

Agenda Item No: 1 - Summary of Report

Licence Reference 12/01688/LAPRE

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

Date: 25TH JUNE 2012

**Report Title: EARLS
30 EARL STREET
MAIDSTONE
KENT
ME14 1PS**

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

Report Author: Lorraine Neale

Summary:

1. The Applicant – Sanjay Raval
2. Type of authorisation applied for: a Premises Licence under the Licensing Act 2003. (Appendix A)

Affected Wards: High Street

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 appropriate 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
Home Office Supporting Guidance – Pools of Licensing Conditions.
Maidstone Borough Council Statement of Licensing Policy

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Agenda Item No. 1

Report Title: EARLS, 30 EARL STREET, MAIDSTONE, KENT, ME14 1PS

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 Sanjay Raval, in respect of the premises Earls, 30 Earl Street, Maidstone, Kent, ME14 1PS in respect of which 1 representation (Appendix C) has been received from a Responsible Authority. There have been no representations received from Interested Parties.

Issue to be Decided

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

1. The relevant sections are Part 3 ss 16-21, 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
2. The application has been correctly advertised in the local press and a notice displayed on the premises for the required period.
3. 1 representation was received from a Responsible Authority

The table below illustrates the relevant representation which has been received

Responsible Authority/Interested Party	Licensing Objective	Associated Documents	Appendix
Kent Police	Crime & Disorder Public Safety Public Nuisance	Letter	C

4. The premises has a current licence for the ground and second floors, Appendix E. The current licence holder is the applicant and the current DPS is the proposed DPS. The Police indicate that the old licence will be surrendered if this application is successful but there is no indication of this by the applicant. It is possible for two premises licences to be held in respect of the same premises. It would be necessary for the licence holder to be clear on which licence he is operating under.

5. The current licence hours are shown at appendix E and the proposed hours for a new licence at appendix A. The differences are an additional hour Fri and Sat to 03:00 for **B) Films (Indoors only)**, **C) Indoor Sporting Events (Indoors only)**, **E) Live music (Indoors only)**, **F) Recorded music (Indoors only)**, **G) Performances of dance (Indoors only)**, **H) Anything similar to E, F, or G (Indoors only)**, **I) Facilities for making music (Indoors only)**, **J) Facilities for dancing (Indoors only)** and **M) Sale or Supply of Alcohol (On & Off the premises)**. An additional hour Fri and Sat to 03:30 for **L) Late Night Refreshment (Indoors only)** and an additional 30 minutes to 3:30 Friday and Saturday for **O) Opening Hours**.

The times of the same amounts on the same days are applied for for non standard times.except for the new year extension for Late Night Refreshment. The Police have not raised any objection in relation to the additional times applied for the new licence.

6. The Police representation in respect of this application (Appendix C) states that that the schedule 4 conditions on the current licence were fundamental in resolving the issues arising from the premises lack of customer control at that time and the Kent Police believe that if a new licence is issued without those conditions being attached all the previous problems the premises had will resume. The Police have also provided a statement from Maidstone Borough Councils, Licensing Enforcement Officer, Stephen Noble in support of their representation.(Appendix D) The following conditions were attached to the existing licence following a Police application for review, at a Hearing on 24.09.2009.

1. There shall be no consumption of alcohol outside the premises other than in the terraced area on the first floor shown on the submitted plans
2. There shall be no glass outside.
3. All soft drinks for outside consumption shall be supplied in plastic bottles or decanted into plastic or polycarbonate vessels.
4. The Police or Local Authority will be provided with a recording by way of tape, CD Rom or any other means of a CCTV image immediately upon request.
5. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who is able to provide a recording of any incident at the request of the police or local authority.
6. Prominent, clear and legible notices are to be displayed at all exits requesting patrons to respect persons walking by and not to cause obstructions.

