

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

Licensing Sub Committee - Thursday 27 April 2023

Report of: Chief Officer Planning & Regulatory Services

Status: For Decision

Key Decision: No

Portfolio Holder: Cllr. McArthur

Contact Officer: Susan Lindsey, Ext. 7491

Recommendation to Licensing Sub-Committee:

The Sub Committee is asked to determine the variation application in accordance with the Licensing Act 2003 (as amended), 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. 2 representations have been made in relation to the application by responsible authorities (Planning & Environmental Protection), and 12 representations against the application have been made by local residents.

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 1**
- 2 The nature of the proposed variation which is the subject of the variation application is to:
 - Extend the hours for the sale of alcohol (for consumption on the premises): Friday and Saturday from 11pm to 1.30am (the following morning)
 - Add the provision of recorded music and anything of a similar description (to cover amplified DJ music: indoors) : Friday and Saturday from 11pm to 01.30am (the following morning)

Add the provision of late night refreshment (indoors):
Friday and Saturday from 11pm to 2am (the following morning)

- 3 The applicant agreed to the addition of 'recorded music' on this application (in addition to the provision of 'anything of a similar description to live music, recorded music, or performances of dance') in order to clarify the provision of amplified DJ music.
- 4 No additional steps have been proposed by the applicant to promote the licensing objectives, but they have stated within their application that they are open to suggestions from relevant authorities. No communication with regard to additional steps have been received from relevant authorities.
- 5 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.
- 6 A public consultation period took place between 10th March and 5th April 2023. Responsible Authorities (listed below at 2.2) 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
- 7 A copy of the current Premises Licence (ref 22/03351/LAPMV) with associated plans are at **Appendix 2**, and **Appendix 3**
- 8 A copy of the agreed Dispersal Policy (which forms part of the conditions of the Licence) is at **Appendix 4**
- 9 A further, more detailed site plan of the area surrounding the licensed premises is at **Appendix 5**.
- 10 Members attention is drawn to the fact that there is a condition on the premises licence inherited from the original Justices Licence with regard to regulated entertainment as follows:
- 11 *Unless otherwise specified on this licence no regulated entertainment shall take place at the premises with the exception of pre-booked private events limited to the provision of music and dancing for pre-invited guests.*
- 12 This variation application has not requested the removal of this condition. This condition is 'suspended' between the hours of 8am and 11pm (due to de-regulation legislation), but it will be an enforceable condition after 11pm if the entertainment provided is done so under the authorisation of the Premises Licence.
- 13 Members attention is also 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. Any regulated entertainment applied for does not apply for this area, but this area does benefit from the live music de-regulation in relation to a workplace up to 11pm.

Background

- 14 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 under the authority of the Premises Licence have not changed since 2004 to date.
- 15 In September 2018 the Premises Licence was transferred to Mr Cihangir Surucu.
- 16 A variation application was approved in July 2019 to include the delivery off sales of alcohol for online sales orders (to accompany food).
- 17 Variation applications to extend licensing hours were submitted in June and December 2021 both of which were withdrawn prior to Sub Committee Hearings being held.
- 18 In July 2022 a review application was submitted by Licensing following an officer witnessing unauthorised licensable activities and the undermining of the prevention of crime and disorder objective. A Hearing was held in October 2022 which resulted in a period of suspension and additional conditions being added to the Premises Licence.
- 19 During the consultation period for the review application, a Minor Variation was submitted (in September 2022) to add a number of conditions to the Premises Licence in relation to CCTV, staff training, incident and refusals logs, a noise limiter and other noise related conditions. This minor variation was approved and the agreed conditions added to the premises licence.

Planning

- 20 The premises is currently the subject of the following Planning condition:

‘The hours of opening of the restaurant shall be restricted to 8.30am to 11pm from Monday to Saturday, and 12 noon to 10pm on Sundays and Public Holidays’

- 21 The reason for this planning condition is ‘in the interests of the residential amenities of the area’
- 22 In February 2022 an application was submitted to extend planning hours Monday to Saturday until 1am, Sundays and Bank Holidays until midnight. This application was refused in April 2022 and this decision was subsequently appealed to the Planning Inspectorate. In March 2023 this appeal was dismissed by the Planning Inspectorate on the grounds of the effect the proposed extended opening hours will have on the living conditions of occupiers of nearby residential properties.

Temporary Event Notices

- 23 Since the outcome of the review hearing in October 2022, the premises have operated under 3 x Temporary Event Notices to cover the extended sale of alcohol, regulated entertainment and late night refreshment:

From 17th December 2022 to operate until 1.30am on 18th December 2022

From 24th December 2022 to operate until 1.30am on 25th December 2022

From 31st December 2022 to operate until 1.30am on 2nd January 2023.

- 24 No objections to these temporary applications were received from either Environmental Protection or Kent Police, and Environmental Protection have notified licensing that no noise complaints were lodged during these Temporary Events.

Representations received from Responsible Authorities:

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

Kent Police	Response received : no representation
Environmental Health	Representation received at Appendix 6
Kent Fire	No comment made
Child Protection	No comment made
Trading Standards	No comment made
Health & Safety	No comment made
Planning	Representation received at Appendix 7
Public Health	No comment made
Home Office Immigration	No comment made

Representations received from others

- 26 Representations objecting to this application are considered valid and have been received from 12 local residents. A copy of these representations are at **Appendix 8 to Appendix 19.**

- 27 On the basis of the representations received, it is considered unlikely that this application will be successfully mediated before the Sub Committee Hearing.

Licensing Sub Committee Considerations

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

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

- 29 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 (ie. more probable than not).

- 30 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.

- 31 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.

- 32 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.
- 33 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

- 34 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 the 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

- 35 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 1 - Application to vary a premises licence
- Appendix 2 - Current Premises Licence (22/03351/LAPMV)
- Appendix 3 - Current Plans associated with Premises Licence
- Appendix 4 - Dispersal Policy
- Appendix 5 - Plan of surrounding area
- Appendix 6 - Representation : Environmental Protection
- Appendix 7 - Representation : Planning
- Appendix 8 - Representation : C.Bumstead
- Appendix 9 - Representation : Murphy
- Appendix 10 - Representation : A.Bumstead
- Appendix 11 - Representation : Armitage
- Appendix 12 - Representation : Kostelnyk
- Appendix 13 - Representation : Li
- Appendix 14 - Representation : Wood & Gold
- Appendix 15 - Representation : Monk & Truong
- Appendix 16 - Representation : Man
- Appendix 17 - Representation : Hacker
- Appendix 18 - Representation : Ambrose
- Appendix 19 - Representation : Latter

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