

AGENDA ITEM

**LICENSING SUB COMMITTEE
16 May 2014**

REPORT OF THE HEAD OF ENVIRONMENTAL SERVICES

**TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE FOR
A ONE DAY EVENT IN SHOBROOKE PARK**

REASON FOR REPORT

1. An application has been received for a premises licence for a one day event in Shobrooke Park to which a relevant representation has been received. Accordingly, Mid Devon District Council as the licensing authority is obliged to hold a hearing to determine the application.

RECOMMENDATIONS

1. **That this application is decided in accordance with the licensing objectives**

RELATIONSHIP TO CORPORATE PLAN

None

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	If there is an appeal against the decision the Council could find itself bearing the costs
Legal	If the decision is not lawful the Council could find itself subject to appeal or judicial review
Risk Assessment	If the decision is not reasonably and lawfully made it could be overturned on appeal to the Magistrates' Court

CONSULTATION CARRIED OUT WITH:

1. The process for applying for these licences is prescribed by regulations made under the Licensing Act 2003 that require applicants to copy their applications to the “responsible authorities” consisting of the police, fire service, Weights and Measures, body responsible for health and safety (generally Environmental Health), Environmental Health for nuisance, the planning authority, the licensing authority, the Primary Care Trust and the body responsible for child protection.
2. This Council notifies the town or parish council where the event is. For this application we notified both Shobrooke Parish Council and Crediton Town Council.
3. Applicants are also obliged to advertise their applications in two ways – on their premises so as to be visible to passers-by and in a local newspaper.

1.0 PREMISES AND EVENT

- 1.1 The premises are described by the applicant as “Shobrooke Park Event Area consists of parkland (mixed trees and grassland) with a lake to the southern edge. There is an amphitheatre with stage cover and some toilet provision already in place. The rest of the infrastructure involved will be brought in”.
- 1.2 There is an Event Management Plan which sets out that “The Enchanted Garden Ball is to be a single day event with entertainment including live bands, DJ performance, cabaret performances, performing arts and theatre. The event is aimed at 20 to 25 year olds, exclusively students, who will mostly have finished their end of year examinations. The event is for over 18s only and no under 18s will be admitted”. The date of the event is Saturday 7 June 2014.
- 1.3 The plan goes on to say that “There will be five main venues. They will be located in the area of the amphitheatre (see site plan). The live music stage will be open air to the south west of the field utilising the existing amphitheatre and cover. To the south east will be the geo dome with a DJ set up and silent disco. The Bavarian venue in a pole tent will be to the north east. In the north east corner of the site will be the Rabbit Hole big top and to the south of that the Rum Shack. This area will also contain a bar, about five caterers and some fairground stalls”.
- 1.4 The plan goes on to state that “Ticket holders will be encouraged to use coaches from central Exeter locations. Taxis will also be used.”
- 1.5 In terms of occupancy the maximum the plan covers is “4999 persons including ticket holders, guests, crew and performing artistes. Initially the site is designed for 3500 ticket sales”.
- 1.6 A copy of the Event Management Plan is attached as Annexe 1.

2.0 APPLICATION

- 2.1 The application is made by Crazy Penguin Events Ltd for a one day event on Saturday 7 June 2014 (despite the application form actually saying 2013).

2.2 In terms of regulated entertainment plays, films, live music, recorded music and the performance of dance are all applied for from 1700 until 0130. The supply of alcohol also is applied for with those times and the provision of late night refreshment is requested from 2300 until 0130. The opening times requested are from 1700 until 0200 with the later closing time to accommodate the dispersal of those attending by buses. A copy of the application form is attached as Annexe 2.

3.0 LICENSING OBJECTIVES

3.1 All applicants are required to set out in their applications how they will meet the four licensing objectives which are:

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

3.2 In the general the Event Management Plan covers all of the licensing objectives but the issue here is noise nuisance so attention is drawn to the Noise Management Plan that is attached as Annexe 3.

4.0 RESPONSIBLE AUTHORITIES

4.1 The responsible authorities are the police, the fire service, Environmental Health (nuisance and health and safety), the planning authority, Weights and Measures, the Primary Care Trust, the licensing authority and the body responsible for child protection.

4.2 Environmental Health met with the applicants after the event last year in view of the number of complaints received (14 mostly from Crediton residents) and full discussion took place on the noise management resulting in the plan attached as Annexe 3. Environmental Health Officers are satisfied that if this plan is followed noise nuisance will not be an issue. An officer from Environmental Health will be present at the hearing to answer any questions members might have.

5.0 OTHER PERSONS

5.1 Since 25 April 2012 any other person may play a role in a number of licensing processes under the Licensing Act 2003. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation of premises licences and club premises certificates regardless of their geographical proximity to the premises. Any representations must be 'relevant' in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious.

