

This report will be made public on 13 November 2020



Report Number: **DCL/20/33**

To: Licensing Sub-Committee
Date: 23 November 2020
Status: Non-Executive Decision
Head of service: Ewan Green, Director of Place

SUBJECT: An application for a Variation of a Premises Licence in respect of: Rosemont Restaurant & Cocktail Bar, 1 Majestic Parade, Sandgate Road, Folkestone, Kent, CT20 2BZ

SUMMARY: This report outlines the application made by Mr Erdogan to vary the current 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 Variation application for the 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/20/33.
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 The premises at Rosemont Restaurant & Cocktail Bar, 1 Majestic Parade, Sandgate Road, Folkestone, Kent, CT20 2BZ has held a premises licence since before 2005 when the Licensing Act 2003 was introduced, it was brought over from the Magistrates. It was formerly known as Hop Kweng. In September 2020 Mr Onder Erdogan applied to transfer the Premises Licence and Designated Premises Supervisor to himself and to change the name of the premises to Rosemont. A copy of the current licence can be found at Appendix 1.
- 1.3 There are no conditions on the licence aside from the Mandatory Conditions. The current licence allows alcohol sales from 10:00 to 00:00, Monday-Saturday and on Sunday, 10:00 to 23:00.
- 1.4 No Temporary Events Notices have been submitted for this premises in the past and no complaints have been received by the Licencing or Environmental Health Departments.

2. APPLICATION

- 2.1 An application to Vary the Premises Licence was received from the premises licence holder on the 23rd November 2020. The application can be found at Appendix 2. The Variation is to extend hours and add seasonal timings to cater for private functions and busier periods. Adding off sales to offer street dining. We received confirmation that the premises will be a restaurant and cocktail bar. It will not be a night club/music venue.
- 2.2 The Variation application was for:
- Opening hours – 10:00 – 01:00 Mon-Thurs, 10:00 – 03:00 Fri & Sat, 10:00 – 00:00 Sun
- Alcohol Sales – 10:00 – 00:30 Mon-Thurs, 10:00 – 02:30 Fri & Sat, 10:00 – 23:30 Sun
- Recorded music – 23:00 – 01:00 Mon-Thurs, 23:00 – 03:00 Fri & Sat, 23:00 – 00:00 Sun
- Late night refreshment – 23:00 – 01:00 Mon-Thurs, 23:00 – 03:00 Fri & Sat, 23:00 – 00:00 Sun
- 2.3. Following representations from Planning, Environmental Health and some residents, the applicant offered to revise his Variation application and submitted some additional information regarding the plans for the

restaurant and his knowledge of other restaurants in the local area to support his application:

Good afternoon,

I am completing this statement to assist the licensing committee in determining my application for a premises licence to be granted for Rosemont Restaurant, Majestic Parade, Folkestone.

The development of the previous Hop Kweng Chinese restaurant that had remained empty and in disrepair, will bring cosmetic value to a run-down corner of the town and potentially uplift the appeal to visitors and traders to Folkestone. Following considerable investment and planning, the intentions of this premises are to provide a dining experience that immerses the customer in culture and good food. This is a family operated business, not a franchise, and as a family we are very keen to ensure that the premises are operated to a high standard, and we will take into consideration guidance and advice from both the police and council to achieve this.

My application for a restaurant and cocktail bar has inadvertently caused both employees of the council, residents and others to question the validity of the application. I assure that this was not my intention. Rosemont is a restaurant and is certainly not to be compared to the running of 'The Bank Bar', which was operated as a night club. On reflection, the operating times have also caused concern. I am happy to review the opening times and put forward some additional conditions to help relay the fears that are being presented.

To assist my determination in identifying hours acceptable and appropriate to my business, I have taken time to research the Council Online Licensing Register. I have picked a few similar businesses and present them as follows.

Aspendos Restaurant, Aspen House, West Terrace. Opening timings until 0030hrs

The Radnor Arms, Christchurch Road. Opening timings until 0130hrs

Conchitas, Bouverie Road West. Opening timings until 0100hrs

Kalala, Castle Hill Avenue. Opening timings until 0130hrs

The Clifton Hotel, Clifton Gardens. Opening timings until 0130hrs

Roccos Cafe, Sandgate Road. Opening timings until 0100hrs

Wards Hotel & Bistro, Earls Avenue. Opening timings until 0200hrs

All the above premises operate as a restaurant with a bar where alcoholic drinks are prepared and displayed with no limitations. As the town is a mix of residential and businesses all operators should have considered the

licensing objectives and licensing policy, taking steps to promote these and satisfied the local authority and responsible authorities that they have done so.

The register provides opportunity to identify what measures these premises have taken to promote the licensing objectives. It has been interesting to find that the licensing objectives most prominently acknowledged through additional conditions, revolve around Prevention of Public Nuisance.

When looking to promote the Prevention of Public Nuisance, I have considered the following quote, "It is submitted that the appropriate threshold should be neither a probability nor a possibility of occurrence, but a real possibility of public nuisance occurring". It is therefore important that I identify what public nuisance could occur through the opening of a restaurant. Obviously, this might be noise or disturbance emanating from the premises and at times customers are leaving the premises.

