

Agenda Item No: 1 - Summary of Report

Licence Reference 21/02337/LAPRE

Report To: LICENSING SUB – COMMITTEE
(UNDER THE LICENSING ACT 2003)

Date: 21st October 20221

Report Title: THE ZOO, 10 – 11 MARKET BUILDINGS, MAIDSTONE, KENT, ME14 1HP

Application for: A premises licence to be varied under the
Licensing Act 2003

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Mrs Christopher Dyer
 2. Type of authorisation applied for: To vary a premises licence under the Licensing Act 2003. (Appendix 1)
 3. Licensable Activities and hours:

		Current Hours		Hours: New Application	
B)	Films (Indoors)	Monday-Sunday	09:00 – 07:00	–	–
E)	Live Music (Indoors)	Monday-Sunday	09:00 – 07:00	Monday to Sunday (Indoors) Fri & Sat (Outdoors)	– 23:00 -01:00
F)	Recorded Music (Indoors)	Monday-Sunday	09:00 – 07:00	Monday to Sunday (Indoors) Fri & Sat (Outdoors)	– 23:00 -01:00
G)	Performance of Dance (Indoors)	Monday-Sunday	09:00 – 07:00	–	–
H)	Anything of a similar description to that falling within (e), (f) or (g) (Indoors)	Monday-Sunday	09:00 – 07:00	–	–
I)	Late Night Refreshment (Indoors & Outdoors)	Monday-Sunday	23:00 – 07:00	–	–
J)	Supply of alcohol (On & Off the premises)	Monday-Sunday	09:00 – 07:00	–	–
L)	Opening Hours	Monday-Sunday	09:00 – 07:00	–	–

The variation seeks to include Live and recorded music in the outside front area of the licensed premises from 23:00- 01.00 on Fridays and Saturdays only (Appendix 2).

The outside area is subject to deregulation Sundays -Thursdays and the terminal hour will be 23:00 for live and recorded Music.

Affected Wards: High Street

Recommendations: **The Committee is asked to determine the application and decide whether to vary the premises licence.**

Policy Overview: The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and that such departure be supported by proper reasons.

Financial Implications: Costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application it is appropriate to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**other persons**” (objectors). The procedure for determining licences has a prescribed format to ensure fair representation of the relevant facts by all parties.

LEGAL: Under the Licensing Act 2003 the **Licensing Authority** has a duty to exercise licensing control of relevant premises.

Background Papers: Licensing Act 2003
DCMS Guidance Documents issued under section 182 of the Licensing Act 2003 as amended
Maidstone Borough Council Statement of Licensing Policy

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Agenda Item No. 1

Report Title: THE ZOO, 10 – 11 MARKET BUILDINGS, MAIDSTONE, KENT, ME14 1HP

Application to: Vary a premises licence under the Licensing Act 2003.

Purpose of the Report

The report advises Members of an application to vary a Premises Licence under the Licensing Act 2003,(Appendix 1) made by Mr Christopher Dyer for The Zoo, 10 – 11 Market Buildings, Maidstone, Kent, ME14 1HP in respect of which 6 responses have been received from other persons (Appendix 3).

Issue to be Decided

Members are asked to determine whether to :

Grant the application as applied for, or

Grant the application and modify conditions of the licence, or

Reject all or part of the application

Background

1. The relevant sections are Part 3 S13 and 34 – 36 of The Licensing Act 2003 and section 4 of The Licensing Act 2003 in particular the Licensing Objectives:

The prevention of crime and disorder;
Public Safety
The prevention of public nuisance; and
The protection of children from harm

2. The application has been correctly advertised in the local press and notices displayed on the premises for the required period.
3. There were no representations received from responsible authorities.
4. 6 responses were received from other persons.
5. The table below illustrates the relevant responses which have been received

	Responsible Authority /Interested Party	Licensing Objective	Associated Documents	Appendix
	Objections			
1	Ana Brjan	Public Nuisance	E-mail	3
2	Sara Mecaj	Public Nuisance	E-mail	3
3	Kate William	Public Nuisance Public Safety	E-mail	3
4	Arber Hassani	Public Nuisance Public Safety	E-mail	3
5	Charles Mann	Crime and Disorder Public Nuisance Public Safety	E-mail	3

6	Kay Ince	Public Nuisance Public Safety	E-mail	3
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The objectors all raise concerns for the significant adverse disturbance effect on nearby residents and premises. The belief in granting the extended hours for Live and recorded music in the outside area, Friday and Saturday until 1am is that noise nuisance will increase for the nearby residents and other night time venues which will be affected within their own premises. The venue is also accused of causing car parking congestion which impedes access to premises and also prevents emergency vehicle access to Market Buildings. The venue is also accused of having drug dealing take part in its vicinity and the door staff unable to manage the situation or it's patrons, relying on nearby premises door staff to assist when controlling their issues. There are also concerns around the narrow access past the venue which affects the ingress and egress for members of the public trying to pass by the premises compromising public safety.

