

LICENSING ACT 2003 VARIATION APPLICATION - Ephesus, 57-59 High Street, Sevenoaks, Kent. TN13 1JF

Licensing Sub Committee - Wednesday 9 February 2022 at 10:30am

Report of: Chief Officer Planning & Regulatory Services

Status: For Decision

Key Decision: No

Portfolio Holder: Cllr. McArthur

Contact Officer: Jessica Foley, Ext. 7480

Recommendation to Licensing Sub-Committee:

The Sub Committee is asked to determine the variation application in accordance with the Licensing Act 2003 (as amended 29), Sevenoaks District Council Statement of Licensing Policy, and the Home Office Guidance issued per Section 182 of the Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

Reason for recommendation:

A variation application has been received for a Premises Licence pursuant to Section 34 Licensing Act 2003. 13 representations against the application have been made by local residents, 1 representation by Environmental Health, and 1 representation made in support of the application by a local resident.

Introduction and Background

- 1 An application has been made to Sevenoaks District Council to vary a Premises Licence for Ephesus, 57-59 High Street, Sevenoaks, Kent. TN13 1JF. The applicant is Mr Cihangir Surucu - Appendix A
- 2 The nature of the proposed variation which is the subject of the variation application is to:

Extend the terminal hour for sale by retail of alcohol, Friday and Saturday until 01:00 hours and;

Add Late Night Refreshment for Friday and Saturday from 23:00 to 01:00 hours.

No changes are sought for hours Sunday to Thursday.

- 1 A copy of the current Premises Licence (ref 19/01981/LAPRE) with associated plans are at **Appendix B and Appendix C**
- 2 Members attention is drawn to the fact that in August 2019 planning was approved for a rear/side extension to the premises to facilitate further customer space. This extension does not form part of the current Premises Licence Plans and this variation application does not seek to amend the current plans to include this area. Licensable activities cannot take place within this extension, although alcohol can be ‘consumed’ in this area. Regulated entertainment has not been applied for and would not apply to this area, but the premises do benefit from deregulation ‘exemptions’ which are explained at **item 14 to 19** of this report. Photographs and plans of this extension can be found in **Appendix D and Appendix E**.
- 3 For the attention of Members, a further, more detailed, site plan of the area surrounding the licensed premises is at **Appendix F**.
- 4 Local Authority records go back as far as 2004 for this premises showing it was operating under a Justices Licence (under the Licensing Act 1964) in the name of ‘Spice Club’. This licence was converted under the transitional provisions of the Licensing Act 2003 which came into effect in November 2005. The hours of operation for the sale of alcohol have not changed since 2004 to date.
- 5 In September 2018 the Premises Licence was transferred to Mr Cihangir Surucu.
- 6 The applicant was required to advertise the variation application by placing an A4 pale blue sign at the premises, and also to advertise in a local newspaper to inform the public of the application.
- 7 A consultation period took place between 18th December 2021 and 14th January 2022. Responsible Authorities were consulted as part of the process. The applicant conformed with all requirements in accordance with The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.

Representation received from Responsible Authorities:

- 8 The following Statutory Bodies (described as Responsible Authorities by the Licensing Act 2003) were consulted about this application

Kent Police	No comment made
Environmental Health	Representation received
Kent Fire	No comment made
Child Protection	No comment made
Trading Standards	No comment made
Health & Safety	No comment made
Planning	Comments received but not objection
(Appendix I)	
Public Health	No comment made
Home Office Immigration	No comment made

Representations received from others

- 9 Representations objecting to this application have been received from 13 local residents and Environmental Health. The relevant grounds of objection in the representations relate to noise, traffic, and antisocial behaviour which are relevant to the licensing objectives of the prevention of public nuisance, public safety, the prevention of crime and disorder, and the protection of children from harm. Copies of the representations are at **Appendix G**.
- 10 One representation in support of this application has been received from a local resident which is at **Appendix H**.
- 11 On the basis of the representations received, it is considered unlikely that this application will be successfully mediated before the Sub Committee Hearing.

