



LICENSING AUTHORITY: SWALE BOROUGH COUNCIL

**LICENSING ACT 2003
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005**

NOTICE OF DETERMINATION

Applicant: Lee Robert McCall

Regarding **NEW PREMISES LICENCE – Unit 1, Britannia House, 75 High Street, Sheerness ME12 1TX.**

Date(s) of hearing: 25 August 2022

Date of determination: 25 August 2022

Committee Members: [Chair]: Councillor Derek Carnell (Chair)
Councillor Carole Jackson
Councillor Mike Dendor

Legal Advisor in attendance at hearing(s): Helen Ward

Licensing Officer in attendance at hearing(s): Chris Hills

Democratic Services Officer in attendance at hearing(s): Philippa Davies

This was an application for:

Variation Grant
 Provisional Statement Review Other

for a

Premises Licence Club Premises Certificate Personal Licence
 Temporary Event Notice

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant

- Lee McCall and John Durtnall

Responsible Authorities

None

Other Persons

- John Summersall and Peter Saunders
- John Summersall on behalf of Roseanne Appleby
- John Summersall on behalf of Uttam Roy

Representations considered in the absence of a party to the hearing:

Those contained within the Report prepared for the Licensing Sub Committee

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Swale Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto in particular:

Section 4 relating to the general duties of licensing authorities and sections 16-25 which relate to the grant of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

Chapter 2 which relates to the licensing objectives
Chapter 8 & 9 which relates to premises licences & determinations
Chapter 10 which relates to conditions attached to licences;

The Committee has taken into account its Statement of Licensing Policy:

The Committee has decided to depart from the guidance under section 182 of the Act and or the statement of licensing policy for the following reasons:

Paragraphs and reasons (state in full):

N/A

C: Determination:

The Committee has decided to:

Grant the application as applied for, save for the two amendments which were confirmed at the hearing, namely that

1. Live Music is permitted indoors only
2. The condition relating to external tables and chairs shall read that they are to be rendered unusable by 9pm each day, and not 10pm as in the original application

The Licensing Sub Committee have given particular consideration to fire safety and recommends that a further Fire Risk Assessment is obtained prior to the premises opening and notes that the applicant is obliged to comply with other relevant legislation regarding fire safety.

Reasons for determination:

■ **Prevention of Crime and Disorder**

Reasons (state in full):

The Sub-Committee had regard to the representations made in writing and comments made at the hearing in respect of this licensing objective. The Sub-Committee noted that there was no representation from Kent Police. The Sub Committee heard from the applicant that they were installing CCTV to include coverage of the outside areas. The Sub Committee heard from the objectors that they had concerns about anti social behaviour in Rose Street adjacent to the premises, which was ongoing at this time and their concerns about the potential for further anti social behaviour should the application be granted. The Sub-Committee felt that these concerns could not be evidentially linked to this application. They considered that as the premises was currently empty, the presence of a restaurant in the unit may go some way to improving the monitoring in this area. They also welcomed the use of CCTV in the area and were satisfied that the premises would operate as a restaurant and not a bar. As such, the Sub-Committee were satisfied that the application promoted this licensing objective.

■ **Public Safety**

Reasons (state in full):

The Sub-Committee had regard to the representations made in writing and the comments made during the hearing. The Licensing Sub Committee noted that the Fire Authority were not objecting to the application and had been approached for further comment on the matters raised in objection, although they have not yet

replied. The Sub-Committee carefully considered the definition of public safety in the statutory guidance given under Section 182 of the Licensing Act 2003. The Sub Committee heard from the applicant about the measures that they were putting into place to reduce the risk of a fire and to deal with a fire that could occur. The Licensing Sub Committee also heard from the objector who had significant concerns relating to fire safety and the structure of the premises. The Licensing Sub Committee recognised that the applicant is obliged to comply with other legislation relating to fire safety and in accordance with the Guidance it would not be appropriate to add conditions relating to matters that are covered by other legislation. The Licensing Sub Committee felt it would be appropriate to recommend that an additional Fire Risk Assessment is carried out prior to the premises opening, as they noted that the current Fire Risk Assessment made a number of recommendations.

■ **Prevention of nuisance**

Reasons (state in full):

The Sub-Committee had regard to the representations made in writing and raised during the hearing today. The Sub-Committee noted that there was no representation from any responsible authority in respect of the application. The Sub-Committee heard from the applicant that the application should only be seeking live music indoors and that the tables and chairs externally would be rendered unusable by 9pm, and not 10pm as per the original condition offered in the application. The Licensing Sub Committee considered the comments made by the objector that people living in the flats above the premises would not be able to open their windows due to noise and smoke from people using the smoking area.

The Licensing Sub committee noted the applicant's comments that he was hoping in the future that the County Council would take steps to pave Rose Street so that he could put seating there but unless and until that happened he would not. The licensing Sub Committee recognised that if he did wish to place seating externally then permission would be required in the form of a pavement licence application, which would have its own consultation process. The Licensing Sub Committee noted the capacity of the premises of around 20 – 30 customers and that it would operate as a fine dining restaurant and the conditions proposed in the application around this and they did not consider a large number of people would congregate in external areas. As such, they considered the conditions offered, as amended at the hearing, were appropriate to ensure promotion of the licensing objectives.

The Licensing Sub Committee considered music inside the premises and noted that the applicant explained this would be background. They gave consideration to whether any additional conditions might be appropriate to promote the licensing objectives. They noted that the concerns were largely speculative on this point and that if there were any concerns made out there was appropriate redress through other statutory regimes including enforcement action under the Licensing Act 2003 and through environmental protection legislation.

■ **Protection of children from harm**

Reasons (state in full):

The Sub-Committee had regard to the representations made in writing regarding this licensing objective and were satisfied that the operating schedule for the premises is sufficient to promote this licensing objective.

The Sub-Committee noted that this licensing objective has a narrow definition under the Section 182 Guidance.

■ **Other Relevant Considerations**

Reasons (state in full):

The Licensing Sub Committee noted that a number of comments had been made in relation to planning. The Planning Department have confirmed that the premises has the correct planning use for the intended use a restaurant. They also noted that whilst planning issues can relate to licensing issues, the two regimes were properly separated to avoid duplication and inefficiency. As such, they did not give weight to the concerns raised regarding the planning permission.

The Licensing Sub Committee noted that financial concerns were raised by the objector to the application. They noted that their decision had to be based on the likely effect of the application on the licensing objectives.

The Licensing Sub Committee recognised that their Statement of Licensing Policy particularly encouraged premises that have a food offer.

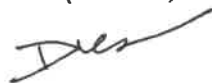
D: Appeal

Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the Licensing Act 2003.

An appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

Cllr Derek Carnell (CHAIR):

Signed:



A copy of the original document is held on file

Date: 25 August 2022