

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Hellfire Caves, Church Lane, West Wycombe, HP14 3AH
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	W047 - West Wycombe

1. Purpose of Report

To provide Members with information enabling 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 West Wycombe Caves Ltd. (trading As The Hellfire Caves) (“the applicant”) in respect of Hellfire Caves, Church Lane, West Wycombe, HP14 3AH (“the premises”).

2. Background

2.1 The premises is known as The Hellfire Caves which are a network of man-made chalk and flint caverns which extend 260m underground above the village of West Wycombe. They were excavated between 1748 and 1752 for Francis Dashwood. The caves have been operating as a tourist attraction since 1863

A location plan showing the premises location is attached to this report marked **Appendix 1**.

3. The Application

3.1 This application is for a new Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application is attached to this Report marked **Appendix 2**. A plan of the “premises” is attached **Appendix 3**

3.2 The licensable activities sought are as follows:

<u>Proposed activity</u>	<u>Proposed hours</u>
Supply of alcohol (Both on & off the premises)	11:00 - 23:00 Daily
Exhibition of Films (Indoor)	11:00 – 23:00 Daily
Provision of Live Music (Indoor)	11:00 – 23:00 Daily
Playing of Recorded Music (Indoor)	11:00 – 23:00 Daily
Hours premises are open to the public	11:00 – 23:00 daily

4. Relevant Representations

4.1 Responsible Authorities:

4.1.1 **The Chief Officer of Police:** Response received – Objection. The police and applicant have agreed to amended conditions, **Appendix 4**

4.1.2 **The Licensing Authority:** No objection

4.1.3 **The Fire and Rescue Authority:** Response received – no objection

4.1.4 **The Local Planning Authority (Head of Sustainable Development):** No response received - no comment

4.1.5 **The Local Environmental Health Authority (Head of Environmental Health):** Response received - no objection, **Appendix 5**

4.1.6 **Weights and Measures Authority (Trading Standards Officer):** No response received - no comment

4.1.7 **The Safeguarding and Child Protection Unit:** No response received - no comment

4.1.8 **The Primary Care Trust:** No response received - no comment

4.1.9 No responses were received from any other Responsible Authority.

4.2 **Any other persons:** Five (5) objections were received during the 28 day consultation process which ended on 18 April 2021 a copy of which are attached marked **Appendix 6**

4.3 No letters of support were received.

5. Licensing Officer's Observations:

5.1 The Relevant Representations received raise the follows issues:

- The prevention of public nuisance

Representations mentioned concerns regarding noise occurring on the premises, particularly in the car park area.

Residents living nearby have expressed concerns that their right to enjoy the peaceful possession of their property is undermined, and that a statutory nuisance may occur as a result of the granting of the application.

The local Parish Council and residents are of the opinion that the current use of Temporary Event Notices (TEN) should continue. The applicant has the right under this section of the legislation to apply for a Premises Licence. There are no records of any nuisance having been reported to the Licensing Unit since 2018.

Twenty four TEN's have been issued in the last 10 years

Government Guidance states the following: That any licence holder "cannot manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff" and "Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law"

The Council's own Statement of Licensing Policy states, "Licensing is not a mechanism for the general control of anti-social behaviour by individuals beyond the direct control the licensee of the premises concerned."

5.2 In addition to the Mandatory Conditions, the Licensing Sub-Committee should consider those conditions offered in the operating schedule and decide whether they are appropriate for the promotion of the licensing objectives and address any valid representations made by Interested Parties.

6. Policy Considerations

6.1 Regard must be had to the Council's adopted Licensing Policy published February 2022 when determining this application. Of particular relevance (but not limited to) the following:

3.35 Public nuisance relates to the negative effects of nuisances including noise, light, odour, dust and litter affecting, or likely to affect, at least a few separate households locally. The Licensing Authority is keen to protect the amenity of residents and businesses in the vicinity of licensed premises. At the same time the Licensing Authority is aware that the licensed trade is important to the local economy and promoting the Council's culture and leisure aspirations. Consequently, the Licensing Authority will try and work together with statutory agencies, licensed businesses, residents and other businesses to reach a compromise in its decision making. 3.36 In considering all licence applications, 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. In preparing applications, applicants are strongly encouraged to

consider the measures set out below. Much weight will be placed on recommendations made by Environmental Health Officers in terms of preventing public nuisance.

3.37 Particular measures include:

- a) **Noise escape.** The steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices. In appropriate circumstances and where not included in the operating schedule, a condition may be imposed requiring the assessment by the applicant (either with or without the involvement of Environmental Health), of potential noise sources which could cause disturbance to those in the vicinity and to identify and implement appropriate control measures.
- b) **Customer arrival.** The steps taken or proposed to be taken by the applicant to prevent disturbance by customers arriving at the premises, particularly at night. This may include last entry conditions, minimisation and control of queuing and supervision of the exterior of the premises. If some queuing is inevitable then queues should be diverted away from neighbouring premises or be otherwise managed to prevent disturbance or obstruction.

