



## LICENSING AND GAMBLING SUB COMMITTEE – 28TH APRIL 2022

**SUBJECT: DETERMINATION OF PREMISES LICENCE APPLICATION**

**REPORT BY: LEE MORGAN LICENSING MANAGER**

### 1. Application Details – Premises Licence Licensing Act 2003

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
Tog Farm Limited Company no 12512477	Land at Tog Farm, Rudry, CF83 3DG	New Premises licence

#### 1.1 Application for Grant of a New Premises Licence

An application has been submitted to apply for a new premises licence for the above 'premises' under the Licensing Act 2003. The proposed application for consideration is set out in 1.3 of this report.

Members will note that the Licensing Act 2003 permits an application for a premises licence for 'any place,' not just a building and as a result 'open space' can be a place at which applicants can apply to obtain a premises licence.

#### 1.2 Site Plan/Photographs

The plan of the licensed area is reproduced as **Appendix 1**.

A location plan of the boundary of Tog Farm is reproduced as **Appendix 2**.

Photographs of the location are reproduced as **Appendix 2a**

#### 1.3 Proposed Trading Times and Licensable Activity

The application for the grant of a Premises Licence sought to permit the following Licensable Activities:-

- **Supply of Alcohol (on sales only)** Monday to Sunday, 15:00 to 23:00.
- **Regulated Entertainment – (Provision of Films)** Monday to Sunday, 18.00 to 23.00 (Films on projector screen inside tent, and outside in designated area.)

A general description of the proposed premises has been provided as '*Glamping site, guests pre book their stay. Alcohol will be offered with meals, and while staying with us on site, only at the designated sites.*'

- 1.3.1** The following steps have been volunteered by the applicant as part of the Operating Schedule, to promote the Licensing Objectives, and are reproduced directly from the application:-

*By holding a premises license we will be able to monitor and control the intake of alcohol by our guests. We will reserve the right to refuse alcohol if someone is intoxicated, ensuring all guests and staff are safe.*

*We currently operate a 'bring your own' policy with alcohol, which will stop immediately if granted a license.*

*All guests will be pre booked with no more than 10 guests at any one time.*

*At least 2 members of staff will be available when there are groups of 6-10 and at least 1 member of staff for bookings of 1-5.*

*The site is covered by CCTV which is continuously monitored.*

*Guests sign a disclaimer prior to booking where they consent to managing their own and any others personal safety, within the disclaimer it is outlined that we have a zero tolerance approach to any violence, or disorderly behavior, and that we reserve the right to escort any guest off the premises at any point if displaying the above*

*The general public will not be in contact with any of our guests, as our site is on private land.*

*To ensure the safety of all of our staff along with other members of larger groups, there will be 2 members of staff at any one time. There will be no lone working.*

*By having a license we will reserve the right to refuse sale of alcohol to anyone we believe is intoxicated, we also reserve the right to remove any guest who may become a public nuisance from the premises.*

*There will be no children on site when larger groups are attending.*

Note: By virtue of the Operating Schedule submitted, the Applicant has effectively limited the total number of persons on site for the purposes of the supply of alcohol / provision of film to a maximum of 10 persons.

#### **1.4 RELEVANT CONSIDERATIONS**

Extract of Caerphilly County Borough Council Licensing Policy **Appendix 3**

Extract of Statutory Home Office S182. National Guidance **Appendix 4**

## 1.5 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS

### 1.5.1 Responsible Authorities:

The following responsible authorities have indicated that they have no representations in respect of the proposed new premises licence:-  
Fire & Rescue Service and Gwent Police.

#### Child Protection Officer

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>23/3/2022</b>	<b>Appendix 5</b>

#### Environmental Health - Health & Safety

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>1/4/2022</b>	<b>Appendix 6</b>
<b>Supplementary Comments</b>	<b>20/4/2022</b>	<b>Appendix 6a</b>

#### Licensing Authority in role as Responsible Authority

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>1/4/2022</b>	<b>Appendix 7</b>

#### Environmental Health Pollution

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>30/3/2022</b>	<b>Appendix 8</b>

#### Trading Standards

Document	Date Received	Appendix Reference
<b>Initial Representation</b>	<b>28/3/2022</b>	<b>Appendix 9</b>