I question what is the effect of restaurants on residents in Folkestone? I have not been able to find any information whereby the local authority has held a review hearing for ASB or any other matter surrounding restaurant licensed premises. I can therefore surmise that a problem surrounding dispersal does not exist and any reference to public nuisance matters is merely subjective and presumptive and not a real possibility of occurrence. There are currently no restrictions or conditions to commercial operating hours under planning control for this premises.

The premises are currently classed as A3 (Restaurant and Cafés), allowing sale of food and drink for consumption on the premises. We have no intention of operating outside of these parameters and alcohol sales will be ancillary to the main use of the property. Without contacting other premises to identify current 'class' it is difficult for me to research how similar businesses are classed. I have researched the council Planning and Building Control Register and found that the Sunshine Restaurant, Hythe High Street is identified as Class A3. The premises are tastefully and culturally decorated offering a cosmetic bar where drinks are displayed and prepared.

Another Class A3 premises is The Tavernetta Restaurant in Folkestone. This premises also tastefully and culturally presented, has a bar where drinks are displayed and prepared. I am therefore confident that premises such as the Kalala, Conchitas and Roccos are also classed A3.

To assist me I have considered the Council Licensing Policy. P12 Planning gives guidance that there is no legal basis for a licensing authority to refuse a licence application because it does not have the relevant planning

permission. It is my understanding that my premises do have the required planning and that there are currently no conditions attached.

P13 Promoting Cultural Life identifies that Licensing is not solely about control but about promoting a diverse and vibrant cultural life for all. It states that a well-regulated, varied day-time, evening and night-time economy can benefit both residents and businesses and contribute to the promotion of the licensing objectives. The policy bullet points,

- The use of proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- Greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
- The encouragement of more family friendly premises where younger children can be free to go with the family;
- The maintenance of a safe and family friendly environment within the District, particularly within town centres;
- The further development within communities of our rich culture of live music, dancing and theatre, and other forms of entertainment both in rural areas and in our towns;
- The regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
- The necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.

I am confident that my business will meet all these objectives.

P14 identifies that there is currently no Cumulative Impact policy for me to consider and P16 identifies that the council has not set fixed opening times within certain areas but will consider imposing stricter conditions in respect of noise control where premises are situated in areas that have dense residential accommodation and/or are close to sensitive areas, for example hospitals, schools, places of worship, nursing homes. This paragraph continues to identify that licensing authority would only have discretion to consider attaching such conditions where a relevant representation is received in respect of an application, and then only where considered appropriate for the promotion of the four licensing objectives.

As identified, Prevention of Public Nuisance seems to be the main area of concern and noise from customers. I have therefore paid attention to 'Best Practice' as identified on P22-23.

Taking into consideration the concerns that appear to be raised and referring to the licensing policy; in addition to conditions already proposed on application, I am prepared to offer the following,

Licensable activities – to reduce the timings to the following

Friday and Saturday all licensable activities to cease at 0100hrs. Premises to close at 0130hrs

Monday to Thursday all licensable activities to cease at 0000hrs. Premises to close at 0030hrs

Sunday all licensable activities to cease at 2330hrs. Premises to close at 0000hrs.

Seasonal Variations to remain as per application.

Prevention of Public nuisance

Windows and doors to be kept closed after 2200hrs daily.

No customers permitted to take drinks outside after 2200hrs daily.

Customers will only be permitted to take drinks outside to accompany a meal and to be seated in accordance with a pavement licence.

Customers will be encouraged to leave quietly and not to congregate outside.

Information will be made available to customers advising taxi, bus and train services.

Customers will not be served at the bar; table service only applies.

The revised timings bring operating times in line with restaurants. The additional measures I propose take into consideration best practice as identified in the council licensing policy.

I am very happy to meet with council representatives and other responsible authorities. There is an open invitation for representatives to attend the premises and discuss the proposed operations of this restaurant. I welcome openness and transparency, encouraging good working practices to promote Folkestone.

Onder Erdogan

Co-Owner of Rosemont, Folkestone Kebab and Radiance Clinic

3. RELEVANT REPRESENTATIONS

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

Responsible Authority	Comments
Home Office - Immigration	None
Kent Police	None
Environmental Health (Pollution)	See Representation 2 below
Environmental Health (Commercial)	None
Kent Fire and Rescue	None

Planning	See Representation 1 below
Child Protection Agency	None

Four valid representations were submitted from members of the public, these were objections, several other representations were received but these were not considered valid by Licensing Officers as they referred to general issues in the wider area and other non-relevant premises, the valid representations can be found in Appendix 3.

4. OPTIONS

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

- a) Grant the Variation
- b) Grant the Variation with amendments
- c) Add conditions to the Licence/Amend hours
- d) Reject whole or part of the Variation

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

Councillors 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:

Current 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. Current Premises Licence

Appendix 2. Application to Vary Premises Licence

Appendix 3. Representations