Entertainment De-regulation

- 12 Members attention is drawn to section 16.6 of the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003
- 13 No licence permission is required for:
- 14 Live Music
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that does not have a licence, provided that the audience does not exceed 500. A “workplace” is as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 and is anywhere that is made available to any person as a place of work. It is a very wide term which can include outdoor spaces, as well as the means of entry and exit.
- 15 Recorded Music
 - any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
- 16 Licence Conditions
(Section 16.36 of the Home Office Revised Guidance)
Any existing licence conditions (or conditions added on a determination of an application for a premises licence) which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08:00 and 23:00 on the same day where the following conditions are met:
 - At the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises,

- If the music is amplified, it takes place before an audience of no more than 500 people, and
- The music takes place between 08:00 and 23:00 on the same day.

17 Licence Reviews: Live and recorded music

(Section 16.55 of the Home Office Revised Guidance)

On a **review** of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition

Licensing Sub Committee Considerations

18 In determining the application with a view to promoting the licensing objectives, the Sub Committee must give appropriate weight to:

19 The steps that are appropriate to promote the licensing objectives
 The representations presented by all parties
 The Home Office Guidance issued under section 182 Licensing Act 2003
 The Sevenoaks District Council Statement of Licensing Policy
 Any other relevant legislation

The Licensing Act 2003 requires representations to address the four Licensing Objectives:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

A representation is a ‘relevant representation’ if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of the grant (i.e. more probable than not).

20 Sevenoaks District Council has produced a Statement of Licensing Policy in order to comply with its duties and powers under the Licensing Act 2003. A link to this Policy is in the Background Papers section at the end of this report.

The aims of the Policy are:

- To minimise nuisance and disturbance to the public through the licensing process
- To help build a fair and prosperous society that properly balances the rights of people and their communities
- To integrate its aims and objectives with other initiatives, policies plus

strategies that will reduce crime and disorder, encourage tourism, encourage an early evening and night time economy which is viable, sustainable and socially responsible, reduce alcohol misuse, encourage employment, encourage the self-sufficiency of local communities, reduce the burden of unnecessary regulation on business, and encourage and promote, live music, dancing and theatre for the wider cultural benefit of communities generally.

- 21 The Licensing Sub Committee should be mindful of requirements and responsibilities placed on them by other legislation, in addition to those contained within the Licensing Act 2003. These include, but are not limited to, having due regard to the Equality Act 2010 and the Human rights Act 1998.
- 22 The Sub Committee is asked to note the procedures relating to this hearing which are contained within The Licensing Act 2003 (Hearing Regulations) 2005 (as amended). A link to these Regulations are in the Background Papers section at the end of this report.

Options

- 23 When considering this variation for a premises licence, the following options are available to the Sub Committee:
 - Grant the variation in the same terms as it was applied for
 - Grant the variation, but modify or add conditions as appropriate for the promotion of the licensing objectives.
 - Grant the variation, but modify the hours of licensable activity as appropriate for the promotion of the licensing objectives.
 - Reject the variation application.

Right of Appeal

- 24 Under Section 181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal to the Magistrates Court in respect of variation applications to Premises Licences. This right of appeal is open to both the applicant and to any person who has made relevant representation. The appeal application must be made within 21 days of the written notification of the Sub Committee's decision.

Key Implications

Financial

A decision made by the Sub Committee may be appealed by any party to the proceedings of a Magistrates Court. Costs associated with this matter and incurred by any party, may in certain circumstances be awarded against the Council.

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 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.

Net Zero Implications

The decisions recommended through this paper have a remote or low relevance to the council's ambition to be Net Zero by 2030. There is no perceived impact regarding either an increase or decrease in carbon emissions in the district, or supporting the resilience of the natural environment.

Appendices

Appendix A - Variation application

Appendix B - Current Premises Licence (19/01981/LAPRE)

Appendix C - Plans association with current Premises Licence

Appendix D - Photographs of premises extension

Appendix E - Plans of premises extension

Appendix F - Site plan showing surrounding area

Appendix G - Representations objecting from residents and Environmental Health

Appendix H - Representations supporting from resident

Appendix I - Comments from Planning

Background Papers

[Licensing Act 2003](#)

[Revised Guidance issued under Section 182 Licensing Act 2003](#)

[Sevenoaks District Council Statement of Licensing Policy](#)

[The Licensing Act 2003 \(Hearings\) Regulation 2005](#)

Richard Morris
Chief Officer Planning & Regulatory Services