

Body: Licensing Sub Committee
Date: 28th June 2012
Subject: Application For a New Premises Licence, Open Space Land, 5 Acre Field, Lottbridge Drive, Eastbourne
Report Of: Jay Virgo, Licensing Manager
Ward(s) Sovereign Ward
Purpose To determine an application for a new premises licence under the Licensing Act 2003.
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1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council's Licensing Team for a premises licence under the Licensing Act 2003 to cover the open space land known as Five Acre Field, Lottbridge Drive, Eastbourne.
- 1.2 The area is described as a sports, park and event land. It is proposed that the premises licence, if granted, authorises the use of the area and seeks a "one off licence" for the period 2nd August – 7th August 2012 to accommodate the Moscow State Circus.
- 1.3 This is a significant change from the original application lodged on the 7th May 2012, which sought consent for a series of licensable events over the period of a year. A copy of the original licence application is included at Appendix 1, and includes a layout plan of the site.
- 1.4 Following receipt of correspondence from Mr Marchant, the applicant, acting on behalf of the council's Tourism and Leisure service on the 25th May 2012, a copy of which is included at Appendix 2, the amended application is described as follows in section 2.

2.0 The Application

- 2.1 An application for grant of a new premises licence under the Licensing Act 2003 has been sought for the period Thursday 2nd August 2012 – Tuesday 7th August 2012, covering 12 performances by the Moscow State Circus. Consent is sought for the following activities for the specified period, both indoor and outdoor.

Section E – Live Music

Section F - Recorded Music

Section G – Performances of Dance

Section H – Anything of a similar description

Provision of Entertainment Facilities

Section I – Making Music

Section J – Dancing

Section K – Entertainment of a similar description

2.2 Mr Marchant has proposed that licensable activities, if granted, operate from 14:00 – 22:00 hours. This will allow two performances per day. It is envisaged that the site will be cleared of patrons by 22:00 hours.

2.3 Mr Marchant has also proposed that the following condition be added to the licence if granted:

“The premises licence issued shall only apply during the 2nd – 7th 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”.

2.4 The applicant has also indicated that it is intended that a Temporary Event Notice (TEN) be authorised to provide a licensed bar at the site for no more than 499 patrons, offering pre- performance and interval refreshments.

3.0 Licensing Objectives

3.1 When submitting an application for a premises licence under the Licensing Act 2003, the applicant is required to describe the steps they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. These are:

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

3.2 The Operating Schedule detailing the steps that the applicant intends to take to promote these objectives can be found at Section P of the application form, included at Appendix 1.

3.3 In making any decision, the Licensing Sub Committee must act to promote the four Licensing Objectives. All carry equal weight.

4.0 Eastbourne Borough Council’s Statement of Licensing Policy 2011 - 2014

4.1 Copies of the Council’s Statement of Licensing Policy 2011 -2014 have previously been circulated to Members. A copy is also retained in the Members Room or can be downloaded from www.eastbourne.gov.uk/licensing.

4.2 Whilst each application will be considered on its merits, the Licensing Committee will have due regard for the Eastbourne Borough Council's Licensing Statement Of Licensing Policy, and Section 182 Guidance issued by the Department of Culture, Media and Sport, revised on the 25th April 2012, and must act to promote the 4 Licensing Objectives.

4.3 Eastbourne Borough Council's Statement of Licensing Policy 2011 - 2014 outlines the matters the Authority will consider when determining matters under the Licensing Act 2003. This Policy offers a framework for decisions; however, the committee may choose to depart from it, offering reasons for doing so.

5.0 Overview of the Councils Statement of Licensing Policy 2011 - 2014

5.1 Public Safety

The Statement of Licensing Policy states that the Operating Schedule should include steps to ensure the physical safety of patrons. This might include the imposition of conditions regarding capacity and mechanisms to promote responsible drinking. A restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

5.2 Prevention of Public Nuisance

The Statement Of Licensing Policy states that within the Operating Schedule, applicants will be required to demonstrate how they intend to prevent nuisance arising, disturbance occurring and mechanisms to protect amenities in the vicinity of the premises. A restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

5.3 Protection of children from harm

The Statement of Licensing Policy requires that the Operating Schedule must specify the measures and management controls in place to protect children from harm. Conditions can be placed to restrict access to children from accessing the premises during certain times or when certain licensable activities are taking place. The restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

5.4 Prevention of Crime and Disorder

The Statement of Licensing Policy states that the Operating Schedule should include steps to ensure the deterrence and prevention of crime and disorder on and in the vicinity of premises. The restriction on the types of licensable activity, hours and the imposition of conditions may be considered and applied as appropriate.

