

Determination of a Premises Licence Application – Beluga Bar

To: Licensing Sub-Committee

Date: 4 December 2013.

Main Portfolio Area: Sustainability

Author of report: Dave Packham, Licensing Officer

Classification: Non-Exempt

Ward: Pantiles and St Marks

SUMMARY

To determine an application for a premises licence made under Section 17 of The Licensing Act, 2003, for the premises known as:

Beluga Bar, 46-50 High Street, Royal Tunbridge Wells, Kent, TN1 1XF.

LINK TO STRATEGIC COMPASS

Passionate about PEOPLE – Consistency of our approach in delivering the service. All parties involved are communicated and engaged with.

Passionate about CUSTOMERS – Customers will effectively know what to expect from the licensing process and a fair hearing is provided to all parties involved.

Passionate about VALUE – By being open and transparent in our approach to administering the licensing regime the public can see the efficiency of the service.

Passionate about COMMUNITY – By holding a hearing, the public can be confident that the Council is ensuring the promotion of the licensing objectives in all its licensed premises

Report status

Members' decision is requested.

Route to Implementation/Timetable:

Decision is made at the Sub-Committee meeting.

Introduction/Background

1. On 11 October 2013, an application made under the provisions of section 17 of the Licensing Act 2003 for a new premises licence at Beluga Bar, 46–50 High Street, Tunbridge Wells was received by the Licensing Partnership at Sevenoaks District Council offices. The application was submitted by Horsey Lightly Fynn on behalf of Mr Hamid Javadi and Mr Majid Javadi. A copy of the application form is attached at **Appendix B**.
2. In accordance with the requirements of the Act and the Licensing Act (Premises licences and club premises certificates) Regulations 2005, a Public Notice was displayed at the premises for a period of 28 days and a notice placed in a local newspaper both with a closing date for representations of 9 November 2013.
3. At any stage, during the 28 day public consultation period, a responsible authority, or an interested party, may make representations in connection with any of the four licensing objectives namely:-
 - Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm
4. If representations are received a hearing must be held to determine the application, providing that the grounds for the representation are relevant to the promotion of the licensing objectives and are not vexatious, frivolous or repetitive.
5. Members are advised that a current premises licence is in force for the same address in the name of Liquid Lounge/Davinci's. A copy of the licence is attached at **Appendix C**.
6. The Licensing Act 2003 does not prohibit more than one premises licence being held at any premises. Moreover, the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 paragraph 1.17 states that each application must be considered on its own merits.
7. However as it is considered pertinent to matters raised later in this report, for the purposes of clarity Members are advised that the current premises licence was the subject of a Review hearing in 2009 at which time a number of conditions were attached to the licence. A copy of the Decision Notice from the hearing is attached at **Appendix D**.
8. Nevertheless, as this is an application for a new premises licence the conditions attached to the current licence, other than the mandatory ones, will not automatically apply should the application be granted. Moreover, any conditions or restrictions attached to the new licence, if granted, will not apply to the current licence and this hearing cannot modify the current premises licence in any way.

The application

9. The new application seeks authorisation for the following categories of licensable activities:
 - B Films**
 - Sunday – Wednesday 10:00 – 02:00 the following day
 - Thursday – Saturday 10:00 – 03:00 the following day

E Live Music

- Sunday – Wednesday 10:00 – 02:00 the following day
- Thursday – Saturday 10:00 – 03:00 the following day

F Recorded Music

- Sunday – Wednesday 10:00 – 02:00 the following day
- Thursday – Saturday 10:00 – 03:00 the following day

G Performances of dance

- Sunday – Wednesday 10:00 – 02:00 the following day
- Thursday – Saturday 10:00 – 03:00 the following day

H Anything similar to E, F & G

- Sunday – Wednesday 10:00 – 02:00 the following day
- Thursday – Saturday 10:00 – 03:00 the following day

I Late night refreshment

- Sunday – Wednesday 10:00 – 02:00 the following day
- Thursday – Saturday 10:00 – 03:00 the following day

J Supply of alcohol (for consumption both on and off the premises):

- Sunday – Wednesday 10:00 – 02:00 the following day
- Thursday – Saturday 10:00 – 03:00 the following day

Non-standard hours for all the above activities:

On New Years Day from midnight until the normal conclusion on that particular evening of the week.

10. The proposed opening hours for the premises are:

- Every day 00:00 – 00:00 (24 hours a day)

Representations

11. A representation has been received from a Responsible Authority - Tunbridge Wells Borough Council Environmental Protection Team. The representation is based on the following licensing objective:

- **PREVENTION OF PUBLIC NUISANCE**

A copy of the representation is attached at **Appendix E**.

12. Forty representations objecting to the application to vary the premises licence have been received from Other Persons based on the following licensing objectives:

- **PREVENTION OF PUBLIC NUISANCE**
- **PREVENTION OF CRIME AND DISORDER**

13. Copies of the representations are attached at **Appendix F**.

14. No other representations were received within the statutory period prescribed by the Act from Responsible Authorities or Other Persons.

