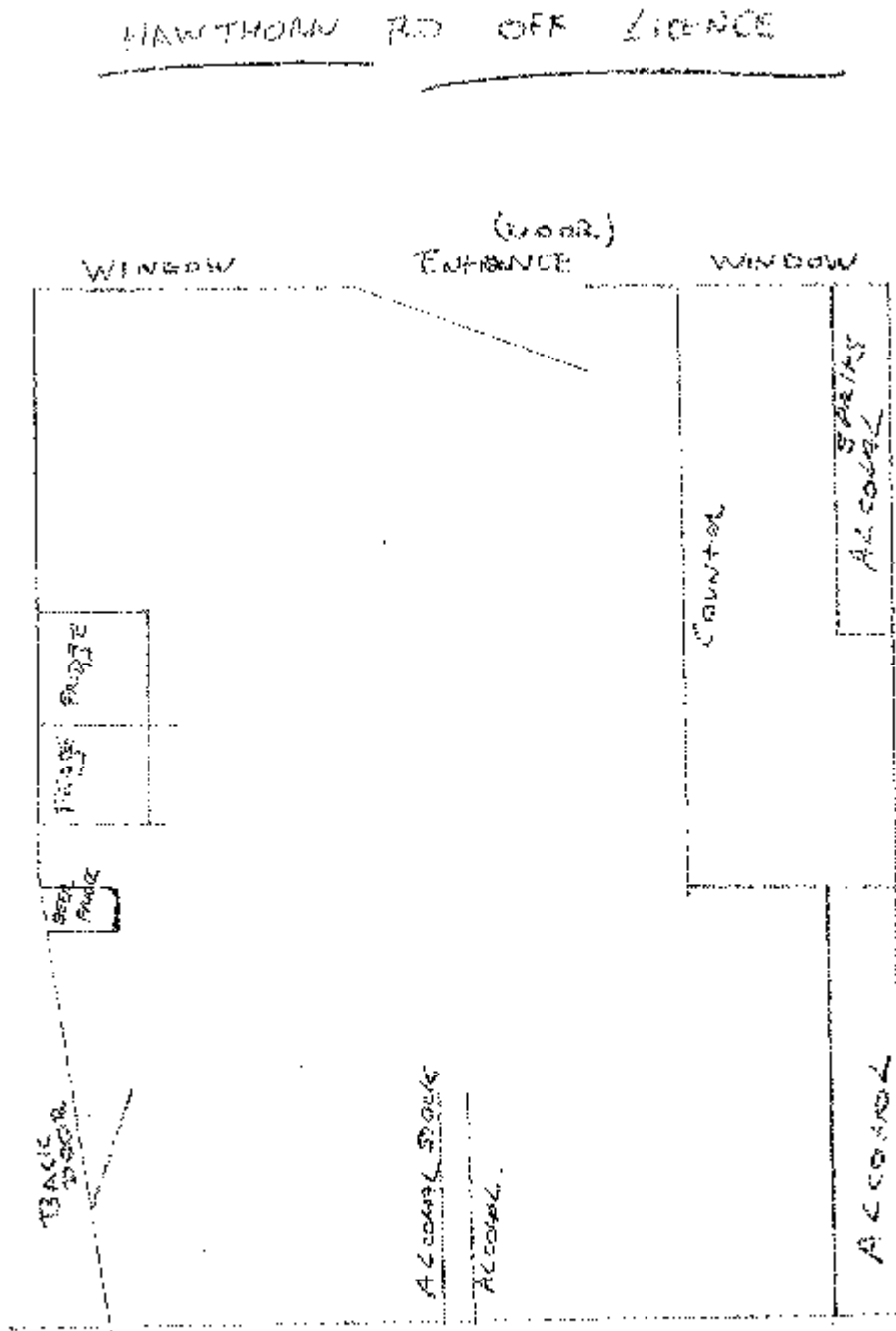
Condition 2

- (a) A refusal/incident book will be kept with details of refusal, time, day and date of event.
- (b) Challenge 21 shall be adopted and relevant signs displayed.
- (c) The premises will be an active member of the Swale Safe radio system

Annex 3 - Conditions attached after a hearing by the licensing authority

N/A

Annex 4 – Plans



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Chief Officer of Police Representation in relation to an application for variation of premises licence to specify individual as premises supervisor made under Part 3 Section 37 Licensing Act 2003 (S37(5) Licensing Act 2003)

Details of person making objection

Name of Chief Officer of Police	Chief Superintendent White 15754
Postal Address: (Area Headquarters)	C/O Medway Police Station Purser Way Gillingham Kent ME71NE
E-mail address	daniel.hunt@kent.police.uk
Telephone Number:	01634 792388

Details of premises representation is about

Name of Premises:	Best One
Address of premises:	16 Hawthorn Road Sittingbourne Kent ME10 1BB
Date application received by police	25/08/2023
Date representation sent to Licensing Authority	29/08/2023

Must be within 14 days of receipt - S.37(6) Licensing Act 2003

The Chief Officer of Police has received an application for the variation of a premises licence made under the provisions of Section 37 Licensing Act 2003. The relevant representations within the meaning of S.37(5) of the Licensing Act satisfy the requirements of S.37 (6) of that Act and are as follows:

Is this a representation regarding the specification of a Premises Supervisor under S37 (5) Licensing Act 2003? **YES**

If yes, complete the following statement: -

Due to the exceptional circumstances of this case, I am satisfied that granting the application would undermine the crime prevention objective because

Please see continuation page entitled "DPS variation objection Best One"

Please use separate sheets where necessary

Signed:

Date: 29\08\2023

Print name: PC Daniel Hunt

Force Number: 11044...

pp Chief Officer of Police for the Police Area in which the licensed premises are situated

Representation must be made **within the period of 14 days** beginning with the day on which the Chief Officer of Police is notified of the application to vary to specify an individual as premises supervisor. Please return this form along with any additional sheets to the Licensing Authority. This form must be returned within the Statutory Period.

Please consider this document as a continuation page regarding Kent Police objection to the authorisation of a designated premises supervisor variation at Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB. Due to the following exceptional circumstances of this case, Kent Police are satisfied that the granting of the application would undermine the licensing objectives.

On 17th August 2023, prior to receiving this designated premises supervisor (DPS) variation request, Kent Police submitted an application for a review of the premises licence at Best One Hawthorn Road. This was due to Kent Police becoming increasingly concerned that in recent weeks and months the premises has seemingly failed to promote the licensing objectives, in particular those relating to the prevention of crime and disorder and the protection of children from harm. The application for review is still in a consultation period and a date of hearing is yet to be scheduled. Kent Police are such that we seek revocation of the premises licence.

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- The reinstatement of Vijay Kapoor as DPS on 27th July seemingly being a paper exercise only.
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It would even be fair to suggest that the sale of illegal vape products would also undermine and engage the public safety licensing objective.

It is our understanding that Roopesh Kapoor has only very recently undertaken a course to become a personal licence holder which has then enabled him to apply for the position of DPS. The stand alone action that Roopesh Kapoor has undertaken a personal licence course does not alleviate Kent Police concerns or restore our faith in his ability to become a responsible operator or promote the licensing objectives.

Kent Police do not support this variation and request that the application be denied.