

Swale Borough Council

Report to: Licensing Sub – Committee (Under the Licensing Act 2003)
Date: Wednesday 30th September 2015 at 14:00
Report Author: Mohammad Bauluck - Licensing Officer
Subject: West Faversham Community Centre – Bysingwood road Faversham
Kent ME13 7RH

Purpose and summary of report:

To consider an application, to which a representation has been made, for a variation of an existing Premises Licence application under the Licensing Act 2003 – application reference number FAV/SWALE/189/0558

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: Mohammad Bauluck at mohammadbauluck@swale.gov.uk
Telephone: 01795 417 364

The Licensing Act 2003 requires the Council to publish a 'Statement of Licensing Policy' that sets out the policies the Council will general 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: West Faversham Community Centre – Bysingwood road Faversham
Kent ME13 7RH**

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 Variation of a Premises Licence under the Licensing Act 2003, made by James Browning, in respect of the premises West Faversham Community Centre (Appendix A and B) in respect of which one(1) representation (Appendix C) has been received from an other person.

Issues to be decided

1. Members are asked to determine whether to (i) 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, (ii) grant excluding any of the licensable activities applied for, (iii) grant refusing to specify a premises supervisor, or (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: and
- iv) the protection of children from harm

3. The Application

- a. On 6th August 2015 an application was received from Mr James Browning for the variation of a premises licence under section 34 of the Licensing Act 2003 in respect of premises West Faversham Community Centre at Bysingwood road Faversham Kent ME13 7RH

The application is for:

- (1) An extension of the hours for licensable activities on Friday nights to 00:00 (midnight)
- (2) Removal of condition 'All glasses used on the premises will be polycarbonates or toughened glass. No glass bottles will be served other than wine/champagne'.

The current opening hours are:

Monday – Thursday 07.00 – 24.00
Friday – Saturday 07.00 – 01.00
Sunday 08.00 – 00.00 (midnight)

The current hours for licensable activities are:

Plays, Films, Indoor Sporting Events, Live, Recorded Music, Performance of dance and Supply of alcohol.

Sunday – Thursday 09.00 – 23.00
Friday 09.00 – 23.30
Saturday 09.00 – 00.00(midnight)

Late Night Refreshment

Friday 23.00 – 23.30
Saturday 23.00 – 24.00

Live/Recorded Music - One extra hour on New Year's Eve.

- b. 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**
- c. The application has been correctly advertised in the local press and a notice has been displayed for the whole of the consultation period.
- d. There is no Designated Premises Supervisor on the premises. On 10 October 2011, an application for the mandatory alcohol condition under the Licensing Act 2003 requiring a Designated Premises Supervisor (DPS) in respect of a premises licence to be disapplied was submitted and granted.

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
- Planning Department – Swale Borough Council – No representations

- Environmental Pollution – Swale Borough Council – No representations
- Kent County Council Public Health – No representations.
- Kent Police – No representation

There has been one valid representation received from an other person. Their comments are shown as **Appendix C**.

Responsible Authority / Other person	Licensing Objective	Associated Documents	Appendix
Mr Martin Tyler	Public Nuisance	Email	C

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 3.4 – 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:

1. 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.
2. Exclude from the licence any of the licensable activities applied for.
3. Refuse to specify a person in the licence as premises supervisor.

4. 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”.

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
Appendix B – Plan of premises
Appendix C – Representation (Other Persons)
Appendix D – Plan of area
Appendix E – 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.