

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: 9TH October 2020
Report Author: Christina Hills – Licensing Officer
Subject: Neptune’s Beach Café, Shellness Road, Leysdown on Sea, Sheerness,
Kent ME12 4RH

Purpose and summary of report:

To consider an application, to which representations have been made, for a new Premises Licence application under the Licensing Act 2003 – application reference number SHE/SWALE/189/0752

Recommendations:

The Committee is asked to determine the application and decide whether to grant a licence. Members asked to consider the application on its merits.

Background papers: The Licensing Act 2003
Home Office Guidance Documents issued under Section 182 of the Licensing Act 2003 as amended
Swale Borough Council Statement of Licensing Policy

The Licensing Act 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 a decision on applications made under the Act. The Policy will be available at the meeting for reference purposes.

Under the 2003 Act, it is the duty of all licensing authorities that, in carrying out their functions, they must 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 its 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. Should the need arise the Guidance will be available at the meeting for reference purposes.

The Licensing Authority must, under the Act refer any application for hearing to the Licensing Panel, if relevant representations are made by a responsible authority or other person. A copy of the Council’s approved procedure for hearings of the Panel in relation to an application, along with a copy of the Hearings Regulations has been circulated to all parties prior to the meeting.

Report Title:

Application for: A Premises Licence to be granted under the Licensing Act 2003

Purpose of the report:

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Henry Eakin, in respect of premises at Neptune's Beach Café, Shellness Road, Leysdown on Sea, Sheerness, Kent ME12 4RH (Appendix A) in respect of which (5) representations have been received from members of the public (1) by the parish council and (1) from a ward Councillor (Appendix B).

1. Issues to be decided

Members are asked to determine whether to:

- (i) grant a licence subject to conditions consistent with the Operating Schedule modified to such an extent as considered appropriate for the promotion of the licensing objectives and any mandatory conditions,
- (ii) grant a licence but excluding any of the licensable activities applied for,
- (iii) grant a licence but refusing to specify a premises supervisor,
- (iv) reject the application.

2. Background

The Licensing Act requires the Council as licensing authority to carry out its various licensing functions so as to promote the following four licensing objectives:

- (i) the prevention of crime and disorder;
- (ii) the protection of public safety;
- (iii) the prevention of public nuisance;
- (iv) the protection of children from harm

3. The Application

- 3.1 On 18 August 2020 an application was made which was fully complete, from Mr Henry Eakin for the grant of a Premises Licence under section 17 of the Licensing Act 2003 in respect of premises at Neptune's Beach Café, Shellness Road, Leysdown on Sea, Sheerness, Kent ME12 4RH. The application is for the sale of alcohol and recorded music. The proposed hours of the licensable activities are as follows:

Sale of Alcohol	
Monday to Thursday	10:00 – 23:00
Friday	10:00 – 24:00
Saturday and Sunday	10:00 – 01:00

Recorded Music – May to September each year indoors and outdoors	
Monday to Sunday	16:00 – 22:00

Members will be aware the recorded music that under the provisions of the Deregulation Act 2015 recorded music is deregulated between the hours of 08:00

and 23:00 for audiences of less than 500 and therefore is not something that can be considered by the Licensing Sub-Committee.

The opening hours for the premises will be the same as that for the sale of alcohol from May to September. From October until March the premises will close at 18:00 and therefore the proposed licensable activities will cease at that time also.

The applicant also completed section 14 of the application form relating to late night refreshment which is the sale of hot food between the hours of 23:00 and 05:00. However, as he intends the sale of hot food at the premises to stop at 23:00 this would not be included on any granted premises licence as it is not within the licensable hours.

3.2 A copy of the application, which includes the operating schedule that details the steps the applicant intends to take to address the licensing objectives is shown at Appendix A.

3.3 The application has been correctly advertised in the local press on 26 August 2020. The consultation period ended on 16 September 2020. The required public notice was correctly displayed during the whole of the consultation period.

3.4 The proposed Designated Premises Supervisor is Henry Eakin.

3.5 **Representations**

3.6.1 Representations from responsible authorities:

- Kent and Medway Fire & Rescue Service – No representations
- Kent County Council Trading Standards – No representations
- Kent County Council Services Children and Families – No representations
- Kent County Council Public Health – No representations
- Environmental Health – Swale Borough Council – Have made no representations however they seek the attachment of the following conditions to assist in the promotion of the licensing objectives:

- Kent Police – Have made no representations however they seek the attachment of the following conditions to assist in the promotion of the licensing objectives:

Condition 1

All persons who sell or supply alcohol to customers must have licensing training.

