

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: Monday 15th July 2019 at 14:00
Report Author: Mohammad Bauluck – Licensing Officer
Subject: Brenley Farm Brenley Lane Boughton Under Blean Faversham Kent
ME13 9LY

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/189/0726

Recommendations:

The Sub 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
Home Office 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 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 Sub Committee 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 Sub Committee 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: Brenley Farm Brenley Lane Boughton Under Blean Faversham Kent ME13 9LY

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

Purpose of the report:

The report advises Members of an application for a new Premises Licence to be granted under the Licensing Act 2003. Application was made by Julia Berry of Brenley Farm regarding premises at Brenley Farm Brenley Lane Boughton Under Blean Faversham Kent ME13 9LY (Appendices A, B and C) in respect of which two (2) representations have been received from members of the public (Appendix D).

1. Issues to be decided

Members are asked to determine whether to:

- (i) grant a licence as applied for
- (ii) 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,
- (iii) grant a licence but excluding any of the licensable activities applied for,
- (iv) grant a licence but refusing to specify a premises supervisor,
- (v) 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 22nd May 2019 a completed application was received from Julia Berry and Brenley Farm for the grant of a Premises Licence under section 17 of the Licensing Act 2003. The application is to apply for a premises licence for their field so that they can hold wedding receptions and supply alcohol for this event.

The proposed hours for the licensable activities are as follows:

- **Live music, Recorded Music (Both indoor and outdoor)**
Friday and Saturday 12:00 – 16:00 18:00 – 00:00 (midnight)
- **Performance of dance (Both indoor and outdoor)**
Friday and Saturday 18:00 – 00:00 (midnight)
- **Sale of Alcohol (on the premises)**

Friday and Saturday 12:00 – 00:00 (midnight)

- **Opening Hours**

Friday and Saturday 09:00 – 00:00 (midnight)

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 and the plan is shown at Appendix B and C.

3.3 The application has been correctly advertised in the local press on 30 May 2019. The consultation period ended on 18th June 2019. The required public notice was correctly displayed during the whole of the consultation period.

3.4 The proposed Designated Premises Supervisor (DPS) is Julia Berry.

3.4.1 **Representations**

3.6.1 Representations from responsible authorities:

- Kent and Medway Fire & Rescue Service – No comments
- Kent County Council Trading Standards – No comments
- Kent County Council Services Children and Families – No comments
- Kent County Council Public Health – No comments
- Environmental Health – Swale Borough Council - No representations
- Kent Police – No representations

3.6.2 There have been two (2) valid representations from members of the public. This is shown at Appendix D.

| Responsible Authority / Other person | Licensing Objective | Associated Documents | Appendix |
|---|----------------------------|-----------------------------|-----------------|
| Member of the Public | Public Nuisance | Two (2) letters | D |

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 3,1 – 3.4, 17.1-8, 17.20-23 – 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.

Determining the application – Options of the Sub Committee The Sub Committee 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 Sub Committee 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 1998 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 the field where licensable activities will take place

Appendix C – Plan of Area

Appendix D – Representations from members of the public

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