

## **Licensing Act Sub-Committee - Record of Hearing held on Thursday 28 June 2012 at 6.00pm**

**MEMBERS:** Councillor SHUTTLEWORTH (Chairman); Councillors Mrs HEARN and Mrs WEST.

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### **1 Declarations of Interest.**

None were received.

### **2 Application for New Premises Licence – Five Acre Field.**

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

The Licensing Manager outlined the report regarding the application for a new premises licence to cover the open space land known as Five Acre Field, Lottbridge Drove, Eastbourne.

The Licensing Manager advised that following a mediation meeting held on 23 May 2012, the applicant Mr M Marchant, acting on behalf of the Council's Tourism and Leisure Service had revised the application significantly to address the concerns raised by local residents and interested parties.

The licence, if granted would authorise the use of the area of Five Acre Field for the period 2 August to 7 August to accommodate the Moscow State Circus. The original application lodged on the 7 May had sought consent for a series of licensable events over the period of a year.

The Legal Adviser to the Sub-Committee clarified that the sale of alcohol was not being sought as part of the application and would be dealt with under a Temporary Event Notice.

A personal licence holder can give a temporary event notice for licensable activities, and if no objections were raised by Sussex Police and the Council's Environmental Health Division the TEN would be granted.

39 written representations had been received objecting in relation to the 4 Licensing Objectives. Representations had also been received from Ward Councillors Gordon Jenkins and David Elkin.

The Sub-Committee was notified that Councillor Warner had requested to speak at the meeting however had not submitted a written objection within the prescribed period. The Sub-Committee agreed that Councillor Warner be permitted to address the meeting.

Mrs M Gyax addressed the Sub-Committee in objection to the application. Concerns were expressed that the location of the Circus would be too near the nearby unfenced river and in darkness could pose a health and safety risk. Given that the Circus was scheduled to finish around 10pm, there was also a concern that the lack of street lighting on Seaside Road and Middleton Drive

would make it unsuitable for anyone walking around late. There was also a fear that visitors to the Circus would cause congestion in the neighbouring side roads. This would lead to a disruption in traffic and possibly hinder the accessibility of ambulance and fire engines down the side roads.

It was also a concern that if the gates to the field were left unattended, travellers could enter and take up residence as they had done previously which had led to damage and disruption to the area. Mrs Gyax also made reference to a recent accident involving a gentleman walking on the Field who went down a dip in the ground and hurt his back and the fact that football matches were stopped from taking place on Five Acre Field as evidence that the field is unsuitable.

Mr Pitcher addressed the Sub-Committee and expressed concern over traffic congestion and questioned whether a risk assessment had been undertaken prior to the application being submitted, taking into account the new location for the Circus. Concerns were also raised and this was later reiterated by Mr Egalton, over how the Council's Statement of Licensing Policy which states that "amplified music or other entertainment noise from within the premises shall be inaudible within any residential premises" could be applied.

Mr Pitcher also felt that selling of alcohol could encourage drunken behaviour. Litter was also identified as a problem that would likely develop and Mr Pitcher feared that the stipulation in the application that litter and debris would be cleared at the conclusion of the event was insufficient and that litter should be cleared up daily or hourly.

Mr Pitcher then made reference to Liberal Democrat and Conservative leaflets published in 2007, appended to the report which had promised residents that no events would be moved onto Five Acre Field. Mr Pitcher concluded by referencing the mediation meeting that had taken place where it had been suggested that should the application be unsuccessful, the Circus would be shoehorned into Princes Park. Mr Pitcher considered this a much more suitable venue.

Mr Egalton addressed the Sub-Committee objecting to the application and focused on the prevention of public nuisance licensing objective by detailing the noise levels that could develop during the proposed Circus event. Mr Egalton had produced 3 maps, appended to the report that outlined the distances between the Circus tent and nearby residential areas and showed the average prevailing wind directions for August as taken from Eastbourne Borough Council's weather records. It was a concern that the close proximity to a residential area of the caravans, trailers and generators that accompany the Circus would cause undue noise pollution to residents, not just with music but the noise of visitors arriving and leaving the Circus and continued noise of the generators.