Training should take place within six weeks of employment

1. Any new employees will be supervised until the training has taken place.
2. Refresher training should be repeated a minimum of every six months or earlier if required due to changes of legislation.
3. Training records must be kept on the premises and shall contain the nature, content and frequency of all training.

4. Records must be made available for inspection by Police, Police Licensing Officer and authorised officers from Swale Council on demand either electronically or hard copy.

Condition 2

CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.

Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale and supply of alcohol occurs.

1. Equipment must be maintained in good working order, be correctly time and date stamped, recordings MUST be kept in date order, and kept for a period of 31 days and handed to Police on demand.
2. The premises licence holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority on demand.
3. The recording equipment and discs/tapes shall be kept in a secure environment under the control of the DPS or other responsible named individual.
4. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded.
5. In the event of technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to the Police Licensing Officer immediately (licensing.north.division@kent.pnn.police.uk)

Condition 3

An incident log shall be kept at the premises, and made available on request to a police officer, police licensing officer or council authorised licensing officer. It must be completed within 24 hours of the incident and will record the following:

1. all crimes reported to the venue
2. all ejections of patrons
3. any complaints received concerning crime and disorder
4. any incidents of disorder
5. all seizures of drugs or offensive weapons
6. any faults in the CCTV system, searching equipment or scanning equipment
- (g) any refusal of the sale of alcohol
7. any visit by a relevant authority or emergency service.

Condition 4

The premises licence holder or designated premises supervisor must keep a refusal register. Staff to be trained to complete a refusal book/record immediately after the refusal but no later than the end of their shift. The register must be kept on the premises and will detail

Day, Date & Time of refusal

1. Item Refused

2. Name or description of person refused sale
3. Reason for refusal
4. Each entry is to be checked and signed by the DPS/Licensee no later than 1 week after the entry has been made.

The register must be made available for Police, Police Licensing Officer and authorised officers from Swale Council on demand either electronically or hard copy.

3.6.2 The applicant has agreed to these conditions being imposed on any granted premises licence

3.6.3 There have been (5) representation(s) from members of the public as well as (1) representation from the parish council and (1) from a ward councillor. These are shown at Appendix B.

Responsible Authority / Other person	Licensing Objective	Associated Documents	Appendix
Members of the Public	Public Nuisance Public Safety Crime and Disorder Protection of Children from Harm	(5) letters and emails of which 1 email is on behalf of a group of residents	B
Parish Council	Public Nuisance Public Safety Crime and Disorder Protection of Children from Harm	1 email	B
Ward Councillor	Public Nuisance Public Safety Crime and Disorder Protection of Children from Harm	1 email	B

3.6.4 In an email to the licensing team of 4 September 2020 the applicant has indicated that he would be willing to curtail licensing activities at 23:00 each day. This is shown as Appendix C

4. Policy Considerations

The following provisions of the Secretary of State's Guidance apply to this application:

Chapter 2 – The licensing objectives

Chapter 8 – Applications for premises licences

Chapter 9 – Determining applications

Chapter 10 – Conditions attached to Premises Licences

The following paragraphs of the Council's Statement of Licensing Policy apply to this application:

Sections 3.1 -3.4, 17.1-8, 17.20-23 – These sections set out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.

Section 1.1 to 1.4 – These sections set out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

5. Determining the application – Options of the Panel

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:

- (i) Grant the licence application as applied for;
- (ii) Modify the activities or conditions proposed or add any new conditions;
- (iii) Refuse to specify a person in the licence as designated premises supervisor
- (iv) Reject the whole or part of the application

5.1 Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under the Section 17 of the Crime and Disorder Act 1989 to consider the crime and disorder implications of their decisions and 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 function on, and the need to do all that is reasonably can to prevent crime and disorder in its area”.

6. Implications Assessment

The decision should be made with regard to the Secretary of the State's guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

7. Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.

- Article 10 – Freedom of Expression

8. Recommendations

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

9. List of Appendices

Appendix A – Application form and plan of premises

Appendix B – Representations (Members of the public, Parish Council, Ward Councillor) against the application

Appendix C – Email from applicant dated 4 September 2020

Appendix D - Order of proceedings

10. Appeals

The applicant or any other person (objector) may appeal the Licensing Act 2003 Sub Committee's decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates' Court. Parties should be aware that they MAY incur an Adverse Cost Order should they bring an appeal