

LICENSING SUB-COMMITTEE – 14 SEPTEMBER 2020

APPLICATION FOR A PREMISES LICENCE FAIRY FESTIVAL, BURLEY

1. INTRODUCTION

- 1.1 The purpose of the report is to provide Members with information at the hearing to determine an application for a new premises licence made under section 17 of the Licensing Act 2003 ('the Act') in respect of the Fairy Festival, Burley

2. THE APPLICATION

- 2.1 An application has been received for a new, time limited premises licence for the Fairy Festival on 26 and 27 September 2020 on the field in Burley between the Burley Manor Hotel and Chapel Lane ('the Site').
- 2.2 The application seeks permission for the following on the two days of the event:
- sale of alcohol and
 - live and recorded music between 10:00 to 18:00 on both days.
- 2.3 The Fairy Festival is a family event which includes amplified music and a main stage, for bands to play acoustic sets of music of a folk genre. There will also be several workshops and one bar. A copy of the application form and plan are attached to the report as **Appendix 1**.
- 2.4 The Site is a popular event site in the village of Burley. A plan showing the site location is attached as **Appendix 2**.
- 2.5 Members may note that the deregulation of some forms of regulated entertainment in April 2015 now permits amplified or non-amplified live and recorded music to be played from 08:00 to 23:00 daily on any premises licensed for the sale of alcohol for consumption on the premises where the audience is no more than 500 people. Therefore Members do not need to consider the music element of the event.
- 2.6 Public consultation as required by the Licensing Act 2003 has been correctly carried out and the application has been advertised both on the site and in the local newspaper.

3. BACKGROUND INFORMATION

- 3.1 The event had been held at the Site for the past 7 years under short term premises licences, however since 2019, a premises licence was granted which permits the licensable activities to take place each year on the second weekend in August. A copy of the existing premises licence is attached as **Appendix 3**. The current application mirrors the licensable activities permitted by the existing premises licence with the exception of the date that the event is to take place.
- 3.2 During the current Coronavirus/ Covid 19 pandemic, the Government placed restrictions on public gatherings, which initially prevented many activities including outdoor events from taking place. The organiser of the Fairy Festival, therefore, decided that the event would not take place in August as it had done in previous years (and in accordance with the existing premises licence).

- 3.3 The Health Protection (Coronavirus Restrictions) (No.2) (England) Regulations 2020 came into force on 4 July 2020 and relaxed the restriction on gatherings where:
- (i) the gathering has been organised by a business;
 - (ii) the person responsible for organising the gathering has carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999; and
 - (iii) the gathering organiser has taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account their risk assessment. (Regulation 5)
- 3.4 Following this change, the Applicant submitted the premises licence application which is to be determined.

4. REQUIREMENTS FOR A HEARING

- 4.1 In accordance with section 18 of the Act, the Licensing Authority must hold a hearing to determine a premises licence application where relevant representations addressing the licensing objectives are made. These are:

- 1) The prevention of Crime and Disorder;
- 2) Public safety;
- 3) The prevention of public nuisance;
- 4) The protection of children from harm.

- 4.2 Members are referred to statutory guidance issued by the Home Office under section 182 of the Act dated April 2018, in particular the section on the licensing objectives.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

- 4.3 In determining the application, the Licensing Sub-Committee must give appropriate weight to:

- 1) The steps that are appropriate to promote the licensing objectives;
- 2) The relevant representations presented by all the parties;
- 3) The Home Office guidance;
- 4) The Council's own Statement of Licensing Policy

5. REPRESENTATIONS RECEIVED

- 5.1 During the representation period, the Licensing Authority received four representations against the application. Three of the letters of objection were from residents in the village of Burley and one was from Councillor Mark Steele (a New Forest District Council Ward Councillor for Burley who sits also on the Burley Parish Council). These are provided in **Appendix 4**.
- 5.2 The representations, in the main, refer to the impact of the event in relation to the current Coronavirus pandemic, under the public safety licensing objective. They also highlight concerns under the prevention of crime and disorder and public nuisance, based on the volume of traffic entering the village and parking issues, creating overcrowding and reduced access for emergency vehicles.

- 5.3 The statutory guidance issued by the Home Office under section 182 of the Act and linked at paragraph 4.2 above states the following regarding public health and the public safety licensing objective:

'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' (paragraph 2.7)

- 5.4. In respect of whether a representation is to be considered a relevant representation, the statutory guidance states the following:

'A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives' (paragraph 9.4)

- 5.5 It goes on to state that:

'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.' (paragraph 9.9)

- 5.6 In supporting a transparent and robust application process, all of the representations have been included for Members to consider. Members may wish to consider the weight they give to these objections, in line with legal guidance.
- 5.7 No representations have been received from any of the Responsible Authorities consulted during this premises licence application process.

6. SAFETY ADVISORY GROUP

- 6.1 In addition to the premises licence application, the Applicant submitted an event notification to the Safety Advisory Group ('SAG').
- 6.2 The SAG consists of the following members; the Police (Operations and Licensing), New Forest District Council Environment Health (Environmental Protection and Food and Health and Safety), Hampshire County Council Public Health, Hampshire Fire and Rescue and Hampshire County Council Highways and provides a forum for discussing and advising on public safety at an event.
- 6.3 SAG members received the following documents to review and were able to ask any supplementary questions or request further information where required, to outline the safety measures that would be carried out prior to and during the event:
- (i) An event management and operating plan;
 - (ii) Covid 19 risk assessment
 - (iii) Noise management plan and
 - (iv) Location plan and site layout plan.

