

LICENSING ACT 2003 VARIATION APPLICATION - Ephesus, 57-59 High Street, Sevenoaks, Kent TN13 1JF

Licensing Sub Committee - Monday 20 September 2021

Report of: Chief Officer Planning & Regulatory Services

Status: For Decision

Key Decision: No

Portfolio Holder: Cllr. McArthur

Contact Officer: Susan Lindsey Ext. 7491

Recommendation to Licensing Sub-Committee:

The Sub Committee is asked to determine the variation application in accordance with the Licensing Act 2003 (as amended 29), Sevenoaks District Council Statement of Licensing Policy, and the Home Office Guidance issued per Section 182 of the Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

Reason for recommendation:

A variation application has been received for a Premises Licence pursuant to Section 34 Licensing Act 2003. Twenty five representations against the application have been made by local residents, one representation by Kent Police, one representation by Environmental Protection, and one representation made in favour of the application by a local resident.

1. Introduction and Background

- 1.1 An application has been made to Sevenoaks District Council to vary a Premises Licence for Ephesus, 57-59 High Street, Sevenoaks, Kent, TN13 1JF. The applicant is Mr Cihangir Surucu - **Appendix 1**
- 1.2 The nature of the proposed variation which is the subject of the variation application is to:

Add live music (indoors):

| | |
|---------------------|-------------------------------------|
| Friday and Saturday | 11pm to 1am (the following morning) |
| Sunday | 11pm to 12 midnight |

Add recorded music (indoors):

| | |
|---------------------|--|
| Thursday | 11pm to 11.30pm |
| Friday and Saturday | 11pm to 2.30am (the following morning) |
| Sunday | 11pm to 1am (the following morning) |

Add the performance of dance (indoors):

Friday and Saturday 11pm to 2.30am (the following morning)
Sunday 11pm to 1am (the following morning)

Add late night refreshment (indoors):

Sunday to Thursday 11pm to 12 midnight
Friday and Saturday 11pm to 2am (the following morning)
Sunday 11pm to 12 midnight

Increase the sale of alcohol:

Monday to Thursday 9am to 10am, and
12 midnight to 1am (the following morning)
Friday and Saturday 9am to 10am, and
12 midnight to 2.30am (the following morning)

- 1.3 The applicant has proposed the following steps (to be placed on the licence as conditions) in order to promote the licensing objectives:
- 1.4 General
The premises will operate as a Restaurant/Cocktail lounge
- 1.5 The prevention of crime and disorder
Door supervisors are SIA certified and will log any incidents that happen in the premises or in the immediate outside area to the front of the premises. An incident and accident book will be available at the premises for inspection by either the Police or an authorised officer of the Council. The property has a CCTV operating 24/7 inside and outside the premises. Ephesus partnered with Guardian Security Solutions to provide door supervisors on busy days (such as Friday and Saturday evenings) - these evenings to be determined on a risk assessed basis by the Licence Holder. CCTV will be made available to either the Police or an authorised officer of the Council when requested.
- 1.6 Public safety
The premises will display clear signage notifying customers that free drinking water is available upon request.
- 1.7 The prevention of public nuisance
Signage will be displayed around the exit of the premises requesting customers to be quiet and not to disturb neighbours.
Contact details of local taxi companies will be displayed and taxis called for customers requesting one.
Staff will have a contact number for the Designated Premises Supervisor at all times and will be able to make contact at any time of the day regarding the premises.

1.8 The protection of children from harm

A Challenge 25 policy will be implemented at all times and only photographic ID accepted (such as passport, driving licence).

1.9 The variation application also seeks to remove the following conditions currently imposed on the licence:

Unless otherwise specified on this licence, no regulated entertainment shall take place at the premises with the exception of pre-booked events limited to the provision of music and dancing for pre-invited guests.

Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied except alcohol sold or supplied:

(a) with and for the consumption at a meal supplied at the same time, is consumed with the meal and paid for together with the meal

(b) for consumption by a person residing in the premises or his guest and paid for together with this accommodation

(c) to a canteen or mess

1.10 A copy of the current Premises Licence (ref 20/01376/LAPRE) with associated plans are at **Appendix 2**, and **Appendix 3**

1.11 Members attention is drawn to the fact that in August 2019 planning was approved for a rear/side extension to the premises to facilitate further customer space. This extension does not form part of the current Premises Licence Plans and this variation application does not seek to amend the current plans to include this area. Licensable activities cannot take place within this extension, although alcohol can be 'consumed' in this area. Any regulated entertainment applied for does not apply for this area, but the premises do benefit from deregulation 'exemptions' which are explained at item 5 of this report. Photographs and plans of this extension can be found in **Appendix 4** and **Appendix 5**

1.12 For the attention of Members, a further, more detailed, site plan of the area surrounding the licensed premises is at **Appendix 6**.

1.13 Local Authority records go back as far as 2004 for this premises showing it was operating under a Justices Licence (under the Licensing Act 1964) in the name of 'Spice Club'. This licence was converted under the transitional provisions of the Licensing Act 2003 which came into effect in November 2005. The hours of operation for the sale of alcohol have not changed since 2004 to date.

1.14 In September 2018 the Premises Licence was transferred to Mr Cihangir Surucu.

1.15 The applicant was required to advertise the variation application by placing an A4 pale blue sign at the premises, and also to advertise in a local newspaper to inform the public of the application.

1.16 A consultation period took place (initially) between 2nd July and 30th July 2021, but due to the removal of the public notice at the premises prior to the end of the consultation period, this consultation was extended to expire on 26th August 2021 - and the public notice re-instated for this period. Responsible Authorities (listed below at 2.2) were consulted as part of the process. The applicant conformed with all requirements in accordance with The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.

2. Representation received from Responsible Authorities:

2.1 The following Statutory Bodies (described as Responsible Authorities by the Licensing Act 2003) were consulted about this application

| | | |
|-----|-------------------------|--|
| 2.2 | Kent Police | Representation received at Appendix 7 |
| | Environmental Health | Representation received at Appendix 8 |
| | Kent Fire | No comment made |
| | Child Protection | No comment made |
| | Trading Standards | No comment made |
| | Health & Safety | No comment made |
| | Planning | No comment made |
| | Public Health | No comment made |
| | Home Office Immigration | No comment made |

3. Representations received from others

3.1 Representations objecting to this application have been received from twenty five local residents. The relevant grounds of objection in the representations relate to noise, traffic, and antisocial behaviour which are relevant to the licensing objectives of the prevention of public nuisance, public safety, the prevention of crime and disorder, and the protection of children from harm. Copies of the representations are at **Appendix 9 to Appendix 33**

3.2 One representation in support of this application has been received from a local resident which is at **Appendix 34**

4. Mediation

4.1 On the basis of the representations received, it is considered unlikely that this application will be successfully mediated before the Sub Committee Hearing.

5. Entertainment De-regulation

5.1 Members attention is drawn to section 16.6 of the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003

5.2 No licence permission is required for:

5.3 Live Music

- a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
- a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
- a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that does not have a licence, provided that the audience does not exceed 500. A “workplace” is as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 and is anywhere that is made available to any person as a place of work. It is a very wide term which can include outdoor spaces, as well as the means of entry and exit.

Recorded Music

- any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

5.4 Licence Conditions

(Section 16.36 of the Home Office Revised Guidance)

Any existing licence conditions (or conditions added on a determination of an application for a premises licence) which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08:00 and 23:00 on the same day where the following conditions are met:

- At the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises,
- If the music is amplified, it takes place before an audience of no more than 500 people, and
- The music takes place between 08:00 and 23:00 on the same day.

5.5 Licence Reviews: Live and recorded music

(Section 16.55 of the Home Office Revised Guidance)

On a **review** of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition.

6. Licensing Sub Committee Considerations

- 6.1 In determining the application with a view to promoting the licensing objectives, the Sub Committee must give appropriate weight to:

The steps that are appropriate to promote the licensing objectives
The representations presented by all parties
The Home Office Guidance issued under section 182 Licensing Act 2003
The Sevenoaks District Council Statement of Licensing Policy
Any other relevant legislation

- 6.2 The Licensing Act 2003 requires representations to address the four Licensing Objectives:

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

A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of the grant (ie. more probable than not).

- 6.3 Sevenoaks District Council has produced a Statement of Licensing Policy in order to comply with its duties and powers under the Licensing Act 2003. A link to this Policy is in the Background Papers section at the end of this report.

