

Agenda Item No: 1 - Summary of Report

Licence Reference 15/03601/LAPRE

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

Date: 15 DECEMBER 2015

Report Title: KWIK E MART, 68 LOWER STONE STREET, MAIDSTONE, KENT, ME15 6NA

Application for: A premises licence under the Licensing Act 2003

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Kavitha Sivothyayan
 2. Type of authorisation applied for: A premises licence under the Licensing Act 2003.
 3. Proposed Licensable Activities and hours:

| | | | Hours |
|---|-------------------|-----------|---------------|
| M | Supply of Alcohol | Mon - Sun | 00:00 – 00:00 |
| O | Opening Hours | Mon - Sun | 00:00 – 00:00 |

The application form states 64 Lower Stone Street as the address, however the correct address for the premises is 68 Lower Stone Street as advised by the applicant immediately after the application had been submitted. Officers advised the applicant that the blue public notice which is displayed at the premises and the newspaper advert both needed to state the correct address and made subsequent checks to confirm that they did.

Affected Wards: High Street

Recommendations: The Committee is asked to determine the application and decide whether to grant 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

Contacts: Mrs Lorraine Neale at: lorraineneale@maidstone.gov.uk – tel: 01622 602028

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

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 Kavitha Sivothyayan, in respect of the premises Kwik E Mart, 68 Lower Stone Street, Maidstone, Kent, ME15 6NA (Appendix B) in respect of which 1 objection has been received from a responsible authority (Appendix C).

Issue to be Decided

1. Members are asked to determine whether to grant or reject the application

Background

- 2 The relevant sections are Part 3 S16 -19A and 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 notices displayed at the premises for the required period.
4. There is 1 representation received from responsible authorities.
5. There are no representations from other parties.
6. The table below illustrates the relevant representations which have been received

| Responsible Authority /Interested Party | Licensing Objective | Associated Documents | Appendix |
|--|--|-----------------------------|-----------------|
| Kent Police | Crime and Disorder Public Safety Public Nuisance Children from Harm | Letter | C |

The objections are that the premises are located in an area which already suffers heavily with incidents of alcohol fuelled disorder. Around 80% of the ASB/disturbance calls to the Police in that area are linked to one or more parties being under the influence of alcohol and easier access to alcohol will make that problem worse.

The shops location is also a factor that the Police believe needs to be considered, it is on one of the main egress routes from the town centre for people using the night time economy, the shop is located on a busy corner junction posing a real risk for drunk people near the junction. It is also only a few yards from Lily Smith House, an organisation providing supported housing with around 50% of their residents having alcohol issues. It is believed that these premises will negatively impact the Licensing Objectives and these are set out in the Police representation attached as Appendix C.

Because of these factors Kent Police wish the licence to be restricted for the sale of alcohol to be between 07:00hrs and midnight each day. They also wish that certain conditions be added to the licence to protect the licensing objectives.

The conditions suggested by the Police that could be added to the licence to remedy the representation are as follows:

CCTV to be fitted to a standard agreed by the Police that complies with the CCTV Codes of Practice (Latest edition) as produced by the information Commissioners Office. 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.

The Police and the applicant attended a meeting on 23 December 2015 in an effort to agree the requested conditions and the hours of the sale of alcohol. Neither of these matters were resolved at the meeting and are now for Members consideration.

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

a) General – all four licensing objectives:

Convenience store selling food items, grocery and beverages &.Sale of alcohol for consumption off the premises only.

b) The prevention of crime and disorder:

Fully recorded CCTV system would be installed. All staff will be trained to avoid any conflict with anyone. Incident record book will be maintained. We will join crime prevention unit.

c) Public Safety:

Premises will operate with current legal requirements for fire safety, health & safety including periodic risk assessments. The premises will only purchase alcohol from registered wholesalers.

d) The prevention of public nuisance:

In addition to having policy of no sale to drunken people, we will work closely with the local community and police to identify anyone causing anti social behaviour to be barred from the shop.

e) The Protection of children from harm:

The company will operate a Challenge 25 policy. Full training will be given to staff, a refusals log will be kept and refresher training on a regular basis. Store shall operate a fully recordable CCTV system . Ensure that promotional displays are on one side and close to the counter

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

Chapter 2 The licensing objectives

Chapters 8 & 9 Premises Licences & Determining Applications

Chapter 10 Conditions.

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:**

17.9 – 17.15 Prevention of Crime and Disorder

17.16 – 17.18 The Promotion of Public Safety

17.19 – 17.22 Prevention of Public Nuisance

17.23 – 17.26 Protection of Children from Harm

CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

Under the Act the Licensing Authority has a duty to promote the licensing objectives, and, a further duty under the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the borough.

The applicant will be expected to detail in their operating schedule how they will prevent crime and disorder on and close to the premises. Such detail should reflect the licensable activities on offer, location and character of the area, the nature of the premises use and the range of customers likely to use the premises.

These may include, but are not limited to, the following:

- Prevention of disorderly conduct and anti-social behaviour
- Prevention of underage drinking
- Prevention of sales of alcohol to intoxicated customers
- Prevention of drunkenness both on and in the vicinity of the premises
- Prevention of drug use and drug dealing
- Restriction to responsible drinks promotions
- Use of safety glass
- Inclusion of a wind-down time following alcohol sales period
- Adequate seating to discourage “vertical drinking”
- The offer of food and snacks or other entertainment or occupation to discourage persistent drinking

In busier premises the Licensing Authority would usually expect to see a short (e.g.30 mins) ‘wind down’ or ‘drinking up’ period allowed for after the cessation time of entertainment and alcohol sales as this is effective in assisting in a reduction in noise and exuberance of customers before leaving the premises.