### 1.5.2 Other Persons:

#### Elected Members

Document	Date Received	Appendix Reference
<b>Representation 1</b>	<b>30/3/2022</b>	<b>Appendix 10</b>
<b>Representation 2</b>	<b>31/3/2022</b>	<b>Appendix 11</b>
<b>Representation 3</b>	<b>28/3/2022</b>	<b>Appendix 12</b>

#### Residents

Document	Date Received	Appendix Reference
<b>Resident Mr R Jenkins</b>	<b>28/3/2022</b>	<b>Appendix 13</b>
<b>Resident Mr G Bodley</b>	<b>30/3/2022</b>	<b>Appendix 14</b>
<b>Resident C</b>	<b>30/3/2022</b>	<b>Appendix 15</b>
<b>Resident D</b>	<b>29/3/2022</b>	<b>Appendix 16</b>
<b>Resident E</b>	<b>31/3/2022</b>	<b>Appendix 17</b>

<b>Resident F</b>	<b>31/3/2022</b>	<b>Appendix 18</b>
<b>Resident Mr &amp; Mrs Smith</b>	<b>30/3/2022</b>	<b>Appendix 19</b>

### **Community Council**

Document	Date Received	Appendix Reference
<b>Draethen, Waterloo &amp; Rudry Community Council</b>	<b>1/4/2022</b>	<b>Appendix 20</b>

## **1.6 SUMMARY OF REPRESENTATIONS**

Objections to the granting of a premises licence have been received from Environmental Health (Health & Safety) in relation to public safety concerns, in respect of access and egress from the site, following a site visit. The objection was supported by the Licensing Authority in its role as a responsible authority. However, both Responsible Authorities have advocated conditions, should a premises licence be approved. These included a requirement that the track between the licensable areas and the camping area being kept free of farm livestock at all times. A requirement that Guests are transported safely between the licensable areas in suitable enclosed vehicles. Guests must not be transported in a trailer behind an all-terrain vehicle (ATV). Guests should not sit astride an ATV. In addition, a requirement for guests to be transported in a suitable vehicle from the camping area in the event of an emergency overnight.

Furthermore, a requirement that Alcohol must be consumed in the 2<sup>nd</sup> licensable area (camping area) from poly carbonate glasses. This area should remain free from glass. Once alcohol is decanted guests must be encouraged to dispose of the bottles in the waste receptacles provided. The Environmental Health (Health & Safety) Officer also advocated that suitable hand washing facilities and signage must be provided adjacent to the 1<sup>st</sup> licensable area (horsebox, point of sale of alcohol).

Supplementary comments made by Environmental Health (Health & Safety) Officer on 20<sup>th</sup> April 2022 confirm that works required to address their concerns in respect of access and egress had not been completed and therefore their objection to the application remains.

The Licensing Authority in its role as responsible authority has commented on the reference to CCTV on the Operating schedule submitted by the applicant and has advocated that the following conditions in order to promote the licensing objectives, namely that the use of CCTV shall cover the licensable area where the supply of alcohol takes place, continually record when licensable activity takes place and shall be maintained in good working order. Furthermore, a requirement that the premises licence holder shall ensure images from the CCTV are retained for a period of 31 days and also ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of any authorised officer of the Licensing Authority or a Constable.

In addition, it is advocated that the premises licence holder shall require the designated premises supervisor, or in his / her absence other responsible person, to keep an 'incident / refusals' logbook in a bound book in which full details of all incidents are recorded. The logbook is to be kept on the premises at all times and shall be produced to an authorised officer of the Licensing Authority or a constable when required. Records shall be kept for a period of 12 months

Finally due to the distance between both licensing areas, the licensing authority advocated in addition to the condition proposed by the Environmental Health Pollution Officer in relation to boundary checks, monitoring of the licensable areas will be undertaken at hourly intervals to ensure the promotion of the licensing objections and the avoidance of anti-social behaviour.

The Child Protection Officer has made no objection to the application but has advocated conditions linked to the protection of children from harm licensing objective, namely implementation of Challenge 25 and documented staff training in relation to underage sales. Furthermore, the Child Protection Officer has advocated further conditions in respect of the applicant controlling access to films of persons aged under 18, under 15 and under 12 in line with Classification requirements.