- 6.4 The aims of the Policy are:

To minimise nuisance and disturbance to the public through the licensing process
To help build a fair and prosperous society that properly balances the rights of people and their communities
To integrate its aims and objectives with other initiatives, policies plus strategies that will reduce crime and disorder, encourage tourism, encourage an early evening and night time economy which is viable, sustainable and socially responsible, reduce alcohol misuse, encourage employment, encourage the self-sufficiency of local communities, reduce the burden of unnecessary regulation on business, and encourage and promote, live music, dancing and theatre for the wider cultural benefit of communities generally.

- 6.5 The Licensing Sub Committee should be mindful of requirements and responsibilities placed on them by other legislation, in addition to those contained within the Licensing Act 2003. These include, but are not limited

to, having due regard to the Equality Act 2010 and the Human rights Act 1998.

- 6.6 The Sub Committee is asked to note the procedures relating to this hearing which are contained within The Licensing Act 2003 (Hearing Regulations) 2005 (as amended). A link to these Regulations are in the Background Papers section at the end of this report.

7. Options

- 7.1 When considering this variation for a premises licence, the following options are available to the Sub Committee:

- Grant the variation in the same terms as it was applied for
- Grant the variation, but modify the conditions as appropriate for the promotion of the licensing objectives.
- Grant the variation, but modify the hours of licensable activity as appropriate for the promotion of the licensing objectives.
- Reject the variation application.

8. Right of Appeal

- 8.1 Under Section 181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal to the Magistrates Court in respect of variation applications to Premises Licences. This right of appeal is open to both the applicant and to any person who has made relevant representation. The appeal application must be made within 21 days of the written notification of the Sub Committee's decision.

9. Key Implications

9.1 Financial

- 9.2 A decision made by the Sub Committee may be appealed by any party to the proceedings of a Magistrates Court. Costs associated with this matter and incurred by any party, may in certain circumstances be awarded against the Council

9.3 Legal Implications and Risk Assessment Statement.

- 9.4 This Hearing is regulated by the Licensing Act 2003 (Hearings) Regulations 2005.

- 9.5 The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where decision departs from the Policy or Guidance, the departure must be directed solely at the attainment of the

licensing objectives, and such departure must be supported by clear and cogent reasons.

9.6 Equality Assessment

- 9.7 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users

Appendices

- Appendix 1 - Variation Application
- Appendix 2 - Current Premises Licence (19/01981/LAPRE)
- Appendix 3 - Plans association with current Premises Licence
- Appendix 4 - Photographs of premises extension
- Appendix 5 - Plans of premises extension
- Appendix 6 - Site plan showing surrounding area
- Appendix 7 - Representation : Kent Police
- Appendix 8 - Representation : Environmental Health
- Appendix 9 - Representation : Hacker
- Appendix 10 - Representation : A.Bumstead
- Appendix 11 - Representation : Barton
- Appendix 12 - Representation : C.Bumstead
- Appendix 13 - Representation : Gold
- Appendix 14 - Representation : Hersee
- Appendix 15 - Representation : Kostelnyk
- Appendix 16 - Representation : Lessner
- Appendix 17 - Representation : Marling
- Appendix 18 - Representation : Marshall
- Appendix 19 - Representation : Rockdale
- Appendix 20 - Representation : Potter & Latter
- Appendix 21 - Representation : Watsham
- Appendix 22 - Representation : Campbell
- Appendix 23a & 23b - Representation : Sard
- Appendix 24 - Representation : Bayliss
- Appendix 25 - Representation : Allen
- Appendix 26 - Representation : Rummey
- Appendix 27 - Representation : Murphy
- Appendix 28 - Representation : Monk & Truong
- Appendix 29 - Representation : Scott & Puplett
- Appendix 30 - Representation : Voss
- Appendix 31 - Representation : Craig
- Appendix 32 - Representation : Billington
- Appendix 33 - Representation : Shuter
- Appendix 34 - Representation in favour : Ayling

Background Papers

[Licensing Act 2003](#)

[Revised Guidance issued under Section 182 Licensing Act 2003](#)

[Sevenoaks District Council Statement of Licensing Policy](#)

[The Licensing Act 2003 \(Hearings\) Regulation 2005](#)

Richard Morris
Chief Officer Planning & Regulatory Services