

## **Licensing Act Sub-Committee – Record of Hearing held on Tuesday, 17 December 2013 at 6.00 pm**

**Members:** Councillor Shuttleworth (Chairman), Councillors Mrs Hearn and Mrs West

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### **1 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct.**

Councillor Shuttleworth and Councillor West both declared a personal interest in item 2 as each lived in relative proximity to the premises. They did not however consider that this fact was sufficient to qualify as a prejudicial interest and neither considered it would prejudice their judgement of the public interest.

### **2 Application for a Premises Licence - Tennis in the Park.**

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Senior Specialist Advisor outlined the report regarding the application for a premises licence for Tennis in the Park, Gildredge Park. Section M of the application showed steps taken by the applicant to promote the licensing objectives. The Sub-Committee was advised that the applicant also sought to sell Pimms on the premises in addition to wine, bottled beers and bottled cider.

Representations had been received from 3 members of the public, Mr Bloor, Ms Spiller and Ms Morris. The representations centred on the prevention of crime and disorder and the prevention of public nuisance (noise) licensing objectives. No representations had been received from responsible authorities.

Councillor Shuttleworth advised all parties present that Part D under Section M of the application showed additional details and conditions put in place by the applicant should the application be granted. This included the limitation of 10 ticketed events a year for the extended time for closure of the premises from 22:30 hours until 23:30 hours on Thursday, Friday and Saturday.

Mr Dove, Licensing Agent addressed the Sub-Committee on behalf of the applicant Active Children Ltd. He advised them that Mr Mackie, present at the meeting, would become the Designated Premises Supervisor should the premises licence be granted. He explained that the standard template for completing a premises licence application meant that the intention of the

application could not be easily portrayed but hoped he could address any concerns raised by the interested parties.

Mr Mackie addressed the Sub-Committee and reassured all parties present that the premises would not be operated like a pub as the application may have suggested. He then gave the Sub-Committee a background to the premises. Mr Mackie had acquired the land in February 2010 and had been granted planning consent to illuminate the tennis courts therefore allowing them to be open for longer. This would coincide with the closure of the premises applied for in the application. He reiterated that the extended time for closure of the premises from 22:30 hours until 23:30 hours on Thursday, Friday and Saturday would only apply for no more than 10 occasions and be limited to pre-booked tickets only.

He stated that he had received no representations against the application formally or informally from any of the Responsible Authorities. He then gave an overview of the vision of the premises which included his company's background and what he intended to do should the licence be granted. Mr Mackie was a resident of Old Town and also a member of the Lawn Tennis Association (LTA) which organisation supported the licensing objective of protecting children from harm. As a trained tennis coach he had safeguarding children experience.

The area where the premises lay was a beautiful spot of Eastbourne and Mr Mackie wanted to reassure those interested parties objecting that the application would have no ill effect on the area or cause any harm. The company Active Children Ltd promoted sports and health and fitness. He hoped that new members could be attracted to Tennis in the Park and stated that good hospitality was a key part of the sporting product. Funding had been received from Sport England and the LTA.

Mr Mackie advised that there were around 470 people, mostly children, played on the courts each week and he stated that the club was struggling with adult participation. The club currently makes adults bringing their children welcome by offering them tea and cakes. Answering why the premises were choosing alcohol as refreshment, Mr Mackie responded that the club builds its success on the hospitality it provides, therefore the sale of alcohol would enhance the offer provided and help the club grow. By supplying alcohol this provided a social environment for adults and this view was shared by other sports clubs. Mr Mackie emphasised that the social scene was critical for club membership. Mr Mackie made reference to Gildredge Bowls Club which had an alcohol licence.

Mr Mackie then explained how the premises would operate. He reiterated that the premises would not operate like a pub or generate loud noise. The alcohol on sale would be limited to bottled beer, cider and wine. The application would also include the sale of Pimms for the Wimbledon Championships. He emphasised that the type of alcohol products on sale were not associated with troublesome activity and anti social behaviour. He gave an example that a Mum and Dad could bring their kid to play tennis and enjoy a glass of wine and some lunch while watching their child play. This enhanced the hospitality that was available at the premises. Currently when the tennis courts close at 7:30 pm, people go home. The extension

would give people the opportunity to go off the court and have a glass of wine after a game. The extension would also allow the premises to host social events such as quiz nights.

