

APPLICATION FOR A NEW PREMISES LICENCE

REPORT OF: Lucy Corrie, Assistant Director - Communities
Contact Officer: Jon Bryant, Senior Licensing Officer
Email: jon.bryant@midsussex.gov.uk Tel: 01444 477428
Wards Affected: Haywards Heath
Key Decision: No
Report To: Liquor Licensing Panel

Purpose of Report

- 1 To provide information in order that the Licensing Panel can determine an application for a Premises Licence.

Summary

- 2 An application, pursuant to Section 17 Licensing Act 2003, has been made by Mr Pakeerathan Sanmugalingham for the grant of a new Premises Licence at 42-44 America Lane, Haywards Heath RH16 3QB. One member of the public, referred to as an 'Interested Party' within the Act, has submitted a representation objecting to the application on the grounds of the Prevention of Public Nuisance. The Interested Party is a local resident.
 - 3 The Licensing Panel is asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.
-

Background

- 4 42-44 America Lane is a commercial unit that is currently vacant which was previously occupied several years ago by McColls. There are residential flats above and it forms part of a local shopping parade. Mr Samugalinngham plans to open a One Stop store at these premises.
- 5 The application before the Panel is for the issue of a new Premises Licence permitting the sale of alcohol for consumption off the premises.
- 6 The applicant seeks the following licensable activities and timings:

Licensable Activity	Timings
Supply of Alcohol consumption Off Premises	Mon - Sun 06:00 – 23:00

- 7 The proposed opening hours of the premises will be:

Mon - Sun 06:00- 23:00

- 8 A Premises Licence has previously been issued for this location when it traded as McColls. This licence was surrendered when McColls relocated to 56A America Lane.
- 9 The current application was advertised at the site between 8th December 2022 to 4th January 2023 and in the Mid Sussex edition of The Argus on the 15th December 2022.
- 10 In total there were 2 representations received during the consultation period – one was not accepted as it did not address the licensing objectives.
- 11 The accepted representation has been received from a member of the public, referred to as an ‘Interested Party’, and did have relevance to the licensing objectives. The main relevant points raised within the representation relate to the licensing objective of the Prevention of a Public Nuisance.
- 12 It should be noted that no representations have been received from any of the Responsible Authorities including the Police or Environmental Protection Team.
- 13 The Panel should be aware when reading the full correspondence from the Interested Party that some of the information contained within their representation is not considered relevant within this type of application. These are the references within their initial email relating to matters such as the location of the premises, the need for the premises and the fact that there are other premises selling alcohol in the immediate vicinity. These comments should be disregarded when considering the representation. The Panel must focus on the relevant parts only when determining this application.
- 14 The Police have agreed conditions with the applicant and if the Panel decides to grant the licence, I would request that, in addition to the Mandatory conditions, the conditions offered in the operating schedule by the applicant and those agreed by the Police be attached to the licence. Full details are attached in the Appendix 5.

Representations

15 Interested Party Representation

Ian Habgood

Ian Habgood has made representations on the grounds of the Prevention of a Public Nuisance.

His original representation was not considered relevant however he subsequently re-submitted his representation stating

I believe the likely effect of granting and extending the hours of a 42-48 America Lane licence of 0600-2300 every day as opposed to the previous licensable hours of 0900-2200 everyday - which the previous business McColls operated under - would be an increase in noise pollution both late at night and early in morning from a mixture of anti-social behaviour and noise emanating from the premises and delivery vehicles.

His correspondence is attached at Appendix 4

Policy Context

16 Determination of Application for a Premises Licence

The Licensing Panel must determine the application in accordance with the Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

17 Section 18 LA03 deals with the determination of the application:

Grant of premises licence

18. Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

(a) receives an application for a premises licence made in accordance with section 17, and

(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to—

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must—

(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 appropriate for the promotion of the licensing objectives.

(4) The steps are—

(a) to grant the licence subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

(6) For the purposes of this section, “relevant representations” means representations which—

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and

(d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

(7) The requirements of this subsection are—

(a) that the representations were made by a responsible authority or other person within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

18 Relevant Representations

The Licensing Act 2003 requires representations to address the four licensing Objectives which are

1. Prevention of Crime and Disorder
2. Promotion of Public Safety
3. Prevention of Public Nuisance
4. Prevention of Harm to children and young persons

19 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 a grant - (ie more probable than not)

9.3

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

9.4

A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.

9.5

It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.9

It is recommended 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.

9.37

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but

they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- Guidance issued under Section 182 Licensing Act 2003;
- its own statement of licensing policy.

9.42

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.....The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Other Options Considered

- 21 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence.

Financial Implications

- 22 The final decision made by the Licensing Panel in this matter is subject to appeal in the Magistrates Court by any party to the proceedings.

Risk Management Implications

23 None

Equality and Customer Service Implications

24 None

Other Material Implications

- 25 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise, than under, and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 26 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

Sustainability Implications

27 None

Background Papers

- Appendix 1 – Application Form and plan of premises
- Appendix 2 – Area plan
- Appendix 3 – Photos of location
- Appendix 4 – Representation – Ian Habgood
- Appendix 5 – Schedule of proposed conditions
- Appendix 6 – Licensing Panel – Procedure at hearings.