

**REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF A REPRESENTATION IN RELATION TO AN APPLICATION MADE UNDER THE LICENSING ACT 2003 FOR THE COTTON MILL IN SWANLEY - 18/00126/LAPRE.**

**Licensing Sub-Committee - 18 April 2018**

Report of                      Chief Officer, Environmental and Operational Services -  
Richard Wilson

Status                        For Decision

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**Executive Summary:** This report provides information to advise members of an application for a new premises licence under The Licensing Act 2003 in respect of The Cotton Mill, 10 Station Road, Swanley, Kent. BR8 8ET

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**Contact Officer**        Jessica Foley, Ext. 7480

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**Recommendation to Licensing Sub-Committee:**

Options available to members are:

- a) To grant the application in full on the terms and conditions contained in the operating schedule along with relevant mandatory conditions
  - b) To grant the application, modified to such an extent as considered appropriate in order to satisfy any relevant representations so as to adequately promote the licensing objectives
  - c) To exclude from the scope of the licence any of the licensable activities
  - d) To refuse to specify a person in the licence as the premises supervisor
  - e) To refuse the application in its entirety
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**Reason for recommendation:** Each application must be considered on its individual merits and in relation to the licensing objectives under the Licensing Act 2003. Members are asked to consider the options above in light of the individual circumstances of this application and representations and testimony received at hearing.

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**Introduction and Background**

- 1 The procedure for Hearings of Sub-Committees of the Licensing Committee established in accordance with Section 9 of the Licensing Act 2003 is attached to the agenda.

- 2 On 12 January 2018 an application was received from Mr David Graham Miller for a new premises licence for The Cotton Mill, 10 Station Road, Swanley, Kent. BR8 8ET. This application was validated on 25 February 2018 and the consultation end date was the 24 March 2018.
- 3 11 representations have been received from local residents that have not been withdrawn. (Appendix C)
- 4 A representation was also received from Environmental Protection with suggested conditions to be added to the licence. The applicant has agreed to the suggested conditions. (Appendix D)
- 5 This is a new premises that has not had a Premises Licence or any Temporary Event Notices (TENs) previously.
- 6 The premises is situated opposite a row of shops with flats above on a 'No Through' road. 3 of the shops are either takeaways or Restaurant and have opening hours until 23:30 or 00:00 hours.
- 7 There is a pub on the High Street, a short walk through the 'No Through' road (The Lullingstone Castle) that has a licence to sell alcohol Sunday to Thursday 11:00 to 23:00 hours, Friday and Saturday 11:00 to 00:00 hours and opening hours are half an hour after that.
- 8 Application is to allow the following licensable activities on the premises.

**The application is to:**

Section F	<p>To allow recorded music indoors Monday to Friday from 07:00 to 22:00 hours and Saturday and Sunday from 12:00 to 22:00 hours.</p> <p>On Christmas Eve until the hours of 00:00 and on New Year's Eve until the hours of 01:00.</p>
Section M	<p>To allow the supply of alcohol for consumption on the premises every day from 12:00 to 22:00 hours.</p> <p>On Christmas Eve until the hours of 00:00 and on New Year's Eve until the hours of 01:00.</p>
Section O	<p>To allow the premises to be open to the public Monday to Friday from 07:00 to 22:00 hours and Saturday and Sunday from 12:00 to 22:00 hours.</p> <p>On Christmas Eve until the hours of 00:00 and on New Year's Eve until the hours of 01:00.</p>

**The applicant intends to take the actions detailed in the operating schedule (Appendix B) in order to promote the four licensing objectives detailed below if the proposed application is granted.**

## **Statutory Guidance**

### **Revised Section 182 Guidance (April 2017)**

#### **Licensing objectives and aims**

##### **Paragraph 1.2**

The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

##### **Paragraph 1.3**

The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

##### **Paragraph 1.4**

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

## **Consultation**

The regulations to the Licensing Act 2003 outline the requirements for the advertising of applications. These require the applicant to advertise the application:

a. For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority to display a white notice prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises. It was noted that the notice was displayed upon the premises for the 28 day consultation period which ended 6 July 2017.

b. By publishing a notice in a local newspaper on at least one occasion within 10 working days of submitting the application.

Regulations also require that the applicant give a copy of the application to each responsible authority on the same day as the day upon which it is given to the licensing authority. As the application was electronic, the requirement to serve the application was met by the licensing authority.

