

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: 22nd June 2018 at 14:00
Report Author: Christina Hills – Licensing Officer
Subject: Monks Hills Farm Showground, Monkshill Road, Faversham, Kent ME13 9EH

Purpose and summary of report:

To consider an application, to which representations have been made, for a new Premises Licence application under the Licensing Act 2003 – application reference number FAV/SWALE/189/0689

Recommendations:

The Committee is asked to determine the application and decide whether to grant a licence. Members asked to consider the application on its merits.

Background papers: The Licensing Act 2003
DCMS Guidance Documents issued under Section 182 of the Licensing Act 2003 as amended
Swale Borough Council Statement of Licensing Policy

Contacts: Christina Hills, Licensing Officer
Email: chrishills@swale.gov.uk
Telephone: 01795 417737

The Licensing Act 2003 Act 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 a decision on applications made under the Act. The Policy will be available at the meeting for reference purposes.

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. This would be a key consideration for the courts should departure from the Guidance result in a determination which gives rise to an appeal or judicial review. Should the need arise the Guidance will be available at the meeting for reference purposes.

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. A copy of the Council's approved procedure for hearings of the Panel in relation to an application, along with a copy of the Hearings Regulations has been circulated to all parties prior to the meeting.

Report Title: Monks Hill Farm Showground, Monkshill Road, Faversham, Kent ME13 9EH

Application for: A Premises Licence to be granted under the Licensing Act 2003

Purpose of the report:

The report advises Members of an application for a Premises Licence to be granted under the Licensing Act 2003, made by Mr. Dave Whiteoak, in respect of land and premises at Monks Hill Farm Showground, Monkshill Road, Faversham (Appendices A,B,C, and D) in respect of which sixteen(16) representations (Appendix E) have been received from members of the public, these representations also include 2 received from Graveney with Goodnestone Parish Council and Hernhill Parish Council.

Environmental Health have objected to the application (Appendix F) but if the Panel are minded to grant the application they have requested that additional conditions are imposed on the granted licence which are also detailed in the appendix.

The Police Licensing Team have objected to the application (Appendix G) but if the Panel are minded to grant the application they have requested that additional conditions are imposed on the granted licence which are also detailed in the appendix.

1. Issues to be decided

Members are asked to determine whether to:

- (i) grant a licence subject to conditions consistent with the Operating Schedule modified to such an extent as considered appropriate for the promotion of the licensing objectives and any mandatory conditions,
- (ii) grant a licence but excluding any of the licensable activities applied for,
- (iii) grant a licence but refusing to specify a premises supervisor,
- (iv) reject the application.

2. Background

The Licensing Act requires the Council as licensing authority to carry out its various licensing functions so as to promote the following four licensing objectives:

- (i) the prevention of crime and disorder;
- (ii) the protection of public safety;
- (iii) the prevention of public nuisance;
- (iv) the protection of children from harm

3. The Application

- 3.1 On 3rd April 2018 an application was fully complete, from Mr Dave Whiteoak for the grant of a Premises Licence under section17 of the Licensing Act 2003 in respect of land and premises at Monks Hill Farm Showground, Monkshill Road, Faversham. Kent ME13 9EH. The application is for the provisions of regulated entertainment and the supply of alcohol. The proposed hours of the licensable activities are as follows:

