

MAIDSTONE BOROUGH COUNCIL

Licensing Act 2003 Sub Committee

MINUTES OF THE MEETING HELD ON WEDNESDAY 6 JANUARY 2016

Present: Councillor , and
Councillors Naghi, Newton and Mrs Parvin

Also Present: Councillors Mrs Blackmore

1. **DISCLOSURES BY MEMBERS AND OFFICERS**

There were no disclosures by Members of Officers.

2. **DISCLOSURES OF LOBBYING**

There were no disclosures of lobbying.

3. **EXEMPT ITEMS**

RESOLVED: That all items on the agenda be taken in public as proposed.

4. **ADJOURNMENT**

The Sub Committee were informed that a message had been received from the Applicant's agent that he anticipated being delayed around 30 minutes due to train delays.

RESOLVED: Due to the delay in arrival of the Applicants representatives the Committee agreed to adjourn the meeting for 30 minutes to enable his attendance, in the public interest.

The Applicant's agent arrived at 10:30 and was given a brief time to organise his papers etc. before commencement of the hearing.

5. **REPORT OF THE HEAD OF HOUSING AND COMMUNITY SERVICES -
APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT
2003 FOR KWIK E MART, 68 LOWER STONE STREET, MAIDSTONE, KENT,
ME15 6NA**

The Chairman opened the meeting at 10:40am.

The Chairman requested all those persons participating in the hearing to introduce themselves.

Those present were:

- Councillor David Naghi

- Councillor Gordon Newton
- Councillor Mrs Parvin
- Jayne Bolas – legal advisor
- Tessa Ware – Democratic Services Officer
- Suresh Kanapathi – agent for the Applicant
- Gregory Millener – Shop Manager to be named on the licence as Designated Premises Supervisor
- PC Neil Barnes – representing Kent Police as a Responsible Authority
- Councillor Annabelle Blackmore – Observing the proceedings for training purposes and taking no part in member discussions or vote.

The Sub-Committee Members confirmed they had read all the papers.

The applicant's agent stated that conditions suggested by Kent Police, and detailed in the papers on pages 31 and 32, were agreed, with the exception of the opening hours restrictions sought at page 31.

The Legal Representative outlined the application and explained that the premises were at 68 Lower Stone Street and not 64 Lower Stone Street as stated in the application. There have been correct amendment and time for advertisement of the application.

The Legal Representative went on to state that the application was for a licence to sell alcohol 24 hours, 7 days each week, for off the premises consumption. One representation had been received from a Responsible Authority, Kent Police, on the basis of the negative impact on all four Licensing Objectives. PC Neil Barnes was present to request a restriction on the opening hours to 7am to 12 midnight daily. The draft conditions were set out in the papers.

There had been no other representations. Members were directed to their options set out in Section 10, page 8 of the papers. Members were reminded to consider the opening hours sought and what was appropriate to promote the Licensing Objectives.

The Legal Representative explained the Maidstone Borough Council Licensing Policy changed as of the day of the hearing. However, the application was made at the time of the previous policy. There being little material difference between the two policies as affecting this application, Members were advised to consider the application under the previous policy but have regard to the new policy when making their decision as appropriate.

Mr Kanapathi, representing the applicant addressed the Sub Committee. He stated the applicant had another similar business at 56 Gabriel's Hill, Maidstone which was open until midnight each day. The applicant was very experienced locally having ran a business in the area since 2009 with no problems.

Mr Kanapathi went on to explain that Mr Millener, who would be managing the premises at 68 Lower Stone Street, had experience of the area. He had been running the business at these premises for some time and had also ran licenced premises nearby.

Mr Kanapathi explained the business model for the premises. It was a 24 hour shop selling ready-made foods, sandwiches, chocolates etc. and alcohol, with customers coming in late for convenience after finishing a late shift at work. He stated there was a demand for products 24 hours a day locally. The shop would be run by three staff and the manager.

Mr Kanapathi explained he and the applicant understood the concerns of the Police regarding the night time economy and people going home after a night in the town and stopping off on their way out of town to top up with alcohol. However, he stated that the staff had handled attempts to obtain alcohol, by customers who appear to be drunk, carefully, in the past without any problems.

