

**REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF A REPRESENTATION IN RELATION TO AN APPLICATION FOR A VARIATION MADE UNDER THE LICENSING ACT 2003 FOR BRISKET AND BARREL IN ST JOHNS HILL, SEVENOAKS - 18/01270/LAPRE.**

**Licensing Sub-Committee - 20 July 2018**

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

Status For Decision

Key Decision No

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**Executive Summary:** This report provides information to advise members of a Variation of a premises licence application under The Licensing Act 2003 in respect of Brisket And Barrel, 123 St Johns Hill, Sevenoaks, Kent. TN13 3PE

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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 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

- 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 19 April 2018 an application to vary the existing Premises Licence for Brisket And Barrel Ltd (123 St Johns Hill, Sevenoaks, Kent. TN13 3PE) was received; attached as **Appendix A**. The application was validated by Licensing on 02<sup>nd</sup> May 2018 and the consultation end date was the 27<sup>th</sup> June 2018.
- 3 The proposed variation is to incorporate the parking area located at the back of the premises (to be used as a terrace) into the licensed area of the premises where customers will be able to sit down, eat and drink, the proposed plan is attached as **Appendix B**. The application also include the addition of licensable activities as follows

Section B	To allow the exhibition of films outdoors everyday from 11:00 to 23:00 hours.
Section E	To allow Live music outdoors on Fridays and Saturdays from 20:00 to 23:00 hours.
Section F	To allow recorded music outdoors everyday from 11:00 to 23:00 hours.
Section M	To allow the supply of alcohol for consumption both on and off the premises everyday from 11:00 to 23:00 hours.
Section O	To allow the premises to be open to the public everyday from 09:00 to 23:00 hours.

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

- 4 The additional Licensable Activities are restricted to the outside terrace area only. The licensable activity 'sale of alcohol' is to be extended into the outside terrace area permitting consumption both on and off the premises.
- 5 2 representations have been received from a local resident and Environmental Protection that have not been withdrawn. (**Appendix C**)
- 6 The applicant has advised that he has met with local neighbours and sent them a follow up email with suggested conditions (**Appendix D**).

## **Background**

- 7 The existing Premises Licence, attached as **Appendix E**, was awarded on 31<sup>st</sup> August 2017.
- 8 The Licensing Team have not received any complaints regarding the premises for the life time of the current licence.
- 9 On 25<sup>th</sup> November 2017 the applicant submitted a Temporary Event Notice (TEN) for live music within the courtyard between the hours of 19:00 - 22:30hrs without any complaints.

## **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.

Following the resident's complaint on 26<sup>th</sup> May 2018, it was brought to the attention of the Licensing Team that the Public Notice may not have been displayed consecutively for 28 days as the notice was displayed on the shop window and covered by the shutters when the premises was closed.

The applicant states the original notice displayed on the shutter must have come loose but was unable to provide evidence that the Public Notice jhas been displayed continually for the 28 days period and therefore the consultation period was started again and ceased on 27<sup>th</sup> June 2018.

**Representations received from statutory consultees:**

Fire Safety	NO COMMENTS RECEIVED
Trading Standards	NO COMMENTS RECEIVED
Social Service	NO COMMENTS RECEIVED
Police	NO COMMENTS RECEIVED
Environmental Health and Safety	<b>NO OBJECTIONS</b>
Public Health Department	NO COMMENTS RECEIVED
Environmental Protection	<b>REPRESENTATION RECEIVED (APPENDIX C).</b>
Development Control	<b>NO OBJECTIONS</b>

**Representations received from interested parties:**

1 received from Local resident and 1 from Environmental Protection. (Full details of the representations received are attached as Appendix C).

### **Summary of resident representation made:**

*“I live... no more than 3 meters from the suggested ‘beer garden/ music venue’, my flat... has a balcony that directly overlooks the beer garden. I feel the noise generated from 100 people/ music/ live music/ films/ alcohol would mean that I am no longer able to have the doors/ windows open... also an 11pm licence Monday to Sunday is incompatible with a residential way of life.”*

### **Summary of environmental representation made:**

“Environmental Protection are concerned about the impact that the use of the terrace until 23:00 will have on local residents, particular in summer months, when not unreasonably, they want to have windows to habitable rooms open to assist with ventilation and temperature control within their homes... it is reasonable to assume that when a group of customers congregate for any length of time, they tend to become louder... laughing, shouting and screeching, become difficult to control.”

### **Deregulation**

It is important to note that under the deregulation of the Licensing Act 2003, premises authorised for the sale of alcohol are permitted to carrying certain forms of regulated entertainment, including live and recorded music, without the need for a licence if:

- It takes place between 8am and 11pm; and
- The audience is no more than 500 people

A licence, for this type of premises, is still required to screen a film or exhibit moving pictures.

### **Conclusions**

Without prejudice, the Officer would like to draw 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."

#### **4. Exhibition of films**

- Where the film classification body is specified in the licence, unless subsection (3) (b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

- Where -

- (a) the film classification body is not specified in the licence, or
- (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

In this section -

"children" means person aged under 18; and

"film classification body" means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

#### **Operating Schedule conditions**

1. Substantial food shall be available at all times during the permitted hours.
2. The premises shall install and maintain a comprehensive CCTV system. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon request of Police or authorised officer
3. All staff will be trained to ask customers to leave quietly in the evening when necessary.
4. There will be appropriate signage at the premises requesting customers to leave quietly.
5. An appropriate under-age system will be operated in accordance with Mandatory Conditions. 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 - Application including Operating Schedule

Appendix B - Plan of the Premises

Appendix C - Representations from local resident and Environmental Protection

Appendix D - Email to local neighbours

Appendix E - Existing Premises Licence

Appendix F - Locality maps

## **Background Papers**

The Licensing Act 2003

**Richard Wilson**

**Chief Officer for Environmental & Operational Services**