The application before members has an operating schedule which offers the following:-

Prevention of Crime and Disorder

1. CCTV must be installed in and around the location of the premises with particular attention as to the siting of cameras covering all entrances and exits, public areas, areas where the public, club members and guests may congregate to gain entry or leave the premises and all other areas where the public, club members and guests may have access.
2. A sign or written notice shall be displayed in all public areas informing those persons at the premises or entering or leaving the premises that they will be subject to recording by means of CCTV or other recording device.
3. All CCTV cameras and recording equipment, including video tapes, shall be well maintained, kept in good working order and be subject to regular testing and inspection.
4. Where CCTV has not been installed, or there are specific requirements for further CCTV coverage in or around the premises, guidance must be sought from the Chief Officer of Police, officers or other representatives of, the Police Authority
5. Any Recording made (during the hours open to the public) via the use of CCTV or other recording

equipment, must be of a continuous nature and shall be retained and stored securely for a six month period. All recording, howsoever made, must be stored securely for one month, the first day of storage being the last date of the continuous recording. Each video tape/recording material shall be labelled with the following;

(i) The date(s) of the recording period(s).

(ii) The time(s) the recording period(s) began and concluded including any breaks in the recording of the video tape/recording material. Where breaks in recording occur, all reasons for the said breaks

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(iii) The name(s) and position(s) of all persons entering the above information, illustrating the date(s) and recording period(s) each person is responsible for.

(iv) Where a “working video tape” and a ‘copy video tape’ is made from a master video tape material, each “working video tape” and “copy video tape” must be labelled with information concerning all date(s) and time(s) copying took place, the name(s) and position(s) of all persons which made the “working video tape” and the “copy video tape” and reasons copies were made.

(v) The location of all master video tapes/recordings materials and copies. Footnote:
all video tapes! recording material shall be accessible at all times to members of the Police Authority, Licensing Authority, or other responsible Authorities.

(vi) Warning sign: All video tapes/recording materials shall be kept in a safe and secure location and should not be accessible to members of the public or any other unauthorised persons.

(vii) Warning Sign: All video tapes! recordings materials must be kept for a minimum of one month, All video tapes/recording materials must be stored securely for a minimum period of one month, the first day of storage being the last date of the continuous recording. All video tapes/recording materials shall be stored in accordance with subsection (vi) above.

Public Nuisance

The following licensed activities that have the potential to create public nuisance shall not be permitted unless they are done so in accordance with the controls below:

(1) Activity control

a. Performances of Music, Film, Amplified Speech or Sound. All doors and windows to be shut after 23.00hrs,

b. After 22.00hrs sound levels will be regularly monitored from the outside to ensure there is no noise nuisance being created.

c. The level of music/sound shall be controlled so that no noise is discernible at the façade or inside the nearest noise sensitive dwellings.

d. Prominent, clear notices shall be displayed at all exits! in the beer garden! outside areas, requesting customers to respect the needs of local residents and leave the premises and the area quietly.

e. A ‘freephone’ taxi line! Telephone numbers for local taxi companies must be available to assist with the peaceful dispersal of patrons from the premises.

Protection of Children from harm

Anyone who appears to be under 18 and is attempting to purchase alcohol in the licensed premises/club or is consuming alcohol in the licensed premises/club shall, upon request, provide any member of staff of the licensed premises/club with adequate and acceptable proof of age.

Proof of age may be illustrated by a:-

- Connexions card — as promoted by Kent trading Standards and Kent Police.
- ‘New type’ driving licence with photograph.
- Valid UK Passport
- Official identity card issued by HM armed forces.

It may be acceptable for children under the age of 18 to consume alcohol as a part of a meal whilst under adult supervision. In this instance, it may not be necessary to require proof of age.

The operating schedule mirrors that of the existing licence at annex 2 but with the removal of the following:

The DPS, manager or other responsible person will ensure that the premises will become a member of 'Pubwatch' or any other similar group if established.

The DPS, manager or other responsible person in charge of the premises shall liaise and comply with the Local Police Authority regarding their drugs policy, and will allow the use of IONTRAK machines or other drug/illicit substance detection device or method, at all times.