Trading Standards have made no objection to the application but have supported the comments of the Child Protection Officer in relation to proposed conditions referred to above.

The Environmental Health (Pollution Officer) makes no objection to the application but advocates a number of conditions including a requirement for the applicant to make regular patrols to check noise levels, a restriction on times when waste can be moved to external areas and requiring the premises licence holder to take reasonable steps to ensure that patrons using any outside areas do so in a quiet and orderly fashion.

No objections were received from Gwent Police or the Fire Service following site visits undertaken.

There were objections made by the 3 Elected Members for the area, who reference their concerns. Member 1, referenced residents contacting her in quite significant numbers with issues and concerns around matters concerning TOG farm. The Member made reference to being able to clearly hear the music from the farm while sitting in her garden. The Member also referred to the following concerns of residents namely the escalation of behaviour of certain visitors, health issues regarding the disposal of sewage, health and safety issues regarding children attending to visit the animals, an increase in the amount of traffic, an increase in the noise and an escalation in the unpleasant behaviour that residents have had to witness.

Member 2 referred to concerns about nuisance arising from loud music being played and refers to difficulties for emergency vehicles accessing the site. Concerns are expressed as to how patrons allegedly enter the site on board a flatbed vehicle and concerns about the noise generated from parking. Member 3 indicated that her concerns about public nuisance mirrored that of Member 2 detailed immediately above.

There were a number of resident representations objecting to the application during the 28 day consultation period. Two of the representations have come from the same household. All representations were forwarded to the applicant for her attention and comment.

Resident Mr Jenkins detailed that he wished to record an objection to the application and referenced concerns about the proximity of the site to where dome tents are currently to his property. Concern was expressed about unlicensed events held the previous year for stag, hen, music festivals and weddings/engagements. Reference was made about concerns with regards managing licensing hours, antisocial behaviour and access to event fields. Comment is expressed about the lack of change of use for the land and the applicant's ability to manage the sale of alcohol.

Resident Mr Bodley details his objection and refers to noise and disturbance in the absence of a licence. Reference is made to the potential for things to escalate were a licence to be

granted. Comment is made regarding an advertisement for home-made gin being offered on the website.

Resident C detailed concerns about their details being released to the applicant. Reference is made to the businesses total disregard to disorder following antisocial behaviour, loud music which has forced the resident to remain indoors. Reference is made to an Abatement Notice and the impact that the partygoers have upon the local area.

Resident D refers to a lack of respect for the law, neighbours and local residents from 2020 into 2021. Reference is made to entertainment events held at the site and the provision of alcohol in the absence of a licence. Comment is made in respect of an Abatement Notice served in response to complaints of residents. Reference is made to Pictures provided to highlight concerns regarding public safety and the presence of cattle on site and potential for harm given the availability of alcohol. Further comment is made and pictures provided showing proximity of children to Cattle, which the resident stated demonstrated a lack of responsibility. Concern is expressed about the applicant's ability to comply with any licence afforded.

Resident E referenced an objection submitted to the Council's Planning department by Members of Draethen, Waterloo and Rudry Community Council opposing the planning application of Tog Farm in November 2021. Comment is made in respect of alcohol which it was believed was sold at the site in the absence of a licence and links prospective alcohol consumption to increased risk taking and the undermining of the public safety licensing objective. Concern is expressed about the protection of children licensing objective and introduces pictures of children in what appears close proximity to loose cattle. Comment is made that alcohol would increase the risk by decreasing inhibition and increased risk taking.

Further comment is made in respect of the applicants operating schedule in relation to public safety and the focus on safety of staff on site as opposed to the safety of patrons. In addition, concern that the applicant has failed to address the public nuisance licensing objective referencing loud music that had been audible consistently over the summer months.

Resident F details that since organising parties on the land that there has been disruption during spring and summer months, the biggest concern being the number of amplified live bands and singers and general music that was played on weekends. Reference is made to screaming and shouting into the early hours. Comment is expressed that the resident distrusts the applicant to maintain alcohol provision for the 10 persons and fears the situation will be worse than last year. The resident submitted photographs taken from social media of demonstrating the nature / scale of the parties being undertaken previously. The resident asks to remain anonymous, requests that their comments are read. Comment is made concerning a neighbour and alleged intimidation by the applicants in the past.

