

Licensing Sub-Committee Meeting	
Meeting Date	10th October 2023
Report Title	Application for a variation of Designated Premises Supervisor for a premises licence granted under the Licensing Act 2003 for which objections have been received from Kent police
Premises	Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB
Lead Officer	Christina Hills, Licensing Team Leader
Classification	Open
Recommendations	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 To consider an application, for which objections have been received from Kent police, for the variation of a premises licence granted under the Licensing Act 2003 to specify an individual Mr Roopesh Kapoor, as a Designated Premises Supervisor in respect of Best One, 16 Hawthorn Road, Sittingbourne, Kent ME10 1BB.

2 Background

- 2.1 The Licensing Act 2003 (the 2003 Act) requires the Council as a licensing authority to carry out its various licensing 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 Personal licences

- 3.1 The "supply of alcohol" by retail can only be authorised by an individual who holds a Personal Licence under the 2003 Act issued by the licensing authority within whose area they normally reside.
- 3.2 Personal licences are not subject to any conditions or restrictions on use.
- 3.3 The licensing authority must grant the licence if it appears to it that:
- i) The applicant is over 18 years of age;
 - ii) He/she possessed a licensing qualification or is a person of prescribed description;
 - iii) No personal licence held by him/her has been forfeited in the period of five years ending with the day that the application was made; or
 - iv) He/she has not been convicted of any relevant offence or any foreign offence.
- 3.4 Personal licences are valid for the lifetime of the holder unless surrendered, suspended, revoked or declared forfeit by the courts. Once granted, the licensing authority which issued the licence remains the "relevant licensing authority" for it and its holder, even though the individual may move out of the area or take employment elsewhere.
- 3.5 The holder of a Personal Licence is under a duty to notify any convictions for relevant offences to the licensing authority and the courts are similarly required to inform the licensing authority of any conviction for a foreign offence. These measures should ensure that a single record will be held of the holder's history in terms of licensing matters.

4 Designated Premises Supervisors

- 4.1 In every premises licensed for the supply of alcohol, a personal licence holder must be specified as the “Designated Premises Supervisor”, as defined in the 2003 Act. This person is expected to have day to day management responsibility for the running of the premises given to them by the premises licence holder.
- 4.2 Only one Designated Premises Supervisor (DPS) may be specified on a premises licence, but a DPS may supervise more than one premises but only as long as they are able to ensure that the four licensing objectives are properly promoted and the premises complies with licensing law and licence conditions.
- 4.3 The police may object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. They must give the licensing authority a notice why they are so satisfied within a period of 14 days beginning with the day on which they are notified of the application.
- 4.4 The police can object where, for example, a particular DPS is first appointed or transferred to a particular premises, and their presence in combination with particular premises gives rise to concerns. The Secretary of State expects that police objections would arise only in genuinely exceptional circumstances.
- 4.5 Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put their arguments. The 2003 Act provides that the applicant may apply for an individual to take up post as DPS immediately, and, in such cases, the issue would be whether the individual should be removed from this post.
- 4.6 The licensing authority, when considering the matter must restrict its consideration to the issue of the crime and disorder objective and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.

5 The Application

- 5.1 An application was received on 24th August 2023 from Mr Roopesh Kapoor who is the Premises Licence Holder for Best One Off-Licence, Hawthorn Road, Sittingbourne, Kent ME10 1BB to vary the premises licence SIT/SWALE/189/0222 by the nomination of a new Designated Premises Supervisor to replace the existing incumbent Vijay Kapoor. A copy of the premises licence is attached as **Appendix I**.
- 5.2 The proposed DPS is Roopesh Kapoor who was granted a personal licence on 23rd August 2023 by Swale BC. His personal licence number is SWALE-PL-2313.

5.3 On 29th August 2023 Kent police served a notice under section 37 of the Licensing Act 2003 objecting to this application on the grounds that it would undermine the crime prevention objective because, as stated in their application:

“On 17th August 2023, prior to receiving this designated premises supervisor (DPS) variation request, Kent Police submitted an application for a review of the premises licence at Best One Hawthorn Road. This was due to Kent Police becoming increasingly concerned that in recent weeks and months the premises has seemingly failed to promote the licensing objectives, in particular those relating to the prevention of crime and disorder and the protection of children from harm. The application for review is still in a consultation period and a date of hearing is yet to be scheduled. Kent Police are such that we seek revocation of the premises licence.

Mr Roopesh Kapoor is the premises licence holder and Mr Vijay Kapoor the designated premises supervisor.

The objections regarding this DPS variation are very much aligned to the evidence and concerns documented within the application for review submitted to the licensing authority on 17th June 2023 and includes:

- Admissions made by Roopesh Kapoor on 27th July that Vijay Kapoor had not worked at the premises for several years, thus operating and conducting licensable activity without a DPS resulting in local authority licensing issuing a S.19 closure notice.
- The reinstatement of Vijay Kapoor as DPS on 27th July seemingly being a paper exercise only.
- The seizure of 86 illegal vape products from the premises during a multi-agency visit made to the premises on 27th July 2023.
- Numerous allegations of underage sales relating to age restricted products namely vapes, being made at the premises.
- Unconfirmed reports that stolen products are sold within the store.
- Breach of premises licence conditions.
- A lack of faith in Roopesh Kapoor’s ability to promote the objectives.

The application for review document covers each of the above points in greater detail, a copy of which we can confirm has been served upon Roopesh Kapoor, hence our reason for only providing bullet points within this specific representation, points that can be elaborated on in a hearing if necessary.

Whilst Vijay Kapoor was the named DPS during the period of time leading to the application for review, by his own admission it was Roopesh Kapoor the premises licence holder that was in day to day control and managing the the premises at that time.

It would even be fair to suggest that the sale of illegal vape products would also undermine and engage the public safety licensing objective.

It is our understanding that Roopesh Kapoor has only very recently undertaken a course to become a personal licence holder which has then enabled him to apply for the position of DPS. The stand alone action that Roopesh Kapoor has undertaken a personal licence course does not alleviate Kent Police concerns or restore our faith in his ability to become a responsible operator or promote the licensing objectives.

Kent Police do not support this variation and request that the application be denied.”

A copy of the police objection is attached as **Appendix II** and **Appendix III**.

6 Determining the application – Options of the Licensing Sub-Committee

- 6.1 The options available to the committee in this case are as follows:
- i) Having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objection to do so.
 - ii) Grant the application in any other case

7 Implications

Issue	Implications
Corporate Plan	<p>The service is an important regulatory function undertaken to ensure the safety of the residents of Swale.</p> <p>There are indirect links to:</p> <p>Priority 3: Tackling deprivation and creating equal opportunities for everyone – 3.4 Ensure that the council plays a proactive role in reducing crime and antisocial behaviour.</p>
Financial, Resource and Property	<p>There are no direct financial requirements at this time. There is the possibility of a challenge by way of an appeal.</p>
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</p>

	have regard to the safety and protection of the public and therefore to ensure that the right balance is found.
Crime and Disorder	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. 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".
Environment and Climate/Ecological Emergency	No implications
Health and Wellbeing	Anti-social behaviour 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 SIT/SWALE/189/0222
- Appendix II and Appendix III: Objection to DPS variation received from Kent police

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

