

Agenda Item No: 1 - Summary of Report

Licence Reference 20/02943/LAPRE

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

Date: 8th February 2021

Report Title: THE GREEN ROOM, 32 – 34 EARL STREET, MAIDSTONE, KENT, ME141PS

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

Report Author: Lorraine Neale

- Summary:**
1. The Applicant – Unity Parties Limited
 2. Type of authorisation applied for: To vary a premises licence under the Licensing Act 2003. (Appendix A)
 3. Licensable Activities and hours:

		Current Hours		Hours: New Application	
A)	Plays	-	-	Mon – Sun (Indoors)	08:00 – 04:00
B)	Films	-	-	Mon – Sun (Indoors)	08:00 – 04:00
C)	Indoor Sporting Events	-	-	Mon - Sun	08:00 – 04:00
D)	Boxing or Wrestling	-	-	Mon – Sun (Indoors)	08:00 – 04:00
E)	Live Music	Mon - Sun	11:30 - 00:30	Mon – Sun (Indoors)	08:00 – 04:00
F)	Recorded Music	-	-	Mon – Sun (Indoors)	08:00 – 04:00
G)	Performance of Dance	Mon - Sun	11:30 - 00:30	Mon – Sun (Indoors)	08:00 – 04:00
H)	Anything similar to (e), (f) or (g)	Mon - Sun	11:30 - 00:30	Mon – Sun (Indoors)	08:00 – 04:00
L)	Late Night Refreshment	Mon – Sat Sun	23:00 - 00:30 23:00 – 00:00	Mon – Sun (Indoors)	23:00 – 04:00
M)	Supply of alcohol (On the premises)	Mon -Sat Sun	10:00 – 00:00 12:00 – 23:30	Mon – Sun (On & Off the Premises)	08:00 – 04:00
O)	Opening Hours	Mon – Sat Sun	10:00 – 00:30 12:00 – 00:00	Mon – Sun	08:00 – 04:00

The variation also seeks to remove the following conditions from the licence: -

- Alcohol may be sold or supplied for one hour following the hours set out above and on Christmas Day, between 3pm and 7pm to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by such a person in that part of the premises as an ancillary to his meal. For other purposes or in other parts of the premises the hours set out above shall continue to apply.

- Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary thereto.

- No draught beer to be sold or consumed on the premises.

Affected Wards: High Street

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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Agenda Item No. 1

Report Title: THE GREEN ROOM, 32 – 34 EARL STREET, MAIDSTONE, KENT, ME141PS

Application to: Vary a premises licence under the Licensing Act 2003.

Purpose of the Report

The report advises Members of an application to vary a Premises Licence under the Licensing Act 2003 (Appendix 1), made by Unity Parties Limited for The Green Room, 32 – 34 Earl Street, Maidstone, Kent, ME141PS in respect of which 5 responses have been received from other persons (Appendix 3).

Issue to be Decided

Members are asked to determine whether to:

Grant the application as applied for, or

Grant the application and modify conditions of the licence, or

Reject all or part of 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 notices displayed on the premises for the required period.
3. There were no representations received from responsible authorities.
4. 5 responses were received from other persons.
5. The table below illustrates the relevant responses which have been received

	Responsible Authority /Interested Party	Licensing Objective	Associated Documents	Appendix
	Objections			
1	Dmitry Livchak	Crime & Disorder Public Nuisance Public Safety	E-mail	3
2	Mr Robert Jones	Crime & Disorder Public Nuisance Public Safety Children from Harm	E-mail	3
3	Kerry King	Crime & Disorder Public Nuisance	E-mail	3
4	Bulent Turgut	Crime & Disorder		3

		Public Nuisance		
5	Ms Anne Bryson-Payne	Crime & Disorder Public Nuisance Public Safety Children from Harm	E-mail	3

The objectors are concerned that this application represents a substantial change to activities in an area which is currently predominantly dominated by restaurants. In offering routine late-night hospitality and an increase in hours of operation for certain licensable activities at the Green Room will encourage in visitors and could have significant adverse disturbance effect on nearby residents and increase crime and disorder and public nuisance for the Town Centre. There are also public safety concerns around the increase to late night traffic and the potential to drink drive in an area which is pedestrianised and the danger that poses to families with children visiting the area.

