

<b>Licensing Sub-Committee</b>	
<b>Meeting Date</b>	25 <sup>th</sup> August 2022
<b>Report Title</b>	Consideration of an application for the grant of a new premises licence under the Licensing Act 2003
<b>Premises</b>	Unit 1 Britannia House 75 High Street Sheerness Kent ME12 1TX
<b>Lead Officer</b>	Johanna Thomas, Licensing Officer
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	1. Members are requested to determine the application on its merits

## **1 Purpose of Report and Executive Summary**

- 1.1 The report advises Members of an application for a premises licence to be granted under the Licensing Act 2003 in respect of which representations have been made by Seven (7) interested parties

## **2 Background**

- 2.1 The Licensing Sub-Committee is asked to determine an application for the grant of a new premises licence under the Licensing Act 2003 in respect of premises at Unit 1 Britannia House 75 High Street Sheerness Kent ME12 1TX
- 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 the council 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 1 April 2021. The Policy will be available at the meeting for reference purposes.
- 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 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 right 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 hearings 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 Authority must, under the Act, refer any application for hearing to the Licensing Sub-Committee where relevant representations are made by a responsible authority or an interested party.
- 2.7 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 Application**

- 3.1 On 11<sup>th</sup> July 2022 an application was received from Mr Lee Robert McCall for the grant of a premises licence under section 17 of the Licensing Act 2003.
- 3.2 The application is for:

#### Sale and Supply of Alcohol (on the Premises)

Monday to Thursday	10:00 – 23:00
Friday and Saturday	10:00 – 00:00
Sunday	10:00 – 22:00
Christmas Eve	10:00 – 00:00
New Year's Eve	10:00 to 01:00 New Year's Day

#### Live Music (indoors and outdoors)

Monday to Saturday	19:00 – 22:00
Sunday	11:00 – 22:00
New Year's Eve & Christmas Eve	11:00 – 00:00

#### Recorded Music (indoors)

Monday to Thursday	10:00 – 23:00
Friday and Saturday	10:00 – 00:00
Sunday	10:00 – 22:00
New Year's Eve & Christmas Eve	11:00 – 00:00

- 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 representations, 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 I**. A copy of the plans for the premises are shown at **Appendix II**.
- 3.5 The applicant has commissioned an independent Fire Risk Assessment to support the application. This is shown at **Appendix VI**.

## **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 Representations from responsible authorities:
- Kent and Medway Fire and Rescue Service – No representations. Although Kent and Medway Fire and Rescue Service made no representations on 18<sup>th</sup> July in light of the nature of the objections an email was sent to Kent and Medway Fire and Rescue Service on 19<sup>th</sup> July raising the concerns about fireboarding, the email is shown as **Appendix III**, to date we have not received a reply.
  - 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 BC – No representations
  - Swale Borough Council Planning Area Team – Sittingbourne and Sheppey – No representations. Response shown as **Appendix IV** this includes the licensing team raising an enquiry with planning as a result of comments made by members of the public who objected.
  - Kent Police – No representations
- 4.3 There have been 7 representations from members of the public. The representations are made on the basis of all 4 of the licensing objectives of

prevention of crime and disorder, promotion of public safety, prevention of public nuisance, and protection of children from harm. These are shown at **Appendix V**.

## **5 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 to 3.14.4 – These sections set out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.

Section 2.1 to 2.8 – These sections set out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

## **6 Determining the application – Options of the Sub-Committee**

5.1 Members are asked to determine which of the following options they deem appropriate:

- (i) grant a licence as applied for
- (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 designated premises supervisor
- (iv) reject the application

5.2 Members of the Licensing Sub-Committee are reminded of their duty under Section 17 of the Crime and Disorder Act 1998 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.

## 6 Implications

Issue	Implications
Corporate Plan	A community to be proud of: by promoting the four licensing objectives the authority is enriching and enhancing the community whilst maintaining its regulatory and enforcement role.
Financial, Resource and Property	None unless there is an appeal to Magistrates' Court which proves to be successful and which could therefore result in costs being awarded against the Council.
Legal and Statutory	<p>The Licensing Sub-Committee has to decide on the outcome of the application taking into account the four licensing objectives,</p> <p>In accordance with 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 decisions</p>
Crime and Disorder	The council has a duty under section 17 of the Crime and Disorder Act 1998 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.
Environmental Sustainability	No implications
Health and Wellbeing	No implications
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

## 6 Appendices

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

- **Appendix I:** Application form
- **Appendix II:** Plan of premises
- **Appendix III:** Email to Kent and Medway Fire and Rescue Service
- **Appendix IV:** Consultation Response form Planning Area Team
- **Appendix V:** Representations against the application
- **Appendix VI:** Fire Risk Assessment

## 7 Background Papers

The Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003 (as amended)

Swale BC Statement of Licensing Policy