

**Agenda Item No: 1 - Summary of Report**

**Licence Reference 19/04346/LAPRE**

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

**Date: 23<sup>RD</sup> DECEMBER 2019**

**Report Title: 87 - 88 BANK STREET, MAIDSTONE, KENT, ME14 1SD**

**Report Author: Lorraine Neale**

- Summary:**
1. The Applicant – Century Buildings (Rochester) Limited
  2. Type of authorisation applied for: A premises licence under the Licensing Act 2003.
  3. Proposed Licensable Activities and hours:

A	Plays (Indoors)	Every day	10:00 – 03:00
B	Films (Indoors)	Every day	10:00 – 03:00
C	Indoor sporting events	Every day	10:00 – 03:00
D	Boxing or wrestling (Indoors)	Every day	10:00 – 03:00
E	Live music (Indoors)	Every day	10:00 – 03:00
F	Recorded music (Indoors)	Every day	10:00 – 03:00
G	Performance of dance (Indoors)	Every day	10:00 – 03:00
H	anything of a similar description to that falling within (e), (f) or (g) (Indoors)	Every day	10:00 – 03:00
L	Late night refreshment (Indoors)	Every day	23:00 – 03:00
M	Supply of Alcohol (On Sales)	Every day	10:00 – 03:00
O	Opening Hours	Every day	10:00 – 03.30

**The applicant Century Buildings (Rochester) Limited currently holds licence 19/03281/REVIEW for the premises (Appendix 1).**

**This application is for a shadow licence . This is a common situation where a shadow licence is applied for when a landlord’s licensed premises is operated by a tenant whose actions could have a negative impact on the licence due to poor management of the premises resulting in restrictive conditions being added, hours cut back or even revocation.**

**Landlords often seek to protect themselves against such risks through provisions in the lease, these will rarely have a bearing on the licensing process. Such provisions may provide a landlord with a right of action against a tenant, but they cannot prevent a licence from lapsing or being reviewed. A shadow licence solves this problem for the landlord.**

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**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](mailto:lorraineneale@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 2), made by Century Buildings (Rochester) Limited, in respect of the premises 87 - 88 Bank Street, Maidstone, Kent, ME14 1SD (Appendix 3 ) in respect of which 1 objection has been received from other parties

### 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 were no representations received from responsible authorities.
5. There is 1 representation from other parties.
6. The table below illustrates the relevant representations which have been received

There appear to be concerns that the requested hours and licensable activities will potentially cause unrelenting noise nuisance and unsociable behaviour 7 days a week. The objectors believe it will have a detrimental effect on their day to day lives especially their working week. Also they believe that crime and disorder has become worse in the 7 years they have lived in the town and it was publicly demonstrated when a youngster lost their life after being at the Gallery in recent months. They request that the licensing hours for all activities Sunday to Thursday are reduced to midnight on a weekly basis, exceptions to be made on days when the direct (following day is a Bank Holiday).

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:**

Generic Conditions as per previous license – additional specific conditions in separate document.

**b) The prevention of crime and disorder:**

Age verification policy in place for staff of Challenge 25 in line with general objectives and training  
 Incident and refusal book to be used in line with general objectives  
 Staff training as detailed in general objectives

<b>Responsible Authority /Other Party</b>	<b>Licensing Objective</b>	<b>Associated Documents</b>	<b>Appendix</b>
Mr Robert Baker & Ms Louisa Beddoes	Crime & Disorder Public Safety Public Nuisance	e-mail	Appendix 4

CCTV in use as detailed in general objectives

SIA Door Supervisors will be used as required

**c) Public Safety:**

Age verification policy in place for staff of Challenge 25 in line with general objectives and training

Incident and refusal book to be used in line with general objectives

Staff training as detailed in general objectives

CCTV in use as detailed in general objectives

SIA Door Supervisors will be used as required

**d) The prevention of public nuisance:**

DPS or manager will monitor noise levels in and around the property and take action as required so as not to be a nuisance .

Promote guests to arrive and leave in a quiet manner. This includes signage at the venue exit

Ensure where possible doors and windows are kept closed. Specifically, if amplified music is taking place

Complaints will be recorded by staff/management in the incident log.

Repetitive issues and significant breaches will be investigated by the DPS

Smoking – This will be monitored by staff and management

Give consideration to overall noise level of property and adjust such things as background music to lower levels.

**e) The Protection of children from harm:**

Age verification policy in place for staff of Challenge 21 in line with general objectives and training

Incident and refusal book to be used in line with general objectives

Staff training as detailed in general objectives

CCTV in use as detailed in general objectives

**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:**

**17.9 Crime and Disorder**

**17.16 Public Safety**

**17.19. Prevention of Public Nuisance**

**17.9 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.

17.10 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

17.11 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.

17.12 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.

17.13 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.

17.14 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.

17.15 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.

### **3.1 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.

- 3.2 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.
- 3.3 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.

#### **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**

Appendix 1	Copy Licence 19/03281/REVIEW
Appendix 2	Application Form
Appendix 3	Premises Plan
Appendix 4	Objection Letter
Appendix 5	Plan of area
Appendix 6	Human Rights Articles
Appendix 7	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.**

Contact:  
Email:

**Senior Licensing Officer**  
[lorraineneale@maidstone.gov.uk](mailto:lorraineneale@maidstone.gov.uk)