

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

26 April 2017

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR A NEW PREMISES LICENCE FOR AMANO LTD , 47 SWAN STREET, WEST MALLING, KENT ME19 6JU

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 Amano Ltd, 47 Swan Street, West Malling, Kent ME19 6JU.

1.1.2 This is a new application for Late Night Refreshment and the Supply of Alcohol.

1.2 Background and Introduction

1.2.1 The application was validated on the 1 March 2017, with the 28 day consultation period running from the 2 March 2017 until the 30 March 2017.

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

1.2.3 A Satellite map showing the location of Amano Ltd 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 2014 and will remain in force until 2019. The Policy will be available at the hearing, 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 also be made available at the hearing for reference purposes.

1.3 The application

- 1.3.1 The applicant is Amano Ltd, 47 Swan Street, West Malling, Kent ME19 6JU.
- 1.3.2 The application which was received on 1 March 2017, is attached to this report as **Annex 3**
- 1.3.3 The application details are as follows:

Section 14)	Provision of late night refreshment (Indoors only) - Monday until Sunday 23:00 hours until 00:00 hours (Midnight).
Section 15)	Supply of alcohol (Both on and off sales) – Monday until Saturday 10:00 hours until 00:00 hours (Midnight). Sunday 10:00 hours until 23:00 hours Non Standard Timings New Year’s Eve – to permit the Sale of Alcohol to members of the public from close of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day

- 1.3.4 The Designated Premises Supervisor will be David Benavent.
- 1.3.5 The application states that the premises is to be operated as a hotel, with restaurant and café bar area. In relation to the licensing objective of the

prevention of public nuisance, the applicant's operating schedule states that *"the nature of the premises requires that the premises licence holder runs the premises in such a way as to avoid disturbance for its residents and guests. Because of the location of the premises, the nature of the operation and its general hours of operation no conditions are necessary to meet this objective."*

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 an interested party.
- 1.4.3 Representations received from statutory consultees:

Fire Safety	has made no comments
Trading Standards	has made no comments
Social Service	has made no comments
Police	has no objections
Environmental Health	has no objections
Health & Safety	has no objections

Planning

Made the following comment on 8 March 2017–

Further to the premises licence application, I can advise that the planning permission for the restaurant is TM/16/01629/FL which has condition 14 as follows and that appears to be incompatible with the hours requested for the premises licence.

The restaurant shall not be used or operated outside the hours of 9am to 11.30pm Mondays, Tuesdays, Wednesdays, 9am to Midnight, Thursdays, Fridays and Saturdays and 9am to 10.30pm on Sundays or Public and Bank Holidays. The last orders in the kitchen shall be 10pm Monday to Saturday.

Reason: To protect the aural environment of nearby dwellings.

- 1.4.4 One Representations has been received by an interested party and is shown at **Annex 4**
- 1.4.5 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.

In particular, Section 5 states that an applicant should demonstrate in their operating schedule that suitable and sufficient measures to prevent public nuisance have been identified and will be implemented. Paragraphs 5.1.5 and 5.1.6 require the applicant to demonstrate they have considered the relevant factors which may impact upon public nuisance, and the sorts of measures which should be considered.

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. Exclude from the scope of the licence any of the licensable activities to which the application relates;

3. 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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