

**BABERGH DISTRICT COUNCIL**

**FROM:** Head of Natural and Built Environment

**REPORT NUMBER** **K73**

**TO:** LICENSING SUB-COMMITTEE

**DATE OF MEETING** 16 August 2010

**LICENSING ACT 2003 - HEARING REPORT**

**1. SUMMARY**

- 1.1 To determine an application made under the provisions of the Licensing Act 2003 by:

**Essex Pig Company Limited**

in respect of:

**‘Jimmy’s Farm’  
Pannington Hall Farm, Wherstead, IPSWICH IP9 2AR**

The hearing is to determine an application for a NEW premises licence (Application ref: 005640) made under section 17 of the Licensing Act 2003. A copy of the premises licence application and accompanying plans are attached as Appendix 1. The premises currently already benefits from a premises licence (number BPL0339) for the farm shop operation (off-sales of alcohol only).

- 1.2 Generally, the new application seeks to expand licensable activity at the site to incorporate regulated entertainment and extend alcohol permissions (including ON sales) at Jimmy’s Farm for their proposed restaurant and function activity. It should be noted that a simultaneous planning application in progress (ref B/10/00481) in respect of their proposals. In terms of the relationship between licensing and planning, it should be noted that they are separate processes with different objectives (albeit there is crossover in some respects). For example, irrespective of any permission granted by a licence should the planning position in due course prove more prohibitive, for instance on hours or activity/use, then that more restrictive provision would ordinarily apply to the operation as a whole.

**2. RECOMMENDATIONS**

- 2.1 The sub-committee must, having regard to the representations made, take such of the steps below (if any) as it considers necessary for the promotion of the licensing objectives:
- To grant the licence subject to conditions which are consistent with the operating schedule submitted by the applicant;
  - To exclude from the scope of the licence any of the licensable activities that have been applied for;
  - To refuse to specify a person in the licence as the premises supervisor;
  - To reject the application.

2.2 Members of the sub-committee should note that they may, where it is deemed necessary and proportionate for the promotion of the licensing objectives, alter, omit or add new conditions within the applicants operating schedule.

2.3 The sub-committee is able to determine this application.

### **3. EQUALITY AND DIVERSITY IMPACT**

3.1 There are no Equality and Diversity implications.

### **4. THIS APPLICATION**

4.1 The applicant is Essex Pig Company Limited - registered company number 4721026 - and they have instructed Nigel Broadhead Mynard Solicitors of Chelmsford to act for them in connection with this application.

4.2 The activities proposed, including amplified music, would take place both indoors and outdoors and the application proposes the flexibility to authorise these activities up until 23:00hrs Monday to Sunday. The solicitor for the applicant has confirmed that outdoor music activity and consumption of alcohol would be restricted to the herb garden and farmer's market areas of the plan provided with the application (see Appendix 1). The application is seeking such flexibility to enable functions, including weddings, and restaurant activity to take place within the farm complex.

4.3 The proposed Designated Premises Supervisor (DPS) is Ms Tanja Sadler - who is the holder of a personal licence (number BPA0537) issued by Babergh District Council.

4.4 Specifically, this premises licence application (ref:005640) seeks to carry on the following licensable activities:

- (a) Supply of alcohol (for consumption both ON and OFF the premises)
- (b) Plays (indoors and outdoors)
- (c) Live music (indoors and outdoors)
- (d) Recorded music (indoors and outdoors)
- (e) Provision of facilities for dancing (indoors and outdoors)

Activities are proposed to commence an earliest of 09:00hrs for alcohol, 10:00hrs for music and midday for plays and dancing facilities. Activities would cease by 23:00hrs with the premises closing to the public 30 minutes thereafter – identifying a period for drinking-up and dispersal of patrons. .

