

Agenda Item No: 1 - Summary of Report

Licence Reference 21/00337/LAPRE

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

Date: 19th APRIL 2021

Report Title: TAP 17, 17 HIGH STREET, HEADCORN, KENT, TN27 9NH

Report Author: Lorraine Neale

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

E	Live music (Indoors)	Mon – Thurs Fri & Sat Sun	12:00 – 21:00 12:00 – 22:00 12:00 – 16:00
F	Recorded music (Indoors)	Mon – Thurs Fri & Sat Sun	12:00 – 21:00 12:00 – 22:00 12:00 – 16:00
M	Supply of Alcohol (On and Off Sales)	Mon – Thurs Fri & Sat Sun	12:00 – 21:00 12:00 – 22:00 12:00 – 16:00
O	Opening Hours	Mon – Thurs Fri & Sat Sun	12:00 – 21:00 12:00 – 22:00 12:00 – 16:00

Please note there is no requirement for the applicant to include Live/Recorded Music on their application as they would be exempt under the Live Music Act 2012 as it stipulates that a licence is not required to stage a performance of live music, or the playing of recorded music if:

- it takes place between 8AM and 11PM; and
 - it takes place at an alcohol on-licensed premises; and
 - the audience is no more than 500 people
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Affected Wards: HEADCORN

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

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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 Mrs Kelli Newman, in respect of the premises Tap 17, 17 High Street, Headcorn, Kent, TN27 9NH (Appendix 2) in respect of which 1 objection has been received from other parties (Appendix 5).

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, who requested that the applicant amend the operating schedule to include certain conditions, the applicant agreed, and the objection was withdrawn, (Appendix 3 & 4).
5. There is 1 representation from other parties (Appendix 5).
6. The table below illustrates the relevant representation which has been received

Responsible Authority/Other Party	Licensing Objective	Associated Documents	Appendix
Headcorn Parish Council	Public Safety Public Nuisance	e-mail	5

There appear to be concerns that the granting of a licence for these premises will cause excessive noise nuisance to be generated, which will affect nearby dwellings. Littering, increased parking and customers smoking will also be detrimental factors to nearby residents and the public in general.

It is suggested that the premises are not suitable for a business of the nature intended because of the perceived cramped conditions inside the building. The belief is that overcrowding will occur both inside the building and on the narrow pavement at the front of the property. This could cause an increase to anti-social behaviour in the vicinity of the premises and ultimately put the general public and customers at risk.

The applicant has responded to the points raised by Headcorn Parish Council and those comments are attached at Appendix 6.

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:

In addition to the licensing objectives and always acting with due diligence, we see the below as our responsibilities as taking on the serious responsibility of serving alcohol to the public.

b) The prevention of crime and disorder:

Earlier closing times means restricted hours of drinking.
Not serving any person we believe to be drunk and disorderly.
Age limit posters to be put up in premises and caution to be taken when serving anybody. making sure I.D. is asked for whenever any doubt.
We have an anti-drug policy.

c) Public Safety:

Again, being aware of our customers state at all times. Making sure drunk and disorderly behaviour is not created from our ignorance.
All bottles, cans and glasses will be removed as soon as empty to remove hazards. No opened bottles or glasses to be taken off the premises. Violence will not be tolerated.
Police will be contacted to report if necessary.

d) The prevention of public nuisance:

Advising customers to be respectful of neighbours etc when leaving the premises.
Doors and windows will be kept closed when regulated entertainment is taking place.
Staff will clear any litter outside the premises daily to a distance of 3 metres.
Noise levels will be checked and regulated to make sure no noise nuisance.

e) The Protection of children from harm:

Advising parents to be responsible for their children at all times, if we feel the child is unsupervised then dealing with the responsible adult in an appropriate way.
A clear policy to outline if children are on the premises with a responsible adult the expectations, including supervision. Removing empty glasses to minimise opportunities for children to access left over alcohol.

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:

17.16 Public Safety

17.19. Prevention of Public Nuisance

17.16 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.

17.17 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.

17.18 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	Application Form
Appendix 2	Plan of Premises
Appendix 3	Representations – Police
Appendix 4	Applicants agreement & Police withdrawal of reps
Appendix 5	Other parties representation.
Appendix 6	Applicants response to concerns raised by other parties
Appendix 7	Plan of area
Appendix 8	Human Rights Articles
Appendix 9	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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