6.2 Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended.

7. Links to Council Policy Objectives

7.1 The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made, the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective. In order to consider these matters, it is necessary to consider the environment of the area in which the premises are or will be situated.

Guidance issued under s.182 (p.18)

Prevention of a public Nuisance

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. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated

measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). 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. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 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.
- 2.21 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.

8. Resources, Risk and Other Implications

- 8.1 **Resource:** The only resource implications to date have been officer time however if the applicant or persons making relevant representations appeals 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.
- 8.2 **Human Rights:** The Licensing Sub-Committee's decision regarding this application will have Human Rights implications in respect of both the Applicant and the persons making relevant representations which also need to be considered equally and fairly so that the decision is proportionate and the right balance is met. The referral of this matter to the Sub-Committee is laid down in the Licensing Act 2003, as amended and is also in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. The Applicant and the persons making relevant representations have been notified of the Hearing and invited to make representations. A statutory right of appeal to the Magistrates Court and the right (if it arises) to challenge the Sub-Committee's decision by way of Judicial Review to the High Court also ensure a fair hearing to both the Applicant and the persons making relevant representations.
- 8.3 Article 8 and Article 1 of the First Protocol - the right to respect for private/family life and peaceful enjoyment of property/possessions (including Licences) - also needs to be considered. The persons making relevant representations have a right to respect for

their private and family life and their home. They are entitled not to be disturbed by unreasonable noise and/or nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.

- 8.4 Article 14 of the Human Rights Act 1998 - the right to freedom from discrimination (which is an absolute right) also needs to be considered. The human rights provided under the Human Rights Act 1998 must not be subject to discrimination under various headings, including race, national or social origins, association with a national minority group or other status.
- 8.5 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 can not be interfered with.
- 8.6 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.
- 8.7 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.
- 8.8 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.

9. Determination by the Licensing Sub-Committee

- 9.1 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.

- 9.2 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.
- 9.3 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.
- 9.4 The following options are available to the Licensing Sub Committee:
- 9.4.1 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.
 - 9.4.2 Exclude from the scope of the Premises Licence granted under Para 9.4.1 above any of the licensable activities to which the application relates.
 - 9.4.3 Refuse to specify a person in the Premises Licence granted under Para 9.4.1 as the premises supervisor.
 - 9.4.4 Reject the whole of the Application.
 - 9.4.5 Grant the Premises Licence subject to different conditions for different parts of the premises or the different /reduced licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).
- 9.5 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.

Conditions offered in the Operating Schedule

The prevention of crime and disorder

- A CCTV system has been installed in the Café (to include the staff areas), courtyard, and throughout the Caves to monitor all areas of the premises.
- For events such as parties, film nights, paranormal nights etc the number of guests are pre-booked and these are private events. They are all manned by our staff and security staff are employed as required.
- The gates to the Courtyard are covered by CCTV and easily manned to prevent unauthorised access. There is no other means of access.
- We have a regular collection of all litter with nearby Biffa bins to remove weekly.

- We will provide all the refreshments/alcohol in suitable containers/glasses etc. Customers are not allowed to bring in their own alcohol.

Public safety

- All fire safety checks are carried out regularly and staff are certified fire trained. The Café contains requisite fire extinguishers/blankets etc.
- Staff are first-aid trained to a certified level and first aid kit is located on premises.
- There are appropriate signs advising the public of the hazards contained within the Caves.
- The Caves are already a popular tourist attraction with thousands of visitors which we manage accordingly and we have had virtually no issues of any such nature in the last thirty years (someone twisted an ankle a few years ago!).
- There is CCTV throughout.

The prevention of public nuisance

- No noise can be heard outside from within the Caves themselves.
- There is a small car park directly outside the Caves courtyard (6 spaces plus disabled) which leads straight onto the Public Highway. Most visitors park either in the Public Car Park at the West Wycombe Walled Garden (300m), or in the Car park at the top of the Hill.
- For booked and private events we advise visitors and implement a suitable strategy depending on the event, timings etc. (ie attendees might arrive in a coach or minibus and we make sure they know where to pick up and drop off.)
- For light pollution the Caves courtyard is already floodlit with LED lights on a timed basis (which turn off automatically) and forms part of the visitor attraction.
- Suitable litter bins are located throughout the premises. Staff carry out daily litter picks

The protection of children from harm

- We have many children who come as regular tourists and also run events for them such as witches workshop, children’s parties etc. The Caves themselves are suitable for them and appropriate signs are displayed regarding the dangers.
- Our staff have the necessary safeguards and training. (CRB/DBS checked). We also have CCTV throughout.
- They are accompanied by adults (usually their parents, grandparents, whoever brings them).
- If showing movies nights then only the correct age categories will be admitted.
- Alcohol will only be available to those legally permitted to purchase/consume it.

Informative/s -

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Background Papers:	Application Ref 22/00774/LAPREN Licensing Act 2003, as amended Licensing Policy – Wycombe Area Published December 2018. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.