6.0 Consultation Process

6.1 The Licensing Act 2003 requires applicants to advertise both on the premises and in a local newspaper in order to inform the public of the application. A number of "Responsible Authorities" have also been consulted as part of the process, allowing a consultation period of 28 days for representations to be

made. In respect of the application submitted on the 7th May 2012, the Licensing Team confirms that all of the statutory requirements have been met.

6.2 As a result of the consultation process, a series of representations were made regarding the application. These are detailed more fully at Section 7 of the report.

7.0 Representations

7.1 A copy of all representations received are included at Appendix 3. An overview appears below.

<p>Representations from individuals in the community</p> <ul style="list-style-type: none">• 39 representations have been received in relation to the 4 Licensing Objectives
<p>Representations from Ward Councillors</p> <ul style="list-style-type: none">• Representations have been received from Councillor Jenkins and Councillor Elkin.
<p>Representations from Responsible Authorities</p> <ul style="list-style-type: none">• Sussex Police – No representations have been received.• Eastbourne Borough Council Pollution team - No representations have been received.• Eastbourne Borough Council Licensing Authority – No representations have been received.• Eastbourne Primary Health Care Trust – no representations have been received.• East Sussex Fire and Rescue Service – No representations have been received.• Eastbourne Borough Council Health and Safety team – No representations have been received.• Eastbourne Borough Council Planning team – No representations have been received.• Council Area Child Protection Team, East Sussex County – No representations have been received.• Trading Standards, East Sussex County Council – No representations have been received.

- 7.2 Given the number of representations received in respect of the application, a mediation meeting was held on Wednesday 23rd May 2012. Approximately 130 people attended, including members of the local community, Ward Councillors and representatives of Eastbourne Borough Council, including Mr Marchant, the applicant for the premises licence. A series of concerns were raised by residents, including:
- The effective promotion of the Licensing Objectives, and potential for noise, nuisance, crime and disorder.
 - The potential for anti social alcohol related behaviour.
 - Health and safety concerns regarding the suitability of the site.
 - Litter and the likely wider disruption to the local community.
- 7.3 Following the mediation meeting, Mr Marchant took on board the concerns of attendees, and revised the application as detailed in his letter of the 25th May 2012, included at Appendix 2.
- 7.4 The applicant, those making representations from the local community, Ward Councillors and/or Responsible Authorities may also suggest conditions, or revisions to the application to address concerns and as a means to promote the Licensing Objectives.

8.0 Options Open To The Sub Committee

- 8.1 Members may consider any other matters which may negatively impact upon the locality and the Licensing Objectives, and may impose reasonable, proportionate and enforceable conditions as considered necessary to promote the Licensing Objectives.
- 8.2 The Licensing Sub Committee must have regard to the following:
- Eastbourne's Statement of Licensing Policy 2011-2014.
 - Statutory Guidance as amended on the 25th April 2012, under Section 182 of the Licensing Act 2003.
 - Representations from the proposed Premises Licence Holder and/or the Designated Premises Supervisor.
 - Representations from any Responsible Authority.
 - Representations from the local community and Ward Councillors.
 - Other information as considered appropriate.
- 8.3 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the Licensing Objectives and may:
- Grant the application in full as requested;
 - Grant the application but modify it;
 - by altering hours or activities;
 - adding conditions as necessary; or
 - omit parts as considered necessary for the promotion of the Licensing Objectives.
 - Reject all or part of the application.

9.0 Legal Considerations

- 9.1 The framework for the issue, variation and/or modification to applications is made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act. This Guidance is provided in order to assist the Council in carrying out functions under the Act.
- 9.2 Furthermore, the Licensing Sub Committee must have regard for the Eastbourne Borough Council's Statement of Licensing Policy 2011-2014.

10.0 Human Rights

- 10.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act 2003.
- 10.2 Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property. However, in this instance, a licence is yet to be obtained.
- 10.3 Article 8 - which relates to the right to respect private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right.
- 10.4 Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
- Has a basis in law;
 - Is intended to pursue a legitimate purpose
 - Is necessary and proportionate; and
 - Is not discriminatory.

11.0 Right of Appeal

- 11.1 An applicant and/or a person making a representation, be it a Responsible Authority or "interested party" has a right of appeal to the decision taken by the Licensing Authority. These provisions are detailed in Schedule 4 of the Licensing Act 2003.

Background Material

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (January/October 2010 & April 2012)
- Hearing and Regulations, Licensing Act 2003-2005
- Eastbourne Borough Council Licensing Statement 2011-2014
- Human Rights Act 1998