Applicants will be expected to seek advice from the Police and the Licensing Authority will give appropriate weight to requests by the Police for premises to be protected by SIA registered door staff subject to the provision of relevant evidence. Where the Licensing Authority determines after consultation with the police that a premises is one that warrants additional security and monitoring it would expect applicants to include the provision of SIA approved door staff at the premises at appropriate times. Relevant premises are usually those used mainly for drinking alcohol, have later opening hours and are situated within the Town Centre night time economy area.

Where appropriate, applicants for licences in the Town Centre areas providing mainly alcohol, music and dancing would be expected to consider inclusion of a provision of safety glasses to prevent a risk of injury on the rare occasion that a glass may be used as a weapon.

The use of CCTV should be considered where appropriate or on the advice and recommendations of the Police and to a quality and standard approved by the Police for evidential purposes. Licensees will be expected to fully comply with the requirements of the Information Commissioners Office and the Data Protection Act 1998 in respect of any surveillance equipment installed at a premises.

In any application resulting in hearing the sub-committee will consider each application on its individual merits and determine the imposition of conditions that are appropriate to promotion of the licensing objectives.

CONDITIONS TO PROMOTE PUBLIC SAFETY.

The applicant will be expected to show how the physical safety of persons attending the premises will be protected and to offer any appropriate steps in the operating schedule to promote this.

Such steps will not replace the statutory obligation on the applicant to comply with all relevant legislation under the Health and Safety at Work etc. Act 1973 or under the Regulatory Reform (Fire Safety) Order 2004.

Applicants will be expected to have carried out the necessary risk assessments to ensure safe occupancy levels for the premises. Where a representation from the Fire Authority suggests that for the promotion of the Public Safety objective a maximum occupancy should be applied, the Licensing Authority will consider adding such a limit as a licence condition.

Where appropriate an operating schedule should specify occupancy limits for the following types of licensed premises:

- (i) High Volume Vertical Drinking e.g. premises that provide mainly stand up drinking facilities with limited seating/table space and the primary activity is the sale of alcohol
- (ii) Nightclubs
- (iii) Cinemas
- (iv) Theatres
- (v) Other premises where regulated entertainment is likely to attract a large number of people.
- (vi) Where conditions of occupancy have arisen due to representations received.

CONDITIONS TO PROMOTE THE PREVENTION OF PUBLIC NUISANCE.

The applicant will be expected to detail any appropriate and proportionate steps to prevent nuisance and disturbance arising from the licensable activities at the premises and from the customers using the premises.

The applicant will be expected to demonstrate that they have considered the following and included steps to prevent public nuisance:

- (i) Proximity of local residents to the premises
- (ii) Licensable activities proposed and customer base
- (iii) Hours and nature of operation
- (iv) Risk and Prevention of noise leakage from the premises from equipment, customers and machinery
- (v) Prevention of noise from customers leaving the premises and customer pick up points outside premises and from the Car Park.
- (vi) Availability of public transport to and from the premises
- (vii) Delivery and collection times and locations.
- (viii) Impact of external security or general lighting on residents.
- (ix) History of management of and complaints about the premises.
- (x) Applicant's previous success in preventing Public Nuisance.
- (xi) Outcomes of discussions with the relevant Responsible Authorities.

- (xii) Impact of location, noise and contamination from outside smoking areas on neighbours and other customers
- (xiii) Collection of litter arising from the premises

Steps to prevent public nuisance may include a range of options including noise limiting devices, sound insulation, wind down periods, acoustic lobbies, management of smoking areas etc.

Steps will differ depending on the individual premises and activities and it is for the applicant to ensure that reasonable, effective and appropriate steps are included within the operating schedule.

CONDITIONS TO PROMOTE THE PROTECTION OF CHILDREN FROM HARM.

Applicants will be expected to detail any appropriate and proportionate steps to protect children at the premises from any harm. The Licensing Authority recognises the right of licensees (serving alcohol) to allow accompanied children into their premises. The Licensing Authority would not seek to restrict access by children (above that specified in the Act) unless it is necessary for the prevention of physical, moral or psychological harm.

Steps to protect children from harm must be carefully considered for inclusion where:

- (i) There is entertainment or services of an adult nature provided.
- (ii) There have been previous convictions for under age sales of alcohol.
- (iii) There has been a known association with drug taking or dealing.
- (iv) There is a significant element of gambling on the premises.
- (v) There is a presumption that children under 18 should not be permitted entry such as to nightclubs (apart from when specific events are held for under 18's).
- (vi) Outcomes of discussions with relevant Responsible Authorities suggest such steps are applicable.

Nothing in the Licensing Act prevents licensees from excluding children from a licensed premises and no condition can be added to require the admission of children.

Where there are no matters that give rise to concern in respect of children at premises the Licensing Authority would expect to see the relevant box on an application form completed to specify NONE.

10. Options

Legal options open to members –

- 1) Grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application
- 2) grant the licence with MODIFIED conditions.
- 3) refuse to specify a person in the licence as designated premises supervisor
- 4) 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".

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

| | |
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| Appendix A | Application Form |
| Appendix B | Plan of Premises |
| Appendix C | Responsible authorities representation |
| Appendix D | Plan of area |
| Appendix E | Human Rights Articles |
| Appendix F | Order of Proceedings |

15. 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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| Contact: Email: | Senior Licensing Officer lorraineale@maidstone.gov.uk |
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