

<b>Licensing Sub-Committee Meeting</b>	
<b>Meeting Date</b>	25th April 2022
<b>Report Title</b>	Consideration of an application for the review of a premises licence under the Licensing Act 2003
<b>Premises</b>	Life Nightclub, 76-78A High Street, Sittingbourne, Kent ME10 4PB
<b>Lead Officer</b>	Christina Hills, Licensing Officer
<b>Key Decision</b>	No
<b>Classification</b>	<b>Closed</b>
<b>Recommendations</b>	1. 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 The report advises Members of an application for the review of a premises licence granted under the Licensing Act 2003 made by PC 11044 Daniel Hunt on behalf of Kent Police in respect of Life Nightclub, 76-78A High Street, Sittingbourne, Kent ME10 4PB.

## **2 Background**

- 2.1 The Licensing Sub-Committee is asked to determine an application for the review of a premises licence under section 51 of the Licensing Act 2003.
- 2.2 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
- 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 The current Licence**

- 3.1 The current premises licence for Life Nightclub, 76-78A High Street, Sittingbourne, Kent ME10 4PB was granted to become effective on 24<sup>th</sup> November 2005. The premises licence holder is Dr Haydn Pugh and the Designated Premises Supervisor is Mr Kevin Pearton.
- 3.2 The licence allows for: Sale of Alcohol, Films, Live Music, Recorded Music, Performance of Dance, Anything of a similar description and Late Night Refreshment.
- 3.3 Following a change of address of the premises licence holder an amended premises licence was issued on 9<sup>th</sup> March 2022 and is attached as **APPENDIX I**.

### **4 The Review Application**

- 4.1 An application for a review of the premises licence was received on 7<sup>th</sup> March 2022 from PC 11044 Daniel Hunt on behalf of Kent Police.
- 4.2 It is a requirement of the Licensing Act 2003, that the licensing authority advertise the review application, inviting representations from any responsible authority or interested party. The application has been correctly advertised with notices

posted at the premises, on the council website and the council offices for the required period of 28 days.

- 4.3 The grounds for the review are in order to promote the licensing objectives of: The prevention of crime and disorder, the protection of public safety, the prevention of public nuisance and the protection of children from harm and follows multiple recent incidents at the premises which have identified premises failings and raised concerns. Also, a breach of a premises licence conditions. The review application is attached as **APPENDIX II**.
- 4.4 As the review application relates to ongoing police investigations the police submitted two review applications. One is suitable for the public domain and is included in Part A of the Agenda. The other application is for the information of the members of the Licensing Sub-Committee, the applicant and licence holder and his representatives only and is included in Part B of the Agenda as **APPENDIX III**.
- 4.5 As part of the review application the Police have stated that they believe that the addition of further premises licence conditions would go some way to alleviating concerns and would allow the premises to better promote the licensing objectives. Therefore, Kent Police ask Members to consider at a minimum, the imposition of the following conditions:
- a) All SIA door supervisors must wear Body worn video cameras which both record visual pictures and audio. Recordings from the body worn video cameras will be maintained for at least 31 days and made available for inspection when required by the Police or local authority. Body worn video cameras will be in record mode for the duration of the shift. Footage from body worn cameras will be made available to police upon request.
  - b) SIA registered door supervisors shall be deployed from the premises as and when the various areas within the premises close to assist with external dispersal at closing time. Door staff shall wear hi-visibility vests when deployed to assist with external dispersal at closing time.
  - c) A written dispersal policy shall be prepared by the licence holder in consultation with the police and licensing authority. The dispersal policy can be amended from time to time by the licence holder in agreement with the Police and Licensing Authority. The premises shall operate in accordance with the dispersal policy.
  - d) All customers must be searched as a condition of entry (save for private functions with the written permission of the police, such permission to be sought by the licence holder at least 14 days before the function). Premises must employ a minimum of 1 male and 1 female door supervisor to assist with same gender searching.
  - e) All customers must provide proof of identification (including name, photograph, and date of birth) to be scanned by an electronic identification

scanning system as a condition of entry. (If the scanning system malfunctions the identification documents must be photographed until the system is repaired, this period being no longer than 72 hours).

- f) The venue will actively participate in the any local Pub watch or equivalent scheme, such as Swale Safe. Any radios provided through such a scheme will be monitored by a responsible member of staff.

## 5 Representations

5.1 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 vexatious, frivolous or repetitive.

5.2 Representations from responsible authorities:

Kent & Medway Fire & Rescue Service	No representations
KCC Trading Standards	No representations
KCC Public Health	No representations
Swale BC Environmental Health Protection	Have made a representation as shown below at 5.3

5.3 Swale BC Environmental Health Protection have made a representation which is based on the licensing objectives of “prevention of public nuisance” and is in support of Kent police licensing’s review application. Their comments are shown as **APPENDIX IV**.

