

# TONBRIDGE & MALLING BOROUGH COUNCIL

## LICENSING & APPEALS COMMITTEE

06 August 2021

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

#### Part 1- Public

#### Delegated

### **1 APPLICATION FOR A NEW PREMISES LICENCE FOR SWAN EVENT, WINGS OF THE MORNING FIELD, WROTHAM HILL, WROTHAM, KENT. TN15 7NS**

#### **1.1 Executive Summary**

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 the premises called Swan Event, Wings of the Morning field, Wrotham Hill, Wrotham, Kent. TN15 7NS. The application has been submitted by The Swan Brasserie Ltd, 35 Swan Street, West Malling, Kent, ME19 6JU.

1.1.2 This is a new application for provision of, Live music, Recorded music, and Supply of alcohol.

1.1.3 This application has resulted in thirty-seven Representations being received by the Licensing Authority from Responsible Authorities, Parish Councils, Local businesses, and Residents.

#### **1.2 Background and Introduction**

1.2.1 The application was validated on the 3 June 2021, with the 28-day consultation period running until the 5 July 2021.

1.2.2 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.

- 1.2.3 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.
- 1.2.4 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 Darryl Healy, The Swan Brasserie Ltd, 35 Swan Street, West Malling, Kent, ME19 6JU
- 1.3.2 This application is for a one event taking place from 30 August 2021 until 31 August 2021.
- 1.3.3 The applicant has applied to erect a 15mtr x 45mtr marquee as well as a catering tent and large bar area. These will be located at the furthest point in the field with the speakers facing out towards the M20.
- 1.3.4 A copy of the application form can be seen at **Annex 1**
- 1.3.5 A copy of the Site Plan is shown at **Annex 2**
- 1.3.6 The application details are as follows:

Section 10 of 21	<b>Provision of Live Music - (indoors and outdoors)</b>  Monday 12:00 hours until 22:00 hours
Section 11 of 21	<b>Provision of Recorded Music - (indoors and outdoors)</b>  Monday 12:00 hours until 22:00 hours

Section 15 of 21	<b>Supply of alcohol (for consumption on the premises)</b> Monday 12:00 hours until 22:00 hours
---------------------	--

1.3.7 The Designated Premises Supervisor will be Mr Darryl Healy

#### **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 an “other” party.

1.4.2 The Licensing Authority has, during the representation period, received ninety-eight representations from other persons objecting to the application.

1.4.3 A full set of redacted representations are shown at **Annex 3 and Annex 4**

#### **Representations from statutory consultees**

1.4.4 Representations received from statutory consultees:

Fire Safety	No Comments Received
Trading Standards	No Comments Received
Social Service	No Comments Received
Police	No Comments Received
<b>Environmental Health TMBC</b>	<b>Representation received.</b>
Health & Safety	No Comments Received
Planning	No Comments Received

1.4.5 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 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 - 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

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 Licensing Policy and any guidance issued by the Secretary of State under section 182.

1.6.4 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. 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.

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

Background papers:  
 Licensing Act 2003  
 Live Music Act 2012  
 Deregulation Act 2015  
 Licensing Act Guidance  
 Tonbridge & Malling Statement of Licensing Policy

contact: Anthony Garnett

Adrian Stanfield  
Director of Central Services and Deputy Chief Executive