

REPORT TO LICENSING SUB-COMMITTEE, FOLLOWING RECEIPT OF REPRESENTATIONS IN RELATION TO AN APPLICATION FOR A NEW PREMISES LICENCE MADE UNDER THE LICENSING ACT 2003 FOR CHARTWELL BARNES (THE ELMS NURSERY), BOUGH BEECH ROAD, FOUR ELMS, KENT TN8 6ND (19/04703/LAPRE)

Licensing Sub-Committee - 6 February 2020

Report of Richard Morris (Chief Officer Planning & Regulatory Services)

Status For Decision

Key Decision No

Executive Summary:

This report provides members with information relating to a Premises Licence application under The Licensing Act 2003 in respect of Chartwell Barnes (The Elms Nursery), Bough Beech Road, Four Elms, Kent TN8 6ND.

The proposed Premises Licence seeks to provide regulated entertainment (live and recorded music) between 08:00 to 23:00 (Monday to Saturday) and 08:00 to 19:00 (Sunday) and the sale of alcohol between 11:00 to 23:00 (Monday to Saturday) and 11:00 to 19:00 (Sunday).

Representations have been received from 13 local residents.

Portfolio Holder Cllr. Margot McArthur

Contact Officer Michael Moss (Licensing Partnership Manager) Ext. 7364

Recommendation to Licensing Sub-Committee:

Options available to members are:

- a) To grant the application in full on the terms and conditions contained within the operating schedule, along with relevant mandatory conditions.
 - b) To grant the application, modified to such an extent as considered appropriate in order to satisfy any relevant representations so as to adequately promote the licensing objectives.
 - c) To exclude from the scope of the licence any of the licensable activities.
 - d) To refuse to specify a person in the licence as the Designated Premises Supervisor.
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e) To refuse the application in its entirety.

Reason for recommendation:

Each application must be considered on its individual merits and in relation to the licensing objectives under the Licensing Act 2003. Members are asked to consider the options above in light of the individual circumstances of this application and representations and testimony received at hearing.

Introduction

The procedure for hearings of Sub-Committees of the Licensing Committee established in accordance with Section 9 of the Licensing Act 2003 is attached to the agenda.

On 6 December 2019 a new premises licence application was made by Daniel Mario Dos Santos of 6 Pine Grove, Edenbridge, Kent TN8 5HU. A copy of the application is attached as **Appendix A**.

The application was initially invalid upon submission, but validated on 16 December 2019.

The Public Notice(s) were displayed from 16 December 2019 and therefore the public consultation expired on 13 January 2020.

A holder of a Premises Licence, when offering any licensable activity, must ensure they promote the licensing objectives at all times. The Operating Schedule of the application contains details of the control measures that the applicant will have in place in order to promote the licensing objectives. The following conditions have been nominated by the applicant:

- 1) All staff will be made aware of the Licensing Act 2003 and encouraged to conduct themselves in a professional manner when dealing with the sale and consumption of alcohol to customers on and around the premises.
- 2) Challenge 25 Scheme will be in operation.
- 3) CCTV will be installed around the premises.
- 4) The entrance gate to the premises will be closed during non-operative hours.
- 5) The premises exterior and car park will be illuminated with outdoor lighting.
- 6) Staff will be required to keep the premises free of litter.
- 7) Signage displayed asking customers and staff to keep noise to a minimum when entering or leaving the premises.

The premises application is accompanied by a plan, attached as **Appendix B**.

Background

The Elms is a garden centre and equestrian centre, which also provides an ancillary café/ restaurant with a decking area. The premises was originally granted planning permission in 2008 with an application to extend the size of the site in 2019. There are no restrictions placed on the premises in respects to the opening hours of the café/restaurant.

In order to ensure the café/restaurant remains ancillary to the main use of the site a condition was imposed on the planning permission which reads “No part of the premises shall be used for the purposes of a café other than the conservatory and decking area hereby approved. The café shall be used only for purposes ancillary to the main use of the land as a garden centre.”

The application for a Premises Licence under the Licensing Act 2003, proposes the use of licensable activities beyond the hours of the main use of the site and there is a potential for the applicants to be in breach of planning legislation. In addition, the site is currently identified as an A3 use by planning, but should the business develop over time to become more of a drinking establishment, then the applicant would require to vary the use of the premises to an A4.

Despite this information being provided as part of the report, planning considerations cannot be taken into consideration when making a decision on a Premises Licence application made under the Licensing Act 2003; any potential breaches on concerns of planning matters, will be dealt with by the planning authority under their own enforcement powers.

Licensable activities:

The application seeks a premises licence to permit the following activities:

Performance of live music both indoors & outdoors

Monday to Saturday: 12:00 - 23:00hrs
Sunday: 12:00 - 19:00hrs

Additional information provided by the applicant suggests any live music performed will not be amplified.

Playing of recorded music both indoors & outdoors

Monday to Saturday: 08:00 - 23:00hrs
Sunday: 08:00 - 19:00hrs

Sale of alcohol with the consumption on the premises only

Monday to Saturday: 11:00 - 23:00hrs
Sunday: 11:00 - 19:00hrs

Under the 2015 deregulations, any premises awarded a premises licence which authorises the sale of alcohol, is automatically permitted to provide live and/or recorded music between 08:00 - 23:00hrs.

