

## Swale Borough Council

**Report to:** Licensing Sub – Committee (Under the Licensing Act 2003)  
**Date:** Thursday 28<sup>th</sup> June 2018 at 10:00am  
**Report Author:** Mohammad Bauluck – Licensing Officer  
**Subject:** Iwade Barn – All Saints Close Iwade Sittingbourne Kent, ME9 8FP

### **Purpose and summary of report:**

To consider an application, to which 9 representations have been made, for a new Premises Licence application under the Licensing Act 2003 – application reference number SIT/SWALE/189/0698

### **Recommendations:**

The Committee is asked to determine the application and decide whether to grant a licence. Members are 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.

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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 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: Iwade Barn of All Saints Close Iwade Sittingbourne Kent, ME9 8FP**

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 Iwade at the Barn Trust in respect of the premises Iwade Barn (Appendix A and B) in respect of which nine (9) representations (Appendix C) have been received from members of the public.

### **Issues to be decided**

Members are asked to determine whether to:

- (i) grant the licence as per the application,
- (ii) grant 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 condition,
- (iii) grant excluding any of the licensable activities applied for,
- (iv) grant refusing to specify a premises supervisor, or
- (v) reject the application.

## **1. 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: and
- iv) the protection of children from harm

## **2. The Application**

- a. On 26<sup>th</sup> April 2018 an application was received online from Iwade at the Barn Trust for the grant of a premises licence under section 17 of the Licensing Act 2003 in respect of premises Iwade Barn at All Saints Close Iwade Sittingbourne Kent, ME9 8FP. The application is for provision of plays, films, Indoor sporting events, live music, recorded music, performance of dance and supply of Alcohol.

### **The proposed hours of operation are:**

Plays (both indoors and outdoors), Films (both indoors and outdoors), Indoor Sporting Events, live music (both indoors and outdoors), recorded music (both indoors and outdoors), performance of dance (both indoors and outdoors), supply of alcohol (both indoors and outdoors).

Monday – Sunday 10:00 – 23:00  
Public holiday 10:00 – 01:00am

### **Opening Hours**

Monday – Sunday 08:00 – 00:00  
Public holidays 10:00 – 02:00am

- b. Live and recorded music is deregulated for a Licensed Premises during the hours of 08:00 – 23:00. Therefore although advertised on the Public Notice, the timings fall within these deregulations as per the Deregulation Act 2015 and Live Music Act 2012. Based on the application form, the only times which are not deregulated is on public holidays where the premises intend to trade until 02:00am Therefore it becomes licensable.
- c. 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 as **Appendix A**.
- d. A location plan of the premises is shown at **Appendix B**.
- e. The application has been correctly advertised in the local press and a notice has been displayed for the whole of the consultation period.
- f. The applicant has applied to not have a Designated Premises Supervisor in place on the licensed premises.

## Representations

Responsible authorities:

- Kent and Medway Fire & Rescue Service – No representations
  - Kent County Council Trading Standards – No representations
  - Kent County Council Social services Children & Families – No representations
  - Home Office Immigration – No representations
  - Planning Department – Swale Borough Council – No representations
  - Environmental Health – Swale Borough Council – No representations
  - Kent County Council Public Health – No representations.
  - Kent Police – No representations
- g. There have been nine (9) valid representation received from members of the public. Their comments are shown as **Appendix C**.

Responsible Authority / Other person	Licensing Objective	Associated Documents	Appendix
Members of the public	Prevention of Crime and Disorder Public Nuisance Public Safety	2 emails 7 letters through the post	C

- h. The applicant has sent in a mediation letter. The Licensing officer has sent a letter with the comments from the applicant to all those who made a representation – a copy of the letter is attached at **Appendix D**
  - The applicant is willing to not have the extended hours until 01:00am on public holidays as proposed on the application form. The extension until 01:00am will only be requested for New Year's Eve.

### **3. 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.

### **4. 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:

1. Grant the licence as per the application.
2. Grant the licence subject to such conditions as are consistent with the operating schedule accompanying the application; modified to such an extent as the Licensing sub-committee considers appropriate for the promotion of the licensing objectives and any relevant mandatory condition.
3. Exclude from the licence any of the licensable activities applied for.
4. Refuse to specify a person in the licence as premises supervisor.
5. Reject the application.

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".

## **5. 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.

## **6. 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

## **7. Recommendations**

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

## **8. List of Appendices**

Appendix A – Application form  
Appendix B – Plan of premises  
Appendix C – Representations (Other Persons)  
Appendix D – Letter sent to all those who made a representation.  
Appendix E – Order of proceedings

## **9. 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.