

Agenda Item No: 1 - Summary of Report

Licence Reference 11/03141/LAPRE

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

Date: 7TH MARCH 2012

**Report Title: 61 UNION STREET
MAIDSTONE
KENT
ME14 1ED**

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

Report Author: Lorraine Neale

Summary:

1. The Applicants – Mr Ahmet Arslan
2. Type of authorisation applied for: a premises licence under the Licensing Act 2003, S17.
3. Proposed Licensable Activities and hours:

B)	Films	Monday to Sunday	15:00 to 04:00
L)	Late Night Refreshment	Monday to Sunday	23:00 to 04:00
M)	Supply of alcohol; on the premises	Monday to Sunday	15:00 to 04:00
O)	Opening Hours	Monday to Sunday	15:00 to 04:00

Affected Wards: East Ward

Recommendations: **The Committee is asked to determine the application and decide whether to grant a 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 necessary to consider the rights of both the applicant and other parties, such as “**responsible authorities**” and/or “**interested parties**” (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: 61 UNION STREET, MAIDSTONE, KENT, ME14 1ED

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

Purpose of the Report

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Mr Ahmet Arslan, in respect of the premises 61 Union Street, Maidstone, Kent, ME14 1ED in respect of which 2 representations (Appendix C) have been received from Interested Parties

Issue to be Decided

1. Members are asked to determine whether to i) grant subject conditions consistent with the operating schedule modified to such extent as considered necessary for the promotion of the licensing objectives and any mandatory condition, ii) grant excluding any of the licensable activities applied for, iii) grant refusing to specify a premises supervisor, or iv) reject the application.

Background

2. The relevant sections are Part 3 ss 16-20, 23 & 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 a notice displayed on the premises for the required period.
4. 2 representations were received from Interested Parties
5. The table below illustrates the relevant representation which have been received

Responsible Authority/Interested Party	Licensing Objective	Associated Documents	Appendix
Sue Henniker on behalf of Mr Bulford Proprietor Maidstone Sewing Centre	Public Nuisance	E mail	C
Mr David Savory – spokesperson for local residents	Public Nuisance	Letter and petition	C

6. **Members are advised that applications cannot be refused in whole or in part, or conditions attached to the licence unless it is necessary to do so to promote the licensing objectives.;**
7. **The Operating Schedule submitted by the Applicant has addressed the licensing objectives in the following manner:**

a) General – all four licensing objectives

HEALTH AND SAFETY RULES AND LAW WILL BE ABIDED BY AT ALL TIMES, THE SHOP IS SMALL WITH A KITCHEN OFF ROOM AND TOILET.

b) The prevention of crime and disorder

MANAGEMENT AND STAFF WOULD BE ALERT OF THE SURROUNDINGS AND SITUATIONS AT ALL TIMES CCTV WILL BE IN OPERATION, WE WILL HAVE A DRESS CODE, NO DRUGS, ADULT MOVIES OR NUDITY, ABIDE BY ALL LAWS AND REFUSE TO SERVE UNSOCIAL PERSONS, THERE WILL BE NO ADMISSION AFTER 23HRS, THERE WILL ONLY BE ALLOWED 2 PEOPLE AT A TIMES IN THE GARDEN TO SMOKE AND SIGNS WILL BE PUT UP TO AVOID NOISE. SUMMER MONTHS WILL BE THE SAME AS WINTER MONTHS AS ACTIVITY WILL BE INSIDE.

c)Public safety

CCTV IN OPERATION, CHILDREN WOULD NOT BE ADMITTED AFTER 18.00HRS STAFF WILL BE TRAINED IN MANAGEMENT SKILLS, FIRE ESCAPES WILL BE IN PLACE TO SHOW FIRE SAFETY, THERE WILL BE A TIME LIMIT SITTING IN THE GARDEN, THERE WILL ALSO BE SIGNS ON DISPLAY ABOUT NOISE CONTROL.

d) Prevention of public nuisance

CCTV ANY NOISE WOULD BE KEPT TO A REASONABLE LEVEL AFTER 23.00 HRS, WE WILL HAVE WELL LIT AREAS SURROUNDING THE PREMISES, PUBLIC SERVICES WOULD BE ADVISED TO USE THE PUBLIC CAR PARK AT THE BACK OF THE SHOP, ANYONE THAT APPEARS TO BE DRUNK WOULD BE ASKED TO LEAVE.

e) The protection of children from harm

HEALTH AND SAFETY RULES APPLY AT ALL TIMES, NO SMOKING POLICY INSIDE BUILDING, ABIDE BY ALL LICENSING LAWS, PHOTO ID WOULD BE ASKED FOR IF A PERSON LOOKS UNDER AGE. CHALLENGE 25 POLICE POLICY IN PLACE.

