

Is the final decision on the recommendations in this report to be made at this meeting?

Yes**Determination of an application for a premises licence – Colebrook Park**

Final Decision-Maker	Licensing Sub-Committee
Portfolio Holder(s)	Councillor Dr Ronen Basu, Portfolio-holder for Sustainability
Lead Director	Paul Taylor, Director of Change and Communities
Head of Service	Gary Stevenson, Head of Environment & Street Scene
Lead Officer/Author	David Packham, Licensing Officer
Classification	Non-exempt
Wards affected	Sherwood

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

Meeting	Date
Licensing Sub-Committee	18 May 2018

Determination of an application for a premises licence – Colebrook Park

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out details of an application for a premises licence.
 - 1.2 In accordance with the provisions of Section 18(3) of the Licensing Act 2003 the licensing authority must hold a hearing to determine an application for a premises licence if relevant representations are made.
 - 1.3 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.
 - 1.4 However, the Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 recommends that: “[I]n borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.” *[paragraph 9.9]*
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2. INTRODUCTION AND BACKGROUND

- 2.1 On 23 March 2018, an online application made under the provisions of section 17 of the Licensing Act 2003 was received for a new premises licence at Colebrook Park, Colebrook Lakes, Kingstanding Way, Royal Tunbridge Wells. The application was made in the name of Mr Iain Nicolas Samuel Love by Mr Stephen Thomas, the applicant’s solicitor. A copy of the application form together with the marquee and site plans is attached at **Appendix A**.
- 2.2 A list of suggested conditions submitted by the applicant, clarifying different categories of events mentioned below and which will vary timings shown on the application form in specific circumstances, is attached at **Appendix B**.
- 2.3 Members will be aware that there is a current premises licence held by Sound and Light Event Management Ltd in place for this venue. The licence was the subject of a premises licence review hearing in August 2017 based on the licensing objective prevention of public nuisance. Detailed, prescriptive conditions were agreed by the premises licence holder and the responsible authorities and attached to the licence. A copy of those conditions is attached for members’ information at **Appendix C**.
- 2.4 Nevertheless, the Licensing Act 2003 does not preclude more than one premises licence being in place for the same venue. Moreover, the Guidance issued by the Home Office under section 182 of the Act states that each application must be considered on its own merits. *[paragraph 1.17]*

- 2.5 Therefore, the times at which licensable activities are authorised by the existing premises licence and any conditions attached to the licence do not apply to this application. It is however open to the applicant and the responsible authorities to agree similar timings and conditions in relation to this application, which could then be attached to the premises licence, if granted.
- 2.6 A public notice was 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 20 April 2018 in accordance with the requirements of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.
- 2.7 During the 28 day public consultation period a responsible authority or other person may make representations about the likely effect of the grant of the application on the promotion of one or more of the licensing objectives, which are:-
- Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm
- 2.8 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 one or more of the licensing objectives and are not vexatious, frivolous or repetitive.
- 2.9 The application as made seeks authorisation for the following licensable activities, however suggested conditions submitted by the applicant (see Appendix B) will vary the timings in certain circumstances as shown in italics:

Plays

- Every day 09:00 – 23:00

Films

- Sunday to Wednesday 09:00 – 23:00
- Thursday 09:00 – 00:00
- Friday and Saturday 09:00 – 02:00
- Bank Holiday Sundays 09:00 – 02:00

No films to be shown outdoors after 23:00

Live music

- Thursday 18:00 – 23:00
- Friday 12:00 – 03:00
- Saturday and Sunday 10:00 – 03:00

Live music – Saturdays and Sundays start 10.00 except for Category 1 and Category 2 events that will commence at 12 noon

Recorded music

- Thursday 18:00 – 23:00

- Friday 12:00 – 03:00
- Saturday and Sunday 10:00 – 03:00

*Recorded music - Saturdays and Sundays start 10.00 except for Category 1 and Category 2 events that will commence at 12 noon
Recorded Music for Category 2 event will cease at 01.00*