4.5 The only outstanding unresolved licensing application issue relates to measures to prevent public nuisance caused by noise. In view of the flexibility and scope of activity (including outdoor) proposed by the licence application at this location, as submitted the operating schedule makes little mention of noise control steps to mitigate the risks of public nuisance. The Principal Environmental Protection Officer has lodged representations accordingly seeking to promote this licensing objective, and has included his recommendations on proposed controlling conditions to mitigate his concerns. This representation remains outstanding and not withdrawn, thus necessitating a hearing.

4.6 The statutory advertisements required under the 2003 Act have been published and on display. The newspaper advertisement appeared in the East Anglian Daily Times and on-site notices have been displayed. The following consultees, as Responsible Authorities under the 2003 Act, have been served with a copy of the application and plans:

<b>RESPONSIBLE AUTHORITY:</b>	<b>RESPONSE:</b>
1. Chief Officer of Police	No representations.
2. Local Fire Authority	No representations.
3. Health and Safety Executive/Local Authority for Health and Safety at Work Act	No representations.
4. Environmental Health	<b>Representation made (see Appendix 2)</b>
5. Local Planning Authority	No representations. Note - a separate planning application is in progress.
6. Area Child Protection Committee	As Police response.
7. Any other Licensing Authority	Not applicable
8. Trading Standards	No representations.

4.7 No representations have been received during the statutory period from any 'interested party' as defined by the 2003 Act.

4.8 A copy of any representations are attached as Appendix 2.

**5. GUIDANCE AND POLICY CONSIDERATIONS**

5.1 The sub-committee is referred generally to section 2 – 'The Licensing Objectives', section 8 - 'Applications for Premises Licences', section 9 - 'Determining Applications' and section 10 - 'Conditions Attached to Premises Licences and Club Premises Certificates' of the Central Government Guidance (as revised March 2010) in respect of this application.

5.2 The Government Guidance issued under section 182 of the Licensing Act 2003 advises that duplication with other statutory provisions is to be avoided (sections 1.16 and 10.15-10.18 refer) and that any conditions deemed necessary to attach to a licence must be proportionate and focus on relevant measures that are within the direct control of the licence holder.

5.3 Licensing law is not the primary mechanism for the general control of individuals once they are away from the licensed premises and beyond the direct control of individual licensees (section 1.26 refers). Any conditions imposed must not be aspirational and must be within the control of the licensee (section 1.27).

5.4 'Need' for licensed premises is not a matter for a licensing authority when discharging its licensing functions - it is a matter for planning committees and for the market (section 13.23 of the statutory guidance refers).

5.5 The sub-committee should have due regard to all relevant sections of the Council's Statement of Licensing Policy in respect of the determination of this application.

- 5.6 The sub-committee will also be aware of Human Rights Act 1998 considerations - specifically Article 6 for the applicant and Articles 8 and 1 of Protocol 1 for those raising representations - when determining applications for the grant of a new licence.

## **6. THE ISSUE(S)**

- 6.1 The Licensing Act 2003 came into full effect on 24 November 2005. The four underlying objectives of the legislation are:
- Prevention of crime and disorder
  - Public safety
  - Prevention of public nuisance
  - Protection of children from harm

These are the **only** grounds upon which an application may be refused, or if deemed necessary, conditions may be attached to a licence.

- 6.2 Members will note that the issues in respect of this application involve:
- Balancing the interests of owners, employees, customers and neighbours of licensable premises.

## **7. PROCEDURE TO BE FOLLOWED AT HEARING**

- 7.1 A copy of the 'Procedure for Hearing of Application under the Licensing Act 2003 where a Representation/Objection is received' is attached to the Agenda.

## **8. APPENDICES REFERRED TO**

- (a) Appendix 1: Application together with premises plans
- (b) Appendix 2: Representations
- (c) Appendix 3: Site plan

MALCOLM FIRTH  
Head of Natural and Built Environment Division

**CONTACT: Lee Carvell**  
**Principal Licensing Officer**

**email: [lee.carvell@babbergh.gov.uk](mailto:lee.carvell@babbergh.gov.uk)**