

## **DETERMINATION OF VARIATION OF PREMISES LICENCE**

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<b>Wards affected:</b>	Ewell Court Ward;
<b>Appendices (attached):</b>	Appendix 1 Current licence Appendix 2 Application Appendix 3 Plan of premises Appendix 4 Location plan Appendix 5 Police representation Appendix 6 Environmental Health representation Appendix 7 Mandatory conditions

### **Summary**

Members are requested to determine an application to vary a premises licence where the authority has received relevant representation.

### **Recommendation (s)**

#### **The Sub-Committee is asked to:**

**Have regard to the relevant representations made during the consultation period, and to take such steps (if any) as it considers appropriate for the promotion of the licensing objectives. The steps are:**

- (1) To grant the variation application as applied for.**
- (2) Modify the conditions of the licence, altering or omitting or adding to them.**
- (3) Reject the whole or part of the application.**

## **1 Background**

- 1.1 The supply of alcohol is a licensable activity under the Licensing Act 2003. Authorisation from the Council, in its role as the licensing authority, is required in order to carry on the activity at a premises within the borough.

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- 1.2 Under the scheme of delegation adopted by the Council the Sub-Committee is responsible for the exercise of many of the functions of the Council as a licensing authority, including determination of applications where representations have been received.
- 1.3 The Council may dispense with holding a hearing if the licence holder and all persons who made valid representations agree that such a hearing is unnecessary and give notice to the authority to that effect.

## **2 Application**

- 2.1 A premises licence authorises the sale of alcohol off the premises at Ruxley Food and Wine at 427 Kingston Road, West Ewell KT19 0BT for the following hours:-

- Monday to Saturday 08.00 hours until 23.00 hours
- Sunday 10.00 hours until 22.30 hours

A copy of the current premises licence is attached at Appendix 1

- 2.2 On 19 June 2025 K A Brothers Ltd (“the licence holder”) applied for a variation to the premises licence to authorise the sale of alcohol for consumption off the premises 24 hours a day, with the sales from 23:00 to 07:00 to be through a hatch/window. A copy of the application is attached at Appendix 2, and a copy of the plan of the premises provided is attached at Appendix 3.
- 2.3 All applications for variation of premises licences must be advertised by the display of a notice at the premises and by a public notice in the local newspaper. The licensing department has determined that this application complies with the public notice requirements of the Licensing Act 2003.
- 2.4 A location plan showing the local area is attached at Appendix 4.

## **3 Representations from Interested Parties**

- 3.1 No representations were received from members of the public.

## **4 Representations from Responsible Authorities**

- 4.1 On 11 July 2025 the responsible authority for the police made representation. A copy of this representation is attached as Appendix 5.
- 4.2 On 17 July 2025 the responsible authority for environmental health made representation. A copy of this representation is attached as Appendix 6.

## **5 General principles to be followed**

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- 5.1 When determining applications, the Sub-Committee is required to carry out its functions with a view to promoting the licensing objectives, which are:
- The prevention of crime and disorder;
  - Public safety;
  - The prevention of public nuisance; and
  - The protection of children from harm
- 5.2 In determining applications, the Council must have regard to its statement of licensing policy, and to the statutory guidance issued under section 182 Licensing Act 2003.
- 5.3 If granted the licence would be subject to the mandatory conditions as attached at Appendix 7.
- 5.4 There are no conditions that would be added to the licence as a result of the operating schedule (section M of the application - Appendix 2).

## 6 Policy Considerations

- 6.1 A copy of the Council's Statement of Licensing Policy (December 2018) has been sent to the licence holder and Responsible Authorities together with this report.
- 6.2 Section 4 of the Licensing Act 2003 stresses that in carrying out its functions, a licensing authority must "have regard to" guidance issued by the Secretary of State under Section 182. This implies looking at the guidance, factoring in its relevance and/or weight, if any, as those matters appear to the licensing authority.
- 6.3 The Section 182 Guidance states with respect to the roles of Responsible Authorities;

*'9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective...However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.'*

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### 7 Legal Implications

- 7.1 Decisions on licensing matters engage issues of human rights, in particular, Article 1 of the First Protocol, the peaceful enjoyment of possessions, Article 6, the right to a fair hearing, and Article 8, respect for private and family life. However, interference with Convention rights is permitted where lawful and necessary in the interests of public safety, the prevention of disorder or crime, the protection of health and morals or for the protection of the rights and freedoms of others.
- 7.2 Due regard must also be had to the public sector equality duty enshrined in Section 149 of the Equality Act 2010, which aims to eliminate unlawful discrimination, having regard to the nine protected characteristics. The nine protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.3 All applications for new or varied Premises Licences or Club Premises Certificates must be advertised by the display of a notice at the premises and by a public notice in the local newspaper. Pursuant to the Council's constitution the Council's licensing department has determined that there is a valid application that complies with the requirements of the Licensing Act 2003.
- 7.4 Licence holders may appeal to the magistrates' court if the licensing authority has rejected their application to vary a premises licence. If a licence is granted, the licence holder may appeal against the imposition of conditions on that licence, or the exclusion of a licensable activity. Those who made relevant representations during the course of an application may appeal against the decision to grant a licence.
- 7.5 Appeal to the magistrates' court who will hear the matter afresh and will only overturn a licensing authorities decision if it thinks it is wrong. This reinforces the importance of well drafted reasons for the decision as the magistrates court is more likely to uphold a well drafted set of reasons.

#### **Legal Officer's comments:**

- 7.6 When considering licence applications, the Sub-Committee shall carry out its functions with a view to promoting the licensing objectives. The licensing objectives are: Prevention of crime and disorder; Public Safety; Prevention of public nuisance; Protection of children from harm.

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The Sub-Committee must ensure that all licensing decisions have: taken into account all relevant representations; a direct relationship to the promotion of one or more of the four licensing objectives; regard to the Council's statement of licensing policy; regard to the Secretary of State guidance; there must not be a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded. Applications must be considered with regard to the principles of fair process and the Human Rights Act 1998.

When considering an application for the variation of an existing licence, only the variation is subject to determination. No changes can be made to a licence or conditions attached unless they are subject to the variation application.

The licence holder has the right of appeal against the decision made by the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day that the licence holder is notified, in writing, of the decision.

## 8 Background papers

8.1 The documents referred to in compiling this report are as follows:

### **Previous reports:**

- None

### **Other papers:**

- Code of Conduct and Practice in Licensing Procedures and Hearings
- Statement of Licensing Policy, dated 11 December 2018
- [Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK](#)