

**LICENSING ACT 2003 - APPLICATION FOR A REVIEW OF A PREMISES LICENCE IN RESPECT OF THE VAULT, 1 THE ROW, NEW ASH GREEN, LONGFIELD, KENT DA3 8JB**

**Licensing Sub-Committee - Monday 30 March 2020**

Report of Chief Officer Planning & Regulatory Services

Status For Decision

Key Decision No

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Portfolio Holder Cllr. Margot McArthur

Contact Officer Michael Moss (Licensing Partnership Manager) Ext. 7364

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**Recommendation to Licensing Sub-Committee:**

The Sub-Committee must consider what steps (if any) should be taken to secure the promotion of the licensing objectives. The four licensing objectives are:

- Prevention of crime & disorder
  - Prevention of public nuisance
  - Public safety
  - Prevention of children from harm
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**Reason for recommendation:**

The Licensing Sub-Committee is required to consider the application made by Kent Police for a review of the above mentioned Premises Licence under Section 53 of the Licensing Act 2003.

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**Introduction**

- 1 An application has been made under Section 51 of the Licensing Act 2003 by the Chief Officer of Kent Police on 10 February 2020 for a review of the Premises Licence held by Kenneth Kirkman in respect of the above-mentioned premises.
- 2 The current premises licence showing the hours for licensable activities and all of the conditions attached to the premises licence, can be found in full attached to this report as **Appendix A**.

3 The licensing objectives to which Kent Police believe are being undermined and this review application relates are:

- The prevention of crime and disorder
- Public safety.
- The Prevention of public nuisance

PC Philip Comben has made the following statement within Kent Police’s application:

*“Kent Police are seeking a review of the premises licence due to concerns surrounding the current licence holder/DPS and issues with compliance with the premises licence as granted. Kent Police believes that recent incidents at the premises have questioned whether Mr Kirkman is ‘fit and proper’ to be in the position of premises licence holder or Designated Premises Supervisor. It is felt by Kent Police that Mr Kirkman is failing to uphold his responsibilities as a Designated Premises Supervisor, and failing to work with the relevant authorities in order to ensure he is adhering to the relevant licensing objectives.”*

4 A full copy of the Review application is attached to this report in **Appendix B**.

5 The premises are situated within the retail village in the New Ash Green ward and a location plan is attached at **Appendix C**.

6 The Public Notice was erected on Tuesday 11 February 2020 at 09:30am in the presence of the Licensing Officer. A statutory 28 day consultation period expired on 9 March 2020; the following responses were received:

Department/ Responsible Authority	Consulted	Date response received	Comments made
Kent Fire & Rescue	Y	None	Not Applicable
SDC Environmental Protection	Y	14/02/2020	No Comment
SDC Health & Safety	Y	17/02/2020	No Comment
SDC Planning Department	Y	04/03/2020	No Comment
Trading Standards	Y	None	Not Applicable
Kent Safeguarding	Y	None	Not Applicable

Kent Public Health	Y	None	Not Applicable
Kent Police	N		

## Background

- 7 An application for a new Premises Licence was made on 28 December 2018 under the name 'The Beverage Bank'.
- 8 The applicant (Kenneth Kirkman) nominated a number of proposed steps in his operating schedule to promote the licensing objectives, however representation was received from Kent Police and Environmental Protection.
- 9 Kent Police comments (at the time of the original application) were...
- 10 *"The amenities available make it a popular meeting point for young people and therefore it suffers from ongoing anti-social behaviour issues. Kent Police believes that the inclusion of another licensed premises, if not managed effectively, will give rise to an increase in anti-social behaviour and lead to the possibility of an increased risk of disorder linked to the night-time economy."*
- 11 Despite the applicant nominating CCTV as a condition on the Premises Licence, Kent Police added...
- 12 *"Kent Police does not believe there is sufficient detail provided (Section M: Operating Schedule) to establish that the management controls in place will be strong enough to promote the licensing objectives"*
- 13 Kent Police suggested 10 conditions, 4 of which included the rewording of the CCTV condition to include duration, coverage, training and notices.
- 14 Environmental Protection comments (at the time of the original application) were...
- 15 *"Further steps could be taken to prevent public nuisance"*
- 16 Environmental Protection suggested 6 conditions, one of which included not taking the drinks outside.
- 17 These suggested conditions were presented to the applicant, who was advised to carefully consider the wording of the proposed conditions and decide whether the conditions, as worded, were achievable; the applicant (Kenneth Kirkman) agreed to have the proposed conditions imposed on the Premises Licence. Exhibited as **Appendix D**.

