

Agenda Item No: 1 - Summary of Report

Licence Reference 12/04073/LAPRE

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

Date: 20TH DECEMBER 2012

**Report Title: MARTINS
327 BOXLEY ROAD
MAIDSTONE
KENT
ME14 2HN**

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

Report Author: Lorraine Neale

Summary:

1. The Applicants – Martin McColl Limited
2. Type of authorisation applied for: a premises licence under the Licensing Act 2003, S17.
3. Proposed Licensable Activities and hours:

M)	Supply of alcohol; Off the premises	Monday to Sunday	06.00 to 23.00
O)	Opening Hours	Monday to Sunday	06.00 to 23.00

Affected Wards: North Ward

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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Agenda Item No. 1

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

Purpose of the Report

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Martin McColl Ltd, in respect of the premises Martins, 327 Boxley Road, Maidstone, Kent, ME14 2HN in respect of which 1 representation (Appendix C) has been received from an Interested Party.

Issue to be Decided

1. Members are asked to determine whether to i) grant subject conditions consistent with the operating schedule modified to such extent as considered appropriate for the promotion of the licensing objectives and any mandatory condition, ii) grant excluding any of the licensable activities applied for, iii) grant refusing to specify a premises supervisor, or iv) reject the application.

Background

2. The relevant sections are Part 3 ss 16-19, 23 & 24 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
3. The application has been correctly advertised in the local press and a notice displayed on the premises for the required period.
4. 1 representation was received from an Interested Party
5. The table below illustrates the relevant representation which have been received

Responsible Authority/Interested Party	Licensing Objective	Associated Documents	Appendix
Dr RJ Worden MB,BS, MRCS,Dobst.RCOG	Crime and Disorder Public Nuisance	Letter	C

6. **Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is necessary to do so to promote the**

licensing objectives.;

7. **The Operating Schedule submitted by the Applicant has addressed the licensing objectives in the following manner:**

a) General – all four licensing objectives

THE SUBJECT PREMISES WILL APPLY A STANDARD OF OPERATION WHICH WILL ENSURE COMPLIANCE WITH ALL FOUR LICENSING OBJECTIVES BASED UPON FACTORS MORE PARTICULARLY OUTLINED IN SECTIONS (b) TO (e) BELOW.

b) The prevention of crime and disorder

THE STYLE OF OPERATION AT THESE PREMISES IS DESIGNED TO MINIMISE CRIME AND DISORDER. THIS WILL BE ACHIEVED BY THE USE OF CCTV WITH THE RETENTION OF TAPES OR DISCS, FOR A MINIMUM PERIOD OF 31 DAYS FOR PROSECUTION PURPOSES. THE PREMISES SEEK TO BENEFIT SOLELY FROM THE SALE OF ALCOHOL FOR CONSUMPTION OFF THE PREMISES. THESE PREMISES WILL OPERATE A CHALLENGE 25' POLICY AS A MINIMUM IN ORDER TO ENSURE THAT LIQUOR IS SOLD ONLY TO PERSONS OF LAWFUL AGE (BEING THAT, SHOULD A PERSON NOT LOOK THE AGE OF 25 THEN HE/SHE WOULD NEED TO PROVE THEY ARE IN FACT OF LAWFUL AGE 18 OR OVER) . THESE ISSUES ALSO OVERLAP ON THE SECTION DEALING WITH PROTECTION OF CHILDREN FROM HARM. ALL STAFF UNDERGO TRAINING CONCERNING KNOWLEDGE OF LICENSING LAWS TOGETHER WITH THE SOCIAL IMPACT OF THE SALE OF ALCOHOL.

c) Public safety

THE PREMISES WILL COMPLY WITH CURRENT LEGAL REQUIREMENTS FOR FIRE SAFETY AND HEALTH AND SAFETY INCLUDING PERIODIC RISK ASSESSMENTS.

d) Prevention of public nuisance

THESE PREMISES ARE PROPOSED TO BE LICENSED FOR THE CONSUMPTION OF LIQUOR OFF THE PREMISES ONLY. IN ADDITION TO THERE BEING NO CONSUMPTION ON THE PREMISES, THERE IS NO FORM OF ENTERTAINMENT ON THE PREMISES. THERE ARE NO OUTDOOR AREAS UTILISED FOR THE BENEFIT OF MEMBERS OF THE PUBLIC AND THE NATURE OF THE OPERATION DOES NOT REQUIRE THE EMPLOYMENT OF DOOR SUPERVISORS OR USE OF DEDICATED CAB FIRMS. THE PREMISES OPERATE WITHIN THE REQUIRED LITTER/REFUSE REGULATIONS ADOPTED BY THE LOCAL COUNCIL. THE MANAGEMENT POLICY AT THE PREMISES IS TO WELCOME COMMUNICATION WITH ANY LOCAL PERSONS IN RELATION TO ANY ISSUES WHICH ARISE CONCERNING THE OPERATION OF THESE PREMISES.