Mr Egalton explained that after monitoring the noise levels at the back of his garden following the mediation meeting, only 15 out of 60 readings had registered over 50 decibels, highlighting how quiet the residential area is and that this would be disrupted heavily with the arrival of the Circus. Mr Egalton enquired whether a noise management plan had been provided and what had been put in place to ensure compliance with the Environmental Protection Act 1990 and the Anti Social Behaviour Act 2003.

Mr Egalton also had concerns that the area where the Circus would be sited would be too uneven and the Circus may find it unsuitable, given that they need a level piece of ground. He echoed concerns regarding parking and felt there had been a lack of communication with residents over the proposal.

Mr McNeill addressed the Sub-Committee in objection stating concerns that the proposal would provide an immediate risk to the health and safety of children and that an issue with drunken behaviour may arise due to the sale of alcohol. It was also a concern that no specific risk assessment had been completed to identify the poor condition that the field is currently in. It was also felt that any incidents that occurred at the Field could incur a cost for local residents in the area relating to insurance premiums. Mr McNeill reiterated that the proposal was not measurable or achievable and requested that Five Acre Field be kept as an amenity.

Councillor Jenkins addressed the Sub-Committee making reference to the Licensing Manager's report that had referred to Five Acre Field as sports, park and events land. Councillor Jenkins disagreed that this was the case as Eastbourne Borough Council had stopped football matches from taking place due to the field posing a danger. It was felt that the proposal undermined the prevention of children from harm licensing objective due to the fact that no risk assessment had been conducted to identify the problems such as the unfenced sewers and uneven surface. It was also a concern that the Field was not situated far enough away from residents to not disturb them and could become an issue for local residents with young children as the noise could disrupt their sleeping patterns. Councillor Jenkins made reference to Mr Egalton's analysis of the noise pollution and reiterated that noise levels would become an issue. He concluded by recommending that the proposal be refused and the Circus be located in Princes Park.

Councillor Elkin addressed the Sub-Committee objecting to the proposal on the grounds of the prevention of public nuisance and public safety licensing objectives. It was believed that the Moscow State Circus would cause disruption to local residents and specifically residents of the Queen Alexandra Cottage Homes where elderly residents are feeling increasingly threatened due to an increase in public nuisance and crime in the area. Councillor Elkin made reference to the petition, appended to the report signed by residents of the Homes, objecting to the proposal. It was also reiterated that the proposal would cause a disruption to children living in the area and that parking problems may arise. Councillor Elkin also felt that the biggest issue was that no risk assessment had been done and especially with two events proposed at the same time, and queried whether the Council had checked that sufficient policing could be provided. It was recommended that the Circus be moved to Princes Park as had been previously suggested.

Councillor Warner addressed the Sub-Committee and thanked them for allowing him to speak at the meeting. Councillor Warner advised that Five Acre Field was not an events field and is a valued space that should be preserved. Councillor Warner reiterated the lack of risk assessments and believed residents had a right to be aggrieved. He considered that if the application were approved it would set a dangerous precedent.

The Senior Head of Tourism and Leisure representing the applicant addressed the Sub-Committee in support of the application. The Sub-Committee was advised that the Tourism and Leisure team organise around 45 events a year

for residents, the associated fees of which contribute to other events that take place throughout the year.

Mrs McNulty advised that she would take onboard the number of points that were raised tonight and clarified that the Circus was not an open event and only those who had bought tickets would be allowed to enter. The Circus was an annual event normally held on Princes Park, but as a special event had been arranged to celebrate the Olympic Games, an alternative venue had been sought. The Moscow State Circus had requested to perform on the same date and with limited open space land available, Five Acre Field was seen as the most appropriate alternative.

