

**Determination of an application for variation of a premises licence**

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| <b>Final Decision-Maker</b> | Licensing Sub-Committee                            |
| <b>Portfolio Holder(s)</b>  | Councillor Dr Ronen Basu                           |
| <b>Lead Director</b>        | Paul Taylor, Director of Change and Communities    |
| <b>Head of Service</b>      | Gary Stevenson, Head of Environment & Street Scene |
| <b>Lead Officer/Author</b>  | David Packham, Licensing Officer                   |
| <b>Classification</b>       | Non-exempt   |
| <b>Wards affected</b>       | Pantiles & St Marks                                |

**This report makes the following recommendations to the final decision-maker:**

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 merits of the application;
  - 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.

**This report relates to the following Five Year Plan Key Objectives:**

- A Prosperous Borough  
Recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises.
- A Confident Borough  
By providing a regulatory framework for alcohol and entertainment licensing which reflects the needs of local communities and empowers the Authority to make and enforce decisions about the most appropriate licensing strategies for the local area.

**Timetable**

|                         |                |
|-------------------------|----------------|
| <b>Meeting</b>          | <b>Date</b>    |
| Licensing Sub-Committee | 25 August 2017 |

# Determination of an application for variation of a premises licence

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out details of an application for variation of a premises licence.
  - 1.2 In accordance with the provisions of Section 35(3) of the Licensing Act 2003 the licensing authority must hold a hearing to determine an application for variation of a premises licence if relevant representations are received.
  - 1.3 Representations are only relevant if they relate to one or more of the licensing objectives. In other words, representations should relate to the impact of licensable activities carried on at the premises on the objectives.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 On 30 June 2017, an online application, made under the provisions of section 34 of the Licensing Act 2003, to vary the premises licence at the premises known as Zee Bar, 46-50 High Street, Royal Tunbridge Wells was received by the Licensing Partnership. The application was made by Mr Denzel Wapad on behalf of the premises licence holder Mr Simon Azimi. A copy of the application form is attached at **Appendix A**.
- 2.2 In accordance with the requirements of the Act and the Licensing Act (Premises licences and club premises certificates) Regulations 2005, public notices were displayed at the premises for a period of 28 consecutive days and a notice placed in a local newspaper with the closing date for representations being 30 July 2017.
- 2.3 During the 28 day public consultation period responsible authorities or other persons may make representations about the likely effect of the grant of the application on the promotion of one or more of the licensing objectives. The licensing objectives are:
  - Prevention of crime and disorder
  - Prevention of public nuisance
  - Public safety
  - Protection of children from harm
- 2.4 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 in the case of representations made by other persons are not vexatious, frivolous or repetitive.
- 2.5 The current premises licence authorises the licensable activities films, live music, recorded music, performances of dance and anything similar to live and recorded music and performances of dance at the following times:

- Sunday to Wednesday 10:00 - 02:00
- Thursday to Saturday 10:00 - 03:00
- On New Year's Day from 00:00 until the normal conclusion on the evening of that particular day of the week.

Also authorised are the licensable activities:

**Sale or Supply of Alcohol**

- Monday to Thursday 10:00 - 01:00
- Friday and Saturday 10:00 - 03:00
- Sunday 10:00 - 00:00
- Sundays prior to Bank Holiday Mondays 10:00 - 03:00.
- On New Years Day from 00:00 hours until normal closing hours

**Late Night Refreshment**

- Sunday to Wednesday 10:00 - 02:00
- Thursday to Saturday 10:00 - 03:00
- New Year's Day 00:00 - 05:00

- 2.6 A copy of the premises licence is attached at **Appendix B**.
- 2.7 The application to vary the premises licence seeks authorisation to amend the times for the licensable activities, recorded music and sale or supply of alcohol on Thursdays to 21:00 – 03:00.
- 2.8 A representation objecting to the application to vary the premises licence was received from a responsible authority; Tunbridge Wells Borough Council Environmental Protection team. The ground for the representation is the licensing objective prevention of public nuisance. A copy of the representation is attached at **Appendix C**.
- 2.9 Fifteen representations were received from other persons objecting to the application to vary the premises licence. Each representation suggests that the application will not promote one or more of the licensing objectives. Copies of the representations are attached at **Appendix D**.
- 2.10 Members will note that a number of the representations made by other persons make reference to incidents of crime and disorder and public nuisance allegedly involving patrons of Zee Bar that take place in residential streets leading off the High Street. The representations also suggest a failure on the part of the premises licence holder to control the persons engaged in the alleged crime and disorder and public nuisance.
- 2.11 Members are advised that the statutory Guidance to Licensing Authorities issued by the Home Office under Section 182 of the Licensing Act 2003 states that conditions attached to premises licences 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. That is to say, a premises licence holder and their staff cannot be responsible for the behaviour of customers once they have left the immediate vicinity of the premises.