Provision of Films

Thursday – Friday 18:00 – 00:00
Saturday – Sunday 12:00 – 00:00

Provision of Recorded Music and Provision of Performance of Dance

Friday 15:00 – 00:00
Saturday 12:00 – 00:00
Sunday 12:00 – 23:00

Late Night Refreshment

Monday – Saturday 12:00 – 00:00

Supply of Alcohol

Monday – Saturday 12:00 – 00:00
Sunday 12:00 – 23:00

Opening hours

Monday – Saturday 12:00 – 00:00
Sunday 12:00 – 23:00

- 3.2 A copy of the application, which includes the operating schedule that details the steps the applicant intends to take to address the licensing objectives is shown at Appendix A.
- 3.3 The applicant also submitted an Information Pack, a Venue Safety Management Plan and a Health and Safety Policy in support of his application and these are shown as Appendices B, C and D.
- 3.4 The application was correctly advertised in the local press (Kent Messenger 16 April 2018). With regards to the blue notice that is required by law to be posted at the premises and, in the case of land, to be posted every 50 metres along the perimeter of the site that abuts a public highway. When licensing officers visited to confirm that they had been correctly posted they were not satisfied that this requirement had been correctly adhered to and, as a consequence the 28 day consultation period was re-started. Further visits to the premises by licensing officers confirmed that the blue notice had been correctly displayed for the whole of the consultation period that ended on 24th May 2018.

- 3.5 The proposed Designated Premises Supervisor has not been named to date.

3.6 Representations

3.6.1 Representations from responsible authorities:

- Kent and Medway Fire & Rescue Service – No representations
- Kent County Council Trading Standards – No representations
- Kent County Council Services Children and Families – No representations

- Kent County Council Public Health – No representations
- Environmental Health – Object to the application but if the Sub-Committee is minded to grant a Premises Licence would request that additional conditions be imposed on the Licence. The grounds for the objection and the possible additional conditions are shown at Appendix F.
- Kent Police – Object to the application but if the Sub-Committee is minded to grant a Premises Licence would request that additional conditions be imposed on the Licence. The grounds for the objection and the possible additional conditions are shown at Appendix G.

3.6.2 There have been (16) representations from members of the public. These representations include 2 received from Graveney with Goodnestone Parish Council and Hernhill Parish Council. These are shown at Appendix E.

Responsible Authority / Other person	Licensing Objective	Associated Documents	Appendix
Members of the Public	Public Nuisance Public Safety Crime and Disorder Protection of Children from Harm	(16) letters	E

4. Policy Considerations

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

The following paragraphs of the Council's Statement of Licensing Policy apply to this application:

Sections 2.1 to 2.4 – These sections set out the Council's approach with regard to licensing and details other mechanisms to deal with potential problems.

Section 1.1 to 1.4 – These sections set out the four licensing objectives and identifies matters that may be relevant to the promotion of each licensing objective.

5. Determining the application – Options of the Panel

The Panel must, when reaching a decision on the outcome of the application, take into account the licensing objectives. Having had proper regard to the matters above the Panel may:

- (i) Grant the licence application as applied for;
- (ii) Modify the activities or conditions proposed or add any new conditions;

- (iii) Refuse to specify a person in the licence as designated premises supervisor
- (iv) Reject the whole or part of the application

5.1 Members of the Licensing Act 2003 – Licensing Sub – Committee are reminded of their duty under the Section 17 of the Crime and Disorder Act 1989 to consider the crime and disorder implications of their decisions and the Licensing Authority's responsibility to co-operate in the reduction of crime and disorder in the Borough.

Section 17 of the Crime and Disorder Act 1998 states:

"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that is reasonably can to prevent crime and disorder in its area".

6. Implications Assessment

The decision should be made with regard to the Secretary of the State's guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the Policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

7. Human Rights

While all Convention Rights must be considered, those which are of particular relevance to the application are:

- Article 8 – Right to respect for private and family life.
- Article 1 of the First Protocol – Protection of Property
- Article 6(1) – Right to a fair hearing.
- Article 10 – Freedom of Expression

8. Recommendations

Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

9. List of Appendices

Appendix A – Application form and plan of premises
 Appendix B – Information Pack submitted by applicant
 Appendix C – Venue Safety Management Plan submitted by applicant
 Appendix D – Health and Safety Policy submitted by applicant
 Appendix E – Representations
 Appendix F - Objection by Environmental Health
 Appendix G – Objection from Kent Police Licensing
 Appendix H - Order of proceedings

10. Appeals

The applicant or any other person (objector) may appeal the Licensing Act 2003 Sub

Committee's decision within 21 days beginning with the day on which the Appellant is notified. All/any appeals must be lodged with the Magistrates' Court. Parties should be aware that they MAY incur an Adverse Cost Order should they bring an appeal