

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

02 December 2020

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Delegated

1 APPLICATION FOR A REVIEW OF A PREMISES LICENCE AT THE HUMPHREY BEAN, 94 HIGH STREET, TONBRIDGE, TN9 1AP

1.1 Executive Summary

1.1.1 The Licensing & Appeals Committee sitting as a Panel is asked to consider an application for the review of a premises licence made under section 51 of the Licensing Act 2003 in relation to the premises known as The Humphrey Bean, 94 High Street, Tonbridge, TN9 1AP.

1.2 Background and Introduction

1.2.1 The Humphrey Bean has a premises licence under the provisions of the Licensing Act 2003, which authorises the following activities -

Licensable Activity	Days and Times
Sale of Alcohol	Sunday – Thursday 09:00 – 00:30 Friday & Saturday 09:00 – 01:00
Recorded Music	Sunday – Thursday 07:00 – 01:30 Friday & Saturday 07:00 – 02:00
Late Night Refreshment	Sunday – Thursday 23:00 – 00:30 Friday & Saturday 23:00 – 01:00

Non-standard timings for licensable activities:

For sale of alcohol and late night refreshment on Christmas Eve and Boxing Day from 09:00 hours until 02.00 hours. For the Thursday preceding Good Friday and for each Sunday preceding a Bank Holiday Monday from 09:00 hours until 01:00 hours. On the following days: Burns Night - 25 January, Australia Day - 26 January, St David's Day - 1 March, St Patrick's Day - 17 March, St George's Day - 23 April, St Andrew's Day - 30 November the terminal time is extended by one hour.

On New Year's Eve & New Year's Day the above may continue between the standard finish time of the authorised period starting on New Year's Eve and the standard start time on New Year's Day.

- 1.2.2 A copy of the current premises licence is shown at **Annex 1**.
- 1.2.3 An application for a review of the premises licence for The Humphrey Bean was received from Mr Frank Adade on 14th October 2020. This review application can be seen at **Annex 2**.
- 1.2.4 The Licensing Authority placed pale blue A4 notices at the premises for a period of 28 days running from the 20th October 2020 until the 16th November 2020. In addition a notice was placed on the Council's website.
- 1.2.5 The time period between the 14th October 2020 and the 20th October was used to try and mediate between the applicant and the premises holder. This was unsuccessful, so the Review consultation period started.
- 1.2.6 At any stage, during the 28 day public consultation period, a responsible authority, or other 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 application for review are relevant to the promotion of the licensing objectives and, in the case of applications by other parties, are not vexatious, frivolous or repetitive, a hearing must be held to review the licence.

- 1.2.7 The applicant has made the following complaints to the Licensing Services about his concerns that the premises were serving drunk customers, and the fighting taking place outside of the premises. The following complaints have been made:
- 1) 12 October 2020 – Email with two videos
 - 2) 24 October 2020 – Email with two videos

1.3 The Application

- 1.3.1 The applicant is Mr Adade Frank, 88 High Street, Tonbridge, Kent, TN9 1AP
- 1.3.2 The grounds for the review are based on the following licensing objectives:
- The prevention of crime and disorder
 - Promotion of public safety
 - The prevention of public nuisance

1.3.3 Representations received from statutory consultees:

Fire Safety	Comments received. This is shown at Annex 3
Trading Standards	No comments received
Social Service	No comments received
Police	No comments received
Environmental Health	Comments received. This is shown at Annex 3
Health & Safety	Comments received. This is shown at Annex 3
Planning	Comments received. This is shown at Annex 3

1.3.4 During the 28 day consultation period, the licensing department have received two representations.

Letters Supporting Review Application	Letters supporting the premises
1	1
These are shown at Annex 4	These are shown at Annex 5

1.4 Reasons for referral

1.4.1 The Licensing Authority must, where an application under section 51 of the Licensing Act 2003, has been received hold a hearing to consider the application and any relevant representations that may have been received. Such applications are heard by the Council's Licensing Sub- Committee.

1.4.2 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 appear to be of particular relevance to this application:

Chapter 2 – The licensing objectives

Chapter 11 – Reviews

Chapter 9 – Determining applications

Chapter 10 – Conditions attached to premises licence

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

Sections 2 – This section sets out the Licensing objectives.

Sections 14 – This section set out the review process for club premises certificates.

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

1.6.2 Section 4(3) of the Licensing Act also requires the Licensing Authority to have regard to its published statement of Licensing Policy and any guidance issued by the Secretary of State under section 182.

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1.6.4 A determination of an application does not have effect until the time allowed for appeal has elapsed, or where an appeal is made, until the appeal has been disposed of (section 88 (11)).

1.6.5 The Licensing Act 2003 section 181 and Schedule 5 makes provision for appeals to be made by the applicant, those making representations and the premises licence holder, against decisions of the Licensing Authority to the Magistrates' Court.

1.7 Options Open to the Panel

1.7.1 Having regard to the application and any relevant representations and the letters of support received, the Licensing Authority must take the steps mentioned below as it considers appropriate for the promotion of the licensing objectives (section 52 of the Licensing Act). The steps are

- (a) To modify the conditions of the licence*;

- (b) To exclude a licensable activity from the scope of the licence;
- (c) To remove the designated premises supervisor;
- (d) To suspend the licence for a period not exceeding 3 months;
- (e) To revoke the licence

*Modification of the conditions of the premises licence can include the alteration or omission of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place

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 and letters of support made and take such steps as the Panel consider appropriate for the promotion of the Licensing Objectives.

Background papers:

contact: Anthony Garnett

Licensing legislation

TMBC Licensing Policy

Adrian Stanfield

Director of Central Services and Deputy Chief Executive