Mr Kanapathi agreed with the police that 80% of public nuisance cases were related to alcohol consumption, but said there was no evidence this had related to these premises or off licences in particular. Mr Kananpathi said the applicant had agreed to all the conditions suggested by the Police and would be happy to implement more if necessary. For example, an incident log, working with the Police and meeting with the Police regularly.

Mr Kanapathi believed the staff structure at the premises would be able to manage any potential issues that may arise.

Mr Millener, the proposed Premises Supervisor, addressed the Sub Committee. He stated that he accepted the concerns raised by nearby sheltered accommodation and the close proximity to the premises. He stated he knew most of the residents who usually shopped at the Gabriel's Hill shop. Mr Millener explained if any of them attempted to purchase alcohol in the evening he would refuse to sell it to them.

Mr Millener explained that he had managed the Fisherman's Arms on Lower Stone Street and had experience of managing drunk people and was confident he could manage customers properly.

The Chairman invited PC Barnes to ask the Applicant's representative questions.

PC Barnes asked if there was evidence of a need for 24/7 opening as the Gabriel's Hill shop was only open until midnight?

Mr Millener responded by stating the evidence was of people rushing in late for provisions and possibly picking up beer at the same time. He stated there was a large Eastern European community in the vicinity who worked late shifts at local factories and shop late at the premises.

PC Barnes referred to a meeting between the Police and Mr Kanapathi and Mr Millener on 23 December 2015. PC Barnes stated that at this meeting

it was mentioned the target trade was not the night time economy or people on foot, but people driving home from work. PC Barnes asked where these customers were going to park given the premises were in an area close to a busy junction.

Mr Kanapathi stated this was not ideal.

PC Barnes stated that there were double yellow lines outside the premises and it posed a real risk in this area if customer parked outside the shop.

Mr Millener stated it was a problem in the area, with restaurants and takeaways too. He stated if customer to the premises parked illegally they would be requested by him to move on.

PC Barnes asked how Mr Millener would deal with possible serving of residents of supported housing when he was off duty.

Mr Millener stated staff would be trained by him in how to deal with these situations.

The Sub Committee were invited to ask questions of the Applicant's representatives.

In response to a question from the Committee Mr Millener stated he had run the Fisherman's Arms for a year.

PC Barnes was invited to address the Sub Committee.

PC Barnes addressed the Sub Committee and stated the premises were in the wrong location for an alcohol licence. It was on the main exit route out of the town where people leaving the town around midnight would have had enough alcohol. The police's aim was to get these people home as soon as possible. Those who had had enough to drink usually seek more and can become violent if they are refused.

PC Barnes went on to state the premises were on a very busy junction and next to the Thirsty Pig public house and a busy set of traffic lights. People waiting outside while their friend goes into the shop were likely to obstruct the junction. This would create a 'flashpoint' and would likely lead to an incident. On warmer nights people would tend to gather outside the premises, which the Police wanted to avoid. These gatherings were hard to disperse.

The Applicant's representatives were invited to ask questions.

In response Mr Kanapathi stated he understood the concerns of the police and stated the premises would not just be selling alcohol but food as well and asked if PC Barnes thought this would help.

PC Barnes stated food would only cause people to further delay leaving the area. In his experience food does not help to 'soak up' the alcohol. The best thing was for these customers to get home as soon as possible.

Mr Millener stated staff would manage people visiting the shop and he did not want people outside. There were ways of managing people and he wanted to make the business work.

In response to a question from PC Barnes Mr Millener stated he would be training staff to replace him should he leave.

The Sub Committee were invited to ask PC Barnes questions.

The Sub Committee asked PC Barnes if the 80% of calls for antisocial behaviour linked with alcohol use in the area were evidenced.

PC Barnes explained he could produce reports from January to November 2015 showing the number of cases between the bingo hall at the bottom of Gabriel's Hill and the Thirsty Pig. He stated it was not a surprising figure because of where it was but wanted to avoid increasing the figure through the availability of alcohol after midnight.

The Chairman asked if either party wanted to make a final statement.