## Enforcement & compliance

- 18 On **5 July 2019** the Licensing Authority started to receive complaints from businesses operating within the vicinity of the 'The Beverage Bank' regarding nuisance associated with a make shift beer garden created in the communal car park; the Licensing Authority also became aware the name of the premises had changed to 'The Vault'. An email was sent to the Premises Licence holder (Kenneth Kirkman) reminding him of the condition relating to drinks being taken outside and asking what steps had been taken to promote the Licensing Objectives; exhibited as **Appendix E**.
- 19 On **16 July 2019** a letter was sent to Kenneth Kirkman as there was no response to the email sent above; exhibited in **Appendix F**
- 20 On **19 July 2019** the Licensing Authority visited the premises as part of an enforcement visit with Kent Police. Photos were taken of the make shift beer garden to include on the complaints record (19/00044/LANSEC), exhibited as **Appendix G**
- 21 Mr Kenneth Kirkman was present at the time of the visit and the Licensing Authority ran through all the conditions imposed on the Premises Licence. Mr Kirkman was advised the use of tables in the beer garden, encouraged patrons to take drinks outside and put him in breach of his premises licence, there was a discussion whether the condition imposed was intended for both the front and rear of the property and Mr Kirkman was advised to submit a minor variation application should he wish to amend any of the imposed conditions or their wording.
- 22 Other conditions were identified as non-compliance, these included the use of an incident book and staff training material and although installed Mr Kirkman was unable to operate the CCTV system.
- 23 On **19 August 2019** a compliance visit was carried out on the premises by a Temporary Licensing contractor (Russell Powell) during the inspection the officer identified there was no incident book and no evidence of staff training. A letter was sent to the Premises Licence holder exhibited at **Appendix H**
- 24 On **18 September 2019** the Licensing Authority was notified of the incident which has been detailed by Kent Police in the review application.
- 25 On **23 September 2019** an email was sent to Kenneth Kirkman to state that evidence from Kent Police's body cameras could be used as evidence of a breach of condition, as exhibited as **Appendix I**
- 26 On **4 October 2019** another email was sent to Kenneth Kirkman as no response had been received; a response was received the same day and is exhibited as **Appendix J**

- 27 On **13 November 2019** a visit with Kent Police, Licence Holder (Kenneth Kirkman) and a representative of the Licensing Authority was held at the premises to discuss the incident which occurred in September 2019 and check the conditions of the Premises Licence; 8 conditions were found to be non-compliant.
- 28 It was discussed that evidence taken from Kent Police's body worn camera, showed customers and the licence holder (Kenneth Kirkman) drinking outside on the date of the incident (16 September 2019) confirming a further breach of condition 19.
- 29 On **18 November 2019** Kent Police sent a letter to the Kenneth Kirkman (Licence Holder) outlining 8 conditions which were non-compliant, exhibited as **Appendix K**
- 30 As previous raised in the original application, the inclusion of another licensed premise, if not managed effectively, will give rise to an increase in anti-social behaviour and lead to the possibility of an increased risk of disorder linked to the night time economy. They also advised that due to the above breaches they deem him no longer 'fit and proper' as Designated Premises Supervisor and a deadline was set for Monday 16 December 2019.
- 31 On **26 November 2019** the Licence Holder requested the name of the premises be changed from The Beverage Bank to The Vault (4 months after the recommendation in July 2019).
- 32 The **16 December 2019** was the original deadline for Kenneth Kirkman to make the necessary change to resolve Kent Police's concerns, this was then extended to 31 January 2020; by which time minimal steps had been taken.
- 33 On **10 February 2020** Kent Police submitted their review application.
- 34 On **11 February 2020** I attended the premises to ensure the Public Notice was displayed at the premises. I personally placed the blue public notice in the centre of the window; email was sent to advise Kenneth Kirkman that the notice must be displayed in a prominent position until the end of the consultation period.
- 35 On **10 March 2020** I attended the premises with Kent Police, where I noticed the Public Notice was not in the centre of the window as I had place it, but stuck down the side of some crates sitting on the window ledge; a photo taken and exhibited as **Appendix L**
- 36 Kent Police had pre-arranged the meeting to start from 11am. Access was obtained to the premises at 11:26am where we were met with the proposed Designated Premises Supervisor (Thomas Whipps); he told us that Kenneth Kirkman had informed him the meeting was taken place the day following and he was unable to contact Mr Kirkman by telephone.
- 37 On **11 March 2020** I spoke with Kenneth Kirkman over the phone. I sent to him, by email, a copy of the representations made by Kent Police in regards

