

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

**Yes****Application for summary review of a premises licence – Envoy Nightclub**

<b>Final Decision-Maker</b>	Licensing Sub-Committee
<b>Portfolio Holder(s)</b>	Portfolio Holder for Sustainability
<b>Lead Director</b>	Paul Taylor, Director of Change and Communities
<b>Head of Service</b>	Gary Stevenson, Head of Housing, Health & Environment
<b>Lead Officer/Author</b>	David Packham, Licensing Officer
<b>Classification</b>	<p><b>Part Exempt</b></p> <p>Exempt Appendices D and E - exempt by virtue of paragraphs (1),(2) and (7) of Schedule 12A of the Local Government Act 1972 (as amended): (1) - Information relating to any individual, (2) - Information which is likely to reveal the identity of an individual,</p> <p>(7) – Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>
<b>Wards affected</b>	Pantiles and St Marks

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

1. That Members determine the application for summary review 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.

**Explain how this report relates to the Corporate Priorities in the Five Year Plan:**

- 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	11 October 2019



# Report Title Application for summary review of a premises licence – Envoy Nightclub

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out details of an application for summary review of a premises licence.
  - 1.2 In accordance with the provisions of Section 53C of the Licensing Act 2003 the licensing authority must hold a hearing to determine an application for full review of a premises licence within 28 days commencing the day following the day on which the application was received.
  - 1.3 The licensing authority must also consider any representations made; providing that the representations are relevant to the promotion of the licensing objectives and in the case of those made by other persons are not frivolous or vexatious.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 Envoy Nightclub is situated at 46 High Street, Royal Tunbridge Wells and has the benefit of a premises licence granted under the provisions of the Licensing Act 2003.

- 2.2 The premises licence authorises the following licensable activities:

### **Films** (Indoors)

- Sunday to Wednesday 10:00 - 02:00
- Thursday - Saturday 10:00 - 03:00

On New Years Day: from 00:00 until the normal conclusion on the evening of that particular day of the week.

### **Live music** (Indoors)

- Sunday to Wednesday 10:00 - 02:00
- Thursday - Saturday 10:00 - 03:00

On New Years Day: from 00:00 until the normal conclusion on the evening of that particular day of the week.

### **Recorded music** (Indoors)

- Sunday to Wednesday 10:00 - 02:00
- Thursday - Saturday 10:00 - 03:00

On New Years Day: from 00:00 until the normal conclusion on the evening of that particular day of the week.

### **Performances of dance** (Indoors)

- Sunday to Wednesday 10:00 - 02:00
- Thursday - Saturday 10:00 - 03:00

On New Years Day: from 00:00 until the normal conclusion on the evening of that particular day of the week.

**Anything of a similar description to the activities of live music, recorded music or the performance of dance (Indoors)**

- Sunday to Wednesday 10:00 - 02:00
- Thursday - Saturday 10:00 - 03:00

On New Years Day: from 00:00 until the normal conclusion on the evening of that particular day of the week.

**Sale or Supply of Alcohol**

- Monday - Wednesday 10:00 - 01:00
- Thursday to 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 - Saturday 10:00 - 03:00

On New Years Day: from 00:00 until the normal conclusion on the evening of that particular day of the week.

- 2.3 A copy of the premises licence is attached at **Appendix A**.
- 2.3 On 20 September 2019 the Council received an application for summary review of the premises licence from the chief officer of police made in accordance with the provisions of Section 53A Licensing Act 2003. The grounds for review given in the application are that in the opinion of a senior police officer the premises are associated with serious crime or serious disorder or both. A copy of the application form is attached at **Exempt Appendix D**.
- 2.4 A copy of the "Certificate to accompany application for the review of a premises licence under section 53A of the Licensing Act 2003" is attached at **Appendix B**.
- 2.5 On receipt of such an application the licensing authority, must arrange a hearing to determine the application for a full review of the premises licence within 28 days commencing the day following the day on which the application was received.
- 2.6 In accordance with the requirements of section 53A of the Act and regulation 39A, Licensing Act (Premises licences and club premises certificates) Regulations 2005, a public notice was displayed by the licensing authority at or near the premises. A copy was also displayed at the Town Hall, and a copy placed on the Council's website for a period of no less than seven consecutive days commencing 23 September 2019.
- 2.7 During the 10 working days public consultation period, responsible authorities or other persons may make representations in connection with the application for review under any of the four licensing objectives namely:-
- Prevention of crime and disorder
  - Prevention of public nuisance
  - Public safety

- Protection of children from harm

2.8 Before determining the application for full review of the premises licence, the Licensing Authority must hold a hearing to consider the application and any representations received. Providing that the representations are relevant to the promotion of the licensing objectives and in the case of those made by other persons are not frivolous or vexatious.

2.9 Notwithstanding the requirements outlined above, in accordance with the requirements of Section 53B of the Licensing Act 2003, a meeting of the Licensing Sub-Committee was held on 23 September 2019, to consider whether it was necessary to take interim steps pending the full review of the licence.

2.10 The Licensing Sub-Committee decided to take the interim step of adding to the premises licence the condition offered by the legal representative for the licence holder and agreed by Kent Police as set out below:

The Premises Licence Holder shall exclude:

- XXXXXX XXXXXX (name redacted)
- XXXXXX XXXXXX (name redacted)

From the licensed premises known as Envoy Nightclub at 46-50 High Street, Tunbridge Wells, Kent, TN1 1XF, on each day of the week, from 18:00 hrs until and including 09:00 hrs; and this condition will remain in force until the full review hearing to take place within 28 days of 20th September 2019. A copy of the Interim Steps Decision Notice is attached at **Appendix C**.