Mrs McNulty informed the Sub-Committee that the organisers had advised that the distance of the vehicle convoy for the Circus would be 90 metres away from residential houses and the generators used would be silent. Addressing some of the concerns of local residents and ward councillors, Mrs McNulty advised that the stream could easily be fenced off and flat flooring would be laid out from the car park to the entrance of the Circus avoiding the uneven ground. With regard to car parking, two areas had been planned that would hold 340 vehicles. With regard to concerns over alcohol, this would only be permitted within a designated space of the tent with no consumption permitted outside the designated area.

Mrs McNulty advised that a Risk Assessment had been completed for Moscow State Circus to analyse noise, nuisance etc. A generic Risk Assessment had also been completed for Five Acre Field which was updated regularly. The Sub-Committee was also informed that Moscow State Circus had assessed the site and deemed it appropriate for the event to take place. It was advised that both Risk Assessments would be integrated with each other as no specific Risk Assessment had been completed for the Moscow State Circus on Five Acre Field.

Those making representations questioned whether the Council's Tourism & Leisure service had been stretched due to the fact that two events had been scheduled to run parallel with each other. Mrs McNulty responded that given the extraordinary year, the Tourism & Leisure team were obliged to find a venue for the Olympic event and there was a risk that Moscow State Circus would not return to Eastbourne if the application was refused.

The Sub-Committee asked whether guarantees could be made regarding the noise levels for the Circus affecting the nearby residential area. Mrs McNulty advised that although it could not be guaranteed that no noise would be heard, having previously visited the Circus at Princes Park, no noise could be heard from nearby Fort Fun. The Sub-Committee was also informed that conditions could be imposed to test noise direction and that the applicant would work closely with the Council's Noise Abatement Team that would involve monitoring the noise during the Circus performance. When asked about the stewarding of the car parks, Mrs McNulty advised that this could also be imposed as a condition.

When asked about who was responsible for clearing up the litter and waste at the end of each day, Mrs McNulty advised that this was the organiser's responsibility.

Those making representations remained concerned that no specific Risk Assessment had been completed for Moscow State Circus being placed on Five

Acre Field and believed it would set a precedent for future applications on Five Acre Field.

Mrs McNulty advised that the concerns of local residents had been noted and would be addressed during the planning of the event. The legal adviser to the Sub-Committee advised on the requirement for each licensing application to be considered on its own merits.

Councillor Ede summarised on behalf of all those making representations the evidence presented to the Sub-Committee. Councillor Ede referred to the lack of no specific Risk Assessment as a concern and that if one had been conducted it would have addressed the many concerns raised regarding the field including the potholes, the unfenced stream and the likelihood of methane emissions. Councillor Ede also made reference to the unsuitability of the Field given the stopping of football matches being played. Councillor Ede concluded that those making representations did no object to the Moscow State Circus but the unsuitability of the site and the failure to adequately address the concerns raised.

Mrs McNulty advised the Sub-Committee that the annual relationship with the Circus formed an important part of the vast array of attractions and events offered to residents and visitors. Mrs McNulty reassured those making representations that the concerns that had been raised would be addressed when combining the two Risk Assessments.

Councillor Hearn questioned whether the decision could be deferred to allow a specific Risk Assessment onsite. Mrs McNulty believed that the Risk Assessment for Five Acre Field and Risk Assessment for the Moscow State Circus were adequate to address the concerns.

Councillor West believed that Five Acre Field was a community and amenities space and approving it would not be in the best interests of the residents.

The legal adviser to the Sub-Committee advised that although the application had been revised to a one off event, page 19 of the original application which detailed the steps taken by the applicant to promote the four licensing objectives would still apply.

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

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

**RESOLVED:** That the new premises application in respect of Five Acre Field be granted as set out in the attached appendix.

The meeting closed at 9.55 p.m.

