

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

23 August 2023

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Delegated

1 APPLICATION FOR REVIEW OF A PREMISES AT THE SWAN, 35 SWAN STREET, WEST MALLING, KENT, ME19 6JU

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 Swan, 35 Swan Street, West Malling, Kent, ME19 6JU.

1.1.2 This Review follows a visit from the Home Office Immigration to the premises on the 16 March 2023.

Two workers were identified as immigration offenders and were arrested. One was detained pending his removal from the United Kingdom. The other arrested worker was found to have an outstanding asylum claim and was walked off the premises as he had no right to work. A further two workers, who were not present on the evening, were identified from staff records as also being immigration offenders.

A copy of a redacted statements from the Immigration Officer are show at **Annex 1A and Annex 1B** (unredacted copy of statements will be available for Licensing Panel and Legal Representatives).

1.2 Background and Introduction

The Swan has a premises licence under the provisions of the Licensing Act 2003. The current premises licence is held by Swan Brasserie Ltd, which authorises the following activities -

Licensable Activity	Days and Times
Sale of Alcohol	Sunday – 10:00 hours until 23:30 hours Monday – Thursday - 10:00 hours until Midnight Friday – Saturday - 10:00 hours until 00:30 hours Good Friday - 10:00 hours until 00:30 hours New Years Eve - 10:00 hours until 02:30 hours Christmas Day - 10:00 hours until 23:30 hours
Live Music	Friday – Saturday - 12:00 hours until Midnight New Years Eve - 10:00 hours until 02:00 hours

Recorded Music	Monday – Thursday - 12:00 hours until 23:00 hours Friday – Saturday - 12:00 hours until Midnight New Years Eve - 10:00 hours until 02:00 hours
Late Night Refreshment	Sunday – 23:00 hours until 23:30 hours Monday – Thursday - 23:00 hours until Midnight Friday – Saturday - 23:00 hours until 00:30 hours New Years Eve - 10:00 hours until 02:30 hours

- 1.2.1 A copy of the current premises licence is shown at **Annex 2**.
- 1.2.2 An application for a review of the premises licence for The Swan was received from Mr Andrew Tutton on 23 June 2023. This review application can be seen at **Annex 3**.
- 1.2.3 The Licensing Authority placed pale blue A4 notices at the premises for a period of 28 days running from the 21 June 2023 until the 19 July 2023. In addition, a notice was placed on the Council’s Notice board and details publish on the website.
- 1.2.4 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.

1.3 The Application

- 1.3.1 The application was made by Andrew Tutton, Immigration Officer, Southeast Immigration Compliance & Enforcement (ICE) Team, Immigration Enforcement
- 1.3.2 The grounds for the review are based on the following licensing objectives:
- The prevention of crime and disorder

1.3.3 Representations received from statutory consultees:

Fire Safety	Comments received. This is shown at Annex 4
Trading Standards	No comments received
Social Service	No comments received
Police	No comments received
Environmental Health	Comments received. This is shown at Annex 4
Health & Safety	No comments received
Planning	No comments received

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

Letters Supporting Review Application	Letters supporting the premises
2	12
These are shown at Annex 5	These are shown at Annex 6

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 9 – Determining applications

Chapter 10 – Conditions attached to premises licence

Chapter 11 – Reviews

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.

Section 14 – Review of a premises or club premises certificate

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 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.

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 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. using the options outlined in section 1.7.1 of this report.

Background papers:
Licensing legislation
Secretary of State's Guidance
TMBC Licensing Policy

contact:
Anthony Garnett
Katie Shipman

Adrian Stanfield
Director of Central Services and Deputy Chief Executive