PC Barnes addressed the Sub Committee and stated if someone were visiting the town centre and leaving a licenced venue after midnight they would be stopped if they attempted to carry alcohol off the premises. This was a waste of time if there was the ability to buy more alcohol on the way home. This undermined the Licensing Objectives.

PC Barnes went on to say extending the licensing hours of these premises would put extra demand on the staff at the nearby sheltered housing and the Police.

PC Barnes raised concerns that the intention of the application was not to target people driving home late but those who were walking home and had already had enough to drink and needed to get home.

PC Barnes stated again that if this licence was granted to trade between 00:00 and 07:00 it would undermine the Licensing Objectives.

Mr Kanapathi addressed the Sub Committee and stated the Applicant had over five years experience in the local area with no problems. The management tackled issues as they arose.

He went on to say that the concerns of the Police were understandable, but stated there was no evidence the problems would increase as a result of the issuing of this licence for these premises.

Mr Kanapathi also stated that the business was not interested in selling alcohol to people who were drunk and would work with the Police if there were any problems.

Mr Millener addressed the Hearing and stated the business was aimed at people whose shopping habits were not to do a once a week shop. It was

aimed at those who shopped as they needed bread, milk and something to eat. The increasing Eastern European community who worked late shifts were the target market. He went on to state they did not want drunk people bringing trouble and would put the shutters down and serve people through a hatch if necessary. He said there was a shift of people drinking at home rather than going out to night clubs.

Mr Kanapathi requested the Sub Committee view the application positively and support the 24 hour business model of the Applicant.

The Chairman asked what provision would be made to deal with issues when Mr Millener was not working.

Mr Millener stated he would normally take a Sunday and Monday off but would be on call. He would also recruit suitable staff and train them to manage the business in his absence.

Mr Kanapathi went on to state staff would be instructed to shut the shutters and serve customers through the window hatch should any issues arise when Mr Millener was not on duty.

The Legal Representative indicated that the subsequent questions were in no way indicative of any decision Members may make but to clarify possible considerations should they be minded to consider various conditions. She then asked how Kent Police would consider any condition regarding the serving of customer through a hatch should any issues arise.

PC Barnes stated it was harder to establish if someone had drunk too much if serving them through a hatch. It would simply keep the trouble outside the premises.

Mr Millener disagreed with this statement and said he was able to judge if someone had drunk too much if serving them through a hatch and if this was the case he would move them away from the area.

The Legal Representative asked if some days of the week were worse than others regarding issues of concern.

PC Barnes explained the town centre venues were busy on Monday and Wednesday, but were not as busy as Friday and Saturday. However, venues in the town were able to change the days they provided events.

Mr Millener stated the reason for applying for a 24 hour licence was to give them the option to support events in the town until 4/5am as well as supporting customers who were going to work early in the morning and stopping off to buy their lunch. The premises would not necessarily be serving alcohol at all hours of the day.

The Legal Representative stated that Guidance stated that the behaviour of people away from the premises was the responsibility of the individual. The Sub Committee should take account of the particular evidence of the

area presented by the Police. The Committee should also keep in mind the decision in the case of by Thwaites, which suggested the evidence should be more than mere speculation and this should be taken into account when making their decision.

Mr Kanapathi produced a copy of a condition on having an incident book that had been suggested and passed to PC Barnes and the Legal Representative.

PC Barnes explained the conditions proposed by the Applicant were not extra but similar to those suggested by the Police. Only the condition numbered 17 on the paper produced should be considered as agreed between the Police and the Applicant.

In response to a question Mr Millener explained the premises would be selling newspapers, however, sales in papers had dropped significantly in recent years.

In response to a question PC Barnes explained the use of a hatch to serve customer through if there were issues does not stop someone who has had too much to drink, and does not stop the problems.

The Chairman adjourned the hearing at 11:45am and declared that the Sub-Committee would retire to private session to consider the application.

Prior to retiring the Legal Representative restated that Councillor Blackmore would be present during the Sub-Committee's deliberations as an observer for training purposes and would take no active role in the decision. There were no objections from the parties to this.

