

Agenda Item No: 1 - Summary of Report

Licence Reference 19/03291/LAPRE

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

Date: 25TH OCTOBER 2019

Report Title: THE CAVENDISH, 8 CAVENDISH WAY, BEARSTED, KENT, ME15 8PW

Report Author: Lorraine Neale

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

E	Live Music (Indoors)	Every day	10:00 – 23:00
F	Recorded Music (Indoors)	Every day	08:00 – 23:00
M	Supply of Alcohol (On and Off Sales)	Every day	08:00 – 23:00
O	Opening Hours	Every day	08:00 – 23:00

Affected Wards: **BEARSTED**

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 persons, 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: lorryneale@maidstone.gov.uk – tel: 01622 602528

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Application: For a premises licence under the Licensing Act 2003. (Appendix 1).

Purpose of the Report

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003 (Appendix 1), made by Court Lodge Kitchen Ltd, in respect of the premises The Cavendish, 8 Cavendish Way, Bearsted, Kent, ME15 8PW (Appendix 2) in respect of which 2 objections have been received from other persons

Issue to be Decided

Members are asked to determine whether to :

- 1) grant as applied for
- 2) grant with conditions
- 3) exclude any licensable activity
- 4) reject the DPS
- 5) or reject the application.

2. The relevant sections are Part 3 S16 -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 was one representation received from a responsible authority which was the Police (Appendix 3), who requested that the applicant amend the operating schedule to include certain conditions, the applicant agreed and the objection was withdrawn, (Appendix 4)
5. There are 2 representations from other persons.
6. The table below illustrates the relevant representations which have been received

Responsible Authority /Other Person	Licensing Objective	Associated Documents	Appendix
Dilip & Chandrika Patel	Public Nuisance	e-mail	5
Gavin Wickens and Kora Erenstein	Public Nuisance	e-mail	5

There appear to be concerns that the requested hours and licensable activities will potentially contribute to noise nuisance and unsociable behaviour 7 days a week, The objectors believe it will have a detrimental effect by noise, anti-social behaviour, increasing traffic and parking problems in a quiet residential 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. The Operating Schedule submitted by the Applicant has addressed the licensing objectives in the following manner:**
 - a) General – all four licensing objectives:**

Challenge 21 and Challenge 25 scheme, if the customer looks under 21 we will ask for ID proof of age. Alcohol will only be sold by persons 18 years and older. All our staff will be trained on this and informed of the necessary safety measures. All sales of alcohol will have to be authorised by a personal licence holder. We will not promote any irresponsible drinks promotions and always have free water on site. We will always have small measures (glass sizes etc.)

b) The prevention of crime and disorder:

We will not serve alcohol to anyone visibly drunk or over the limit, or anyone who looks as though they are going to drive. We will never serve alcohol to anyone who looks as though they are buying alcohol to persons under aged.

c) Public Safety:

We will never have more than 100 customers at any one time to avoid over crowding and noise disturbance. We have first aiders, 2 personal licence holders and fire blankets/extinguishers on site.

Have local taxi services available and on a poster for customers to see. We will always make customers aware of percentage if they ask.

d) The prevention of public nuisance:

Ensure public leave quietly and quickly to avoid disturbance to local community, provide rubbish bins inside and outside to avoid littering. Close windows and doors to prevent loud noise.

e) The Protection of children from harm:

Challenge 21/25 scheme.

No children under the age of 16 will be allowed on the premises during sale of alcohol unless accompanied by an adult.

On the 15.10.19 the applicant confirmed that they agreed to the additional conditions being attached to the licence and the Police also confirmed the withdrawal of their representation on 15.10.19 (Appendix 3&4)

9. 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:

17.19 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.

17.20 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
- 17.21 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.
- 17.22 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.

10. Options

Legal options open to members -

1. Grant the licence subject to conditions as are consistent with the operating schedule accompanying the application.
2. Grant the licence with modified conditions
3. Exclude a licensable activity
4. Refuse to specify the DPS
5. 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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| 15. Appendix 1 | Application Form |
| Appendix 2 | Plan of Premises |
| Appendix 3 | Representations – Police |
| Appendix 4 | Applicants agreement & Police withdrawal of reps |
| Appendix 5 | Other persons representation |
| Appendix 6 | Plan of area |
| Appendix 7 | Human Rights Articles |
| Appendix 8 | 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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