

**REPORT TO THE LICENSING SUB-COMMITTEE – 21ST JULY 2021****APPLICATION FOR THE GRANT OF A PREMISES LICENCE AT 36 STATION ROAD WEST, OXTED WHICH HAS ATTRACTED REPRESENTATIONS**

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Purpose of Report:	To consider the application for a Premises Licence
Publication status:	Unrestricted.
Recommendations:	<p>That, in accordance with its delegated powers, the Sub-Committee either:</p> <ul style="list-style-type: none"><li>(a) grants the Premises Licence subject to the conditions as consistent with the operating schedule accompanying the application, and as modified by agreement with the applicant, and the objector, or modified to such extent as the authority considers appropriate for the promotion of the licensing objectives;</li><li>(b) exclude from the scope of the Premises Licence any of the licensable activities to which the application relates; or</li><li>(c) reject the application.</li></ul> <p>Members of the Licensing Sub-Committee are asked to make a decision at the end of the Hearing after all relevant parties have been given the opportunity to speak. Members must give full reasons for their decision.</p>
Appendices:	<p>'A' Application for a Premises Licence 36 Station Road West, Oxted (pages 9 to 34)</p> <p>'B' Proposed floor plan of premises (page 35)</p> <p>'C' Map of the area around 36 Station Road West, and shopfront photo (pages 37 and 39)</p> <p>'D' Representations and supporting documents from the objector (pages 41 to 65)</p> <p>'E' Supporting documentation from applicant (pages 67 to 80)</p> <p>'F' Relevant sections of Guidance issued under Section 182 of the Licensing Act 2003 (pages 81 to 87)</p> <p>'G' Relevant sections of Tandridge District Council Licensing Policy (pages 89 to 92)</p>

## 1. Purpose of Report

- 1.1 The supply of alcohol, provision of regulated entertainment, and sale of late night refreshment are licensable activities under the Licensing Act 2003. Authorisation from the Council, in its role as the licensing authority, is required in order to carry on any of these activities at premises within the District.
- 1.2 The Licensing Sub-Committee (“the Sub-Committee”) is responsible for the exercise of many of the functions of the licensing authority, including determination of applications where representations have been received.
- 1.3 In accordance with the provisions of Section 53C of the Licensing Act 2003 (‘the Act’) the Council as 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.
- 1.4 The Council must 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.
- 1.5 In considering this application the Sub-Committee will sit in a quasi-judicial capacity and is thus obliged to consider applications in accordance with both the Licensing Act 2003 (Hearings) Regulations 2005, and amending secondary legislation and the rules of natural justice. The practical effect of this is that the Sub-Committee must make its decision based on evidence submitted in accordance with the legislation and give adequate reasons for reaching its decision.

## 2. Background Information

- 2.1 36 Station Road West, is currently a clothes shop as opposed to a food outlet in a parade of shops based beneath residential properties. The owners wish to turn the Premises into a licensed restaurant, although it has not been decided what cuisine will be available.
- 2.2 The application for a Premises Licence was made by Mr Masood Mahmood of 44 Hartley Hill, Purley, CR8 4EN and received on 27<sup>th</sup> May 2021.
- 2.3 The application is for:-
  - sales of alcohol between the hours of 1000 – 2230 Monday to Sunday
  - a copy of the application is attached at **Appendix ‘A’** and a copy of the proposed premises plan is attached as **Appendix ‘B’**
- 2.4 The position of the premises is shown at **Appendix ‘C’** on a map of the area.

## 3. Consultation

- 3.1 The application has been served on all the responsible authorities and it is confirmed that statutory notices were displayed on the premises. The application was available to view by members of the public on the Council’s website.
- 3.2 Under the Act objections can be received from responsible authorities or interested parties. Objections must be relevant and, in the case of an interested party must not be frivolous, vexatious or repetitious.