The premises have a current licence, Appendix 5 and current plans Appendix 6. The current licence holder is the applicant.

6. The current licence hours are as per the licence attached at appendix 5 and set out at 3 of the summary above. The application. also seeks to remove the conditions: -

- Alcohol may be sold or supplied for one hour following the hours set out above and on Christmas Day, between 3pm and 7pm to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by such a person in that part of the premises as an ancillary to his meal. For other purposes or in other parts of the premises the hours set out above shall continue to apply.
- Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary thereto.
- No draught beer to be sold or consumed on the premises.

7. On the 8.1.21 the applicant confirmed that they agreed to the additional conditions requested by the Police on the 8.1.21 (Appendix 4) being attached to the licence which are: -

- (1) CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.
 - a. Cameras shall encompass all ingress, egress and include all areas to which the public have access, including fire escapes, stairwells and where the supply of alcohol occurs (with the exception of areas agreed by the Police, for example toilet cubicles).
 - b. The CCTV shall be recording at all times that the premises are open to the public.
 - c. Equipment must be maintained in good working order, be correctly time and date stamped, recordings MUST be kept on the hard drive and kept for a period of 31 days and handed to Police upon reasonable request.
 - d. The Premises Licence Holder must ensure at all times a DPS or appointed members of staff is capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority upon reasonable request.

- e. The Police or local authority will be given a copy of the CCTV in a suitable format within 48 hours of any reasonable request.
- (2) At least one member of staff with a personal licence will be on duty at all times that the premises are open for the sale of alcohol.
- (3) Toughened or polycarbonate glass will be used at the premises. All drinks will be supplied in polycarbonate or suitably toughened glass. This condition will not apply to the ground floor restaurant area or the Whisky Room except when events in this location are taking place.
- (4) The DPS will be responsible for the maintaining of an incident book at the premises and this book will log all incidents which are “out of the ordinary” whether police are called or not.
- (5) All persons that sell or supply alcohol to customers must have licensing training.
 - a. Training should take place within six weeks of employment and any new employees will be supervised until the training has taken place.
 - b. Refresher training should be repeated a minimum of every six months or earlier if required due to changes of legislation.
 - c. Training records must be kept on the premises and shall contain the nature, content and frequency of all training.
 - d. Records must be made available for inspection by Police, Police Licensing Officer and authorised officers from the Local Authority upon request either electronically or hard copy.
- (6) The premises will undertake the “Challenge 25” Scheme which will be advertised within the premises by way of sufficient posters to make the public aware.
- (7) All staff involved in the sale or supply of alcohol will be trained in the “Challenge 25” Scheme and such training will be recorded.
- (8) The only proof of age that will be accepted by staff will be a photographic driving licence, a passport or a ‘PASS’ marked proof of age card.
- (9) The premises shall produce a full Risk Assessment to cover the running of events at the premises. All events whether run as “in house” or by outside organisers will comply with that Risk Assessment unless a separate Risk Assessment is completed for that particular event. The risk assessment will be sent to/shared with Kent Police 120 hours prior to the event taking place.

- (10) The licence holder shall produce risk assessments that must have proper regard to the Health and Safety Executive guidance 'The Event Safety Guide: A guide to health, safety and welfare at music and similar events'. It must address but is not limited to risks specific to the nature of the proposed event and its potential to undermine the licensing objectives. The risk assessments must be submitted in writing either by post or electronically to Police Licensing Team (west.division.licensing@kent.police.uk), the local Licensing Authority and Environmental Health a minimum of 31 days prior to the event taking place.
- (11) A refusal register 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:
- a. Item refused.
 - b. Name of description of the person refused.
 - c. Reason for refusal.
 - d. Name of staff member making refusal.
- (12) The register will be available for inspection to any Police Officer, Local Authority Licensing Officer or Trading Standards Officer at any reasonable time.
- (13) No persons under the age of 18 will be permitted in the building unless accompanied by an adult with the exception of staff members working at the time.
- (14) Door Supervisors conducting security activities as a condition of any premises licence shall be registered with the Security Industry Authority (SIA) and shall display or be able to display at least one of the following articles upon request by the Licensing Authority, the Police, a responsible authority, and/or any other relevant authorities including the Security Industry Authority (SIA):
- i. A Security Industry Authority (SIA) name badge;
 - ii. Proof of registration to the Security Industry Authority (SIA) scheme allowing them to carry out security activities at licensed premises.
- (15) A minimum of 3 SIA registered door staff will be employed at the premises, these staff will be on duty from 2000hrs until 30 minutes after the premises closes to the public. In addition to this a further one door supervisor per 100 customers.
- (16) If premises is open on Christmas Eve and/or New Years Eve then at least 3 door supervisor will be employed from 20:00hrs until close of business.
- (17) On any Sunday preceding a Bank Holiday at least 3 door supervisors will be employed from 20:00hrs until close of business.