RESOLVED:

To grant the application subject to modified conditions appropriate for the promotion of the licensing objectives.

The hours granted to the premises for supply of alcohol will be 07:00 – 00:00 daily.

The premises opening hours for supply of alcohol is to be the same but for the avoidance of doubt the premises may be open at any time for activities which are not licensable, provided that alcohol is not sold or supplied

Conditions:-

Conditions are any relevant mandatory conditions, conditions consistent with the operating schedule submitted with the application, conditions requested by the Police and agreed by the applicant, shown at pages 31 and 32 of the agenda – subject to amendment of the first part of the CCTV condition to read "CCTV to be fitted to a standard agreed by the Police and the licensing authority etc". Additionally the condition shown as 17, provided by the applicant and agreed with the Police regarding an incident log.(see below)

- CCTV to be fitted to a standard agreed by the Police and the Licensing Authority, that complies with the CCTV Codes of Practice (Latest edition) as produced by the Information Commissioner's Officer. Coverage shall include all public areas.
- The CCTV system shall be maintained and serviced on a regular basis and records kept to that effect.
- The CCTV system shall be operational at all times that the premises are open for trading.
- Images shall be retained on the system for at least 30 days. A copy of CCTV images will be provided to the Police or local authority within 48hrs of any reasonable request.
- The premises will become a member of the "MaidSAFE" scheme and a member of staff on site will monitor the radio system at all times that they are open for trading.
- A refusal recording system will be in operation at the premises, all staff involved in the sale of alcohol will be fully trained in the system and it will record the following:

Date & Time of refusal,
 Item refused,
 Name or description of the person refused,
 Reason refused,
 Name of staff member making the refusal.

- The refusal system will be available for inspection by any Police Officer, Local authority Licensing officer or Trading Standards Officer at any reasonable time.
- A Challenge 25 Scheme will be adopted at the premises, all staff involved in sale or supply of alcohol will be trained in the scheme and such training will be recorded. Such records will be made available to the Police or other responsible authority upon request.
- An incident log shall be kept at the premises and made available on request to an authorised officer of the Council or Police, which will record the following:
 - a) All crimes reported to the venue
 - b) All ejections of patrons
 - c) Any complaints received
 - d) Any incidents of disorder
 - e) Any faults in the CCTV system or searching equipment or scanning equipment
 - f) Any refusal of the sale of alcohol
 - g) Any visit by a relevant authority or emergency service

Conditions imposed by Members:-

Reasons: -

All of these conditions and the restriction on hours are considered to be appropriate and proportionate to this application and promotion of

licensing objectives on prevention of crime and disorder, public safety and prevention of public nuisance.

Members reasons for the hours restriction and conditions under those three objectives took account of the 2003 Act, guidance and policies as set out and particularly paragraph 9.12 of Home Office guidance indicating that the Licensing Authority should accept all reasonable and proportionate representations made by Police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. Members took account of Police evidence that CAD reports for the immediate area of the premises indicated that 80% of anti-social behaviour and disturbance calls are linked to alcohol and that additional access to alcohol will not promote the licensing objectives particularly in this location. It is a main exit route from Maidstone Town Centre for users of the night time economy and used by many who have consumed enough alcohol and will seek more, which is an issue after 00:00 hours particularly. The location is very near to a busy road junction, with only a narrow pavement and there is a real likelihood that any gathering outside the premises will cause a risk to promotion of the three licensing objectives aforementioned, by raising likelihood of disorder and gathering.

The existence in the near vicinity of supported housing, including residents with alcohol issues, is a further concern for pressure to sell alcohol to those having had enough and a real likelihood of risk to the promotion of the three objectives.

There was no evidence before the sub-committee that the protection of children from harm objective would be adversely affected from 00:00 – 07:00 hours. There was no evidence that accepting Police representations would not be appropriate to promote the three remaining objectives.

Whilst Members understood the experience of the proposed DPS and accepted his intentions for management and training at the premises they were not satisfied that this was sufficient to secure promotion of the three objectives mentioned between 00:00 – 07:00 hours in the particular circumstances advised by the Police and within the local knowledge of the sub-committee Members.