(See **Appendix 5** for a summary of the control measures which has been prepared by the Licensing Manager)

- 6.4 The documents provided by the Applicant detail controls to address the requirements for a risk assessment under the Management of Health and Safety at Work Regulations 1999, and demonstrate measures to limit the risk of transmission of the coronavirus as required by the The Health Protection (Coronavirus Restrictions) (No.2) (England) Regulations 2020, as set out at paragraph 3.3 above.
- 6.5 There are no outstanding comments or actions that the SAG requires the Applicant to address. However, it should be noted that the SAG is a non-statutory body and therefore is not empowered to approve or prohibit an event from taking place.

7. PUBLIC HEALTH REVIEW

- 7.1 The Health Protection (Coronavirus, Restrictions)(England) (No.3) Regulations 2020 give Public Health at Hampshire County Council new powers to give a direction imposing prohibitions, requirements or restrictions in relation to the holding of an event in its area should the three conditions in the Regulations be met. These conditions are:
- (a) that giving such a direction responds to a serious and imminent threat to public health,
 - (b) that the direction is necessary for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection by coronavirus in the local authority's area, and
 - (c) that the prohibitions, requirements or restrictions imposed by the direction are a proportionate means of achieving that purpose. (Regulation 3)
- 7.2 Public Health at Hampshire County Council have reviewed the documentation specifically in relation to control measures identified in the Covid 19 assessments.
- 7.3 On 21 August 2020, Hampshire County Council Public Health (Health Protection) emailed the Applicant to state that they had considered the documents covering Covid 19 mitigations submitted for the Fairy Festival event. It was confirmed that based on the information submitted in the application and in any subsequent dialogue, the event would not be escalated for consideration for control under the Director of Public Health powers and the event could go ahead in the context of Covid19 mitigations. A copy of this email is attached as **Appendix 6**.

8. TEMPORARY EVENT NOTICE

- 8.1 In accordance with section 100 of the Act, where an individual is temporarily carrying on a licensable activity during a period not exceeding 168 hours, which is not authorised by a premises licence, the person wishing to hold the event can give notice to the Licensing Authority of the event. This is known as a Temporary Event Notice ('TEN'). It is intended as a light touch process and does not have to be authorised by the Licensing Authority on an application.
- 8.2 This TEN must also be served on the chief of police for Hampshire Constabulary and Environmental Health at New Forest District Council.

- 8.3 The system of permitted temporary activities gives the police and Environmental Health the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives. If they believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the Licensing Authority and premises user an objection notice within 3 working days of receipt of the TEN.
- 8.4 Following the expiry of the consultation period on the premises licence application, on 17 August 2020, the Applicant was informed by the Licensing Manager that relevant representations had been received against the premises application and that a hearing would be held in order for the application to be determined.
- 8.5 On 20 August 2020, the Applicant submitted a TEN to cover the sale of alcohol at the event (**See Appendix 7**) There were no objections from the Police or Environmental Health and therefore the TEN was processed to cover the event. The event organiser has reduced the number of attendees to assist with social distancing for this event based on the current climate, and as set out at paragraph 2.5 above, the other musical and workshop activities do not require a licence under the Licensing Act 2003.
- 8.6 The event, as applied for in the premises licence application, can accordingly take place on the 26 and 27 September 2020 in accordance with the TEN. However, the Applicant has not withdrawn the premises licence application and, therefore, it remains to be determined.

9. LEGAL IMPLICATIONS

- 9.1 This hearing is governed by the Licensing Act 2003 (Hearings) Regulations. Hearings should be held in public unless the Licensing Authority considers that the public interest in excluding the public outweighs it taking place in public.
- 9.2 The Applicant and those parties making representations have been invited to this meeting and have been provided with this report and the procedures to be followed at the meeting.
- 9.3 The Applicant and those who have made relevant representations are entitled to address the Sub-Committee and to ask questions of the other party, with the consent of the Sub-Committee.

10. RIGHT OF APPEAL

- 10.1 It should be noted that the Applicant and those who have made relevant representations may appeal the decision made by the Licensing Sub-Committee to the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the decision.
- 10.2 In the event of an appeal being lodged, the decision made by the Licensing Sub-Committee remains valid until any appeal is heard and any decision made by the Magistrates Court.

11. CONCLUSION

11.1 The Licensing Sub-Committee must, having regard to the application and any relevant representations, take such steps as are appropriate for the promotion of the licensing objectives. Those steps are:

- (a) to grant the licence subject to:
 - (i) the conditions set out in the operating schedule of the application modified to such extent as they consider appropriate for the promotion of the licensing objectives
 - (ii) any condition which must be included in the licence in accordance with the Act;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
- (c) to refuse to specify a person in the licence as the premises supervisor;
- (d) to reject the application

12. RECOMMENDATION

12.1 That the Licensing Sub-Committee determines the application.

13. APPENDICES

Appendix 1 Application form, list of conditions and site plan

Appendix 2 Location plan

Appendix 3 Existing licence

Appendix 4 Representations

Appendix 5 Summary of the control measures prepared by the Licensing Manager

Appendix 6 Email from Public Health following review of documentation

Appendix 7 TEN

Further information:

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