Performances of dance

- Every day 11:00 – 23:00

Anything similar to live music, recorded music and performances of dance

- Every day 11:00 – 23:00

Late night refreshment

- Sunday to Thursday 23:00 – 02:00
- Friday and Saturday 23:00 – 02:30

Sale or Supply of Alcohol

- Monday to Wednesday 10:00 – 23:00
- Thursday 10:00 – 00:00
- Friday to Sunday 10:00 – 02:30

In the camp site when in use for Category 1, Category 2 and Category 3 events the terminal hour is 03:00

2.10 The opening hours applied for are:

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

2.11 A relevant representation objecting to the application was received from Kent Police, a responsible authority, based on all four licensing objectives:

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

2.12 A copy of the representation is attached at **Appendix D**.

2.13 A relevant representation objecting to the application was received from Tunbridge Wells Borough Council Environmental Protection Team, a responsible authority, based on the following licensing objective:

- Prevention of public nuisance

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

2.15 Relevant representations objecting to the application for a premises licence were received from four other persons based on one or more of the licensing objectives. Copies of the representations are attached at **Appendix F**.

2.16 No other relevant representations were received within the statutory period prescribed by the Act from responsible authorities or other persons.

3. AVAILABLE OPTIONS

- 3.1 Grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application, modified to such extent as the licensing authority considers 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 Exclude from the scope of the licence any of the licensable activities to which the application relates.
- 3.3 Refuse to specify the person named in the application as the Designated Premises Supervisor.
- 3.4 Refuse 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, 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.

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.

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, any person who made relevant representations and the chief officer of police will subsequently receive written confirmation of the decision.
- 6.3 A copy of the Decision Notice will be placed on the Council's website.
- 6.4 In accordance with the provisions of Section 181 and Schedule 5, Licensing Act 2003 the applicant and any person who made a relevant representation has a right to appeal the decision made by the Licensing Authority. The appeal must be made to the Magistrates' Court within a period of twenty-one days.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<p>Legal including Human Rights Act</p>	<p>Licensing Act 2003</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"> a) The prevention of crime and disorder b) Public safety c) The prevention of public nuisance d) The protection of children from harm <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>Robin Harris Senior Lawyer - Contentious</p>

Section 35(3) of the Licensing Act 2003 states 'where relevant representations are made, the authority must:-

- (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
- (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.

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

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:

- a) The merits of the application
- b) The promotion of the four licensing objectives
- c) The policy of the Licensing Authority
- d) The Guidance issued under Section 182 of the Licensing Act 2003
- e) All valid representations made

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.

Human Rights Act

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.

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

	<p>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 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>	
Finance and other resources	No implications	David Packham Report Author 03/05/2018
Staffing establishment	No implications	David Packham Report Author 03/05/2018
Risk management	No implications	David Packham Report Author 03/05/2018
Data Protection	No implications	David Packham Report Author 03/05/2018
Environment and sustainability	No implications	David Packham Report Author 03/05/2018
Community safety	<p>If the application is granted, the extra services offered are not unique to Tunbridge Wells.</p> <p>However, Kent Police have made a representation objecting to the application and the following duty is placed on the licensing authority by <i>Section 17, Crime and Disorder Act 1998</i></p> <p><i>“17(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”</i></p>	Terry Hughes, Community Safety Manager
Health and Safety	No implications	David Packham Report Author 03/05/2018
Health and wellbeing	Environmental Health has made a representation objecting to the application.	David Packham Report Author 03/05/2018

Equalities	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 Report Author 03/05/2018
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8. REPORT APPENDICES

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

- Appendix A: Application form and plans
- Appendix B: Suggested conditions submitted by the applicant
- Appendix C: Conditions attached to the existing premises licence at review hearing in August 2017
- Appendix D: Representation made by Kent Police
- Appendix E: Representation made by Environmental Protection
- Appendix F: Representations made by other persons

9. BACKGROUND PAPERS

Revised Guidance issued under section 182 of the Licensing Act 2003
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702660/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.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