

Agenda Item No: 1 - Summary of Report

Licence Reference 21/00345/LAPRE

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

Date: 20th APRIL 2021

Report Title: ESCAPE KENT PRISON ISLAND, 60-61 HIGH STREET, MAIDSTONE, KENT,
ME14 1SR

Report Author: Lorraine Neale

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

| | | | |
|---|--------------------------------------|-----------|---------------|
| | | | |
| M | Supply of Alcohol (On and Off Sales) | Mon – Sun | 11:00 – 23:00 |
| O | Opening Hours | Mon – Sun | 09:00 – 23:00 |

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

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Agenda Item No. 1

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MAIDSTONE, KENT, ME14 1SR

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 Mr Michael Knell, in respect of the premises Escape Kent Prison Island, 60-61 High Street, Maidstone, Kent, ME14 1SR (Appendix 2) in respect of which 1 objection has been received from other parties (Appendix 5). There was some confusion on the application form as to whether the applicant was an Individual or a company. Mr Michael Knell was contacted on 21st April 21 and he confirmed that the applicant is intended as an individual. The Public notice and advert placed in the Downsmail on the 18th March 21 support this.

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 to conditions 1 & 3-11 but disputed condition 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.”

After discussion it was agreed by both parties to be amended to:-

“The DPS or a personal licence holder will be readily available either in person or contactable on phone all the time the premises are open for the sale of alcohol”

As all conditions had now been agreed the Police withdrew their objection (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 |
|--|---|-----------------------------|-----------------|
| Mr Jamie Morgan | Crime & Disorder Public Safety Public Nuisance Children from Crime | e-mail | 5 |

There appear to be concerns that the granting of a licence for alcohol at these premises will put children at risk of harm due to an alleged lack of suitable management at the premises, this in turn will lead to an increase of incidents of anti-social behaviour. There are also concern that the premises will increase the levels of noise pollution in the 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:

Escape Kent Prison Island is a family friendly activity and has a calm and relaxed atmosphere. The focus is on teamwork, communication and fun. The style of activity encourages a standard of behaviour which will help promote the four licensing objectives.

b) The prevention of crime and disorder:

There is CCTV throughout the premises.

For each booking we take the name, email address and contact number for the lead booker.

Staff are present throughout our premises and monitor it physically as well as via the CCTV system.

c) Public Safety:

The maximum number of customers the premises will be able to accommodate will be no more than 250.

All fire escapes are carefully planned out and identified with the assistance of the local fire department, and regular fire checks are carried out.

d) The prevention of public nuisance:

Our premises was previously a night club with a late license and loud music, and as such it is very efficient at supressing noise. As our business will generally only play background music at a low volume level we do not see noise as an issue from the premises.

All our staff will have the relevant training to identify when individuals are drunk and should not be served alcohol.

e) The Protection of children from harm:

All staff will have relevant training on asking customers for ID when purchasing alcohol, and a challenge 25 policy will be in place.

Staff monitor the areas where customers are present physically and via CCTV.

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:

17.10 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 -

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