Mr Mackie then addressed the four licensing objectives and believed that the application would not have an impact or undermine them. Addressing the protection of children from harm, Mr Mackie explained that the majority of children who attend the club were aged 5-8. The 250 members that were under 13 would not be purchasing alcohol. He continued that there would be no off sales at the premises and that the pricing of the alcohol would be at a premium removing the potential for street drinkers looking at the premises for alcohol. Mr Mackie did acknowledge the representations made against the application and noted the concerns that had been raised. He believed that the application would have a positive impact of the prevention of crime and disorder licensing objective as any group of people who could potentially cause anti social behaviour would move away from the area if they see the premises operating later in the evening. He stated that none of the members of the club were troublemakers and were not in the age range commonly associated with anti social behaviour.

Mr Mackie concluded by expanding on Section M of the application and the steps taken by the applicant to promote the four licensing objectives. The premises would operate a Challenge 21 ID Policy and notices would be displayed on the premises to advise the customers that products purchased at the premises must not be taken beyond the perimeter of the premises.

Councillor Shuttleworth asked what reassurances the applicant could give to those objecting to the application that the premises would not extend any problems occurring in the area, especially given that there are children's playgrounds near the premises. Mr Mackie responded that he had been in talks with Sussex Police and clear signage had been displayed to advise customers not to take any drinks off the premises. He also advised that all staff were appropriately trained and the premises would operate a table service. There would be a regular occurrence of staff going out to the decking area which was an extension to the building, removing any potential for drinks to be taken away from the premises.

Councillor Hearn asked how the applicant would deal with any customers who were drunk. Mr Mackie responded that this wouldn't be a common occurrence and it was normally parents who visited the premises or those who had come off the tennis courts. If an individual was drunk Mr Mackie advised that the premises would not serve them. He reassured the Committee that the target group for the premises was not those who had the potential of causing anti social behaviour.

Councillor West expressed concerns over the open space around the premises and enquired whether Mr Mackie would be present on the premises at all times. Mr Mackie responded that as licence holder it was his responsibility to be present and train staff. He advised that there was a clear line of demarcation in the area.

Addressing the concerns relating to the prevention of public nuisance licensing objective, Mr Mackie suggested that the noise in the area during the proposed extended hours would not match or exceed the noise

generated around 4pm during the week by the children playing tennis and in the park. The proposed social events would be significantly quiet in comparison especially the quiz nights. Mr Mackie advised that he had been in continuous communication with neighbours and any concerns raised should be able to get resolved.

Councillor Hearn asked for clarification about whether Gildredge Park Bowls Club did have a premises licence. It was confirmed by the Senior Specialist Advisor that it did but that this was restricted to members only. The Monitoring Officer reminded the Sub-Committee that each application should be judged on its own merits.

Mr Dove clarified the use of the word premises on the application. He made reference to the plan that was included at appendix 2 of the report that denotes clearly the area of the premises not limited to the pavilion building.

Councillor Shuttleworth made reference to the representations that had been made against the premises, included at appendix 3 of the report and advised those present that Ms Morris could not be present tonight but her representation would be taken into consideration.

Dr Bloor addressed the Sub-Committee in objection to the application. He apologised for the lateness of his representation but was not aware of the application until late. Mr Dove responded that notices had been displayed at the appropriate locations at the appropriate times and this had been checked by Eastbourne Borough Council. The Senior Specialist Advisor clarified that all the statutory guidance had been adhered to including an advertisement in the local newspaper and on the premises which allowed for a consultation period of 28 days.

Dr Bloor had also submitted an additional letter objecting to the application. The Sub-Committee agreed to include this during their deliberations. Dr Bloor advised that although his submissions represent his own view, he would also try and represent his neighbours who feel similarly about the application. He continued that during the day there was no problem with the noise and disturbance in the area. The concerns arise during mid to late evening where his sons complained over the noise that could be heard from the park. He made reference to the proposal to hold 10 ticket only events a year and the likelihood of these events taking place during the summer. This would not only disrupt his sons when studying but also the elderly residents in the area who retire to bed early in the evening.

Dr Bloor made reference to his letter and a compromise that might be agreed with the applicant. While some of his neighbours felt that alcohol should not be served in the park at all, Dr Bloor suggested that alcohol sold at the premises should only be served to members or with a meal. Dr Bloor reiterated that an extended time of 22:00 – 23:00 hours would have a disruptive influence on the children in the area.

