

# **APPLICATION FOR A VARIATION TO A PREMISES LICENCE AT THE BOTANY BAY HOTEL MARINE DRIVE BROADSTAIRS**

Licensing Sub Committee     **22nd March 2023**

Report Author                     **Alison Brock, Technical Support Team Manager**

Status                                 **For Decision**

Classification:                     **Unrestricted**

## **Executive Summary:**

To consider a variation to the current premises licence at The Botany Bay Hotel, Marine Drive Broadstairs

## **Recommendation:**

The instructions of the Sub-Committee are requested.

## **CORPORATE IMPLICATIONS**

### **Financial and Value for Money**

Costs associated with processing the application are taken from licensing fee income.

The applicant or any other person (objector) may appeal the Committee's decision to Magistrates' Court within 21 days. Should this decision be appealed the Council will incur costs defending the appeal. Should the appeal be successful it could result in costs being awarded against the Council. Therefore all decisions should ensure that they are in line with the objectives of the Licensing Act 2003

### **Legal**

Under the Licensing Act 2003 the Licensing Authority has a duty to exercise licensing control of relevant premises.

The Licensing Sub-Committee is obliged to determine applications with a view to promoting the four licensing objectives.

Any decision the Licensing Sub-Committee make should be made with regard to the Secretary of State's guidance made under Section 182 of the Licensing Act 2003 (revised in April 2017) as well as Thanet District Councils adopted Licensing Policy.

Where any decision parts from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal/challenge is increased. Similarly the risk of appeal/challenge is increased if any decision made is not evidence based and proportionate.

The Licensing Sub-Committee must pay proper attention to the applicant's rights under the provisions of the Human Rights Act 1998, which gives further effect in the United Kingdom to the fundamental rights and freedoms contained in the European Conventions on Human Rights. The Licensing Sub-Committee must have proper regard to the rights of the

individual applicant when making decisions that affect them. However, it also has to have regard to the safety and protection of the public and therefore to ensure that the right balance is found and think hard about how it can cause the least possible harm to individuals, bearing in mind its duty to ensure the protection of the public.

The effective regulation of licensable activities and of premises at which licensable activities take place can assist in safeguarding children and vulnerable adults.

Section 17 of the Crime and Disorder Act 1998 states: "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 function on, and the need to do all that is reasonably can to prevent crime and disorder in its area"

In considering this application the Licensing Sub-Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

There is a right of appeal to a Magistrates' Court within 21 days of the date of the decision of the Licensing Sub-Committee with regard to the grant/refusal of a licence or any of the conditions attached to it.

## **Corporate**

Corporate Priorities should be taken into account when determining the outcome of any application.

Priority 1: Growth

Priority2: Environment

Priority 3: Communities

## **Equality Act 2010 & Public Sector Equality Duty**

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

In considering this application it is appropriate to consider the rights of both the applicant and other parties, such as "responsible authorities" and/or "other persons" (objectors). The procedure for determining licences has a prescribed format to ensure fair representation of the relevant facts by all parties.

## **Corporate Priorities**

This report relates to the following corporate priorities: -

- *Environment*
- *Communities*

## **1.0 Introduction and Background**

- 1.1 An application for a variation to the current premises licence at the Botany Bay Hotel has been received
- 1.2 The application is attached at Annex 1 the current licence is attached at Annex 2.

## **2.0 The Current Situation**

- 2.1 Applicants for a variation to a premises licence are required, as part of the licensing procedure, to display a public notice which provides information to the public regarding the manner in which representations may be made. Similarly, public notice of the application should be published in a local newspaper circulating in the vicinity of the premises. These requirements were complied with.
- 2.2 The premises received planning permission to install an outside bar and increase the decked area. The planning permission limits the use of the bar to the hours of 11:00am to 21:00pm daily.
- 2.3 One valid representation has been received and this is attached at Annex 3.
- 2.4 No comments have been received from the Police, Environmental Protection Team, Licensing Officer or Fire Service.
- 2.5 Attached at Annex 4 is a statement from the applicant in reply to the representation.
- 2.6 The Licensing Sub-Committee will be aware that it must carry out its functions under the 2003 Licensing Act to take steps which are appropriate for the promotion of the licensing objectives. The Licensing objectives are: - the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm. In carrying out its licensing functions, the Licensing Sub Committee must also have regard to its statement of licensing policy and the Guidance issued under the Act.
- 2.7 The four licensing objectives are the matters the Licensing Sub-Committee must address when considering whether to grant or refuse the application. Each application should be considered on its merits. Reasons must be given for any decision made by the Sub-Committee.

## **3.0 Options**

- 3.1 To approve the application
- 3.2 To refuse the application
- 3.3 To approve the application with any other conditions/limitations that the Sub-Committee feel are appropriate.

Contact Officer: Alison Brock Technical Support Team Manager  
Reporting to: Penny Button, Director of Neighbourhoods

## **Annex List**

Annex 1 – Application  
Annex 2 – Current Licence  
Annex 3 - Representation  
Annex 4 - Statement from applicant

## **Background Papers**

Licensing Act 2003 - <https://www.legislation.gov.uk/ukpga/2003/17/contents>

DCMS Guidance documents issued under Section 182 of the Licensing Act 2003 (as amended)- <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

Thanet District Council Statement of Licensing Policy-  
<https://www.thanet.gov.uk/media/3168621/licensing-document-2016.pdf>