The Police initially made representation which was received on 4.2.2012 (Appendix D), Mr Ahmet Arslan agreed to the amendment of the operating schedule to include the following conditions to be attached to the licence as part of their application:

- CCTV to be fitted to a standard agreed by the police that complies with the CCTV Code of Practice (2008 edition), produced by the Information Commissioners Office, with all public areas, including all access and gress points covered.
- The CCTV system will be maintained and serviced on a regular basis and records kept to that effect.
- CCTV shall be operational at all times that members of the public and or staff are on the premises.
- Images will be retained for a period of at least one calendar month by whatever means the licence holder deems appropriate

- The Police or Local Authority will have access to these images at any reasonable time and in any case within 48hrs of the request being made.
- The Police or Local Authority will be allowed to take a recording by way of tape, CD Rom, DVD, Memory stick or any other appropriate means of the
- image within 48hrs of the initial request being made by either the Police or Local Authority.
- There will be no admittance or re-admittance to the premises after 23.00hrs, except for the customers who have left the licensed premises for the purpose of smoking.
- A personal licence holder will be present at all times that the premises are trading for the sale of alcohol.
- Customers will not be permitted to take drink or refreshment into the smoking area after 23.00hrs.
- The disposal of bottles into waste receptacles outside the premises will not be permitted to take place between the hours of 23.00hrs and 07.00hrs to minimise disturbance to nearby occupiers
- All staff involved in the sale or supply of alcohol will be fully trained in their responsibilities under the Licensing Act and the training will be fully auditable and available to any responsible authority on request.
- A "Challenge 25" scheme will be adopted at the premises. All staff involved in the sale or supply of alcohol will be fully trained in the Challenge 25 scheme and this training will be recorded. Such records will be available to the Police or other responsible authority upon request.
- Signage will be displayed in the smoking area and at the exit of the venue asking customers to be considerate of the neighbours.
- Staff will manage the smoking area to make sure that no more than two (2) customers at a time are using it and that they are not causing a noise issue.
- Doors and windows will remain closed after 23.00hrs at times when the premises are showing films, sporting events or allowing games to be played.

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
Annex D**

part 4 Pool of Conditions relating to Public Nuisance

Relevant policy statements contained in **the Licensing Authority's Statement of Licensing Policy:**

22. Prevention of Public Nuisance

Licensed premises can cause adverse impacts on communities through public nuisance. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from any nuisance caused by the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

The Licensing Authority will interpret 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Concerns

When addressing the issue of prevention of public nuisance, the applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the likelihood of public nuisance. These may include:-

- The location of the premises and their proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship.
- The hours of operation, particularly if between 23.00 and 07.00.
- The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises.
- The design and layout of premises and in particular the presence of noise limiting features.
- The occupancy capacity of the premises.
- Last admission time.
- The steps the applicant has taken or proposes to take to ensure that staff leave the premises quietly.
- The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the premises.
- Whether routes to and from the premises, on foot or by car or service or delivery vehicles, pass residential premises within the vicinity of the Premises.
- Whether other measures have been taken or are proposed such as the use of CCTV or the employment of registered door supervisors.
- The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents.
- The likelihood of any violence, disorder or policing problems arising if a licence were granted.
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- The siting of external lighting, including security lighting that is installed inappropriately.
- Whether the operation of the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises and any measures or proposed measures to deal with this.
- The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licensees.

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:-

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance.
- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries.
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents.
- Effective ventilation systems to prevent nuisance from odour.
- Workplace smoking ban

N.B. Where relevant representations are received which the Licensing Sub Committee consider material particular consideration will be given to the impact on residential amenity of proposals for the provision of late night refreshment where these are either located in, or encourage people to move through, residential areas.

10. **Options**

Legal options open to members -

- a) GRANT the licence subject to such conditions as are consistent with the operating schedule accompanying the application; MODIFIED to such extent as the Licensing sub-committee considers necessary for the promotion of the licensing objectives and any relevant mandatory condition
 - b) EXCLUDE from the licence any of the licensable activities applied for.
 - c) REFUSE to specify a person in the licence as premises supervisor
 - d) REJECT the application.
11. 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 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

14. **Conclusion**

Members must ensure that the application is considered on its merits, as well as against the

relevant guidance, policy and statutory framework.

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15. **List of Appendices**

- Appendix A Application Form
- Appendix B Plan of Premises
- Appendix C Representations (Interested Parties)
- Appendix D Conditions agreed by the Police
- Appendix E Plan of area
- 16. Appendix F Human Rights Articles
- Appendix G Order of Proceedings

17. **Appeals**

The applicant or any interested party (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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