Residents Mr & Mrs Smith detail their objection to the application and provide background to their concerns and the 'trial' run of activities of what is expected by residents going forward. Reference is made as to the lack of experience in relation to running a licensed premises and the vague nature of the fields referenced by the applicant within her application. Comment is made concerning the lack of proper walkways and adequate lighting for guests leaving the site late at night. Concern is expressed as to the adequacy of the operating schedule submitted by the applicant including training/proof of age/toughened glass usage. Comment is expressed as to the absence of planning permissions. Concern is expressed about the 10 guests detailed on the application, reference is made to the number being greatly exceeded the previous year and the events largely unsupervised. The resident details that public safety would be undermined and outlines concerns relating to Great Danes and other dogs kept at the farm, access and egress dangers.

In summing up the residents express concern that little thought or effort appears to have been given to the application and little regard to the negative impact on local residents or community, if a licence was granted.

Representations were made by Draethan, Waterloo and Rudry Community Council who referenced a full council meeting held where members of the Community Council resolved to lodge an objection based on the potential for increased noise and antisocial behaviour, increased risk taking behaviour by visitors and an increase in the risk of harm to children.

## **1.7 APPLICANT RESPONSE**

The applicant has responded to the comments of the Child Protection Officer and has agreed the conditions proposed, should a licence be granted.

At the time of preparing this report, the applicant has not responded to the proposed conditions advocated by the Environmental Health Pollution Officer, nor Environmental Health (Health & Safety) and Licensing Authority, albeit it should be noted that both responsible authorities have lodged an objection to the grant of the licence.

The Applicant was forwarded the representations of all resident objectors, Elected Members and Community Council. The applicant's responses received to date are reproduced for information as **Appendix 21**.

In summary, comment is made by the applicant of plans to diversify away from traditional farming to offer glamping and activity for guests. Reference is made to the first year and lessons, mistakes and a better understanding of business including sustainability longevity and prosperity. Acknowledgement is made of music events, a wedding and parties of up to 30 people, the music noise from which unknowingly to the applicant had been heard by local residents which had placed a strain on relationships with the local community.

Whilst the applicant has referenced a maximum number of guests i.e 15, the applicant has been reminded that the Company's premises licence application stipulated a maximum of 10 guests.

The applicant responds to the concerns raised by Mr Jenkins and rejects the idea that she has operated unlawfully but only used 'permissions' under permitted development rights. Comment is made about bring your own alcohol provisions which the applicant has referred to as troublesome. Clarification is provided as to the extent of proposed alcohol provision going forward which relates to supply of alcohol with a meal or bottle of champagne for celebration. The applicant details that they will not be open for 'walk ins' as all guests are prebooked.

Further information is provided concerning proposals to provide the showing of films to couples and families via private cinema experience with a projector and screen.

The applicant refers to the first year being full of lessons and learning and details that they have gone above and beyond to work the council. The applicant responded to concerns about photographs submitted by residents in relation to livestock and states that there had been a change of set up and that livestock would not be allowed to enter fields occupied by guests.

The applicant references the fact that they are trying to move away from events of last year, but also comments that whether a licence is granted or not that they would be still able to hold events under permitted development rights.

The applicant responded to the representations of Mr & Mrs Smith addressing a number of specific points within the response. Comment is expressed by the applicant on the merits and substance of the comments made in resident objection.

Note: Following a discussion and agreement with Mr Smith with Licensing Officers, one brief comment has been redacted from their objection submission.

It is noted that the applicant has been in correspondence with the Environmental Health (Health & Safety) Officer to attempt to allay his concerns in relation to the objection lodged. The applicant has indicated that the required works have been completed and has provided photographs to demonstrate the same, which should address the concerns of the responsible authority. The applicant detailed that they did not believe a further site visit was required.