Dr Bloor then queried why Active Children Ltd, which promoted sports and health and fitness amongst children, was proposing to sell alcohol. This raised another issue regarding somebody drinking and being responsible for a child at the same time. Dr Bloor explained that the area around the

premises was a very child orientated environment and queried whether it was being changed to be more adult orientated. He acknowledged that other tennis and sports club offer alcohol but their locations were different and restricted to members only.

Addressing the four licensing objectives, Dr Bloor identified the prevention of public nuisance as the main concern particularly noise. As a representative of the neighbourhood, he suggested that a compromise could be made in respect of the closing time of the premises. He recommended that the application be altered to an earlier closing time for the premises in respect of the supply of the alcohol.

Ms Spiller addressed the Sub-Committee objecting to the application. She stated that Gildredge Park was a designated alcohol free zone by the Council and made reference to the various notices that had been placed around the park. She believed that an application to sell alcohol was not in-keeping with the image of the park that was used regularly by dog walkers, children playing and keep fit classes, activities that were alcohol free. She acknowledged that the Bowls Club had a licence to supply alcohol but this was restricted to club members only so was not comparable to the application. She also added that the Bowls Club had high hedges and fences around the club so was not visible from the surrounding area, which didn't apply for the premises in question.

Ms Spiller then explained that there had been problems in Gildredge Park with drinking and she was part of a group that went around the park to pick up empty drinks cans and bottles. If this was not done, the situation posed a health and safety risk with broken glass. Ms Spiller suggested that individuals who were drunk in the park would see the premises selling alcohol and cause anti social behaviour. Addressing the applicants condition that there would be only 10 ticketed events a year where the time for closure of the premises would be extended from 22:30 hours until 23:30 hours from Thursday to Saturday, Ms Spiller was concerned that people would be wandering around the park with alcohol.

Councillor Shuttleworth acknowledged the issues had been raised regarding the time the premises was open and the issue of noise. He advised that the issue of littering and people wandering around the park with alcohol could not be assigned to the premises.

Mr Dove clarified that the issue of the premises being extended to 23:30 hours would only apply 10 times a year with alcohol being sold up to 23:00 hours. He advised that for the rest of the year, the premises would be closed at 22:00 hours which was its current closing time. He stated that the applicant would not necessarily use the 10 events and it would vary for different parts of the year with weather being taken into account.

Councilor Shuttleworth informed all parties present that part of the remit for Councillors included the right to impose conditions on the licence if necessary to promote the four licensing objectives.

Councillor Hearn acknowledged the concerns that had been raised by Ms Spiller and queried whether the applicant could apply for separate Temporary Event Notices (TENs) and whether the sale of alcohol could be

restricted to stop at 22:00 hours. Mr Dove responded that the premises would not be selling products such as vodka, draught beer and spirits, which products determine the type of customer that the premises would attract. He clarified that the applicant had not applied for an off licence therefore no alcohol could be taken away from the premises. Any alcohol found in the park sold at the premises would be a breach of the licence. He also added that his intention in including the 10 events on the application was to avoid the inconvenience of having to apply for TENs every time.

Dr Bloor acknowledged that the premises currently closed at 22:00 hours but added that with alcohol thrown into the mix that would cause more noise activity at the wrong time. Mr Mackie addressed the Sub-Committee and acknowledged that noise was high on the agenda as an issue for the application. He stated that currently the premises closed at 22:00 hours which meant that noise could be heard from the tennis courts until that time. He did not believe that any more noise would be created from the sale of alcohol at the premises as evident by the type of people that visit the premises or are part of the club.

Councillor West enquired about the alcohol free zone in Gildredge Park that had been raised by Ms Spiller. The Monitoring Officer clarified that Sussex Police had powers to act where there was consumption of alcohol in the park. Any such regime did not however pose any conflict in terms of the law with the granting of a premises licence for the consumption of liquor within a defined area within the park.

Councillor Hearn queried whether the extension of the premises was designed to increase the membership of adults. Mr Mackie confirmed that other sports clubs had bars and that the sale of alcohol was part of the hospitality provided. Currently the club was unable to provide enough social events sufficient to attract members.

Councillor Shuttleworth asked the applicant about the overall vision of the premises and how it would operate for the majority of the year. Mr Mackie responded that by applying for 10 ticket only events a year, the club could prepare an effective social calendar where there would be an event each month such as a quiz night and cheese and wine tasting. For regular use of the premises Mr Mackie gave an example that someone could enjoy a casual drink after a game of tennis.

