

# TONBRIDGE & MALLING BOROUGH COUNCIL

## LICENSING & APPEALS COMMITTEE

17 May 2018

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

#### Part 1- Public

#### Delegated

#### **1 APPLICATION FOR THE VARIATION OF A PREMISES 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 the variation of a premises licence under section 34 of the Licensing Act 2003 for the premises called The Farmhouse, 97 High Street, West Malling, Kent. ME19 6NA. The application to vary the premises licence seeks to extend the terminal hour for the sale of alcohol by 30 minutes Monday to Thursday and to extend the terminal hour for the sale of alcohol by an hour on Friday, Saturdays, Sundays preceding a Bank Holiday and New Year's Eve.

##### **1.2 Background and Introduction**

- 1.2.1 The application was validated on the 03 April 2018, with the 28 day consultation period running from the 04 April 2018 until the 01 May 2018.
- 1.2.2 A map showing the location of The Farmhouse is shown at **Annex 1**.
- 1.2.3 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.

- 1.2.4 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.

- 1.2.5 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 Heritage Taverns LTD, Greenway Court Farmhouse, Greenway Court Road, Maidstone, Kent. ME 17 1QD. The application which was received on 3 April 2018 is attached to this report as **Annex 2**
- 1.3.2 The application details are as follows:

Section J	<b>Supply of alcohol for consumption both on and off the premises</b> - Monday to Thursday from 08:00 hours until 24:00 hours. Friday, Saturday, Sundays preceding a Bank Holiday and New Year's Eve from 08:00 hours until 00:30 hours.
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- 1.3.3 The premises is currently licensed, a copy of the current premises licence and conditions are attached to this report as **Annex 3**

### 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 8 representations from other persons which are attached to this report as **Annex 4**
- 1.4.3 Responses received from statutory consultees:

Fire Safety	No comments received
Trading Standards	No comments received
Social Service	No comments received

Police	No objections
Environmental Health	No objections
Health & Safety	No comments received
Public Health	No comments received
Planning	No comments received

- 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 detail other mechanisms to deal with potential problems.

Sections 2 – 6 – These sections set out the four licensing objectives and identify matters 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 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 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.

1.6.3 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's 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 considers appropriate for the promotion of the Licensing Objectives.

Background papers:

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Licensing Act 2003

Live Music Act 2012

Deregulation Act 2015

Licensing Act Guidance

Statement of Licensing Policy

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