## **1.8 LICENSING ASSESSMENT**

THE LICENSING ASSESSMENT IS A PROVISIONAL SUMMARY, BASED ON REPRESENTATIONS RECEIVED PRIOR TO THE HEARING. THE HEAD OF PUBLIC PROTECTION, COMMUNITY AND LEISURE SERVICES RESERVES THE RIGHT TO AMEND OR VARY THE PROVISIONS CONTAINED IN THE SUMMARY AND RECOMMENDATION, SUBJECT TO ANY CHANGE IN THE MATERIAL FACTS THAT BECOME KNOWN AT THE HEARING. THE SUB-COMMITTEE IS OBLIGED TO DETERMINE THIS APPLICATION WITH A VIEW TO PROMOTING THE LICENSING OBJECTIVES WHICH ARE:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm

In making its decision, the Sub Committee is obliged to have regard to:-

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented

NOTE: THE SUB-COMMITTEE MAY NOT MODIFY THE CONDITIONS OR REJECT THE WHOLE OR PART OF THE APPLICATION MERELY BECAUSE IT CONSIDERS IT DESIRABLE TO DO SO. ANY SUCH ACTIONS MUST BE NECESSARY IN ORDER TO PROMOTE THE LICENSING OBJECTIVES.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.



## 1.9 OBSERVATIONS

This application relates to the granting of a new premises licence for the sale of alcohol on the premises only and the provision (showing) of film. The Applicant through their Operating schedule detailed on the application has effectively restricted the extent of any licensable activity for the sale of alcohol and provision (showing) of film to a maximum of 10 persons at any one time. Whether that was intentional on the part of the applicant is unclear. Given these limitations, Gwent Police did not object to the application nor consider the imposition of conditions appropriate in respect of the prevention of crime and disorder licensing objectives.

Paragraph 14.1 of the Council's Statement of Licensing Policy details '*The Licensing Authority will expect applicants to address the licensing objectives in their operating schedule having regard to the type of premises, the licensable activities to be provided, the operational procedures, the nature of the location and the needs of the local community. In this way, those with a right to make representations or objections are able to fully assess the factors that may affect them.*'

The application has been subject to site visits by a number of the Responsible Authorities during the 28 day consultation period. The application has received representations from two Responsible Authorities namely Environmental Health (Health & Safety) and Licensing Authority, in its role as a responsible authority objecting to the grant of the licence.

The primary concern for Environmental Health (Health & Safety) Officers relates to concerns in respect of the promotion of the public safety licensing objective, this is primarily in view of the potential risks to health and safety of persons accessing and egress from the site. This is supported by the Licensing Authority in its role as a Responsible Authority. However, it is noted that both responsible authorities have advocated conditions be attached to the licence, should members determine to grant a licence.

Paragraph 12.1 of the Council's Statement of Licensing Policy details the following '*The Council is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. Applicants will be expected to demonstrate in their Operating Schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events. Applicants are advised to seek advice from various organisations, such as the Caerphilly CBC health and safety enforcement officers, South Wales Fire and Rescue Service etc., before preparing their plans and schedules, particularly where regulated entertainment is to be provided.*'

Paragraph 2.7 of the Section 182 Home Office National Guidance provides advice to licence holders in relation to the promotion of the Public Safety licensing objective and states '*Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning....*'

Clarification sought from Environmental Health (Health & Safety) Officers would suggest that no pre-application advice was sought by the applicant prior submitting the application for a Premises Licence.

Members will note the applicants operating schedule in relation to the Public Safety licensing objective reflected the following '*The general public will not be in contact with any of our guests, as our site is on private land.*' To ensure the safety of all of our staff along with other

*members of larger groups, there will be 2 members of staff at any one time. There will be no lone working.*

The Council's Licensing Policy at paragraph 12.7 provides guidance in relation to public safety and details the following *'The Licensing Authority recognises that there are links between public safety and health, for example injuries suffered in licensed premises that need medical treatment. Falls are a contributor to alcohol related hospital attendances and admissions. Considering and noting issues relating to public safety in responses to a licensing application can be an effective way of addressing these issues through conditions being placed on a licence, or, in more extreme cases a licence not being granted. The Health Board, as a Responsible Authority, may be able to provide evidence of prevalence, costs and impacts of public safety issues as appropriate.'*

Members will note that following the initial site visit undertaken on the 24<sup>th</sup> March 2022 that the applicant has attempted to address the concerns in relation to public safety and has been in correspondence with Environmental Health Officers in order to allay any concerns in respect of public safety. However, it is noted from supplementary comments from Environmental Health Officers following a visit to Tog Farm on the 20<sup>th</sup> April 2022, that their objection remains, as the works have not been completed. However, the applicant has indicated that the works undertaken are sufficient and highlight photographs, which have been provided to the Environmental Health Officer to demonstrate the same. The applicant was of a view that a further site visit was not required. The Environmental Health Officer will be in attendance at the meeting and will confirm their position for Members.

