

Agenda Item No: 1 - Summary of Report

Licence Reference WK/

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

Date: 4TH DECEMBER 2009

**Report Title: THE BELUGA BAR
BANK STREET
MAIDSTONE
ME14 1SN**

Application for Review of a Premises Licence

Report Author: Lorraine Neale

Summary:

1. The Applicant for Review – Chief Inspector David Pascoe on behalf of the Chief Officer of Police
2. Type of application applied for: Review of a Premises Licence.
3. Grounds for Review

Prevention of Crime and Disorder
Public Safety:

The police are requesting the Licensing Committee to review the premise licence following intelligence received by both Police and Maidstone Borough Council Licensing Department that the club was regularly exceeding the capacity as detailed on the premise licence, observations were kept on the premises on Saturday 24th October 2009 and it was found that there were in excess of 600 more customers in the club than the maximum permitted number of 1150. In addition there have been reports of assaults and disturbances at the premises since 28th June 2009 that have caused concern.

Affected Wards: High Street - West

Recommendations: **The Committee is asked to determine the application and decide whether to grant a 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 necessary to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**interested parties**” (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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Application for: Review of a Premises Licence

Purpose of the Report

1. The report advises Members of an application for the review of a premises licence, brought by Chief Inspector David Pascoe on behalf of the Chief Officer of Police in respect of the premises Beluga Bar, Bank Street, Maidstone, Kent, ME14 1SN. No representations have been received from any Interested Parties or any other Responsible Authorities

Issue to be Decided

Members must, having regard to the application and any relevant representations, take such steps mentioned below as members consider necessary for the promotion of the licensing objectives.

1. Members must, having regard to the application and any relevant representations, take such steps mentioned below as members consider necessary for the promotion of the licensing objectives.
2. The steps are:
 - To modify the conditions of the licence (including for a period not exceeding 3 months);
 - To exclude a licensable activity from the scope of the licence (including for a period not exceeding 3 months);
 - To remove the designated premises supervisor;
 - To suspend the licence for a period not exceeding 3 months;
 - To revoke the licence.
 - To issue a warning or caution.
 - To take no action.

Background

3. The relevant statutory provisions are sections 51 to 53 inclusive of the Licensing Act 2003. the Licensing Objectives are as follows:
 - The prevention of crime and disorder;
 - Public Safety;
 - The prevention of public nuisance; and
 - The protection of children from harm
4. The current premises licence was granted on 23rd July 2009 a copy is attached as Appendix B.
6. The application has been correctly advertised with a notice displayed on the premises and at the Council offices for the required period. One representation has been received from Chief Inspector David Pascoe of Kent Police.

7. The applicant is requesting that the Sub-Committee suspend the premises licence for one month in order to act as a deterrent and that the following condition be added to the licence.
- 1) An electronic system will be installed at the premises that accurately counts how many persons are in the premises. This system will be installed with the agreement of the Police and the Fire Safety Officer. It will be available for inspection by any responsible authority at any time that the premises is open to staff or members of the public.
8. **Members are advised that they may only modify premises licences if it is necessary to promote the licensing objectives**
9. Relevant sections of **The Guidance issued under section 182 of The Licensing Act 2003;**

**Chapter 10
Chapter 11**

**Conditions attached to Premises Licences
Reviews**

Annex D, part 1

Pool of conditions relating to the prevention of crime and disorder

Annex D, part 2

Pool of conditions relating to Public Nuisance

Relevant policy statements **contained in The Licensing Authority's Statement of Licensing Policy (Jan 2008);**

Chapter 20. Prevention of Crime and Disorder

Concerns

The applicant should consider factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in addressing the above concerns in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Effective and responsible management of premises.
- Training and supervision of staff.
- Adoption of current best practice guidance (some examples are Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit, and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA).
- Acceptance of accredited 'proof of age' pass cards or 'new type' driving licences with photographs, passports or an official identity card issued by H M Forces.

- Provision of effective CCTV in and around premises.
- Employment of Security Industry Authority licensed door staff. (If two or more are employed there must be at least one male and one female).
- Provision of toughened or plastic glasses.
- Provision of secure deposit boxes for confiscated items ('sin bins').
- Provision of litterbins, security measures, e.g. lighting, outside premises.
- Membership of a Pub Watch scheme.
- The current 'Chill Out Hour' operating at the late night venues in the Borough of Maidstone which is the agreement whereby late night venues cease to sell alcohol yet continue to provide music and dancing for a further hour (at a reduced volume and with the heavy bass beat removed) has proved to be a success in reducing late night crime and disorder.
- Membership of Maidsafe (Nite Net).

Chapter 21 Public Safety

The Licensing Authority wishes to ensure the safety of everyone on licensed premises.

Concerns

Capacity

Where existing legislation does not provide adequately for the safety of the public, club members or guests, the occupancy capacity for premises and events (to include performers and staff) may be an important factor in promoting public safety. Subject to the requirements of the following paragraph the Licensing Authority will expect the issue of occupancy capacity and adequate controls of the numbers of persons on premises or attending an event to be considered by an applicant when completing an Operating Schedule.

Where a relevant representation is received in respect of capacity the Licensing Authority will consider setting capacity limits in consultation with the Kent and Medway Fire and Rescue Authority for the following premises:

- Nightclubs
- Cinemas
- Theatres
- Other premises where regulated entertainment within the meaning of the Act is being provided.

The Applicant might also consider the following concerns when assessing the appropriate capacity for premises or events in the Maidstone area. These could include:-

- The design and layout of the premises.
- The nature of the premises or event.
- The nature of the licensable activities being provided.
- The provision or removal of temporary structures, such as a stage or furniture.
- The number of staff available to supervise customers both ordinarily and in the event of an emergency.
- The customer profile (e.g. age, disability).
- The attendance by customers whose first language is not English.
- Availability of suitable and sufficient sanitary accommodation.
- The nature and provision of facilities for ventilation.
- The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

Where capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the applicant will be expected to consider the

arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

Additional Steps

The following examples of additional steps are given for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Suitable and sufficient risk assessments.
 - Effective and responsible management of premises.
 - Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons.
 - Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons.
 - Adoption of best practice guidance.
 - Provision of effective CCTV in and around premises.
 - Provision of toughened or plastic non disposable glasses/bottles.
 - Implementation of crowd management measures.
 - Regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety.
10. The decision should be made with regard to the Secretary of State's Guidance and the Licensing Authority'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.
11. **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.

Conclusion

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

List of Appendices

12. Appendix A Application for Review
Appendix B Copy of Premises Licence
Appendix C Plan of the premises
Appendix D Plan of the area
Appendix E Human Rights Article
Appendix F Order of Proceedings

Appeal

13. **The applicant, any interested party and the licence holder 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.**

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