The Senior Specialist Advisor asked the applicant what the current standard closing time of the premises was now and what it would be in the future, if the licence was granted for the majority of the year. Mr Mackie responded by stating that the pavilion part of the premises was staffed until approximately 19:00 – 19:30 hours for the majority of the time. For two days a week, the pavilion could be staffed up to 21:00 hours. If the licence was granted Mr Mackie stated that he didn't envisage people staying at the club beyond 20:00 hours for the majority of the year.

Councillor West asked whether the applicant would apply for more than 10 events per year if membership of the club increases. Mr Mackie confirmed that they had no plans to do this but that a Sub-Committee could refuse this application in the future if concerns were raised. Mr Mackie added that

the business plan for the premises was to increase adult membership for the club and in order to create a social environment, it would be inappropriate not to include the sale of alcohol as part of the offer.

Following all the evidence presented to the Sub-Committee, Ms Spiller summarised her representation and added why a parent would want to have a drink while watching their child play tennis when the majority of the time they had travelled by car. She remained puzzled about the signage displaying warning of prosecution if found drinking alcohol in the remit of the Park, as she did not consider that this had been clarified.

Dr Bloor summarised his representations by referencing the Licensing Act 2003 that stated that a premises must "ensure noise is not audible at sensitive locations such as dwellings, hospitals, hotels and other business premises."

Mr Dove summarised on behalf of the applicant and reiterated the points already made by himself and Mr Mackie.

The Sub-Committee then retired to consider and determine the application, having regard to the representations submitted, the four licensing objectives, guidance under Section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy.

Having taking into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

**RESOLVED:** That the premises application in respect of Tennis in the Park be granted as set out in the attached appendix.

The meeting closed at 8.58 pm

**Councillor Shuttleworth  
(Chairman)**

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## Eastbourne Borough Council Decision Notice

### Licensing Act Sub-Committee held on Tuesday 17 December 2013

Premises Licence Holder:	Active Children Ltd.
Premises:	Tennis in the Park.
Reasons for Hearing:	Relevant representations received from interested parties under the prevention of crime and disorder and the prevention of public nuisance (noise) licensing objectives.
Parties in attendance:	<p>Applicant: Mr Francis Mackie (Designated Premises Supervisor) Mr Graham Dove (Licensing Agent)</p> <p>Licensing Authority: Mr Jay Virgo (Senior Specialist Advisor)</p> <p>Legal Advisor: Ms Victoria Simpson (Monitoring Officer/Lawyer to the Council)</p> <p>Interested Parties: Dr Graham Bloor Ms Andrea Spiller</p>
Decision made:	That the application be granted in parts on the following grounds:

#### **Supply of Alcohol (indoors only)**

Monday – Sunday                      12.00 hours – 20.00 hours

Subject to the following conditions:

- An extended time for sale of alcohol (indoors only) up to 22.30 hours (closing time of premises 23.00 hours) is permitted for a maximum of 10 ticket only events in any calendar year. The applicant is required to notify the Licensing Authority and the Responsible Authorities at least 48 hours in advance of such events.
- Alcohol sales are limited to the types of alcohol specified in the operating schedule which forms part of the application, namely wine, bottled beers, bottled cider and pimm's only.

- Notices are displayed inside the premises to advise customers that products purchased on the premises are not to be taken beyond the perimeter of the premises.

Reasons for Decision: The Sub-Committee has granted the application in part subject to the conditions specified having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003, the licensing objectives, the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Department of Culture Media and Sport.

The conditions attached to the licence were considered necessary to ensure the promotion of the licensing objective relating to the prevention of public nuisance and in particular noise nuisance.

In reaching their decision, the Sub-Committee took into account all the representations that were made. Particular regard was given to representations from local residents about the likelihood of late night noise and disturbance given the proximity of residential properties to the premises. The Sub-Committee noted the relevant provisions of the Authority's Statement of Licensing Policy at paragraph 14 regarding the issue of the premises' proximity to residential premises.

The Sub Committee were mindful of the need to balance the concerns of local residents against the applicant's responsible attitude and the nature of their offer. By granting the application in parts subject to additional conditions which it deemed necessary to ensure the promotion of the licensing objective relating to public nuisance, the Sub-Committee felt that it had reached a compromise which balanced the needs of all parties.

Date of Decision: 17 December 2013

Date decision notice issued: 20 December 2013

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

## **RIGHT OF APPEAL**

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant in the case of refusal or restrictions on the licence, or the imposition of conditions to the licence. The right of appeal also

extends to persons who have made representations where the licence has been granted, or that relevant conditions have not been imposed on the licence.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.

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