**A Shuttleworth  
Chairman**

# Eastbourne Borough Council

## Decision Notice

### Licensing Act Sub-Committee held on Thursday 28 June 2012

- Premises Licence Holder: Eastbourne Borough Council's Tourism and Leisure Service
- Premises: Open Space Land, Five Acre Field, Lottbridge Drove Eastbourne
- Reasons for Hearing: Relevant representations received from interested parties under the public safety, prevention of public nuisance, protection of children from harm and prevention of crime and disorder licensing objectives
- Parties in attendance: For the applicant: Ms Tracy McNulty, (Senior Head of Tourism and Leisure)
- Interested Parties: Mr & Mrs Gyax, Mr & Mrs Pitcher, Mr D Egalton, Mr & Mrs Clark, Mr C McNeill, Mrs Eldridge, Mr & Mrs Hewitt, Mrs J Davy, Mrs M Jordan, Mr & Mrs Owen, Mr & Mrs Smith, Mr W Leman, Mr & Mrs Relf, Mr P Weeks, Mr & Mrs Atkins, Mrs R A Cooper, Mrs J Fielden & Mrs J Wood.
- Ward Councillors: Councillor Ede, Elkin, Jenkins and Warner.
- Licensing Authority: Mr J Virgo (Licensing Manager), Mrs S Oliver (Environmental Health and Amenities Manager) and Mr A Couper (Locum Lawyer).
- Decision made: To grant the new Premises Licence as follows:

#### **Open to the Public:**

2<sup>nd</sup> August – 7<sup>th</sup> August 2012 14.00 – 22.00 hours

#### **Regulated Entertainment: (Indoor and outdoor)**

**Live and recorded music, performances of dance and anything of a similar description/provision of facilities for making music, dancing and for entertainment of a similar description**

2<sup>nd</sup> August – 7<sup>th</sup> August 2012 14.00 – 22.00 hours

Subject to the following conditions:

- i) The premises license issued shall only apply during the 2<sup>nd</sup> August – 7<sup>th</sup> August 2012 and only permits regulated entertainment to take place to incorporate licensable activities defined by the Licensing Act 2003 undertaken by the Circus as part of the attraction during that period.

ii) The applicant follows the steps indicated in Section P of the original application to promote the four Licensing Objectives with the additional following requirements.

#### The Prevention of Crime and Disorder

- No alcohol is sold after the interval as agreed under the Temporary Event Notice which would authorise the Moscow State Circus to provide a licensed bar at the site for no more than 499 patrons, offering pre-performance and interval refreshments.

- Proper stewarding and supervision of the event be undertaken especially towards members of the public proceeding to and from the site.

#### Public Safety

A full on site risk assessment be undertaken and approved by Eastbourne Borough Council's Senior Head of Development and Environment that combines the Generic Risk Assessment of Five Acre Field and Risk Assessment completed for the Moscow State Circus. It should also include the following :-

- a) Fencing along the length of the stream/Crumbles sewer.
- b) Flat flooring be provided for visitors moving to and from the Circus tent, car park and toilet facilities.

Councillor Jenkins to be invited to be present at the time of the onsite assessments in his capacity as Ward Councillor.

#### The Prevention of Public Nuisance

- All vehicles/machinery in relation to the Circus and visiting public be sited as far away as can be achieved from residential buildings.

- Eastbourne Borough Council's Noise Abatement Team to monitor the noise levels to ensure the disturbance to the locality is kept to a minimum.

#### Reasons for Decision:

The Sub-Committee has granted the application for a Premises Licence 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 and the Council's Statement of Licensing Policy.

The Sub-Committee has weighed up the applicant's submissions alongside the representations made by the interested parties and Ward Councillors.

The Sub-Committee took into consideration that the application would be a one off event and that the Moscow

State Circus' normal location of Princes Park would be hosting a special event to commemorate the London Olympics.

The Sub-Committee was satisfied with the submissions made in support of the application and the measures offered by the applicant to address the concerns raised in respect of the operation of the site.

In recognising the concerns of local residents the Sub-Committee imposed a number of additional conditions which were considered necessary to promote the licensing objectives.

Date of Decision: 28 June 2012

Date decision notice issued: 6 July 2012

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.