Staff shall receive training on the prevention of drug abuse.

All staff shall be trained in Licensing Law and Health and Safety.

Public Safety

Health and Safety Risk assessments shall be carried out prior to the Premises licence being effective and a copy retained for inspection upon request by an officer of the local Licensing Authority, Police or Fire Authority or other relevant person.

Fire Risk assessments shall be carried out prior to the Premises Licence being effective and a copy retained for inspection upon request by an officer of the local Fire Authority, Licensing or Police Authority or other relevant person.

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. 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:

- 20. Prevention of Crime and Disorder**
- 21. The Promotion of Public Safety**
- 22. Prevention of Public Nuisance**

20. Prevention of Crime and Disorder

Concerns

The applicant should consider factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour

Additional Steps

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

- Effective and responsible management of premises.
- Training and supervision of staff.
- Adoption of current best practice guidance (some examples are Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit, and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA).
- Acceptance of accredited 'proof of age' pass cards or 'new type' driving licences with photographs, passports or an official identity card issued by H M Forces.
- Provision of effective CCTV in and around premises.
- Employment of Security Industry Authority licensed door staff. (If two or more are employed there must be at least one male and one female).
- Provision of toughened or plastic glasses.
- Provision of secure deposit boxes for confiscated items ('sin bins').
- Provision of litterbins, security measures, e.g. lighting, outside premises.
- Membership of a Pub Watch scheme.
- The current 'Chill Out Hour' operating at the late night venues in the Borough of Maidstone which is the agreement whereby late night venues cease to sell alcohol yet continue to provide music and dancing for a further hour (at a reduced volume and with the heavy bass beat removed) has proved to be a success in reducing late night crime and disorder.
- Membership of Maidsafe (Nite Net).

21. The Promotion of Public Safety

The Licensing Authority wishes to ensure the safety of everyone on licensed premises.

Concerns

Capacity

Where existing legislation does not provide adequately for the safety of the public, club members or guests, the occupancy capacity for premises and events (to include performers and staff) may be an important factor in promoting public safety. Subject to the requirements of the following paragraph the Licensing Authority will expect the issue of occupancy capacity and adequate controls of the numbers of persons on premises or attending an event to be considered by an applicant when completing an Operating Schedule. Where a relevant representation is received in respect of capacity the Licensing Authority will consider setting capacity limits in consultation with the Kent and Medway Fire and Rescue Authority for the following premises:

- Nightclubs
- Cinemas
- Theatres
- Other premises where regulated entertainment within the meaning of the Act is being provided.

The Applicant might also consider the following concerns when assessing the appropriate capacity for premises or events in the Maidstone area. These could include:-

- The design and layout of the premises.
- The nature of the premises or event.
- The nature of the licensable activities being provided.
- The provision or removal of temporary structures, such as a stage or furniture.
- The number of staff available to supervise customers both ordinarily and in the event of an emergency.
- The customer profile (e.g. age, disability).
- The attendance by customers whose first language is not English.
- Availability of suitable and sufficient sanitary accommodation.
- The nature and provision of facilities for ventilation.
- The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

Where capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the applicant will be expected to consider the arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

Additional Steps

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

- Suitable and sufficient risk assessments.
- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons.
- Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons.
- Adoption of best practice guidance.
- Provision of effective CCTV in and around premises.
- Provision of toughened or plastic non disposable glasses/bottles.
- Implementation of crowd management measures.
- Regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety.

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.

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.

9. 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 appropriate 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”.

10. **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.

11. **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

12. **Conclusion**

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

13. **List of Appendices**

Appendix A	Application Form
Appendix B	Plan of Premises
Appendix C	Police Representation
Appendix D	Statement of Stephen Noble
Appendix E	Existing Premises Licence
Appendix F	Plan of area
Appendix G	Human Rights Articles
Appendix H	Order of Proceedings

14. **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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