There are no other statutory requirements for advertising of any application, however, details of all applications received along with the time limit for receipt of representations is posted on the Council website via the weekly premises tracker and the public and councillors have public access.

**Representations received from statutory consultees:**

Fire Safety	NO COMMENTS RECEIVED
Trading Standards	NO COMMENTS RECEIVED
Social Service	NO COMMENTS RECEIVED
Police	NO OBJECTIONS
Environmental Health and Safety	NO OBJECTIONS
Public Health Department	NO COMMENTS RECEIVED
Environmental Protection	CONDITIONS SUGGESTED AND AGREED
Development Control	NO OBJECTIONS

**Representations received from interested parties:**

11 received from Local residents (Appendix C).

1 received from Environmental Protection with suggested conditions agreed (Appendix D).

**Conclusions**

Without prejudice, the Officer would like to draw to Members' attention to issues that they may wish to consider.

The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Amended Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from the Policy or Guidance the departure must be directed at the Licensing Objectives and such departure must be supported by clear and cogent reasons

**Mandatory conditions** - the following conditions will be added to the premises licence when it is issued.

**1. The supply of alcohol**

- Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:

No supply of alcohol may be made under the premises licence -

(a) at a time where there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

- Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

## **2. Mandatory conditions in force from 28 May 2014**

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1-

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979

(b) "permitted price" is the price found by applying the formula—  $P = D + (D \times V)$

where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
- 3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 4.
  - (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
  - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### **3. Mandatory Conditions in force from 01 October 2014**

- 1.
  - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a

period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
  - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 3.
- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
  - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
  - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
    - (a) a holographic mark, or
    - (b) an ultraviolet feature.
4. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
    - (i) beer or cider: ½ pint;
    - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
    - (iii) still wine in a glass: 125 ml;
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

### **Operating Schedule conditions**

1. All licensing objectives are to be visible in the back of house areas to all staff.
2. The interior and exterior of the premises shall be covered by CCTV to monitor public behaviour and safety. The CCTV images shall be stored for thirty one (31) days and be of evidential standard that shall be acceptable to the Police Service. The footage shall be made available upon request to the police or other responsible authority.
3. All matters relating to drugs shall be in accordance with the "Metropolitan Police Best Practice Guide" on the handling of drugs in pubs and clubs.
4. Any individuals carrying out security activities at the premises must be licensed by the Security Industry Authority.
5. All incidents shall be recorded in a log and reported to the appropriate authorities. These records will remain on site.
6. Management will ensure regular checks are being carried out during the hours of operation to ensure all areas remain rubbish and clutter free regardless of the source.
7. An accident book should be kept to record all accidents and/or incidents and made available for inspection.
8. Display prominent notices close to the exit doors, requesting patrons to leave the premises quickly and quietly.
9. A twenty (20)-minute "drinking-up time" shall allow an orderly and calm departure from the building and shall be incorporated within the licensed hours.
10. The premises shall operate a "Challenge 25" Policy, whereby customers purchasing alcohol who look or appear to be under 25 years of age shall be asked for an approved form of proof-of-age to verify their age - those being: (i) Photo driving licence (ii) Passport, or (iii) 'PASS' card.
11. A refusals log shall be kept on the premises and ensure that it is filled out whenever a sale is refused to a person who cannot prove they are over the age of 18.

### **Following Operating Schedule conditions agreed with Environmental Protection**

1. Prominent signage shall be displayed at all exits from the premises requesting that customers leave quietly.
2. The premises Licence Holder or Nominated person shall control the levels of noise in the outside area and advise customers of the need to respect local



residents where appropriate. Any patrons continuing to cause any disturbance or disorder will be asked to leave the premises.

3. The removal of empty kegs to external areas after 21:00 hours will not be permitted nor the emptying of bottle skips until the following day after 08:00 hours.

## **Key Implications**

### Financial

None directly arising from this report.

### Legal Implications and Risk Assessment Statement.

This Hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005

The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **Appendices**

Appendix A - Plan of the Premises

Appendix B - Application including Operating Schedule

Appendix C - Representations from local residents

Appendix D - Environmental Protections representation with agreed conditions

Appendix E - Locality maps

## **Background Papers**

The Licensing Act 2003

**Richard Wilson**

**Chief Officer for Environmental & Operational Services**