2.11 Kent Police has submitted further documentation in support of their application for review of the premises licence. A copy of the documentation is attached at **Exempt Appendix E**.

2.12 No representations had been received at the time of writing this report but as the closing date for representations is 4 October 2019 any received tomorrow will be submitted as an addendum.

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### 3. AVAILABLE OPTIONS

- 3.1 The steps a licensing authority may take are –
- To modify the conditions attached to the premises licence. (A condition is modified if it is altered or omitted or any new condition is added)
  - To exclude a licensable activity from the premises licence.
  - To remove the Designated Premises Supervisor.
  - To suspend the premises licence for a period not exceeding three months.
  - To revoke the premises licence.

Should the Sub-Committee decide to take either steps a) or b) above, the modification or exclusion can either be on a permanent basis or for a specified period only (not exceeding three months).

- 3.1 Members are advised that the interim steps taken on 23 September 2019 cease to have effect on determination of the application for summary review (subject to the right of appeal provided by section 53C (11) of the Licensing Act 2003), except where those steps, or any part of them, form part of the decision made by the Sub-Committee at the hearing.
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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 for summary review and the senior police officer's certificate that accompanied 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 The Guidance to Licensing Authorities issued by the Home Office under Section 182 of the Licensing Act 2003 advises that it is imperative that the licensing authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the licensing objectives and nothing outside those parameters.
- 4.3 The authority's determination should be evidence-based, justified as being appropriate to the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 4.4 Moreover, decisions made in accordance with the provisions of the Licensing Act 2003 must not replicate or seek to enforce the statutory provisions of other legislation.
- 4.5 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
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## **5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 5.1 The application for summary review of the premises licence was advertised by the Licensing Authority as required by the Licensing Act 2003. A public notice was displayed at the premises and at the Town Hall, and a copy placed on the Council's website.
- 5.2 The licensing authority has provided copies of the application for summary review and the accompanying certificate to the other responsible authorities.
- 5.3 The interim steps taken by Licensing Sub-Committee on 23 September 2019 are set out at paragraph 2.10 above and a copy of the Interim Steps Decision Notice is attached at **Appendix C**.
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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, any person who made relevant representations, the premises licence holder 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 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.
- 6.5 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.
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## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<p><b>Legal</b> including Human Rights Act</p>	<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 must under section 53C of the Licensing Act 2003, having had regard to an application for summary review of a premises licence made under section 53A of the Act and relevant representations, take such steps as it considers necessary for the promotion of the licensing objectives.</p> <p>Section 53C of the Licensing Act 2003 headed 'Review of premises licence following review notice' states:-</p> <p>(2) The relevant licensing authority must— .</p> <ul style="list-style-type: none"> <li>(a) hold a hearing to consider the application for the review and any relevant representations;</li> <li>(b) take such steps mentioned in subsection (3) (if any) as it considers necessary for the promotion of the licensing objectives; and</li> <li>(c) secure that, from the coming into effect of the decision made on the determination of the review, any interim steps having effect pending that determination cease to have effect (except so far as they are comprised in steps taken in accordance with paragraph (b)).</li> </ul> <p>(3) Those steps are—</p> <ul style="list-style-type: none"> <li>(a) the modification of the conditions of the premises licence,</li> <li>(b) the exclusion of a licensable activity from the scope of the licence,</li> </ul>	<p>Robin Harris Interim Contentious Team Leader 03/10/2019</p>

- (c) the removal of the designated premises supervisor from the licence,
- (d) the suspension of the licence for a period not exceeding three months, or
- (e) the revocation of the licence.

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 for review of a premises licence 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

The applicant, the premises licence holder, responsible authorities and persons making representations all have a right of appeal to the Magistrates Court dependant on the decision of the Sub Committee. In accordance with Section 53C (11) of the Licensing Act 2003, the decision made does not take effect until the end of the period given for appealing against the decision (21 days), or if the decision is appealed against, until the appeal is disposed of.

**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

	<p>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 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 premises licence holder has seen this report prior to this hearing and is aware of the reason why the Sub-Committee is considering their representations against the interim steps taken pending review of the premises licence.</p>	
<b>Finance and other resources</b>	No implications	David Packham Report Author 03/10/2019
<b>Staffing establishment</b>	No implications	David Packham Report Author 03/10/2019
<b>Risk Management</b>	No implications	David Packham Report Author 03/10/2019
<b>Data Protection</b>	No implications	David Packham Report Author 03/10/2019
<b>Environment and Sustainability</b>	No implications	David Packham Report Author 03/10/2019
<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 made the application for summary review. Nevertheless, the following duty is placed on the licensing authority by <i>Section 17, Crime and Disorder Act 1998</i>  <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</i></p>	Terry Hughes Community Safety Manager 03/10/2019

	<i>on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”</i>	
<b>Health and Safety</b>	No implications	David Packham Report Author 03/10/2019
<b>Health and Wellbeing</b>	No implications	David Packham Report Author 03/10/2019
<b>Equalities</b>	No implications	David Packham Report Author 03/10/2019

## 8. REPORT APPENDICES

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

- Appendix A: Premises Licence
- Appendix B: Certificate to accompany application for the review of a premises licence under section 53A of the Licensing Act 2003
- Appendix C: Interim Steps Decision Notice
- Exempt Appendix D: Application for summary review
- Exempt Appendix E: Further information submitted by Kent Police

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

LGA Licensing Act 2003 - Councillor's handbook (England and Wales)  
<https://www.local.gov.uk/licensing-act-2003-councillors-handbook-england-and-wales>