

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

Yes**Determination of an application to vary the premises licence for Colebrook Park**

Final Decision-Maker	Licensing Sub-Committee
Portfolio Holder(s)	Councillor Matthew Bailey, Portfolio Holder for Sustainability
Lead Director	Paul Taylor, Director of Change and Communities
Head of Service	Gary Stevenson, Head of Housing, Health & Environment
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.

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

- 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	20 December 2019

Determination of an application to vary the premises licence for Colebrook Park

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out details of an application to vary 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 to vary a premises licence if relevant representations are made.
 - 1.3 A representation is relevant if it relates to the likely effect of the grant of the licence on the promotion of one or more of the four licensing objectives. In other words, a representation should relate to the impact of licensable activities carried on at 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: “In 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.”
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2. INTRODUCTION AND BACKGROUND

- 2.1 On 5 November 2019 an online application, made under the provisions of section 34 of the Licensing Act 2003, was received for variation of the premises licence at Colebrook Park, Colebrooke Lakes (Land east of Kingstanding Way), Royal Tunbridge Wells, Kent TN2 3UP. A copy of the application form is attached at **Appendix A**.
- 2.2 In accordance with the requirements of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, a public notice was displayed at the premises for a period of 28 consecutive with the closing date for representations being 3 December 2019.
- 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, which 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 one or more of the licensing objectives and are not vexatious, frivolous or repetitive.

2.5 The current premises licence authorises the following licensable activities:

Plays (Both Indoors and Outdoors)

- Every Day 09:00 - 23:00

Films (Both Indoors and Outdoors)

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

No films to be shown outdoors after 23:00

Live music (Both Indoors and Outdoors)

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

Recorded music (Both Indoors and Outdoors)

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

Performances of dance (Both Indoors and Outdoors)

- Every Day 11:00 - 23:00

Anything of a similar description to live music, recorded music or the performance of dance (Both Indoors and Outdoors)

- Every Day 11:00 - 23:00

Sale or Supply of Alcohol

- Monday to Wednesday 10:00 - 23:00
- Thursday 10:00 - 00:00
- Friday, Saturday & 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

For the avoidance of doubt, there will be no consumption of alcohol outside the site area but alcohol can be purchased in on bar area and consumed elsewhere within the site.

Late Night Refreshment (Both Indoors and Outdoors)

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

2.6 A copy of the premises licence is attached at **Appendix B**.

2.7 The current application seeks to vary the premises licence as follows :

1. To streamline the Categories of event from Category 1 and 2 events (1500 – 4999 people) and Cat 3 events (less than 1500 people into Large (1500 – 4999) and Small (less than 1500) events.

2. To extend the terminal hour for the provision of recorded music and provision of late-night refreshment from 03.00 a.m. on Fridays, Saturdays and Sundays (indoors) until 04.30 a.m. (indoors) for no more than 4 events (whether small or large).
 3. To extend the terminal hour for the sale of alcohol from 02.30 to 04.00 on no more than 4 events on Fridays, Saturdays and Sundays (either small or large) in any given year and in the camp site until 04.30 on no more than 4 events in any given year.
 4. To extend the maximum duration of a Large event from 3 to 4 days.
 5. To include a condition that there shall be a minimum of 21 days between the end of one large event before the start of another large event.
 6. That all references in the licence to Category 1 and Category 2 are changed to Large and all references to Category 3 are changed to Small.
 7. Condition 77 to be amended to read "During a large event a risk assessment to control access to the body of water on the Event site".
- 2.8 A representation objecting to the application was received from Tunbridge Wells Borough Council Environmental Protection team, a responsible authority, based on the licensing objective prevention of public nuisance. A copy of the representation is attached at **Appendix C**.
- 2.9 A representation objecting to the application was received from Kent Police, a responsible authority, based on the licensing objectives prevention of crime and disorder, prevention of public nuisance, public safety. A copy of the representation is attached at **Appendix D**.
- 2.10 Five relevant representations objecting to the application were received from other persons based on one or more of the licensing objectives. Copies of the representations are attached at **Appendix E**.
- 2.11 No other relevant representations were received from responsible authorities or other persons within the 28 day consultation period prescribed by the Act.
- 2.12 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.
- 2.13 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.
- 2.14 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.
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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.
- 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, 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
- 4.3 Paragraph 1.17 further advises that each application must be considered on its own merits and that conditions attached to licences and certificates must be

tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.

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 from the date on which the appellant receives notification of the decision from the licensing authority.

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 35 (3) 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</p>	<p>Robin Harris Interim Contentious Team Leader 05/12/2019</p>

	<p>authority must:-</p> <ul style="list-style-type: none">(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. <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">a) The merits of the applicationb) The promotion of the four licensing objectivesc) The policy of the Licensing Authorityd) The Guidance issued under Section 182 of the Licensing Act 2003e) All valid representations made <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>Human Rights Act</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-</p>	
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	<p>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 03/12/2019
Staffing establishment	No implications	David Packham Report Author 03/12/2019
Risk Management	No implications	David Packham Report Author 03/12/2019
Data Protection	No implications	David Packham Report Author 03/12/2019
Environment and Sustainability	No implications	David Packham Report Author 03/12/2019
Community Safety	<p>If the application is granted, the extra services offered are not unique to Tunbridge Wells.</p> <p>Kent Police have made a representation objecting to the application. A new condition has been proposed by Kent Police that the organiser submit an Event Management Plan, upon request, for small events. This will enable the Safety Advisory Group to fully assess the impact of an event.</p> <p>However, 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 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 05/12/2019
Health and Safety	No implications	David Packham Report Author

		03/12/2019
Health and Wellbeing	Environmental Health has not made a representation objecting to the application.	David Packham Report Author 03/12/2019
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 03/12/2019

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 TWBC Environmental Protection

Appendix D: Representation made by Kent Police

Appendix E: 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

LGA Licensing Act 2003 - Councillor's handbook (England and Wales)

<https://www.local.gov.uk/licensing-act-2003-councillors-handbook-england-and-wales>