- 3.3 There were no objections from the responsible authorities.
- 3.4 One objection from a member of the public was received - see **Appendix 'D'** from Mr and Mrs (Geoff and Sam) Lewis (statement on page 55).
- 3.5 The objectors intend to call Mr Phil Barry as an expert witness. His "Statement on Fire Safety Matters" is contained within Appendix D (page 61).
- 3.6 The matter in the application being objected to is under public nuisance storage of refuse as well as noise and disturbance to the area by customers of the restaurant.
- 3.7 One letter of support for the application was received. The individual was e-mailed but it appears that they no longer wish to continue as no response has been received.
- 3.8 As a result of the objection, the applicant has sent in further documentation to answer the objectors. As a result of submitting a Freedom of Information Act request, the applicant has requested that an additional condition is added see **Appendix 'E'** (page 79).
- 3.9 Both the applicant and objector have spoken with each other but have been unable to reach an amicable resolution.

4. Policy & Guidance – Points for Consideration

4.1 **Section 182 Guidance**

The most relevant paragraphs of the Section 182 Guidance issued by the Secretary of State in relation the Sub-Committees decision are set out below and must be considered by the Sub-Committee:

1.2 - 1.5	Licensing objectives and aims
1.16	Licence conditions – general principles
9.37 - 9.38	Hearings
9.42 - 9.44	Determining actions appropriate for the promotion of the licensing objectives
13.10	Giving reasons for decisions

The relevant sections of Section 182 Guidance is provided at **Appendix 'F'** (page 81)

4.2 **Tandridge District Council – Licensing Policy**

The main sections of the Councils Licensing Policy which are particularly relevant to the Sub-Committees decision are set out below and should be considered when determining this application:

- 4 Fundamental principles
- 5 Decision making process
- 7 Premises licences
- 9 The prevention of crime and disorder
- 10 Public safety
- 11 Prevention of public nuisance
- 12 Prevention of harm to children

The relevant sections of Tandridge District Council Licensing Policy are provided at **Appendix 'G'** (page 89).

5. Determination

The Sub-Committee is requested to determine the application in line with Section 4 below, giving full reasons for the decision.

6. Legal Considerations

6.1 When considering licence applications, the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

6.2 The Sub-Committee must ensure that all licensing decisions:

- Have a direct relationship to the promotion of one or more of the four licensing objectives
- Have regard to the Council's statement of licensing policy
- Have regard to the Secretary of State 182 Guidance
- Must not be subject to a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded

6.3 The Sub-Committee is advised that when considering and determining applications for the grant of a premises licence (or variations thereto) regard must be had to any relevant representations that are made before taking such steps (if any) as it considers necessary for the promotion of the licensing objectives.

6.4 There are three courses of action available to the Sub-Committee in relation to this application:

(a) to grant the licence. If the Sub-Committee consider that granting the application would not undermine any of the Licensing Objectives, it should be granted in full as submitted. This would be granted subject to the conditions consistent with the operating schedule accompanying the application, and as modified by agreement with the applicant, the Police and Environmental Health, or modified to such extent as the authority considers appropriate for the promotion of the licensing objectives; or

(b) grant the application as above, but the Sub-Committee could impose extra conditions as it thinks fit and exclude from the scope of the licence any of the licensable activities to which the application relates. This option may include adding any conditions suggested by other parties at the hearing, including the applicant. Any conditions to be attached to a licence must be appropriate to promote the Licensing Objectives; or

(c) if the Sub-Committee concludes that no additional conditions would ensure that the licensing objectives would be upheld, then the whole application should be rejected.

- 6.5 The Sub-Committee must provide full reasons for their decision, based on the promotion of the licensing objectives. However, this application should be considered on its own merits and all the circumstances taken into account before a
- 6.6 In accordance with the provisions of the Act, if the Sub-Committee rejects in whole or in part, an application to grant a Premises Licence the applicant may appeal against the decision, to a Magistrates' court within 21 days of being notified of the decision. Similarly, where a person who made relevant representations in relation to the application contends that the licence ought not to have been granted or that alternative or additional conditions should have been imposed on the licence, they may appeal against the decision, to a Magistrates' court within 21 days of being notified of the decision.

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