

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	19 th March 2014	Unclassified	LSC 69/134	

Report of : David Tolley Head of Consumer and Business Relations Originating Officer: Andrew Heron Licensing Officer	Title: Licensing Act 2003 Application for a Time Limited Premises Licence for Oktoberfest 2014, Millwall Park (off East Ferry Road, London, E14) Ward affected: Blackwall and Cubitt Town
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1.0 Summary

Applicant: **London Oktoberfest**

Name and Address of Premises: **Millwall Park
off East Ferry Road
London, E14**

Licence sought: **Licensing Act 2003:
The sale of alcohol
Regulated entertainment**

Objectors: **Local Residents
Local Councillor**

2.0 Recommendations

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Andrew Heron
020 7364 2665

3.0 Background

3.1 This is an application for a time limited licence for Oktoberfest 2014, Millwall Park (off East Ferry Road, London, E14) from 2nd October 2014 to 12th October 2014.

3.2 A copy of the application is enclosed as **Appendix 1**. Following from the application are the following documents:

- Event Management Plan
- Millwall Park Egress Plan
- Alcohol Management Assessment
- Anti-Social Behaviour Policy
- Fire Risk Assessment
- First Aid Risk Assessment
- Noise Risk Assessment
- Risk Register and Action Plans
- Security and Stewarding Plans

3.3 The applicant has described the nature of the as:

- The sale of alcohol
- Regulated entertainment

3.4 The hours that have been applied for are as follows:-

Sale of Alcohol (on sales only)

- Thursday and Friday from 17:00hrs to 22:30hrs
- Saturday from 14:00hrs to 22:30hrs
- Sunday from 12:00hrs to 18:30hrs

The Provision of Regulated Entertainment:

Live Music (indoors)

- Thursday and Friday from 17:00hrs to 22:00hrs
- Saturday from 14:00hrs to 22:00hrs
- Sunday from 12:00hrs to 18:30hrs

Recorded Music (indoors)

- Thursday and Friday from 17:00hrs to 22:45hrs
- Saturday from 14:00hrs to 22:45hrs
- Sunday from 12:00hrs to 19:00hrs

Hours premises is open to the public:

- Thursday and Friday from 17:00hrs to 23:00hrs
- Saturday from 14:00hrs to 23:00hrs
- Sunday from 12:00hrs to 19:00hrs

3.5 A map showing the site and the area of the park is included as **Appendix 2**.

4.0 Licensing Policy and Government Advice

- 4.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1st November 2013.
- 4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 4.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.homeoffice.gov.uk. It was last revised in June 2013.
- 4.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

5.0 Representations

- 5.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing
- 5.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 5.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.
- 5.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 5.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 3**.
- 5.7 All the representations in this report have been considered by the relevant officer (Trading Standards and Licensing Manager) and determined to have met the requirements of the Licensing Act 2003.

- 5.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
- Local Councillor, see **Appendix 4**
 - Local Residents, see **Appendices 5-20**
- 5.9 Members may note that many of the representations from local residents are 'cut-and-paste' repeats. Full representations have been included for Members' information. This Authority was made aware that the wording for these repeat representations came from an online petition, though this Authority has never been sent a petition in relation to the Oktoberfest 2014 application.
- 5.10 The representation from Mr Hart on behalf Millwall Albion (**Appendix 6**), contains very little information in relation to the licensing objectives. Members may wish to discount this representation altogether. Mr Hart was written to in order to ask for further information, but no response has been forthcoming.
- 5.11 The application received two representations against the application that were deemed to be invalid as they made no reference to the relevant licensing objectives. Both parties were written to in order to provide them with an opportunity to make their objection relevant, but no response was received and therefore they have not been included in this report.
- 5.12 The application has received two representations in favour of the application. Whilst these do not make reference to the licensing objectives, they have been included for reference (see **Appendices 19 - 20**).
- 5.13 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
 - The Metropolitan Police
 - The LFEPA (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Noise (Environmental Health)
 - Trading Standards
 - Child Protection
 - Primary Care Trust
- 5.14 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:
- the prevention of crime and disorder
 - public safety

- the prevention of public nuisance
- the protection of children from harm

5.15 The objections cover allegations of

- Anti-social behaviour on the premises
- Anti-social behaviour from patrons leaving the premises
- Noise while the premise is in use
- Disturbance from patrons leaving the premises on foot
- Close proximity to residential properties
- Noise leakage from the premises
- Safety problems
- The state of the site once the event was over

5.16 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

5.17 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

5.18 In addition to the documentation contained in the report, the application contains additional documentation providing the detail of the Event Management Plan/Noise Management Plan/Acoustic Report/Security Plan/Risk Assessment /Crown Safety Plan. Members are asked to consider all the associated documentation which accompanies the application and incorporate any conditions which are relevant, proportionate and enforceable from those documents that are necessary to address the licensing objectives.

