

Agenda Item No: 1 - Summary of Report

Licence Reference 13/01724/LAPRE

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

Date: 17 MARCH 2014

Report Title: SOLAR COLLECTIVE LTD
1 BOUGHTON BOTTOM COTTAGES
LOWER FARM ROAD
BOUGHTON MONCHELSEA
MAIDSTONE
KENT
ME17 4DD

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

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Solar Collective Ltd
 2. Type of authorisation applied for: To vary a premises licence under the Licensing Act 2003. (Appendix A).
 3. To vary the conditions in relation to noise monitoring
 4. There are no changes to the Licensable Activities and hours:

Affected Wards: Boughton Monchelsea and Chart Sutton

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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**Report Title: SOLAR COLLECTIVE LTD, 1 BOUGHTON BOTTOM COTTAGES
LOWER FARM ROAD, BOUGHTON MONCHELSEA,
MAIDSTONE, KENT, ME17 4DD**

Application to: Vary a premises licence under the Licensing Act 2003. (Appendix A).

Purpose of the Report

The report advises Members of an application to vary a Premises Licence under the Licensing Act 2003, made by Solar Collective Ltd, in respect of the premises Grid ref : TQ76730 48721, open grass field-land, with attached woodland, off lower farm lane, Boughton Monchelsea. (Appendix B) in respect of which 8 objections have been received from other persons (Appendix C).

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. There were no representations received from responsible authorities.
4. 8 representations were received from other persons.

The table below illustrates the relevant representations which have been received

Responsible Authority /Interested Party	Licensing Objective	Associated Documents	Appendix
Andrew & Emma Walker	Public Nuisance	E mail	C
Sarah Evans	Public Nuisance	E mail	C
Marice and Dominic Kendrick	Public Nuisance	E mail	C
Boughton Monchelsea Parish Council	Public Nuisance	E mail	C
Andrew Evans	Public Nuisance	E mail	C
Mr & Mrs D McDonald	Public Nuisance	E mail	C
Rowland Roome & Mrs AP Roome	Public Nuisance	E mail	C
Sue Batt and Jonathan Gershon	Public Nuisance	E mail	C

The general objection is that there has only been one event staged so far by Solar Collective and that one event has not provided enough evidence to justify the relaxing or removal of the noise monitoring conditions attached to the licence. It is believed that the relaxation of the noise monitoring conditions would have a detrimental effect on the local residents.

5. The premises has a current licence, Appendix D. The current licence holder is the applicant, and the DPS is Mr Oliver Barlow.
6. The current licence hours are as per the licence attached at appendix D and those licensable activities and hours are not proposed to change.
7. The application to vary the licence relates to the relaxation of certain noise monitoring conditions attached to the current licence.
8. These are:-
 1. The Music Noise Level ("MNL"), as described in section 3 of the Noise Council Code of Practice on Environmental Noise Control at Concerts, should not exceed 65dB(A) (Laeq 15min) at the façade of the nearest noise sensitive properties for any 3 day events. The MNL for 1 day events to be considered by EHOs against the Noise Council Code of Practice where these are concert/music events and set at a level appropriate for the events in that year which may be lower, but not to exceed 65 dB(A) (Laeq 15min) at the façade of the nearest noise sensitive properties.
 2. Monitoring will be carried out at the following locations and levels will be recorded and supplied to Maidstone Borough Council officers if requested:-

Peens Lane - East of the dip in the road
Stilebridge Lane - outside the kennels
Church Hill - at the Peens Lane Junction and near the Church
Lower Farm Road
Staplehurst Road at the entrance to Hertsfield Farm
East Hall Hill near East Hall
Wierton Hill near Wierton Oast

3. All locations must be monitored at least 3 times during each day of an event.

and replace with:-

1. The Music Noise Level ("MNL"), as described in section 3 of the Noise Council Code of Practice on Environmental Noise Control at Concerts, should not exceed 65dB(A) (Laeq 5min) at the façade of the nearest noise sensitive properties for any 3 day events. The MNL for 1 day events to be considered by EHOs against the Noise Council Code of Practice where these are concert/music events and set at a level appropriate for the events in that year which may be lower, but not to exceed 65 dB(A) (Laeq 5min) at the façade of the nearest noise sensitive properties.
2. Monitoring will be carried out at the following locations and levels will be recorded and supplied to Maidstone Borough Council officers if requested:-

Stilebridge Lane - outside the kennels
Church Hill - at the Peens Lane Junction and near the Church
Staplehurst Road at the entrance to Hertsfield Farm
Eel House Farm entrance

3. All locations must be monitored at least once during an event.

The application does not relate to any other conditions which would remain the same.

9. **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.;**
10. **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:

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

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.

11. **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".

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 A	Application Form
Appendix B	Plan of Premises
Appendix C	Representations –Other persons
Appendix D	Existing Premises Licence
Appendix E	Plan of area

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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