5.2 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.

5.3 Two Crediton residents initially objected but, on being contacted by the organisers and given assurances about noise management, withdrew their objections. They did both, however, make it clear that if the Noise Management Plan does not work they will object to any future applications.

- 5.4 Crediton Town Council made a representation against the licence application on the grounds that the form was incorrectly completed as it gave last year's date, not this year's. The Licensing Manager rejected that representation as irrelevant. The statutory Guidance issued under S.182 of the Licensing Act states "frivolous representations would be characterised by lack of seriousness" and "would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate."
- 5.5 A further email was received the next day (24 April) which was the last day for representations making a representation on the grounds of public nuisance based on last year's event and "the fact that the music was far too loud, going on far too late". The email chain is attached as Annexe 4.
- 5.6 One of the organisers of the event contacted the Town Council to see if he could meet their concerns and that email is attached as Annexe 5. At the time of writing this report that is the situation and Crediton Town Council has not yet been able to discuss their representation in the light of the email from the organiser.

6.0 LICENSING POLICY

- 6.1 The Licensing Act 2003 requires the Council as the Licensing Authority to formally adopt a policy setting out how it will deal with its duties under the Act. That policy must be reviewed every three years and this Council formally adopted the current policy on 18 December 2013 and it came into effect on 7 January 2014.
- 6.2 In its consideration of nuisance the policy at 3.4.1 states that "public nuisance can include low level nuisance affecting a few people living locally, as well as a major disturbance affecting the wider community. Nuisance is generally attributable to noise (from loud music or noisy customers), vibration, light pollution, noxious smells and litter. Applicants will be required to demonstrate that they have adequate measures in place in their applications to prevent nuisance and disturbance".
- 6.3 3.4.3 sets out that "the Authority will require applicants to take appropriate and proportionate measures to promote the prevention of public nuisance objective".
- 6.4 Members must have regard to the policy in making their decision and are requested to bring their own copy to the hearing.

7.0 GOVERNMENT GUIDANCE

- 7.1 Members are also obliged to have regard to the Guidance produced under S.182 of the Licensing Act 2003, the latest version of which was published in April 2012 to incorporate the changes brought about by the Police Reform and Social Responsibility Act.
- 7.2 Paragraph 1.16 states that "Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy". Paragraph 9.39 sets out that "the authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve".

8.0 DETERMINATION

8.1 In considering the application members will be able to take such of the steps below (if any) it considers appropriate for the promotion of the licensing objectives:

- Grant the licence as applied for
- Grant the licence subject to conditions the authority considers appropriate for the promotion of the licensing objectives
- Exclude from the scope of the licence any of the licensable activities to which the application relates
- Reject the application

8.2 In reaching their decision Members must carefully consider the application and the representations before them, having due regard to the Council's own Statement of Licensing Policy and the Government Guidance and, in particular, what is and what is not relevant to the licensing objectives. Whatever decision is made reasons should be given which will set out the matters taken into consideration and why such a decision is arrived at.

8.3 An adopted procedure is attached as Annexe 6, which should help guide all parties through the hearing and ensure all relevant matters are taken into consideration before a decision is made that is reasonable, lawful, and, above all in accordance with the licensing objectives.

9.0 APPEAL

9.1 Members have five days to make a decision but it is recommended that the application is determined at the hearing if possible.

9.2 If either the applicant or Crediton Town Council is dissatisfied with the decision made then all concerned have the right of appeal to the Magistrates' Court within 21 days of the formal notification of the decision.

Contact for any more information	Mrs Marjory Parish (01884) 244619 Licensing & Community Safety Manager or Tom Keating, Licensing Officer
Background Papers	MDDC Licensing Policy, S.182 Guidance to the Licensing Act 2003
File Reference	Licensing/Hearings/Enchanted Garden, Shobrooke
Circulation of the Report	Applicants Crediton Town Council

MID DEVON DISTRICT COUNCIL

Licensing Committee

Procedure for Hearings

1. Introduction

The hearing will be conducted in accordance with The Licensing Act 2003 (Hearings) Regulations (2005). The Sub-Committee will follow the procedure set out below at all hearings under the Licensing Act (2003)

2 The Officers

2.1 Each Sub-Committee will comprise of three Councillors of Mid Devon District Council who will hear applications made under the Licensing Act (2003)

2.2 The Committee will be attended by a:

- (a) A Licensing Officer
- (b) Representative of Legal Services
- (c) Representative of Member Services

2.3 The role of the Licensing Officer will be to introduce the application, outline the relevant facts and any issues involved through the presentation of their report

2.4 The role of the representative of Legal Services will be to deal with any questions of law, matters of practice and procedure and where appropriate assist the Sub-Committee in formulating the reasons for its decision. They may ask questions of parties and witnesses in order to clarify the evidence and any issues in the case.