15. Members will note that a number of the representations made by Other Persons make reference to incidents of crime and disorder and public nuisance that took place four to five years ago. Many of the representations also suggest that similar incidents are likely to recur should the new application be granted. The relevance of these incidents with regard to the application for a new premises licence is a matter for Members to decide, keeping in mind that this application must be treated on its own merits.
16. In an attempt to provide members with as much information as possible concerning the likelihood of any recurrence of crime and disorder should the application be granted, the Police Licensing Officer, PC Oakley was asked to provide details of any incidents occurring at the premises this year which required police to attend. Police records indicate the following:
- Davinchi's**
23/03/2013 common assault
23/03/2013 actual bodily harm
21/04/2013 No crime - abuse of a bouncer.
- Beluga Bar**
26/01/2013 actual bodily harm
22/03/2013 common assault
23/03/2013 robbery
11/05/2013 theft
12/05/2013 wounding
09/06/2013 common assault
29/08/2013 theft
17. PC Oakley has indicated that these figures are considered to be "very good bearing in mind the venue, hence no objections" [from the police to this application].
18. In addition, PC Oakley has also provided a copy of a document detailing the representation made by the then Police Licensing Officer, Katie Voce at the time of the aforementioned review. The Sub-Committee is requested to note that this representation was subsequently withdrawn at the review hearing and is supplied purely to provide background information, which may or may not be relevant to the application being considered. It is for Members to decide the relevance of this information with regard to the application for a new premises licence. The document together with a covering letter is attached at **Appendix G**.
19. A plan of the area indicating the location of the Beluga Bar and neighbouring residential properties is attached for Members information at **Appendix H**.

WHAT IS THE ISSUE THAT REQUIRES A DECISION AND WHAT DOES THIS MEAN FOR THE PEOPLE OF TUNBRIDGE WELLS?

20. In accordance with the provisions of the Licensing Act 2003, the Licensing Authority must have any application determined by the Licensing Sub-Committee when relevant representations are received. The Licensing Authority has received the representations attached at **Appendices E and F**. Members are reminded that representations are only relevant if they relate to one or more of the four licensing objectives.

In other words, representations should relate to the impact of licensable activities carried on from the premises on the objectives. [Section 182 Guidance paragraph 9.4]

WHO HAVE WE CONSULTED AND HOW? (OR WHO WILL WE CONSULT FOLLOWING THE DECISION?)

21. The application for variation of a premises licence was advertised by the applicant as required in the form of Public Notices displayed at the premises and placed in a local newspaper. The applicant has also submitted copies of the application to the appropriate Responsible Authorities.
22. Tunbridge Wells Borough Council has invited the applicant, Environmental Protection as a Responsible Authority and Other Persons who have made representations to attend the hearing.

HOW WILL THE DECISION BE COMMUNICATED?

23. The applicant, the Responsible Authority and the Other Persons will be notified verbally prior to the conclusion of the hearing of the decision made and subsequently in writing. The Decision Notice is also placed on the Borough Council's website.

WHAT ALTERNATIVE ACTION COULD WE TAKE? (Where appropriate)

24. In accordance with Section 18 (3)(a) of the Licensing Act – where relevant representations are made, the authority must hold a hearing, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary.

CONCLUSIONS

25. That the Sub-Committee, in view of the representations made, must determine the application, and take such steps as Members consider necessary for the promotion of the licensing objectives.

RECOMMENDATION:

1. That Members determine the application, and take such steps as the Sub-Committee consider necessary for the promotion of the licensing objectives, giving appropriate weight to:
 - The steps that are appropriate to promote the licensing objectives;
 - The representations and supporting information presented by all parties;
 - The Guidance issued by the Home Office under Section 182 of the Licensing Act 2003;
 - The Council's Statement of Licensing Policy.

Options open to the Sub-Committee

2. The steps an authority may take are –
 - 1) Grant the licence subject to

- (i) such conditions as are consistent with the operating schedule accompanying the application modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
 - (ii) any conditions which must under section 19, 20 or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).
- 2) Modify the conditions attached to the licence. (A condition is modified if it is altered or omitted or any new condition is added)
 - 3) Reject the application.
3. For Members information paragraph 1.16 of the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 states:
- Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format

Representations received from statutory consultees:

Police	NO COMMENTS
Environmental Protection	OBJECTION
Health & Safety	NO COMMENTS
Planning	NO COMMENTS
Kent Child Protection Comm.	NO COMMENTS
KCC Trading Standards	NO COMMENTS

West Kent Fire Safety Office	NO COMMENTS
Health Authority	NO COMMENTS

REASONS FOR RECOMMENDATION:

The Sub-Committee is required under Section 18 of the Licensing Act, 2003, to determine an application when relevant representations have been received.

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Background papers.

Licensing Act 2003

Guidance issued under Section 182 of the Licensing Act 2003 (as amended)

TWBC Statement of Alcohol Licensing Policy

APPENDICES TO REPORT:

Appendix 'A' – Cross Cutting Issues

Appendix 'B' - Copy of Application Form

Appendix 'C' – Current Premises Licence

Appendix 'D' – Review 2009 Decision Notice

Appendix 'E' – Environmental Protection Representation

Appendix 'F' – Representations made by Other Persons

Appendix 'G' – Documents provided by PC Oakley

Appendix 'H' - Plan of the area

Appendix 'I' - Information provided to parties: Rights of Party; Consequences if a party does not attend hearing and Procedure to be followed at hearing.