5.4 Members will note that there were complaints received in 2021 relating to noise nuisance which were substantiated by way of specialist noise recordings and out of hours officers witnessing loud music at the premises in the early hours of the morning. Members may therefore wish to consider whether the current licensable hours of the premises licence are appropriate.

5.5 Representations from Interested Parties:

There have been no representations received from Interested Parties

## 6 Minor Variation Application

- 6.1 Following the service of the review application by Kent Police Licensing Officers on the premises licence holder and DPS a meeting was arranged between them along with their legal representative where the proposed additional conditions to the premises were discussed. As a result of this meeting a Minor Variation application under the Licensing Act 2003 was submitted on 30 March 2022. The application is shown as **APPENDIX V**.
- 6.2 Minor Variations are a simplified process where amendments to an existing premises licence that do not adversely affect the four licensing objections can be proposed. Under this process, the applicant is not required to advertise the variation in a newspaper or copy it to responsible authorities. However, they must display a white notice at the premises for a period of ten working days starting on the working day after the minor variation application was given to the licensing authority. It is confirmed that the notice has been correctly displayed.
- 6.3 In considering the application the licensing authority need only consult with those responsible authorities whose views are needed to be taken into account when considering the application. As the proposed new conditions relate only to the crime and disorder objective only the police were consulted in this case.
- 6.4 Any responsible authority consulted, and other persons have 10 working days in which to submit representations. The Council must determine the application within 15 working days, or the application is deemed refused.
- 6.5 In the case of this application the proposed additional conditions are:
- a) All SIA door supervisors must wear body worn video cameras which both record visual pictures and audio. Recordings from the body worn video cameras will be maintained for at least 31 days and made available for inspection when required by the police or local authority. Body worn cameras will be made available to police upon request.
  - b) Door staff shall wear hi-visibility armbands when deployed to assist with external dispersal at closing time.
  - c) A written dispersal policy shall be prepared by the licence holder in consultation with the police and local authority. The dispersal policy can be amended from time to time in agreement with the police and licensing authority. The premises shall operate in accordance with the dispersal policy. This will incorporate a clause requiring door staff to monitor the outside area for a radius of 40 yards from the premises.

- d) All customers must be searched as a condition of entry (save for private functions with the written permission of the police, such permission to be sought by the licence holder at least 14 days before the function).
- e) All customers who appear to be under 25 must provide identification (including name, photograph, and date of birth).
- f) The venue will actively participate in any local Pubwatch or equivalent scheme, such as Swale Safe. Any radios provided through such a scheme will be monitored by a responsible member of staff. This condition will not apply if the scheme does not operate effectively.

6.6 The end of the consultation for this application is 13 April 2022. Kent Police licensing team have raised no objections. At the time of writing this report it is not possible to confirm whether relevant objections will be received or whether an amended premises licence containing these amended conditions can be granted. This will be confirmed to Members of the Licensing Sub-Committee when they meet.

## **7 Determining the application – Options of the Licensing sub-Committee**

7.1 Members must, having regard to the application and any relevant representations, take such steps mentioned below as they consider appropriate for the promotion of the licensing objectives. The steps are:

- To take no action;
- To issue a warning or caution;
- To modify the conditions of the licence;
- To exclude a licensable activity from the scope of the licence;
- To remove the designated premises supervisor;
- To suspend the licence for a period not exceeding 3 months;
- To revoke the licence

7.2 Relevant sections of the Guidance issued under section 182 of the Licensing Act 2003 that Members should take into account are:

- Chapter 2 Licensing Objectives
- Chapter 10 Conditions attached to Premises Licences and Club Premises Certificates
- Chapter 11 Reviews

7.3 Members should also take into account relevant policy statements as contained in the Swale BC Statement of Licensing Policy 2021 – 2026 including specifically

section 14: Review of Premises Licence or Club Premises Certificates. This is attached as **APPENDIX VI**.

## 8 Implications

Issue	Implications
Corporate Plan	There are links to Priority 3 – Tackling deprivation and creating equal opportunities for everyone. Point 3.4 states “Ensure that the council plays a proactive role in reducing crime and anti-social behaviour including through the modernisation of CCTV provision.
Financial, Resource and Property	There are no direct financial requirements at this time. There is the possibility of a challenge by way of an appeal.
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 have regard to the safety and protection of the public and therefore to ensure that the right balance is found.</p>
Crime and Disorder	<p>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.</p> <p>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”.</p>
Environment and Climate/Ecological Emergency	No implications
Health and Wellbeing	Anti-social behaviour and noise nuisance 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 – ref SIT/SWALE/189/0333
- Appendix II: Review Application for the public
- Appendix III: Review Application for the Licensing Sub-Committee (Restricted)
- Appendix IV: Representation from Environmental Protection Team Leader
- Appendix V: Minor Variation application
- Appendix VI: Extract of Swale BC Statement of Licensing Policy 2021 - 2026

## 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