

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

01 July 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR A NEW PREMISES LICENCE FOR “WHERE MEMORIES MEET”, 188 TONBRIDGE ROAD WATERINGBURY KENT ME18 5NS

1.1 Introduction

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 premises called “Where Memories Meet” of 188 Tonbridge Road, Wateringbury, Kent, ME18 5NS.

1.1.2 This is a new application for the provision of plays, films, live music, recorded music, performance of dance, provision of anything of a similar description to live music, recorded music or performance of dance and supply of alcohol for consumption both on and off the premises. The application was validated on the 29 April 2014, with the 28 day consultation period running from the 29 April 2014 until the 26 May 2014. All Responsible Authorities received a copy of application.

1.1.3 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.

1.1.4 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 January

2014 and will remain in force for five years. The Policy will be available at the meeting, for reference purposes.

- 1.1.5 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 be made available at the meeting for reference purposes (Revised Guidance – June 2014).

1.2 The Application

- 1.2.1 The applicant is KKL & Co Ltd trading as “Where Memories Meet” of 188 Tonbridge Road, Watlington, Kent, ME18 5NS
- 1.2.2 The application was received on 28 April 2014. A copy of the application is shown as **Annex 1**.
- 1.2.3 The application details were as follows:

Section 6	Plays – (Indoors) Monday to Sunday – 12:00 until 23:00
Section 7	Films – (Indoors) Monday to Sunday – 07:00 until 23:00
Section 10	Live Music – (Indoors) Monday to Sunday – 07:00 until 23:00 Classical, Jazz or operative live performances held once or twice a month.
Section 11	Recorded Music – (Indoors) Monday to Sunday – 07:00 until 23:00
Section 12	Performance of dance – (Indoors) Monday to Sunday – 07:00 until 23:00
Section 13	Provision of anything of a similar description to live music, recorded music or performance of dance – (Indoors) Monday to Sunday – 07:00 until 23:00 Comedy Acts, Cabaret, Magic etc

Section 15	Supply of alcohol (Both on and off sales) To allow the supply of alcohol Monday to Sunday from 07:00 hours until 23:30 hours.
Section 17	Opening hours Monday to Sunday from 07:00 hours until 23:30 hours

1.2.4 The Designated Premises Supervisor will be Mr Joseph Lefournour.

1.3 Reasons for referral

1.3.1 The Licensing Authority must under the Act refer any application for hearing to the Licensing Sub- Committee if relevant representations are made by a responsible authority or an interested party.

1.3.2 The Licensing Authority has received two valid representations from interested parties within the twenty eight day notice period.

1.3.3 The Representations from interested parties are shown at **Annex 2**

1.3.4 Members are reminded that representations are only relevant if they relate to one or more of the 4 licensing objectives (i) Prevention of crime and disorder, (ii) Public safety, (iii) Prevention of public nuisance and (iv) Protection of children from harm.

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

1.3.6 The applicant has agreed with the Environmental Health not to have more than 3 events (Plays, films, cabaret shows, magic shows, wine tasting, etc.) per week.

1.3.7 The applicant has also tried to mediate through Licensing Services with the two people who made representations. However this has been unsuccessful in reaching an agreement in regards to the hours and licensable activities.

1.4 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	has no objections

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 The Licensing Act 2003 at section 4(1) requires the Licensing Authority to carry out its functions with a view to promoting the Licensing Objectives which section 4(2) sets out as:-

- 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 the Licensing Policy and any guidance issued by the Secretary of State under section 182.
- 1.6.4 Whilst the applicant, responsible authorities or persons making representations all have a right of appeal to the Magistrates Court dependant on the decision of the Sub Committee, the decision made takes immediate effect.
- 1.6.5 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 Sub – Committee

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 necessary 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

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 S.17 Crime and Disorder Act 1998

1.10.1 There are obvious links to community safety and the perception of crime and disorder if licensed premises supplying alcohol are not adequately enforced.

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:

Nil

contact:

Mohammad Bauluck 6027

Anthony Garnett 6151

Adrian Stanfield

Director of Central Services and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The Panel decision will be made in accordance with legislation and licensing objectives
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.