The premises has a current licence, Appendix 4 and Current plans Appendix 2. The current licence holder is the applicant

6. The current licence hours are as per the licence attached at appendix 4 and set out at 3 of the summary above.

7. On the 13.10.21 the applicant's solicitor confirmed that they agreed to the additional conditions being added to the licence (Appendix 5) which are: -

1. A noise level for the provision of regulated entertainment in the outside areal will be set by agreement with the Community Protection Team of Maidstone Borough Council and thereafter can only be varied by agreement in writing which would include e-mail.
2. The Premises Licence Holder will comply with the requirements of the Noise Management attached prepared by Noise expert Adam Brown (Appendix 5)
3. This plan will be reviewed annually and any update lodged with the licensing authority.
4. The licence holder shall make available a contact number for local residents to contact the premises to discuss any specific incidents or concerns either during or after events. This will be manned throughout the time an event takes place.

The Community protection Team confirmed the withdrawal of their representation on 13.10.21 (Appendix 6)

8. **Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is appropriate to do so to promote the licensing objectives.;**

9. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**

Chapters 8 (8.42 onwards) & 9 Premises Licences & Determining Applications

Chapter 10 Conditions.

Relevant policy statements contained in the Licensing Authority's Statement of Licensing Policy:

Relevant policy statements contained in **the Licensing Authority's Statement of Licensing Policy**:

17.10 Crime and Disorder

17.19 Public Safety

17.22. Prevention of Public Nuisance

CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

17.10 Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

17.11 Wholesale of alcohol. Since 1 April 2017, businesses which sell alcohol (for example, retailers of alcohol and trade buyers) need to ensure that the UK wholesalers that they buy alcohol from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique Registration Number (URN) against the HMRC online database. This is an ongoing obligation and if a business is found to have bought alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face a criminal prosecution and their alcohol stock may be seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses.

17.12 Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC.

17.13 The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- Prevention of disorderly conduct and anti-social behaviour
- Prevention of underage drinking
- Prevention of sales of alcohol to intoxicated customers
- Prevention of drunkenness both on and in the vicinity of the premises
- Prevention of drug use and drug dealing
- Restriction to responsible drinks promotions
- Use of safety glass
- Inclusion of a wind-down time following alcohol sales period
- Adequate seating to discourage "vertical drinking"
- The offer of food and snacks or other entertainment or occupation to discourage persistent drinking

17.14 In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) 'wind down' or 'drinking up' period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

17.15 Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of

relevant evidence. Where the Licensing Authority determines after consultation with the police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol, have later opening hours and are situated within the Town Centre night time economy area.

17.16 Where appropriate, applicants for licences in the Town Centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

17.17 The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

17.18 In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to promotion of the licensing objectives.

CONDITIONS TO PROMOTE PUBLIC SAFETY.

17.19 The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

17.20 Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.

17.21 Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.

Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:

- (i) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol.
- (ii) Nightclubs
- (iii) Cinemas
- (iv) Theatres.
- (v) Other premises where regulated entertainment is likely to attract a large number of people.
- (vi) Where conditions of occupancy have arisen due to representations received.

CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

17.22 The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

17.23 The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premises
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation
- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (v) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (vi) Availability of public transport to and from the premises
- (vii) Delivery and collection times and locations.
- (viii) Impact of external security or general lighting on residents.
- (ix) History of management of and complaints about the premises.
- (x) Applicant's previous success in preventing Public Nuisance.
- (xi) Outcomes of discussions with the relevant Responsible Authorities.
- (xii) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
- (xiii) Collection of litter arising from the premises

17.24 Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

17.25 Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

Options

Legal options open to members -

Grant the variation application as applied for., or

Grant the variation and modify conditions of the licence, or

Reject all or part of the application.

Members of the Licensing Act 2003 – 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

Section 17 of the Crime and Disorder Act 1988 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 function on, and the need to do all that it reasonably can prevent, crime and disorder in its area”.

12. Implications Assessment

The decision should be made with regard to the Secretary of State’s Guidance and the Council’s Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal/challenge is increased.

13. Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to Fair Hearing
- Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendices

14. Conclusion

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

15. List of Appendices

Appendix 1	Application Form
Appendix 2	Plan of Premises (Current)
Appendix 3	Representations –Other persons
Appendix 4	Current Premises Licence
Appendix 5	Community Protection Team reps & applicant response
Appendix 6	Noise Management Plan
Appendix 7	Community Protection Team reps withdrawal
Appendix 8	Plan of area
Appendix 9	Human Rights Articles
Appendix 10	Order of Proceedings

16. Appeals

The applicant or any other person(objector) may appeal the Licensing Act 2003 Sub Committee’s decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates’ Court. Parties should be aware that they MAY incur an Adverse Costs Order should they bring an appeal.

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