2.5 The role of the representative of Member Services will be to make a record of the proceedings both by way of notes of the evidence given and a minute of the decision reached, inclusive of the reasons for the decision.

3. Procedures at the hearing

3.1 The Chair of the hearing will introduce the members of the Sub-Committee and the Officers present at the hearing.

3.2 The Chair will introduce the matter to be resolved, and will ask the parties present at the hearing to introduce themselves.

3.3 The Chair will outline the procedure to be followed at the hearing.

3.4 Upon the failure of a party to attend the hearing, the Sub-Committee will decide whether to adjourn the matter, or proceed in the party's absence. If the decision is taken to proceed, the party's written application or representation will be taken into account.

3.5 The Sub-Committee will consider whether the hearing should be held in public or private session. The hearing will usually be heard in public except where the Sub-

Committee decide that it is in the public interest for the public to be excluded from a particular hearing, or part thereof or where the Sub-Committee make a resolution that the public and the press be excluded from the hearing, on the basis that either confidential or exempt information is likely to be disclosed.

- 3.6 The Sub-Committee will decide whether to grant any written request made by a party for permission to call a witness at the hearing. Any request may not be unreasonably withheld.
- 3.7 The Sub-Committee will consider any requests to present any new evidence or information that has not already been disclosed to all the parties and the Sub-Committee. The general rule is that the Sub-Committee must not consider information or evidence that was not disclosed to it or to the other parties prior to the hearing taking place, although all parties at the hearing can agree to that extra information being considered on the day of the hearing.
- 3.8 The Sub-Committee will consider any requests to call witnesses and will make a decision on such requests.
- 3.9 The Sub-Committee will consider any requests for permission to ask questions of other parties. The Sub-Committee will consider whether asking questions is required in order for it to consider the case properly. If permission is given to one party to ask questions, it will usually be given to all other parties at the hearing.
- 3.10 The Sub-Committee will decide the length of time that each party will be allowed to present their case.
- 3.11 The hearing will take the form of a discussion to be led by the Sub-committee
- 3.12 The Chair will ask the Licensing Officer to outline the matter before the Sub-Committee.
- 3.13 Where the written evidence or information provided by the applicant, responsible authorities and/or interested parties have raised legal issues or submissions, the Chair may request that any legal representatives present at the hearing and the legal representative of Legal Services address the Sub-Committee on the legal points raised.
- 3.14 The Applicant will make their case first either personally or through a representative. The Applicant may give further information in support of the application, but only in response to a point upon which the authority has given notice that it will want clarification.
- 3.15 Documentary evidence or other information produced by the Applicant may be considered, provided this has been produced prior to the hearing, or if not, with the consent of all the other parties. It may be necessary in some circumstances for the hearing to be put back until later in the day so that parties may consider additional information which is produced at the hearing.
- 3.16 The Applicant may then be questioned by members of the Sub-Committee. Questions will either be directed through the Chairman, or put directly by members with the agreement of the Chairman.

- 3.17 The Applicant may call any witnesses in support of his application, if this has been permitted by the Sub-Committee. The witnesses will address the Sub-Committee, which may then ask any question of the witnesses.
- 3.18 When the Applicant has completed the presentation of their case, the representatives of any responsible authorities who have made relevant representations address the Sub-Committee, and may be questioned by members of the Sub-Committee.
- 3.19 Witnesses may be called by the responsible authorities where permitted by the Sub-Committee. Documentary or other information produced on behalf of the responsible authority may be considered
- 3.20 Thereafter, other persons address the hearing, and they may be questioned by members of the Sub-Committee.
- 3.21 Witnesses who are permitted to be called in support of the submissions of the interested parties are then questioned by members of the Sub-Committee. Documentary or other information produced on behalf of an interested party may be considered
- 3.22 Where the Applicant is a responsible authority or an interested party the licence holder will present their case after the applicant followed by any responsible authorities and then interested parties.
- 3.23 After the conclusion of the evidence, each party may sum up their case, by addressing the sub-committee in the order in which they presented their case.
- 3.24 The Sub-Committee will either leave the hearing room to deliberate or ask all parties to leave the room.
- 3.25 Depending on the nature of the application, a determination of the case may be made either at the conclusion of the hearing or within 5 working days.
- 3.26 Where the case is determined at the end of the hearing the Chairman will read the Sub-Committee's determination aloud together with the terms of the decision made and the reasons for such decision.
- 3.27 The Chairman will thank everyone for their contributions, and closes the meeting, or moves on to the next item on the agenda.

4. After the Hearing

- 4.1 Once the meeting of the Sub-Committee has been concluded, Member Services will prepare minutes of the hearings.
- 4.2 The Licensing Officer will issue a notice to all of the parties involved (whether present at the hearing or not), outlining the decision of the Sub-Committee.