

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

05 February 2018

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR A NEW PREMISES LICENCE FOR AFRICAN LODGE AND MARQUEE, KENTFIELD FARM, TOWER HILL OFFHAM, KENT ME19 5NH

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 African Lodge and Marquee, Kentfield Farm, Tower Hill, Offham, Kent ME19 5NH. This is a new application for Sale of alcohol, live music, Recorded music and late night refreshment.

1.2 Background and Introduction

1.2.1 The application was validated on the 21 December 2017, with the 28 day consultation period running from the 22 December 2017 until the 18 January 2018.

1.2.2 A map showing the location of the African Lodge and Marquee is shown at **Annex 1**.

1.2.3 A second map showing the proposed route (in red) to the premises is shown at **Annex 2**. The blue line indicates the route it is anticipated visitors will use.

1.2.4 At any stage, during the 28 day public consultation period, a responsible authority, or other person, 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 one or more of the four licensing objectives and, in the case of requests by other persons, 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 Mr Ian Barwick, Kentfield Farm, Tower Hill, Offham, Kent ME19 5NH
- 1.3.2 The application which was received on 21 December 2017, is attached to this report as **Annex 3** with a photograph of the African Lodge and Marquee.
- 1.3.3 The plan is shown at **Annex 4** and the Ordnance Survey Map is shown at **Annex 5**.
- 1.3.4 The application details are as follows:

Section E	<p>Performance of live music (indoors only) Monday until Sunday 23:00 hours until 24:00 hours.</p> <p><i>Not Licensable – a performance of live amplified music in on-licensed premises with an audience of no more than 500 people (Implemented from 6 April 2015)</i></p> <p><i>Between the hours of 08:00 hours and 23:00 hours</i></p>
Section F	<p>Playing of recorded music (indoors only) Monday until Sunday 23:00 hours until 24:00 hours.</p> <p><i>Not Licensable – a performance of live amplified music in on-licensed premises with an audience of no more than 500 people (Implemented from 6 April 2015)</i></p> <p><i>Between the hours of 08:00 hours and 23:00 hours</i></p>
Section I	<p>Provision of late night refreshment (indoors only)</p> <p>Monday until Sunday 23:00 hours until 24:00 hours.</p>

Section J	Supply of alcohol for consumption both on and off the premises - Monday until Sunday 11:00 hours until 24:00 hours.
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1.3.5 The Designated Premises Supervisor will be Mr Ian Barwick.

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 other person.

1.4.2 The Licensing Authority has, during the representation period received 57 representations from other persons are attached to this report as **Annex 6**

1.4.3 The Licensing Authority also received a letter of support for this application which is shown at **Annex 7**

1.4.4 Representations received from statutory consultees:

Fire Safety	No comments received
Trading Standards	No comments received
Social Service	No comments received
Police	Representation received, conditions and timings have been agreed with the applicant prior to this hearing. This is shown at Annex 8
Environmental Health	Representation received. This is shown at Annex 9
Health & Safety	No comments received
Planning	Representation received. This is shown at Annex 10

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

1.4.6 In response to the representations, the applicant has submitted the Noise Consultants report shown at **Annex 11** and also a letter outlining the intended use for the Premises shown at **Annex 12**.

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
Live Music Act 2012
Deregulation Act 2015
Licensing Act Guidance
Statement of Licensing Policy

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