

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**LICENSING & APPEALS COMMITTEE**

**13 July 2021**

**Report of the Director of Central Services and Deputy Chief Executive**

**Part 1- Public**

**Delegated**

**1 APPLICATION FOR THE VARIATION OF A CLUB PREMISES CERTIFICATE FOR AYLESFORD VILLAGE CLUB, 57 ROCHESTER ROAD, AYLESFORD, KENT ME20 7BS**

**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 club premises certificate under section 84 of the Licensing Act 2003 for the club called Aylesford Village Club, 57 Rochester Road, Aylesford, Kent ME20 7BS.

1.1.2 The application to vary the club premises certificate seeks to –

- Open up an outside area for the consumption of alcohol. The area will be 9M X 12M (108 Msq) directly adjoining the rear of the club. This will allow for socialising in an outside environment. This will be accessed via an existing door at the rear of the Club hall.
- Have a relaxation of point 2 within Annex 3. This will allow for increased ventilation and fresh air circulation within the Club in line with the Governments advice during the Covid 19 pandemic.

For ease, the condition referred to above states (Annex 3, Condition 2) - ***All doors and windows to be kept closed at all times except for access and egress.***

**1.2 Background and Introduction**

1.2.1 The application was validated on the 20 May 2021, with the 28 day consultation period running from the 21 May 2021 until 17 June 2021.

1.2.2 A map showing the location of Aylesford Village Club is shown at **Annex 1**.

1.2.3 Aylesford Village Club was granted a club premises certificate in November 2005 under the Licensing Act 2003.

- 1.2.4 In August 2019, the club premises certificate was called to Review by local residents on the grounds of Prevention of crime and disorder, Prevention of public nuisance, Public safety and Protection of children from harm.
- 1.2.5 Complaints associated with the Review included – Burning of plastic and chipboard, noise complaints, drinking on the pavement, drink driving by patrons, intimidation from staff and drug use.
- 1.2.6 The Review Hearing was held on 20<sup>th</sup> September 2019 and the decision was as follows –
- The Club Premises Licence was suspended for one calendar month. During this period of suspension, the club committee, trustees and staff had to:
    1. Fully understand the conditions of the certificate and to have training and plan how they will comply with those conditions.
    2. Review the rules and regulations of the Aylesford Village Club to ensure they fully comply with the licensing legislation and to plan how these rules will be fully complied with by both members and guests.
  - Also, the panel decided to exclude from the certificate the sale of alcohol for consumption off the premises. The panel pointed out to the management of the Aylesford Village Club that the consumption of alcohol purchased on the premises and consumed outside of the licensed premises in breach of the mandatory conditions is an offence under the Licensing Act 2003.
  - In addition, the panel imposed the following conditions:
    1. Supply the Licensing team of Tonbridge and Malling Borough Council with the revised Aylesford Village Club rules before the end of the suspension, and show evidence of effective staff training having taken place
    2. All doors and windows to be kept closed at all times except for access and egress
    3. Implement the Challenge 25 policy and keep a refusals log
  - Finally with regard to the burning of refuse the panel advised with regret that this issue was not within its remit but understood residents' concerns. The panel suggested that residents should continue to notify the Environmental Health Department with any concerns regarding noise nuisance and any other public nuisance. The Aylesford Village Club should also liaise with the Council about the most appropriate way to dispose of waste.
- 1.2.7 A copy of the Notice of Determination from this Review Hearing can be seen at **Annex 2**.

1.2.8 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.

1.2.9 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.

1.2.10 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 Aylesford Village Club, 57 Rochester Road, Aylesford, Kent ME20 7BS. The application which was received on 20 May 2021 is attached to this report as **Annex 3**.

1.3.2 The application details are as follows:

1.3.3 The addition of an outside area to the rear of the premises for the consumption of alcohol Monday to Sunday 09:00 – 00:00 (for both on and off the premises)

1.3.4 The removal of Condition two, Annex three which was added following a review hearing in September 2019. The condition states - ***All doors and windows to be kept closed at all times except for access and egress.***

1.3.5 A copy of the current licence and conditions is shown at **Annex 4**.

## 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 five representations from other persons which are attached to this report as **Annex 5**. Within these representations are a number of photographs taken which show the club door being left open and people smoking outside.
- 1.4.3 The Licensing Authority also received two representations from statutory consultees, these are shown at **Annex 6 and Annex 7**.
- 1.4.4 Responses received from statutory consultees:

Fire Safety	No Comments
Trading Standards	No Response
Social Service	No Response
Police	Representation Received – <b>Annex 6</b>
Environmental Health (EH)	EP – Representation Received - <b>Annex 7</b> Food Safety – No Comments
Health & Safety	No Response
Public Health	No Response
Planning	No Planning Restrictions

- 1.4.5 All those who have made a representation have been invited to attend this 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:

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**

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

1.6.2 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.

1.6.3 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.

1.6.4 An application for a variation of a premises licence may be made under s.84 of the Act may be made by the holder of the licence. An application made under s.84 of the Act must be determined in accordance with s. 85 of the Act.

1.6.5 Where relevant representations are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in para. 1.7 (if any) as it considers appropriate for the promotion of the licensing objectives.

1.6.6 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 are—

- (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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