

APPLICATION FOR A NEW PREMISES LICENCE AT THE SMOKED STREET KITCHEN – 92 HIGH STREET BROADSTAIRS

Licensing Sub-Committee	25th June 2023
Report Author	Alison Brock – Technical Support Team Manager
Status	For Decision
Classification:	Unrestricted

Executive Summary:

To consider a report to amend the Council’s current Knowledge Test.

Recommendation:

The instructions of the Board 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 Local Government (Miscellaneous Provisions) Act 1976

Legal

The Licensing Board 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 Convention on Human Rights. The Licensing Board 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.

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 Board 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 Board with regard to the grant/refusal of a licence or any of the conditions

attached to it. The risk of appeal/challenge is increased if any decision made is not evidence-based and proportionate.

Whilst there is no statutory guidance with regards to the definition of a fit and proper person, in 2018 The Institute of Licensing produced guidance on determining the suitability of applicants and licensees in the Hackney Carriage and Private Hire Trades in order to bring clarity and conformity to the definition of a 'fit and proper person'.

Risk Management

This section of the report should address each step of our Risk Management process that has been adopted to identify, evaluate and control and mitigate risks. Full details are provided in our Risk Management Strategy, but in summary the following should be considered:

Identify

Asking the following questions can help identify risks:

- If in a year from now we haven't achieved this objective, why – what could have stopped us?
- What could realistically go wrong?
- What do we need in order to achieve this objective? Do we depend on others to succeed?
- What opportunities might arise?

Evaluate

The purpose of this step is to understand the scale of the risks that have been identified and whether or not we need to take action to lower or manage the impact and/or likelihood.

Control and Mitigate

Risk treatment involves taking actions to reduce likelihood of the risk occurring, or limiting the impact if the risks did materialise.

There are 4 principal ways in which we can respond to risks, these are known collectively as 'the Four Ts': Treat, Tolerate, Transfer, Terminate.

Corporate

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

Priority 1: Growth

Priority 2: 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 new premises licence at Smoke Kitchen 92 High Street Broadstairs has been received.
- 1.2 The application is attached at Annex 1 along with the plan at Annex 2.

2.0 The Current Situation

- 2.1 Applicants who apply for a new 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, a 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 Two representations were received. These are attached at Annex 3 & 4 Some of the comments made within the representation at Annex 4 are not valid under the scope of the Licensing Act and have been removed.
- 2.3 There have been no representations from the Police, Fire Service or Licensing Officer.
- 2.4 The applicant has agreed the following conditions the Environmental Health department.
 - a) The rear garden area will be closed to patrons after 22:00pm each day
 - b) No drinks to be taken into the front garden area after 22:00pm each day
 - c) Only the internal areas and external bar will be part of the licenced premises, see plan at Annex 2.

Condition C above means that no music will be allowed in the rear garden or the front decked area as they are not licensed areas.

- 2.5 The premises previously had a licence that was surrendered by the owner when they closed the business.

Sale of alcohol and Recorded Music (both on the premises) – 10am – Midnight
Monday – Saturday and Midday – 23:30pm on Sundays

The hours applied for in this new application are less than the previous licence.

- 2.6 The representations were sent to the applicant who replied and this was forwarded to the objectors. This is attached at Annex 5.

3.0 Options

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

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Annex List

Annex 1 – Application
Annex 2 – Plan
Annex 3 – Representation
Annex 4 - Representation
Annex 5 - 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>