

This report will be made public on 24 November 2023



Report Number **DCL/23/27**

To: Licensing Sub-Committee
Date: 5 December 2023
Status: Non-Executive Decision
Head of service: Andrew Blaszkowicz, Director – Housing and Operations

SUBJECT: An application for a Premises Licence in respect of: IOH Deli, 17-19 High Street, Hythe CT21 5AD.

SUMMARY: This report outlines the application made by Mr William Dunlop for a Premises Licence for this premises. The Licensing Sub-Committee must determine the outcome for the application.

REASONS FOR DETERMINATION:

The Committee is asked to consider the application for a Premises Licence. When considering the application, the Committee must ensure they fully promote the licensing objectives. The Committee is obliged to have regard to the revised national section 182 guidance and the council’s own licensing policy.

DETERMINATION:

The Licensing Sub-Committee is asked to:

1. Note the contents of Report DCL/23/27.
2. Determine the application. The options for determining the application are set out in section 4.

1. BACKGROUND

- 1.1 The Licensing Act 2003 provides that the sale or supply of alcohol on and off the premises and other licensable activities must be authorised by a premises licence.

A premises licence holder must comply with the four licensing objectives:

- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 1.2. Ivy's of Hythe was granted a Premises Licence on 27th September 2021. The company subsequently went into liquidation and therefore the Premises Licence at the time lapsed. The previous licence had the following licensable activities on it:

Hours open to the public: Mon-Sun 07.30 – 23.00

Sale of alcohol On/Off Sales: Mon-Sun 08:00 – 22:30

2. APPLICATION

- 2.1 On the 24th October 2023 Mr William Dunlop submitted a completed application for the premises previously known as Ivy's of Hythe, on Hythe High Street.

The new application for IOH Deli is for:

Hours open to the public: Mon-Wed 08:00 – 23:00 Thurs 08:00 – 23:30
Fri/Sat 08:00 – 00:00 Sun 08:00 – 22:00

New Year's Eve 08:00 – 01:30

Sale of alcohol On/Off Sales: Mon-Wed 08:00 – 22:30 Thurs 08:00 – 23:00
Fri/Sat 08:00 – 23:30 Sun 08:00 – 21:30

New Year's Eve 08:00 – 01:00

Late night refreshment: Thurs 23:00-23:30 Fri/Sat 23:00-00:00

Through the Live Music Act 2012, Live Music and Recorded Music were deregulated and are not considered licensable activities between 8:00 – 23:00 where there is an alcohol licence in place, therefore those activities are not shown above.

- 2.2. Additional explanation:

Opening hours – these are the times when the premises will be open, this can be inside and outside but doesn't take into account the Operating Schedule which may further restrict the use of the premises. For clarity, the rear garden and the pavement seating must close by 22:00.

Sale of alcohol – On Sales always finish 30 minutes before closing time so that customers have 'drinking up' time.

Late night refreshment – if hot drinks and hot food are to be served after 23.00 an applicant must apply for Late night refreshment. If a premises is open past 23.00 it is recommended that they offer coffees and snacks.

The Home Office Revised Guidance issued under Section 182 of the Licensing Act 2003 dated December 2022, advises that if conditions are imposed deregulation has the effect of suspending them between 08.00 and 23.00 where the following criteria are met:

- The music takes place between the hours of 08.00 and 23.00.
- 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 and;
- If the music is amplified, it takes place before an audience of no more than 500 people.

If live or recorded music is played outside of 08.00 to 23.00 any conditions applied to the licence will come into effect. For example, if live music is played from 19.00 to Midnight conditions will only apply from 23.00 to midnight.

Only in the event of a Review of a Premises or Club Licence does the Licensing Act 2003;

- Under s177A(3) allow a Local Authority to lift the suspension applied to deregulated live and recorded music between 08.00 and 23.00, which in turn effectively removes the deregulation and allows any existing conditions to have effect during these periods and;
- Under s177A(4) permit the Local Authority to add conditions to music as if it were regulated entertainment.

This Guidance goes on to advise that more general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will have effect despite this deregulation of music.

The application for a Premises Licence can be seen at Appendix 1.

3. RELEVANT REPRESENTATIONS

- 3.1. This Hearing has been required by the Licensing Act 2003 because valid representations were received from Environmental Health and members of the public.

Responsible Authority	Comments
Home Office - Immigration	None
Kent Police	None
Environmental Health (Pollution)	Objection
Environmental Health (Commercial)	None
Kent Fire and Rescue	None

Planning	None
Child Protection Agency	None

Members of the Public	Numbers Received
Objections	8
In Support	27

The representations can be found at Appendix 2.

4. OPTIONS

4.1. The Licensing Sub-Committee has the following options:

- a) Grant the Application
- b) Grant the Application with amendments
- c) Add conditions to the Licence
- d) Reject whole or part of the Application

4.2. The Committee is asked to note that it may not add conditions or amend the licence merely because it considers it desirable to do so. The Committee must only consider evidence that relates to the 4 Licensing Objectives. Any conditions added must promote the Licensing Objectives.

5. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillor's with any questions arising out of this report should contact the following officer prior to the meeting:

Briony Williamson, Licensing Specialist
 Telephone: 01303 853475
 Email: briony.williamson@folkestone-hythe.gov.uk

Background documents:

The Folkestone & Hythe Statement of Licensing Policy is available under the Policies section of the website:

<https://www.folkestone-hythe.gov.uk/your-council/policies-plans-and-documents/policy-documents>

The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available at:

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

The Committee members are advised to read the new guidance thoroughly. Your attention is drawn to paragraphs 9.42, 9.43 and 9.44 in respect of the determination of the application. Additionally, members are advised to refer to section 10 about imposing conditions. It is also good practice that if they

propose to apply conditions, they should be discussed with the applicant prior to the determination to ensure that they are proportionate.

6. APPENDICES

Appendix 1. Application for a Premises Licence

Appendix 2. Representations