The original application submitted also requested the provision of Late Night Refreshment, however this activity was removed prior to the application becoming valid as the business did not propose to trade beyond 23:00hrs.

Consultation

The regulations to the Licensing Act 2003 outline the requirements for the advertising of applications. These require the applicant to advertise the application:

- a) For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority to display a blue notice prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises. The public notice was inspected by the Licensing Officer on Monday 30 December 2019.
- b) By publishing a notice in a local newspaper on at least one occasion within 10 working days of submitting the application.

Regulations also require that the applicant give a copy of the application to each responsible authority on the same day as the day upon which it is given to the licensing authority.

There are no other statutory requirements for advertising of any application, however, details of all applications received along with the time limit for receipt of representations is posted on the Council website via the weekly premises tracker and the public and councillors have public access.

Representations:

The proposed application impacts on residents served by one Parish Council, that being Cowden & Hever Parish Council; no comments were made by the Parish Council.

13 objections were received from Local residents (**Appendix C**) that have not been withdrawn.

Primarily the representation received concern noise pollution. It is important to note that whilst representations were received and accepted as valid by the Licensing Officer, not all representations are valid in their entirety and invalid aspects of each representation may not be considered.

Valid aspects to consider are those which directly relate to one or more of the licensing objectives and are not regulated by other means such as in other legislation for example traffic matters and planning matters.

As response to the 28 day statutory consultation with the Responsible Authorities, as outlined in the Licensing Act 2003, the Licensing Authority received comments from Sevenoaks District Council's Environmental Health & Planning Department, as well as Kent Police.

The **Environmental Pollution Team** commented "The application being in respect of both live and recorded music, the supply of alcohol for consumption on the premises and the provision of late night refreshment (now not required) from 12:00 to 23:00 Monday to Saturday and 12:00 to 19:00 Sunday. I have no adverse observations in respect of this application however I would request that the application be conditioned such that:

1. No speakers involved in the transmission of live or recorded amplified music are to be installed to the external decking/patio area.
2. Deliveries and collections from the restaurant, including refuse and bottle collections, should be restricted to: Monday to Saturday 08:00 - 18:00hrs and Sundays 09:00 - 17:00hrs. Outside of these times there shall be no goods loaded or unloaded and no commercial vehicles shall arrive, depart or wait for access to the restaurant.

The proposed conditions were presented to the applicant, and confirmation was received on 7 January 2020 that the conditions were accepted and shall be imposed on the Premises Licence, should a licence be awarded.

The **Planning Department** submitted comments which did not relate to one or more of the Licensing objectives. The contents of their response was sent to the applicant on 14 January 2020 and have been attached to this report under Appendix D as supplementary information only.

Kent Police commented "having reviewed the application Kent Police have no representations to make in relation to this premises licence."

Mandatory Conditions:

Mandatory conditions - the following conditions will be added to the premises licence when it is issued.

- 1) The supply of alcohol

Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:-

No supply of alcohol may be made under the premises licence -

- (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Mandatory conditions in force from 28 May 2014

- 1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 2) For the purposes of the condition set out in paragraph 1-
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979
 - (b) "permitted price" is the price found by applying the formula— $P = D + (D \times V)$

where -

- (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 4.
- (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
 - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Mandatory Conditions in force from 01 October 2014

- 1.
- (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 3.
- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
4. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available."

Key Implications

Financial

None directly arising from this report.

Legal Implications and Risk Assessment Statement.

The Hearing is regulated by the Licensing Act 2003 (Hearings) Regulations 2005.

The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Amended Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from the Policy or Guidance the departure must be directed at the Licensing Objectives and such departure must be supported by clear and cogent reasons

Equality Assessment

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.

Conclusions

Under the Licensing Act 2003 in England and Wales the determination of an application for a premises licence where representations have been made can be made by a sub-committee as arranged by the licensing committee (section 10(4)(a))

The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Amended Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from the Policy or Guidance the departure must be directed at the Licensing Objectives and such departure must be supported by clear and cogent reasons

Members are to make any decision they deem reasonable and proportionate given the reference to the requirements of the Act, revised guidance, Council's Statement of Licensing Policy and representations and testimony at hearing.

At a hearing the Licensing Authority may decide:

1. To grant the application in full on the terms and conditions contained in the operating schedule along with relevant mandatory conditions.
2. To grant the application, modified to such an extent as considered appropriate in order to satisfy any relevant representations so as to adequately promote the licensing objectives
3. To exclude from the scope of the licence any of the licensable activities
4. Refuse to specify a person in the licence as the premises supervisor

5. To refuse the application in its entirety

All decision of the Licensing Authority and any conditions imposed must be appropriate for the promotion of the licensing objectives.

Appendices

Appendix A - Application Form & Operating Schedule

Appendix B - Plan of the Premises

Appendix C - Representations from residents

Appendix D - Comments from Planning

Background Papers

[The Licensing Act 2003](#)

[Sevenoaks District Council Statement of Licensing Policy](#)

[Amended Guidance under Section 182 of the Licensing Act 2003](#)

Richard Morris

Chief Officer Planning & Regulatory Services