

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

02 June 2015

Report of the Director of Central Services and Chief Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR A REVIEW OF A PREMISES LICENCE AT THE MEDWAY INN, 2 HIGH STREET, WOULDHAM, ROCHESTER, KENT, ME1 3XB

1.1 Introduction

- 1.1.1 The Licensing & Appeals Committee sitting as a Panel is asked to consider an application for the review of a premises licence made under Section 51 of the Licensing Act 2003 in relation to the premises known as The Medway Inn, 2 High Street, Wouldham, Rochester, Kent, ME1 3XB.
- 1.1.2 The premises known as The Medway Inn has the benefit of a premises licence under the provisions of the Licensing Act 2003, which authorises the carrying out of licensable activities for the sale of alcohol, performance of dance, Films, Live Music, Recorded Music and late night refreshment . A copy of the current licence is shown at **Annex 1**.
- 1.1.3 An application for a review of the premises licence with supporting documentation has been received from Mr Lance Peek, an immediate neighbour. A copy of the Review application is shown at **Annex 2**.
- 1.1.4 The Licensing Authority placed a pale blue A4 notice up at the premises for a period of 28 days running from the 30 April 2015 until the 28 May 2015. In addition a notice was placed on the Council's website and at the notice boards at Kings Hill and the Castle, Tonbridge.
- 1.1.5 At any stage, during the 28 day public consultation period, a responsible authority, or an interested party, may make representations in connection with any of the four licensing objectives namely:-
- Prevention of crime and disorder
 - Prevention of public nuisance
 - Public safety
 - Protection of children from harm

Provided that the grounds for the application for review are relevant to the promotion of the licensing objectives and, in the case of applications by interested

parties, are not vexatious, frivolous or repetitive, a hearing must be held to review the licence.

- 1.1.6 The 2003 Act requires the Council to publish a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act. The Council adopted its Statement of Licensing Policy on 14 December 2004. As required by Section 5 of the Act a revised policy was published on 2 November 2010 to last for three years. The Policy will be available at the meeting, for reference purposes.
- 1.1.7 Under the 2003 Act, it is the duty of all licensing authorities that, in carrying out their functions, they must have regard to Guidance issued by the Secretary of State under section 182. The Guidance cannot anticipate every possible scenario or set of circumstances that may arise. Provided that the licensing authority has properly understood and considered the guidance, it may depart from it when it has reason to do so. However, as the licensing authority is under a duty to have regard to the Guidance, it will need to give full reasons for any departure from it. The Guidance will be made available at the meeting for reference purposes.

1.2 The Application

- 1.2.1 The applicant is Mr Lance Peek, an immediate neighbour, living at 1 Hall Road, Wouldham, Rochester, Kent ME1 3XH. The application, which was received on the 14 April 2015 is show at Annex 2.
- 1.2.2 A map showing the The Medway Inn in relation to Mr Lance's property is show in **Annex 4**
- 1.2.3 The grounds for the review are based on the following licensing objectives:
- The prevention of public nuisance
 - The protection of children from harm

1.2.4 Representations received from statutory consultees:

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| Police | has no objections to make |
| Trading Standards | has made no comments |
| Social Service | has made no comments |
| Environmental Health | has no objections to make |
| Health & Safety | has made no comments |
| Planning | has made no comments |

1.2.5 The licensing department has received the following representations from interested parties:

- As of the 21 May when this report has been written there were two Representations made in support of the Review submitted by Mr Peek and one Representation in support of the Medway Inn. These Representations are shown at **Annex 3**

1.3 Reasons for referral

1.3.1 The Licensing Authority must under the Licensing Act refer any application for a Review Hearing to the Licensing Sub- Committee. The Licensing Authority received a valid review application and documentation from an Interested Party, namely Mr Lance Peek, an immediate neighbour which is show at **Annex 2**.

1.3.2 Members are reminded that representations are only relevant if they relate to one or more of the four licensing objectives.

1.3.3 The Licensing Authority has advertised the application for a review as required. The application has been advertised for 28 days and a copy has been sent to all the responsible authorities. The purpose of this advertising is to enable other interested parties or responsible authorities to make any valid representations.

1.3.4 The Licensing Authority placed a pale blue A4 notice up at the premises for a period of 28 days running from the 30 April 2015 until the 28 May 2015. In addition a notice was placed on the Council's website and at the notice boards at Kings Hill and the Castle, Tonbridge.

1.3.5 The applicant and other persons that have made representations have been invited to attend the hearing.

1.4 Policy Considerations

1.4.1 The following provisions of the Secretary of State's Guidance apply to this application:

Chapters 3 – The licensing objectives

Chapter 8 – Applications for premises licences

Chapter 10 – Conditions attached to Premises Licences

Chapter 11 – Reviews

1.4.2 The following paragraphs of the Councils' Statement of Licensing Policy apply to this application:

Sections 1.8 to 1.13 – These sections set out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.

Sections 2 – 6 – These sections set out the four licensing objectives and identifies matter that may be relevant to the promotion of each licensing objective.

1.5 Legal Implications

1.5.1 The Licensing Act 2003 at section 4(1) requires the Licensing Authority to carry out its functions with a view to promoting the Licensing Objectives which section 4(2) sets out as:-

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

1.5.2 Section 4(3) of the Licensing Act also requires the Licensing Authority to have regard to its published statement of Licensing Policy and any guidance issued by the Secretary of State under section 182.

1.5.3 Having regard to the application and any relevant representations, the Licensing Authority must take such of the steps mentioned below as it considers appropriate for the promotion of the licensing objectives (section 52 of the Licensing Act). The steps are

- (a) To modify the conditions of the licence*;
- (b) To exclude a licensable activity from the scope of the licence;
- (c) To remove the designated premises supervisor;
- (d) To suspend the licence for a period not exceeding 3 months;
- (e) To revoke the licence

*Modification of the conditions of the premises licence can include the alteration or omission of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place

1.5.4 The applicant, the holder of the premises licence or any other person who has made a relevant representation in relation to the application all have a right of appeal to the Magistrates Court against the decision of the Sub Committee. A determination of an application does not have effect until the time allowed for appeal has elapsed, or where an appeal is made, until the appeal has been disposed of (Section 52 (11)).

1.5.5 The Licensing Act 2003 section 181 and Schedule 5 makes provision for appeals to be made by the applicant and those making representations, against decisions of the Licensing Authority to the Magistrates Court.

1.6 Financial and Value for Money Considerations

- 1.6.1 None unless there is an appeal about the Panel decision to Magistrates' Court which proves to be successful and which could therefore result in costs being awarded against the Council.

1.7 Risk Assessment

- 1.7.1 Departure from the Guidance and Policy could lead to an increased risk on an appeal. Similarly if any decision made is not evidence based and proportionate.

1.8 Equality Impact Assessment

- 1.8.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.9 Recommendations

- 1.9.1 That Members determine the application carefully, considering the application along with any other representations made and takes such steps as the Sub-Committee consider appropriate for the promotion of the licensing objectives.

Background papers:

- Licensing Act 2003
- Tonbridge and Malling Borough Council
Statement of Licensing Policy
- LA 2003 October 2014 Guidance

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