

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

29 August 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Delegated

1 APPLICATION FOR A NEW PREMISES LICENCE FOR DOUBLEGOLD ENTERPRISES LTD, OLD FLORENCE PLACE, 152 - 154 TONBRIDGE ROAD, HILDENBOROUGH, TONBRIDGE, KENT, TN11 9HW

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 at Old Florence Place, 152 - 154 Tonbridge Road, Hildenborough, Tonbridge, Kent, TN11 9HW.

1.1.2 This is a new application for the provision of films, recorded music and supply of alcohol for consumption on the premises. The application was validated on the 18 July 2014, with the original 28 day consultation period running from the 21 July 2014 until the 17 August 2014. The consultation period was extended a further 7 days until the 22 August 2014 due to the late advertising of the application. All Responsible Authorities received a copy of application.

1.1.3 At any stage, during the 28 day public consultation period, a responsible authority, and other persons, 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 a person who is not a responsible authority, 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 Doublegold Enterprises Ltd of Old Florence Place, 152 - 154 Tonbridge Road, Hildenborough, Tonbridge, Kent, TN11 9HW.
- 1.2.2 The application was received on 18 July 2014. A copy of the application is shown as **Annex 1**.
- 1.2.3 The application details are as follows:

Section B	Films – (Indoors) Monday to Saturday – 10:00 hours until 21:00 hours Sunday – 10:00 hours until 16:00 hours
Section F	Recorded Music – (Indoors) Monday to Saturday – 10:00 hours until 21:00 hours Sunday – 10:00 hours until 16:00 hours
Section J	Supply of alcohol (On sales) Monday to Saturday – 10:00 hours until 21:00 hours Sunday – 10:00 hours until 16:00 hours
Section L	Opening hours Monday to Saturday – 10:00 hours until 21:00 hours Sunday – 10:00 hours until 16:00 hours

The Designated Premises Supervisor will be Tony Michael French

1.3 Reasons for referral

- 1.3.1 The Licensing Authority must under the Act refer any application for hearing to the Licensing Panel if relevant representations are made by a responsible authority or other person.
- 1.3.2 The Licensing Authority has received two valid representations within the twenty eight day notice period (as of the 18 August 2014).
- 1.3.3 The Representations 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.

1.4 Representations received from statutory consultees (As of the 18 August 2014):

Fire Safety	has made no comments
Trading Standards	has made no comments
Social Service	has made no comments
Police	has made objections
Environmental Health	has made no comments
Health & Safety	has made no comments
Planning	has made no comments

- 1.4.1 Kent Police made a valid representation on the 13 August 2014 on the grounds of Prevention of crime and disorder and Protection of Children from harm. A copy of the representation is shown in **Annex 3**
- 1.4.2 Kent Police have proposed the following conditions which the applicant has accepted. As a result Kent Police have withdrawn their representation.

- 1) CCTV to be fitted to a standard agreed by the Police that complies with the CCTV code of practice (Latest Edition), produced by the Information Commissioner's Office.
- 2) The CCTV system shall be maintained and serviced on a regular basis. Records shall be kept to that effect.
- 3) CCTV shall be operational at all times that the premises are trading.
- 4) The Police or local authority will be allowed to take a recording of the CCTV images by an appropriate format within 48hrs of the initial request being made by either the Police or Local Authority.
- 5) All staff employed in the sale or supply of alcohol will be trained in their responsibilities under the Licensing Act 2003. Such training will be fully recorded.
- 6) A Challenge 25 Scheme will be adopted at the premises, all staff involved in the sale or supply of alcohol will be trained in the scheme and such training will be recorded. These records will be available to the police or other responsible authority upon request.
- 7) A refusal recording system will be in operation at the premises, all staff involved in the sale of alcohol will be fully trained in the system and it will record the following:
 - I. Date & Time of refusal
 - II. Item refused
 - III. Name or description of person refused.
 - IV. Reason for refusal
 - V. Name of the staff member making the refusal
- 8) The refusal system will be available for inspection by any Police Officer, Local Authority Licensing Officer or Trading Standards Officer at any reasonable time.

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

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 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. Refuse to specify a person in the licence as the premises supervisor;
4. 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.

S.17 Crime and Disorder Act 1998

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

1.10 Recommendations

1.10.1 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:

Anthony Garnett

Mohammad Bauluck

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 relevant legislation and the statutory 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.