

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

09 June 2016

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR A NEW PREMISES LICENCE FOR THE FARMHOUSE, 97 HIGH STREET, WEST MALLING, KENT, ME19 6NA

1.1 Executive Summary

1.1.1 The Licensing & 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 Farmhouse, 97 High Street, West Malling, Kent, ME19 6NA

1.1.2 This is a new application for the performance of live music; playing of recorded music; Provision of late night refreshment and supply of alcohol.

1.2 Background and Introduction

1.2.1 The application was validated on the 22 April 2016, with the 28 day consultation period running from the 22 April 2016 until the 20 May 2016.

1.2.2 A map showing the location of The Farmhouse and surrounding properties is shown at **Annex 1**

1.2.3 A Satellite map showing the location of The Farmhouse and surrounding properties is shown at **Annex 2**

1.2.4 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.

- 1.2.5 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.
- 1.2.6 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 Heritage Taverns LTD, Greenway Court Farmhouse, Greenway Court Road, Maidstone, Kent, ME 17 1QD.
- 1.3.2 The application which was received on 22 April 2016, is attached to this report as **Annex 3**
- 1.3.3 A copy of the new plan is shown at **Annex 4**
- 1.3.4 The application details are as follows:

Section e)	Performance of live music – Monday until Sunday from 08:00 hours until 24:00 hours (Midnight).
Section f)	Playing of recorded music – Monday until Sunday from 11:00 hours until 24:00 hours (Midnight).
Section g)	Performance of dance – Monday until Sunday from 11:00 hours until 24:00 hours.
Section i)	Late Night Refreshment – Monday until Sunday from 23:00 hours until 01:00 hours. Non Standard times – News Year's Eve – the end of permitted hours on NYE until the start of permitted hours on New Year's Day.
Section J)	Supply of alcohol – Monday until Sunday from 11:00 hours until 24:00 hours.

1.3.5 The Designated Premises Supervisor will be Rajmund Istvan Mezes.

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 one representation from interested parties, (Parish Council)

1.4.3 A copy of the Representation received is shown at **Annex 5**

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

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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1.12