

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

12 July 2019

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR THE VARIATION OF A PREMISES LICENCE AT DESH, 68 – 70 HIGH STREET, WEST MALLING, KENT ME196LU

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 DESH, 68-70 High Street, West Malling, Kent ME19 6LU. The application seeks to remove a restaurant condition preventing the sale of alcohol to people who are not eating in the restaurant.

1.2 Background and Introduction

1.2.1 The application was validated on the 19 May 2019, with the 28 day consultation period running from the 20 May 2019 until 17 June 2019, however the applicant then asked for these dates to be amended to allow sufficient time for the newspaper advertising to be sourced. The 28 day consultation then ran from 26 May 2019 until 22 June 2019.

1.2.2 A map showing the location of the DESH 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 2019 and will remain in force until 2024. 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 Mr Sheikh Alam, 4 Teston Road, Teston, Maidstone, Kent ME18 5AL. A copy of the application can be seen at **ANNEX 2**.

- 1.3.2 The current licensable activities are as follows:

Sale of Alcohol	Monday to Saturday	10:00 – 00:00 (Midnight)
	Sunday	12:00 – 23:30
	Christmas Day	12:00 – 22:30
Recorded Music	Monday to Saturday	10:00 – 00:00 (Midnight)
	Sunday	12:00 – 23:30
	Christmas Day	12:00 – 22:30

- 1.3.3 A copy of the current Premises Licence can be seen at **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 one representation from West Malling Parish Council which is attached to this report as **ANNEX 4**.

1.4.3 Responses received from statutory consultees:

Fire Safety	No objections
Trading Standards	No comments received
Social Service	No comments received
Police	Conditions Received and agreed by Applicant – See Annex 5
Environmental Health	No comments received
Health & Safety	No comments received
Public Health	No comments received
Planning	No objections

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 paragraphs of the Councils' Statement of Licensing Policy apply to this application:

Section 3 – Licensing Authority general policy considerations

Section 4 – Responsible Authorities and other persons

Sections 8 – In making decisions in respect to new premises licences.

Sections 17 – Licence conditions - appropriate and proportionate in order to promote the licensing objectives at that premises

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 –

1.7.2 (a) to modify the conditions of the licence;

(b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

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

1.11 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.

1.12 Recommendations

1.12.1 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:

Licensing Act 2003
Live Music Act 2012
Deregulation Act 2015
Licensing Act Guidance
Statement of Licensing Policy

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