to the application he made to vary the Designated Premises Supervisor at the premises. In addition I also ask for a comment regarding the Blue Public Notice; as exhibited **Appendix M**.

- 38 At the time of writing this report I have not hear back from Kenneth Kirkman (Premises Licence Holder). The applicant of the review and the Premises Licence Holder have been invited to attend the review hearing set for 30 March 2020.

### **Representation**

- 39 Councillor Pender first approached the Licensing Authority on 29 June 2019 showing an interest into the premises and queried (after being informed by a barman) the conditions relating to CCTV. Information was provided to Cllr Pender that the conditions imposed on the Premises Licence are nominated and agreed by the Premises Licence Holder (Kenneth Kirkman).
- 40 Representation has been submitted during the consultation of the review from Councillor Pender which is exhibited as **Appendix N**.

### **Other Options Considered and/or Rejected**

The steps that may be taken by the Sub-Committee on a full review are:

- (a) Modify the conditions of the licence;
- (b) Exclude a licensable activity from the scope of the licence;
- (c) Remove the designated premises supervisor;
- (d) Suspend the licence for a period not exceeding 3 months;
- (e) The revocation of the Licence.

In addition, regard shall be had to guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 and Sevenoaks District Council's Statement of Licensing Policy (2015 - 2020).

### **Key Implications**

#### Financial

There is no fee for the application of a Review, and there are no financial implications 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.

### Human Rights

This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in Section 4 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.

4.2 Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the Council on a number of grounds including the protection of rights and freedoms of others. The First Protocol - Article 1 - also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

### **Conclusions**

The Licensing Sub-Committee is required to consider the application made by Kent Police for a review of the above mentioned Premises Licence under Section 53 of the Licensing Act 2003.

Breach of condition (4) which requires members of staff to be trained in the use of the CCTV system in July 2019 when Kenneth Kirkman was unable to use the CCTV equipment, 6 months after being awarded the Premises Licence. This condition was breached again in March 2020 when the proposed DPS (who had been employed for a month) admitted to not knowing how to use the CCTV.

Breach of condition (6) which relates to maintaining a log book was discovered in July 2019. This was picked up again in a compliance visit in August 2019 and again in November 2019 when a book was presented but was empty despite recent incidents.

Breach of condition (9) relating to staff training was discovered in July 2019. This was picked up again in August 2019, again in November 2019 and again in March 2020 when the proposed Designated Premises Supervisor failed to realise his responsibility to undertake staff training.

Allegation of breach of condition (19) relating to patrons taking drinks outside, was reported and discussed with Kenneth Kirkman in July 2019, and breach was witnessed by Kent Police when attending the premises in September (2 months later).

During the statutory consultation period, the Public Notice may not have been displayed for the full 28 days.

Members are required to consider the application made by Kent Police for a review of the above mentioned Premises Licence under Section 53 of the Licensing Act 2003.

## **Appendices**

Appendix A - Premises Licence

Appendix B - Review Application

Appendix C - Site Location Plan

Appendix D - Accepting conditions 2019

Appendix E - LA email 05/07/2019

Appendix F - Letter sent to Kenneth Kirkman

Appendix G - Photo of Beer Garden

Appendix H - Compliance follow-up letter

Appendix I - LA email 23/09/19

Appendix J - LA email 04/10/19

Appendix K - Kent Police Letter

Appendix L - Photo of Public Notice

Appendix M - LA email 11/03/2020

Appendix N - Cllr Pender's Representation

## **Background Papers**

None

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**Chief Officer Planning & Regulatory Services**