

Licensing Sub-Committee	
Meeting Date	Tuesday 1 st November 2022
Report Title	Consideration of an application for the variation of an existing Premises Licence under the Licensing Act 2003
Premises	The Old Wine Vaults, 75 Preston Street, Faversham, Kent ME13 8SU
Lead Officer	Johanna Thomas, Licensing Officer
Classification	Open
Recommendations	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 the variation of an existing premises licence under the Licensing Act 2003 in respect of which representations have been made by eight (8) interested parties

2 Background

- 2.1 The Licensing Sub-Committee is asked to determine an application for the variation of an existing premises licence under the Licensing Act 2003 in respect of premises at The Old Wine Vaults, 75 Preston Street, Faversham, Kent ME13 8SU

- 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 8th September an application was received from The Craft Union Pub Company Ltd. for the variation of an existing premises licence under section 34 of the Licensing Act 2003 in respect of The Old Wine Vaults, 75 Preston Street, Faversham, Kent ME13 8SU
- 3.2 The application is for:

An increase to the hours for the licensable activities of sale of alcohol and recorded music (indoors) on Friday and Saturday from a terminal hour of 23:00 to 01:00 and to extend the opening hours on Fridays and Saturdays to allow the premises to close at 01:30 hours the following day.
- 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**.

3.5 A copy of the existing premises licence is shown as **Appendix II**.

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.
- 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 – No representations
- Kent Police – Have requested amendments to conditions as shown below:

To amend condition 7:-

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.

- a. Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale and supply of alcohol occurs.
- b. Equipment must be maintained in good working order, be correctly time and date stamped, recordings MUST be kept on the hard drive and kept for a period of 31 days.
- c. 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 Police or authorised officers from Swale Borough council upon reasonable request.

In the event of technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to Kent Police Licensing within 24 hours unless the CCTV will be repaired before that time (licensing.north.division@kent.pnn.police.uk).

To amend condition 15:-

All persons that sell or supply alcohol to customers must have licensing training:

- a. Training should take place within six weeks of employment and any new employees will be supervised until the training has taken place.
 - b. Refresher training should be repeated a minimum of every six months or earlier if required due to changes of legislation.
 - c. Training records must be kept and shall contain the nature, content, and frequency of all training.
 - d. Records must be made available for inspection by Police, Police Licensing Officer, and authorised officers from Swale Borough council upon request either electronically or hard copy.
- 4.3 There have been three (3) representations in total from members of the public. Two (2) representations are from individual residents and the third is made on behalf of six (6) residents. Although this last representation is in the form of an email from one resident, a further six people were named in that representation. Each of the other residents who put their name to the email representation have been contacted by the Licensing Team and five of those six people named confirmed that the email on their behalf was to be considered a representation to the application. The Licensing Team therefore consider this a valid representation on behalf of the six residents who have confirmed as such. The representations are made on the basis of 2 of the licensing objectives of prevention of crime and disorder, prevention of public nuisance. These are shown at **Appendix III**.

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 (8.5 Variations)

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.

Section 9 relating to variations to licences.

Section 17 relating to conditions

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 the variation as applied for
- (i) grant the variation 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) reject part of the application
- (iii) reject the whole 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 so-operate in the reduction of crime and disorder in the Borough.

6 Implications

Issue	Implications
Corporate Plan	There are direct links to Priority 3 – 3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour
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	The Licensing Sub-Committee must carry out its functions with a view to promoting the four licensing objectives. The procedure for dealing with applications for the variation of an existing Premises Licence is set out in the Licensing Act 2003. Schedule 5 of the Licensing Act 2003 deals with appeals. Any party to the application has the right to appeal the decision of the Licensing Sub Committee. Such appeal must be made to a

	Magistrates' Court within 21 days of the Appellant being notified of the decision.
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. 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 reasonably can to prevent crime and disorder in its area"
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Safeguarding of Children, Young People and Vulnerable Adults	Premises Licence Holders must be 'fit and proper' to operate licensed premises responsibly and uphold the licensing objectives which include 'protection of children from harm'
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.

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:** Premises Licence
 - **Appendix III:** Representations against the application

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

