

SUBJECT:	APPLICATION FOR A PREMISES LICENCE at: Higginson Park, Pound Lane, Marlow
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	W034 - Marlow

1. Purpose of Report

To provide Members with information to enable the determination of an application for a New Premises Licence, in respect of which relevant representations have been received.

The Application has been submitted by Market Square Group Ltd of Greenhill House, First Floor, East Wing, Thorpe Road, Peterborough, PE3 6RU (“the applicant”) in respect of ‘Marlow Moves’, Higginson Park, Pound Lane, Marlow, Buckinghamshire (“the premises”).

2. Background

The premises is a park and is the principal open space in Marlow located on the High Street and yet it also benefits from access to open countryside and the River Thames. The park area is 9.5 hectares (approximately 23 acres) and has been a public park since 1926.

The ‘applicant’ has actively engaged in consulting with members of the Safety Advisory Group as part of the planning for this event. The applicant has stated that the licence shall be for a “Community focused event taking place over **two days**. The event will feature a range of food and craft stalls, and activities for children”.

The application can be found marked **Appendix 1**.

The requested licensable activities are as follows:

Proposed authorised activity	Current hours	
Retail sale of alcohol (Both on & off the premises)	Every Day	09:00 – 22:00
Live Music (Outdoors)	Every Day	09:00 – 22:00
Recorded music (Outdoors)	Every Day	09:00 – 22:00
Performance of dance (Outdoors)	Every Day	09:00 – 22:00
Exhibition of a Film (Outdoors)	Every Day	09:00 – 22:00
Opening Hours	Every Day	09:00 – 22:00

The maximum capacity applied for shall be no greater than 4,999 persons, which shall include staff members.

The plan attached to the Premises Licence can be found marked, **Appendix 2**

3. Relevant Representations

3.1 Responsible Authorities:

- 3.1.1 **The Chief Officer of Police:** No objection received from the police to the application.
- 3.1.2 **The Fire and Rescue Authority:** No Response received: No comment
- 3.1.3 **The Local Planning Authority (Head of Sustainable Development):** No Response received: No comment
- 3.1.4 **The Local Environmental Health Authority (Head of Environmental Health):** No objection received to the application, subject to an agreed Noise Management Plan (NMP), **Appendix 3**
- 3.1.5 **Weights and Measures Authority (Trading Standards Officer):**
No response received. No comment
- 3.1.6 **The Safeguarding and Child Protection Unit:**
No response received. No comment
- 3.1.7 **The Licensing Authority:**
No response received. No comment
- 3.1.8 Three responses were received from any other Responsible Authority or **Any Other Person**, are marked **Appendix 4**.

3.2 No letters in support of the application have been received.

3.3 The applicant has complied with the requirement to advertise the application in accordance with the regulations both at the premises and in the local newspaper.

4. Relevant Policy Considerations:

- 4.1 Regard must be given to the Council's Statement of Licensing Policy (published 4th March 2022) when determining this application. Of particular relevance (but not limited to) are the sections relating to large events (page 46-47) and the Council's approach to preventing a public nuisance (page 35).
- 4.2 In relation to large events, the policy confirms at 3.64 that organisers of large events should be encouraged to make early contact with Buckinghamshire Council's Safety Advisory Group (SAG). The SAG is made up of representatives from the emergency services and other agencies concerned with event safety. The panel should note that the applicant has been engaged with SAG members and has provided on requests such documentation as required by SAG members. Some members of SAG are statutory consultee of the application as 'Responsible Authorities' and therefore able to make a representation to the application should they consider the licensing objectives would be undermined.
- 4.3 In relation to the prevention of a public nuisance licensing objective, section 3.36, the Licensing Authority will consider whether the measures proposed to deal with the potential for public nuisance having regard to all circumstances of the application, are adequate. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.
- 4.4 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

In relation to Prevention of Public Nuisance the Statutory Guidance states:

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

5. Resources, Risk and Other Implications

- 5.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeal against the decision of the Licensing Sub-Committee this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.

Human Rights:

- 5.2. The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents. Any decision taken must be appropriate and proportionate to the objective being pursued. In particular, the following should be taken onto consideration: Article 6 - the right to a fair hearing Article 8 - respect for private and family life Article 1, First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence).
- 5.3. Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there

is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and cannot be interfered with.

- 5.4. Therefore, if Members refuse to grant the application for a new Premises Licence in whole or part or grant it subject to conditions, this will be a breach of the rights of the Applicant unless such refusal (in full or part) is, and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the community at large's enjoyment of their property/possessions.
- 5.5. By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.
- 5.6 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

6. Determination by the Licensing Sub-Committee

- 6.1 The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives. Which are:
 - The prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm

Regard must also be had to the Council's Licensing Policy, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

- 6.2 Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.
- 6.3 The Sub-Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.

6.4 The following options are available to the Licensing Sub Committee in determining the application:

6.4.1. Grant the Premises Licence -subject to any conditions which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received - and any relevant mandatory conditions.

6.4.3. Reject the whole of the Application

6.4.4. Grant the Premises Licence subject to different conditions for different parts of the premises or for different /reduced licensable activities if it is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received.

6.5 The Sub-Committee is asked to note that it may not reject the whole or part of the application or attach conditions - merely because it considers it desirable to do so. It must actually be **appropriate and proportionate** in order to promote the 4 licensing objectives and be in response to the representations received and full reasons must be given for the Sub-Committees decision.

7. Conditions

Mandatory Condition – s19 of the Licensing Act 2003

No supply of alcohol may be made under the premises licence:

- (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every supply of alcohol under the premises licence must be made authorised by a person who holds a personal licence

THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER 2010 (SI2010/860)
AS AMENDED BY THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) ORDER
2014 (SI2014/2440)

Mandatory Condition 1

- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy

- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature

THE LICENSING ACT 2003 (MANDATORY LICENSING CONDITIONS) (AMENDMENT)
ORDER 2014 (SI2014/1252)

Mandatory Condition 2

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price
2. For the purposes of the condition set out in paragraph 1—
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) "permitted price" is the price found by applying the formula—
$$P = D + (D \times V)$$
where—
 - (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence—
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny
- 4.—(1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on

the next day ("the second day") as a result of a change to the rate of duty or value added tax

- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day

Mandatory Condition – s20 of the Licensing Act 2003 – Exhibition of Film

The admittance of persons to an exhibition of a film (including the exhibition of adverts) is to be restricted in accordance with recommendations given either by the body designated under section 4 of the Video Recordings Act 1984 specified on this licence, or by the Licensing Authority itself where the Licensing Authority provides notice to the holder that section 20(3)(b) applies to the film in question. In this case the admission of persons must be restricted in accordance with any recommendation made by the Licensing Authority.

For the purposes of this licence the body designated under section 4 of the Video Recordings Act 1984 is the British Board of Films Classification (BBFC).

Informative/s -

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Background Papers:	Application Ref 22/00274/LAPREN Licensing Act 2003, as amended Licensing Policy – As adopted March 2022. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.