e) The protection of children from harm

IT IS PROPOSED THAT THESE PREMISES WILL BENEFIT FROM A PREMISES LICENCE FOR CONSUMPTION OFF THE PREMISES ONLY. IN ORDER TO ENSURE COMPLIANCE WITH THE LEGISLATION, THE COMPANY WILL OPERATE A 'CHALLENGE 25' POLICY AS A MINIMUM WHEREBY ANY PERSON NOT LOOKING THE AGE OF 25 MUST PROVE THAT THEY ARE IN FACT OVER THE LAWFUL AGE OF 18 FOR THE PURPOSE OF SALE OF ALCOHOL. ACCEPTABLE FORMS OF IDENTIFICATION CONCERNING THE ISSUE OF AGE ARE A TEN YEAR PASSPORT, A PHOTOCARD DRIVING LICENCE OR AN APPROVED PASS LOGO PROOF OF AGE CARD. ALL STAFF ARE OBLIGATED TO FAMILIARISE THEMSELVES WITH THESE REQUIREMENTS. THE COMPANY WILL OPERATE A DUE DILIGENCE POLICY, INCORPORATING THE MINIMUM CHALLENGE 25 POLICY ABOVE; ALSO INCORPORATING FULL TRAINING FOR ALL STAFF, THE OPERATION OF A REFUSALS RECORD AND REFRESHER TRAINING ON A REGULAR BASIS. THE STORE WILL OPERATE A FULLY RECORDABLE CCTV SYSTEM WHICH IS OVERTLY OPERABLE. THERE WILL BE PROMINENT SIGNAGE LOCATED THROUGHOUT THE STORE CONFIRMING THE LEGAL MINIMUM AGE FOR THE PURCHASE OF ALCOHOL AND OTHER AGE RELATED PRODUCTS AND THE COMPANY POLICY.

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

Chapters 8 & 9 Premises Licences & Determining Applications

Chapter 10 Conditions NB: There is Home Office Supporting Guidance on Pools of Conditions but this is not statutory guidance.

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

20. Prevention of Crime and Disorder

22. Prevention of Public Nuisance

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).

22. Prevention of Public Nuisance

Licensed premises can cause adverse impacts on communities through public nuisance. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from any nuisance caused by the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

The Licensing Authority will interpret 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Concerns

When addressing the issue of prevention of public nuisance, the applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the likelihood of public nuisance. These may include:-

- The location of the premises and their proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.
- The hours of operation, particularly if between 23.00 and 07.00.
- The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises.
- The design and layout of premises and in particular the presence of noise limiting features.
- The occupancy capacity of the premises.
- Last admission time.
- The steps the applicant has taken or proposes to take to ensure that staff leave the premises quietly.
- The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the premises.
- Whether routes to and from the premises, on foot or by car or service or delivery vehicles, pass residential premises within the vicinity of the Premises.
- Whether other measures have been taken or are proposed such as the use of CCTV or the employment of registered door supervisors.
- The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents.
- The likelihood of any violence, disorder or policing problems arising if a licence were granted.
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- The siting of external lighting, including security lighting that is installed inappropriately.
- Whether the operation of the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises and any measures or proposed measures to deal with this.
- The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licensees.

Additional Steps

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

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance.
- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries.
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.

- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents.
- Effective ventilation systems to prevent nuisance from odour.

N.B. Where relevant representations are received which the Licensing Sub Committee consider material particular consideration will be given to the impact on residential amenity of proposals for the provision of late night refreshment where these are either located in, or encourage people to move through, residential areas.

9. **Options**

Legal options open to members -

- a) GRANT the licence subject to such conditions as are consistent with the operating schedule accompanying the application; MODIFIED to such extent as the Licensing sub-committee considers necessary for the promotion of the licensing objectives and any relevant mandatory condition
 - b) EXCLUDE from the licence any of the licensable activities applied for.
 - c) REFUSE to specify a person in the licence as premises supervisor
 - d) REJECT the application.
10. 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".

11. **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.

12. **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

13. **Conclusion**

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

14. **List of Appendices**

- Appendix A Application Form
- Appendix B Plan of Premises
- Appendix C Representation (Interested Party)
- Appendix D Plan of area
- Appendix E Human Rights Articles
- Appendix F Order of Proceedings

15. **Appeals**

The applicant or any interested party (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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