6.0 Licensing Officer Comments

6.1 The following is intended to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

6.2 Guidance issued under section 182 of the Licensing Act 2003

- v As stated in the guidance it is "provided for licensing authorities carrying out their functions." It is a key medium for promoting best practice, ensuring consistent application and promoting fairness

equal treatment and proportionality (1.7).

- ∇ Also “so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so.” When doing so licensing authorities will need to give full reasons for their actions (1.9).
 - ∇ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.12)
 - ∇ Conditions may not be imposed for the purpose other than the licensing objectives.
 - ∇ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.7).
 - ∇ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
 - ∇ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. (S. 10.24).
 - ∇ The Government has stated “there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.20)
 - ∇ Mandatory conditions must be imposed (10.43) and censorship avoided (10.31).
 - ∇ Routine conditions about drink promotions are not permitted but can be imposed in appropriate circumstances (10.38). The Office of Fair Trading’s Advice also needs to be considered, namely that minimum prices setting is not permitted.
- 6.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 6.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

- 6.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 6.6 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)
- 6.7 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 6.8 In **Appendices 21-26** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters previously identified.

7.0 Exemptions

- 7.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 7.2 Schedule 1 Part 2 of the Act states that entertainment in churches, Morris dancing (and accompanying music if live and unamplified) and incidental music are not licensable activities-that is no conditions can be set for them.
- 7.3 Acts of religious worship, wherever performed are not licensable.
- 7.4 Section 177, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises and is primarily thus used, and the permitted capacity does not exceed 200, additional conditions relating to the music should only relate to public safety or the prevention of crime (or both). That is they should not relate to any "noise nuisance."
- 7.5 Section 177 (4) provides that where a premises licence (or club) has a capacity of not more than 200 and the only music is unamplified live music between 08:00hrs and midnight, no additional conditions should be set relating to the music.
- 7.6 Section 177 can be disapplied on a licence review if it is proportionate to do so.

8.0 Legal Comments

8.1 The Council's legal officer will give advice at the hearing.

9.0 Finance Comments

9.1 There are no financial implications in this report.

10.0 Appendices

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| Appendix 1 | A copy of the application |
| Appendix 2 | Map of the area |
| Appendix 3 | Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations |
| Appendix 4 | Representation of Councillor Gloria R Thienel |
| Appendix 5 | Representation of Local Resident Ms Karen Anderson |
| Appendix 6 | Representation of Local Resident Mr Albert Blackall |
| Appendix 7 | Representation of Local Resident Ms Rachel Buswell and Mr Jonathan Barratt |
| Appendix 8 | Representation of Local Resident Mr Thomas Carpenter |
| Appendix 9 | Representation of Local Resident Mr Gareth Hargreaves |
| Appendix 10 | Representation of Local Resident Mr Andrew Hesselden |
| Appendix 11 | Representation of Local Resident Mr James Honour |
| Appendix 12 | Representation of Local Resident Mr George Huett |
| Appendix 13 | Representation of Local Resident Mr Glen McCarthy |
| Appendix 14 | Representation Mr Mark Hart on behalf of Millwall Albion |
| Appendix 15 | Representation of Local Resident Robin Poynder |
| Appendix 16 | Representation of Local Resident Ms Vicky Sholund |
| Appendix 17 | Representation of Local Resident B U Smith |
| Appendix 18 | Representation of Local Resident Mr Frank R Thienel |
| Appendix 19 | Representation of Local Resident Mr Martin Griffiths (in |

favour)

- Appendix 20** Representation of Local Resident Tamlyn Thompson (in favour)
- Appendix 21** Licensing Officer comments on Anti-Social Behaviour on the Premises
- Appendix 22** Licensing Officer comments on Anti-Social Behaviour from Patrons Leaving the Premises
- Appendix 23** Licensing Officer comments on Noise while the Premise is in Use
- Appendix 24** Licensing Officer comments on Access and Egress Problems
- Appendix 25** Licensing Officer comments on Noise Leakage from the Premises
- Appendix 26** Licensing Officer comments on Safety problems