

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**LICENSING & APPEALS COMMITTEE**

**26 August 2015**

**Report of the Director of Central Services and Monitoring Officer**

**Part 1- Public**

**Delegated**

**1 APPLICATION FOR A NEW PREMISES LICENCE FOR THE FANCY GOAT, 40 HIGH STREET, WEST MALLING, KENT, ME19 6QR**

**1.1 Executive Summary**

1.1.1 The Licensing and Appeals Committee sitting as a Panel is asked to consider an application for a Premises Licence under section 17 of the Licensing Act 2003 for the premises called The Fancy Goat, 40 High Street, West Malling, Kent, ME19 6QR.

1.1.2 This is a new application for the performance of plays; exhibition of films; Indoor sporting events; performance of live music; playing of recorded music; performance of dance; anything of a similar description to that falling within live music, recorded music or performance of dance; provision of late night refreshment and supply of alcohol.

**1.2 Background and Introduction**

1.2.1 The previous premises licence issued to The Fancy Goat (11/00923/PREM) was issued on the 29 September 2011 with the premises holder being "The Fancy Goat Ltd".

1.2.2 The Fancy Goat Ltd went into Liquidation on the 19 November 2014 and as a result of Tonbridge & Malling Borough Council (Licensing Authority) having not been given an "interim authority" notice within 28 consecutive days of The Fancy Goat Ltd going into liquidation the premises licence lapsed.

1.2.3 The application was validated on the 14 July 2015, with the 28 day consultation period running from the 15 July 2015 until the 11 August 2015.

1.2.4 A map showing the location of The Fancy Goat and surrounding properties is shown at **Annex 1**

1.2.5 A Satellite map showing the location of The Fancy Goat and surrounding properties is shown at **Annex 2**

1.2.6 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 request are relevant to the promotion of the licensing objectives and, in the case of requests by interested parties, are not vexatious, frivolous or repetitive, a hearing must be held to consider the application.

1.2.7 The Licensing Act 2003 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's current Statement of Licensing Policy was published in January 2011 and will remain in force for three years. The Policy will be available at the meeting, for reference purposes.

1.2.8 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 its departure from it. The Guidance will be made available at the meeting for reference purposes.

### 1.3 The application

1.3.1 The applicant is Todo Sobre Ltd T/A The Fancy Goat, 15 Cooling Close, Maidstone, Kent ME14 5RB

1.3.2 The application which was received on 14 July 2015, is attached to this report as **Annex 3**

1.3.3 The application details are as follows:

Section a)	<b>Performance of plays</b> – Monday until Sunday from 07:00 hours until 01:00 hours.
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Section b)	<b>Exhibition of films</b> - Monday until Sunday 07:00 hours until 01:00 hours.
Section c)	<b>Indoor sporting events</b> - Monday until Sunday 07:00 hours until 01:00 hours.
Section d)	<b>Boxing or wrestling</b> – Not applied for
Section e)	<b>Performance of live music</b> - Monday until Sunday 07:00 hours until 01:00 hours. New Year's Eve and Christmas Eve: from 07:00 hours until 03:00 hours.
Section f)	<b>Playing of recorded music</b> - Monday until Sunday 07:00 hours until 01:00 hours. New Year's Eve and Christmas Eve: from 07:00 hours until 03:00 hours.
Section g)	<b>Performance of dance</b> - Monday until Sunday 07:00 hours until 01:00 hours. New Year's Eve and Christmas Eve: from 07:00 hours until 03:00 hours.
Section h)	<b>Anything of a similar description to that falling within live music, recorded music or performance of dance</b> - Monday until Sunday 07:00 hours until 01:00 hours.
Section i)	<b>Provision of late night refreshment</b> - Monday until Sunday 23:00 hours until 01:00 hours. New Year's Eve and Christmas Eve: from 23:00 Hours until 03:00 Hours.
Section j)	<b>Supply of alcohol</b> - Monday until Sunday 07:00 hours until 01:00 hours. New Year's Eve and Christmas Eve: from 07:00 hours until 03:00 hours.

1.3.4 The Designated Premises Supervisor will be Noor Hossenboccus.

## **1.4 Reasons for referral**

- 1.4.1 The Licensing Authority must under the Act refer any application for hearing to the Licensing & Appeals Committee, if relevant representations are made by a responsible authority or an interested party.
- 1.4.2 The Licensing Authority has, during the representation period received sixteen representations from interested parties, including four from a Responsible Authority (Kent Police; Planning; Food and Safety Team and Environmental Protection).
- 1.4.3 A summary of the Representations made by Responsible Authority is shown at **Annex 4**
- 1.4.4 A complete detailed set of the Representations by Responsible Authority received is shown at **Annex 5**
- 1.4.5 A map showing the location of The Fancy Goat and people who have made a Representation is shown at **Annex 6**
- 1.4.6 A Satellite map showing the location of The Fancy Goat and people who have made a Representation is shown at **Annex 7**
- 1.4.7 The applicant and other persons that have made representations have been invited to attend the hearing.
- 1.4.8 A summary of the Representations made by interested parties is shown at **Annex 8**
- 1.4.9 A complete detailed set of the Representations by interested parties received is shown at **Annex 9**

## **1.5 Policy Considerations**

- 1.5.1 The following provisions of the Secretary of State's Guidance apply to this application:
- Chapter 2 – The licensing objectives
  - Chapter 8 – Applications for premises licences
  - Chapter 9 – Determining applications
  - Chapter 10 – Conditions attached to Premises Licences
- 1.5.2 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.

## **1.6 Legal Implications - Determining the application**

1.6.1 Section 4 of the Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the following Licensing Objectives -

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

Having regard to the relevant representations, the Panel must take such of the steps set out at paragraph 1.7.1 below, as it considers appropriate, for the promotion of the licensing objectives.

1.6.2 Section 18(10) of the Licensing Act permits the authority to grant a premises licence so that it has effect subject to different conditions in respect of:-

- Different parts of the premises concerned
- Different licensable activities covered

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

1.6.4 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

## **1.7 Options Open to the Panel**

1.7.1 The steps an authority may take are –

1. Grant the licence subject to
  - i. such conditions as are consistent with the operating schedule accompanying the application modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and
  - ii. any conditions which must under section 19, 20 or 21 of the Licensing Act 2003 be included in the licence (the mandatory conditions).
2. Modify the conditions of the licence. (a condition is modified if any of them is altered or omitted or any new condition is added)
3. Exclude from the scope of the licence any of the licensable activities to which the application relates;

4. Refuse to specify a person in the licence as the premises supervisor;
5. Reject the application

## **1.8 Financial and Value for Money Considerations**

- 1.8.1 None unless there is a successful appeal against the Panel decision to the Magistrates' Court. This could result in costs being awarded against the Council.

## **1.9 Risk Assessment**

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

## **1.10 Equality Impact Assessment**

- 1.10.1 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.

## **1.11 Recommendations**

- 1.11.1 That Members determine the application carefully, considering the application along with any representations made and take such steps as the Panel consider appropriate for the promotion of the Licensing Objectives.

Background papers:

Licensing Act 2003  
Licensing Act Guidance  
Statement of Licensing Policy

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