- (18) There will be a door control policy that outlines clear instruction and understanding of the door supervisor's responsibilities at the premises. This policy will contain
- i. How door staff prevent overcrowding
 - ii. Supervise the queue to ensure that it is managed in a way that avoids rowdy, unpleasant behaviour and to keep customers quiet as to not disturb neighbours in the vicinity
 - iii. A procedure for door staff engaged in searching persons as a condition of entry
 - iv. To ensure the dispersal of patrons from the curtilage and grounds of the licensed premise immediately after the end of licensable activities
 - v. Prevent patrons from leaving the premises with open containers and bottles.
 - vi. To provide evidence by written statement to police in any criminal investigation as and when required.
 - vii. The toilets shall be regularly monitored.
- (19) The premises shall have a written drug policy, this will detail the strategies to minimise the use and supply of illegal drugs within the premises. This will entail an agreed procedure for the handling and retention of any article seized. Where premises consider a drug's safe to deposit drugs found, there will be a clear policy for the handling and packaging of seized items. For premises with a suitable 'drug safe' the items secured within the safe would not be considered as being in possession. For premises that do not have a drug safe they must have a written agreement with police as to a procedure in the collection or delivering drugs to police.
- (20) To allow the use of IONTRACK. (Drug testing Machine), within the premises, (or curtilage of the premises), as a condition of entry, at the request of, and after consultation with Police. To allow swabbing for detection of drugs use when deemed necessary by Police.
- (21) When the venue is operating more than just the ground floor restaurant then door staff will be employed as per condition 15.

The Police confirmed the withdrawal of their representation on 12.1.21 (Appendix 4)

- 8. 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.**
- 9. Relevant sections of The Guidance issued under section 182 of The Licensing Act 2003.**

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:**

17.10 Crime and Disorder

17.19 Public Safety

17.22. Prevention of Public Nuisance

17.26 Children from Harm

CONDITIONS TO PROMOTE THE PREVENTION OF CRIME AND DISORDER.

17.10 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.

17.11 Wholesale of alcohol. Since 1 April 2017, businesses which sell alcohol (for example, retailers of alcohol and trade buyers) need to ensure that the UK wholesalers that they buy alcohol from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique Registration Number (URN) against the HMRC online database. This is an ongoing obligation and if a business is found to have bought alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face a criminal prosecution and their alcohol stock may be seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses.

17.12 Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC.

17.13 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

17.14 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.

- 17.15 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.
- 17.16 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.
- 17.17 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.
- 17.18 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.

- 17.19 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.
- 17.20 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.
- 17.21 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.

- 17.22 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.
- 17.23 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
- 17.24 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.
- 17.25 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.

- 17.26 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.
- 17.27 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.

17.28 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.

17.29 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 -

Grant the variation application as applied for., or

Grant the variation and modify conditions of the licence, or

Reject all 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 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 1	Application Form
Appendix 2	Plan of Premises
Appendix 3	Representations –Other persons
Appendix 4	Applicants Agreement/Police withdrawal of reps
Appendix 5	Current Premises Licence
Appendix 6	Current Plans
Appendix 7	Plan of area
Appendix 8	Human Rights Articles
Appendix 9	Order of Proceedings

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.

Contact: Email:	Senior Licensing Officer lorraineneale@maidstone.gov.uk
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