- 2.12 For Members' information, Kent Police has advised that since 1 January 2017 twenty-six recorded crimes have been linked to Zee Bar. Nine of these were theft or loss of mobile phones and the other seventeen a mixture of common assaults and public order offences.
- 2.13 A map showing Zee Bar and the surrounding area will be made available to Members on the day of the hearing.
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### **3. AVAILABLE OPTIONS**

- 3.1 Grant the application for variation of the premises licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as Members consider necessary for the promotion of the licensing objectives, and any conditions which must under section 19, 20 or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).
- 3.2 Reject the whole or part of the application.
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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 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 merits of the application;
  - 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
- 4.2 For Members information if considering attaching conditions to a premises licence or modifying existing conditions, 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

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## 5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Other than the statutory consultation described in Part 2 of the report above, no other consultation is required by the Licensing Act 2003.

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## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The Chairman will announce the Sub-Committee's decision prior to the conclusion of the hearing.
- 6.2 The applicant, the responsible authority and the other persons who made valid representations will subsequently receive written confirmation of the decision.
- 6.3 A copy of the Decision Notice will be placed on the Council's website.

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## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue                                   | Implications  | Sign-off  |
|---|---|---|
| <b>Legal</b> including Human Rights Act | <p><b>Licensing Act 2003</b></p> <p>The Licensing Act 2003 at section 4(1) requires the Licensing Authority to carry out its functions with a view to promoting the Licensing Objectives which Section 4(2) sets out as:-</p> <ul style="list-style-type: none"> <li>a) The prevention of crime and disorder</li> <li>b) Public safety</li> <li>c) The prevention of public nuisance</li> <li>d) The protection of children from harm</li> </ul> <p>The Sub-committee is permitted under Section 18(4) of the Licensing Act 2003, having had regard to relevant representations, to take such steps, as it considers necessary, for the promotion of the licensing objectives.</p> <p>Section 35(3) of the Licensing Act 2003 states 'where relevant representations are made, the authority must:-</p> | Robin Harris,<br>Senior Lawyer<br>(Contentious) |

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|  | <p>(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and</p> <p>(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.</p> <p>Section 4(3) of the Licensing Act also requires the Licensing Authority to have regard to the published statement of the Licensing Policy and any guidance issued by the Secretary of State under section 182</p> <p>Each application that comes before the Sub-Committee must be treated on its own merits, and the Sub-Committee must take its decision based upon:</p> <ul style="list-style-type: none"> <li>a) The merits of the application</li> <li>b) The promotion of the four licensing objectives</li> <li>c) The policy of the Licensing Authority</li> <li>d) The Guidance issued under Section 182 of the Licensing Act 2003</li> <li>e) All valid representations made</li> </ul> <p>Whilst the applicant, responsible authorities or persons making representations all have a right of appeal to the Magistrates Court dependant on the decision of the Sub Committee, the decision made takes immediate effect.</p> <p><b>Human Rights Act</b></p> <p>Article 1 of the First Protocol is concerned with the protection of property and provides that every person is entitled to peaceful enjoyment of his possessions. The term 'possessions' is given a broad definition and includes a licence.</p> <p>Article 8 is concerned with the right to respect for private and family life. It states that Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and</p> |  |
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|                                       | <p>freedoms of others. The Council has had the proper regard for Article 8.</p> <p>Article 6 relates to the right to a fair hearing. The applicant has seen this report prior to this hearing and is aware of the reason why the Sub-Committee is considering this application.</p> |  |
| <b>Finance and other resources</b>    | There are no financial or other resource issues relating to this hearing.   | David Packham<br>Report Author<br>15/08/2017   |
| <b>Staffing establishment</b>         | There are no staffing implications  | David Packham<br>Report Author<br>15/08/2017]  |
| <b>Risk management</b>                | No implications.  | David Packham<br>Report Author<br>15/08/2017   |
| <b>Environment and sustainability</b> | No implications   | David Packham<br>Report Author<br>15/08/2017   |
| <b>Community safety</b>               | <p>If the application is granted, the extra services offered are not unique to Tunbridge Wells.</p> <p>Kent Police have not made a representation.</p>  | David Packham<br>Report Author<br>15/08/2017   |
| <b>Health and Safety</b>              | No implications   | David Packham<br>Report Author<br>15/08/2017   |
| <b>Health and wellbeing</b>           | Environmental Protection has objected to the application, and objections have been received from other persons. Members should consider whether noise emanating from these premises could be a concern to the extent that it may affect health.                                     | David Packham<br>Report Author<br>15/08/2017   |
| <b>Equalities</b>                     | The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users. .  | [David Packham<br>Report Author<br>15/08/2017] |

## 8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Application form
- Appendix B: Current premises licence
- Appendix C: Representation made by Environmental Health Officer

- Appendix D: Representations made by other persons
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## **9. BACKGROUND PAPERS**

Revised Guidance issued under section 182 of the Licensing Act 2003

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627825/revised\\_182\\_guidance\\_05\\_04\\_17.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627825/revised_182_guidance_05_04_17.pdf)

TWBC Statement of Licensing Policy

[http://www.tunbridgewells.gov.uk/\\_data/assets/pdf\\_file/0011/69878/03.05.17-Ratified-Statement-of-Licensing-Policy-2015-v2-word-version.pdf](http://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0011/69878/03.05.17-Ratified-Statement-of-Licensing-Policy-2015-v2-word-version.pdf)