Members are guided to Paragraph 25.6(e) of the council's statement of licensing policy which details the following *'Conditions on the licence, additional to those voluntarily offered by the applicant, may be considered. Appropriate conditions will focus on matters which are within the control of individual licensees and which also relate to the premises or places being used for licensable activities and the impact of those activities in the vicinity. If situations arise where the licensing objectives are compromised but cannot be dealt with by the use of appropriate conditions the Licensing Authority will consider whether it is appropriate for a licence to be issued or for the premises to continue in operation.'*

It is noted that the Environmental Health (Pollution Team), Child Protection Officer and Trading Standards did not make an objection to the application and have all advocated conditions be attached to a licence, if granted. The applicant has agreed to conditions as suggested by the Child Protection Officer and Trading Standards concerning age restricted sales and age classification on showing of film.

The Fire Authority and Gwent Police both undertook site visits following receipt of the application but responded that having considered the application for the activities sought that they had no representations. Based on this, these Responsible Authorities appear satisfied with the applicant's ability to promote the licensing objectives.

Paragraph 9.12 of the Section 182 Home Office National Guidance states - *Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular*

*responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

Representations making objections to the granting of the premises licence have been received from a number of residents, elected members and community council. Often the concerns of residents can be addressed through mediation during the consultation period or up until the time of any scheduled hearing. However, in this instance, it is not thought that the concerns of residents can be mediated. Members would be reminded that any concerns of residents, elected members and community council must be in respect of the applicant's ability to promote the licensing objectives. Matters which stray away from the licensing objectives should not be considered relevant by Members.

Paragraph 16.2 of the council's licensing policy also states '*Therefore, any person is able to make representations in relation to certain types of applications as an "Other Person" However; all representations must relate to the licensing objectives and may not be frivolous or vexatious.*'

However, where there is any doubt as to the nature or merit of representations, National Guidance at paragraph 9.9 states '*It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.*'

It is noted that a number of residents have requested that their identity remain anonymous as they have reported that they have a fear of reprisal or repercussion should their details be divulged. The Licensing Team has considered each of these requests separately and in line with the council's licensing policy and Home Office Statutory guidance. Whilst their comments are included within the information placed before Members, Members may consider that they are not able fully assess and understand the resident concerns relating to the promotion or otherwise of the licensing objectives, should residents feel unable or unwilling to attend the hearing to amplify or clarify their comments. Members will therefore have to consider how much weight to attribute to such representations. Where objectors indicate that they wish to remain anonymous, the applicant is also unable to test the veracity of the information being levelled against them.

Paragraph 28.21 of the council's licensing policy details '*Relevant representations about applications can also be made by any other person, regardless of their geographical position in relation to the relevant premises. However the Licensing Authority will usually give greater weight to representations that are made by people who can demonstrate that they would be directly affected by the carrying on of licensable activities at the premises concerned.*'

Paragraph 14.5 of the council's licensing policy provides advice to Members when considering representations and states '*Unreasonable, frivolous and vexatious representations will be disregarded. Representations that have been made and considered elsewhere, for example as an objection to a planning application, may also be disregarded where consideration of such representations would be duplication.*'

Whilst crime and disorder and public nuisance concerns have been raised by residents, Gwent Police have made no objection to the application and appear to be satisfied with the Operating Schedule submitted in relation to the application following their site visit. Likewise, the Environmental Health Pollution Officer, has assessed the application, taken into consideration the maximum number of persons that could be present i.e 10 guests and has not made an objection. However, the Environmental Health Pollution Officer has advocated that, conditions be attached, should a licence be granted in order to promote the public

nuisance licensing objective. The concerns of residents appear to relate from use of the land over the last year, where no licensable activities were authorised.

