

Agenda Item No: 1 - Summary of Report

Licence Reference 13/00721/LAPRE

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

Date: 12 APRIL 2013

**Report Title: SUBWAY
4 GABRIELS HILL
MAIDSTONE
KENT
ME15 6JG**

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

Report Author: Lorraine Neale

Summary:

1. The Applicant – Cambridge Subway Ltd
2. Type of authorisation applied for: To vary a Premises Licence under the Licensing Act 2003. (Appendix A)
3. To add two hours to late night refreshment on Fridays and Saturdays, from the current 03:00 to 05:00.

Affected Wards: High Street

Recommendations: **The Committee is asked to determine the application and decide whether to vary the terms of the 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
Home Office Supporting Guidance – Pools of Licensing Conditions.
Maidstone Borough Council Statement of Licensing Policy

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Agenda Item No. 1

**Report Title: SUBWAY, 4 GABRIELS HILL
MAIDSTONE
KENT
ME15 6JG**

**Application for: To vary a premises licence to be granted
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, made by Cambridge Subway Ltd, in respect of the premises Subway, 4 Gabriels Hill, Maidstone, Kent, ME15 6JG (Appendix A) in respect of which 1 representation (Appendix C) has been received from a Responsible Authority. There have been no representations received from other persons.

Issue to be Decided

Members are asked to determine whether to grant or reject 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 a notice displayed on the premises for the required period.
3. 1 representation was received from a Responsible Authority

The table below illustrates the relevant representation which has been received

Responsible Authority/Interested Party	Licensing Objective	Associated Documents	Appendix
Kent Police	Crime & Disorder	Letter	C

4. The premises has a current licence, Appendix D. The current licence holder is the applicant, there is no DPS as the premises does not sell alcohol.
5. The current licence hours are shown at appendix D and the proposed hours for L) Late Night Refreshment (Indoors only) are to extend the hours on Fridays & Saturdays only 23.00 -05.00
6. The Police representation in respect of this application (Appendix C) states that variation applied for would undermine the licensing objective of prevention of crime and disorder. They believe that late night fast food premises encourage people to remain in town longer rather than go home. It is while these people are waiting around often the worse for drink that trouble

occurs. The position of these premises also amplifies the problem as they are at the very top of Gabriel's Hill and near the taxi rank which is a location for disorder and assaults for people frustrated at waiting for taxis. Subway although licensed to trade until 3am were frequently trading until 5 am. After a licence check, when they were advised to trade within their licensed hours and complied, a reduction in problems in the location and reduction in demand for Police presence has been observed. Although the Police concede that fast food outlets are not responsible for how drunk people behave, they believe that their presence and opening hours do contribute to incidents of either a violent or anti social nature. The conditions proposed for SIA trained door staff and removal of furniture are noted but not considered sufficient to deal with the issue of persons waiting in the area.

7. **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.;**
8. **Relevant sections of The Guidance issued under section 182 of The Licensing Act 2003;**

Chapters 8 (8.43 onwards) & 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

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).

9. Options

Legal options open to members –

- a) MODIFY the conditions of the licence.
- b) REJECT the whole 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".

10. 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.

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

12. Conclusion

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

13. List of Appendices

- Appendix A Application Form
- Appendix B Plan of Premises
- Appendix C Police Representation
- Appendix D Existing Premises Licence
- Appendix E Plan of area
- Appendix F Human Rights Articles
- Appendix G Order of Proceedings

14. 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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