Residents point to allegations of music / patron noise and alcohol related anti-social behaviour that has allegedly originated from Tog Farm and point to events held where it is alleged that entertainment has been held and alcohol supplied in the absence of a licence. At the time of preparing this report, the licensing team does not hold information to support the unlicensed sale of alcohol or other unauthorised licensable activity during events held at Tog Farm. Although, it is clear from the comments made by residents that they believe this was the case.

As a workplace, Tog Farm does benefit from exemptions derived from the Live Music Act which permits unamplified and amplified live music between the hours of 8am-11pm for up to 500 people, in the absence of any licence requirement. Protections are afforded to residents by virtue of the Environmental Protection Act in particular Statutory Nuisance. Residents have referenced that a Noise Nuisance (Abatement) notice was served at Tog Farm following entertainment held last year.

Concerns have been raised in respect of possible noise nuisance that could arise if a licence were to be granted. The Environmental Health Pollution Officer has made no objection and has sought only conditions having considered the application.

Some of the resident concerns appear to be anticipatory in nature about behaviour or issues which could arise, should a licence be granted. Residents detail their concerns about the applicant's ability to operate within the confines of a licence (if granted) and reference noise and antisocial behaviour concerns they experienced over the previous year where events.

Paragraph 28.7 of the council's statement of licensing policy details the following '*Whilst the Licensing Authority expects representations to be evidence based, there is no requirement for a Responsible Authority or other person to produce a recorded history of problems at premises to support their representations, and it is recognised that in fact this would not be possible for new premises.*'

Members will note Paragraph 19.5 of the council's statement of licensing policy which states '*A licence may be issued subject to conditions, which must be complied with at all times whilst the premise is being used for licensable activities during the times specified in the licence. Failure to comply with the terms and conditions of a licence or if licensable activities are carried out without a premises licence, may result in a fine, which is unlimited or a term of imprisonment of up to 6 months, or both.*'

Residents comment upon their lack of confidence in the applicant's ability to manage the site appropriately given events held during the previous year.

It is feasible and permissible that the applicant could continue to host, bring your own alcohol events and live music in certain circumstances, in the absence of any requirement for a licence. However, this is subject to other considerations or permissions such as Planning and other legal requirements in relation to antisocial behaviour which could arise from such events. Further protections to residents could be afforded through Community Protection Notices, which are intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life. These apply to both individuals and businesses and can capture all behaviour that is detrimental to the local community's quality of life.

Members of the Licensing Sub Committee will be required to determine the application in relation to the promotion of the four licensing objectives i.e prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Members are advised that they must disregard references to concerns about the absence of planning permission as Licensing and Planning are two separate distinct regimes. The absence of planning permission will have no bearing in determining this application for a premises licence by the applicant. Likewise parking concerns would not normally be a consideration for the Licensing Sub Committee in determining an application of this nature.

Members will note that at the time of preparing this report, two responsible authorities, whom the Statutory Home Office Guidance recognises as experts in their respective field have concerns about the applicant's ability to promote the public safety licensing objective in providing the sale of alcohol or provision (showing) of film for a maximum of 10 guests in view of access / egress concerns for patrons.

Paragraph 9.40 of the Home Office Guidance provides to Licensing Authority's in determining applications and states '*Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities...*'

## **1.10 RECOMMENDATION**

Having had regard to and considered the position of the Responsible Authorities in particular Environmental Health (Health & Safety) and the Licensing Authority acting in its role as a responsible authority, these Responsible Authorities detail concerns about the applicant's ability to promote the Public Safety licensing objective, in relation to patrons accessing and egressing the site. This position has been confirmed following a visit undertaken to Tog Farm on the 20<sup>th</sup> April 2022.

Added to this concerns received from residents, which also raise the applicant's ability to promote the licensing objectives more generally but who also raise the safety of patrons at the site and promotion of the public safety licensing objective.

In view of these concerns with regards the promotion of the licensing objectives, **it is recommended that the application for a Premises Licence is refused.**

However, should Members determine to grant the application for a premises licence, then Members are asked to apply the conditions as set out in **Appendix 22** to any licence.

Background Papers:

[Link to Statutory Guidance issued under S182 of the Licensing Act](#)

[Link to Caerphilly CBC Statement of Licensing Policy](#)

Date of this report: 21<sup>st</sup> April 2022

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