

SUBJECT:	APPLICATION FOR A NEW PREMISES LICENCE at: Buckinghamshire Oktoberfest, Burnham Park, Windsor Lane, Burnham
REPORT OF:	Application under section 17, Licensing Act 2003
Responsible Officer	Brian Whittall – Licensing Officer
Report Author	Brian Whittall – Licensing Officer
Ward/s Affected	Cliveden Ward

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 Barbican Events Limited, 136 Dragon Road Hatfield Hertfordshire AL10 9NZ (“the applicant”) in respect of Buckinghamshire Oktoberfest, Burnham Park, Windsor Lane, Burnham, SL1 7HR (“the premises”).

2. Background

2.1 The premises hosts a number of events throughout the year as a community asset and is located close to residential properties.

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)	Friday 16:00 - 22:30

Provision of Live Music (Indoor)	Saturday	11:00 - 22:30
	Sunday	12:00 – 20:00
	Friday	16:00 - 22:30
Playing of Recorded Music (Indoor)	Saturday	11:00 - 22:30
	Sunday	12:00 - 20:00
	Friday	16:00 - 22:30
Hours premises are open to the public	Saturday	11:00 - 22:30
	Sunday	12:00 - 20:00
	Friday	16:00 - 22:30

4. Relevant Representations

4.1 Responsible Authorities:

- 4.1.1 **The Chief Officer of Police:** Response received – No Objection.
- 4.1.2 **The Licensing Authority:** Objection received, **Appendix 4**
- 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 comment

- 4.2 **Any other persons:** One objection was received during the 28 day consultation **Appendix 6**. Following this representation, the Licensing Officer sought to mediate and upon request was provided a Noise Management Plan by the applicant, **Appendix 7**.

The representation has not been withdrawn.

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 so as to cause a public nuisance to local residents.

Government Guidance states the following: 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. 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.

The Council's own Statement of Licensing Policy states, 3.65 Given the complexity and scale of large events it is normal practice to produce an Event Management Plan (EMP).

3.66 For the purpose of an application for a premises licence the EMP can be the operating schedule. The Act requires the Licensing Authority to issue the licence with conditions consistent with the operating schedule accompanying the application. Paragraph 10.7 of the Statutory Guidance states that 'consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule.' Applicants should bear this in mind when drafting their EMP so that the premises licence is prepared with clear and enforceable conditions attached to it.

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-Committee's decision.

Conditions offered in the Operating Schedule

Prevention of crime and disorder

1. We will be carrying out body scans and bag checks upon entry.
2. We will have stewards in highvis vests based outside the tent on the street, directing the flow of people, reducing any noise and being a presence as people enter and leave the event.
3. If there is any anti-social behaviour when the guests leave the premises the police will be informed.
4. Security will be situated in multiple locations around the tent, at the exits and will be patrolling around the site. If in the event any problems do arise it will be spotted straight away and the appropriate measures will be taken.

Public safety

1. The event is non reserved seating in the general admission area, we have 960 guests in that area and have allocated seating for 1060 to ensure there is no overcrowding.
2. All alcohol and refreshments consumed on the premise will be made of disposable plastic or toughened plastic.
3. Two first aiders will be on the premises at all times.
4. All parts of the premises will be adequately illuminated.

Prevention of public nuisance

1. Any persons leaving the premises will be reminded to conduct themselves in an orderly manner and do not in any way cause annoyance to residents or persons passing by.
2. Patrons will not be permitted to leave the premises with any glass or drink which belong to the premises.
3. All music and entertainment will finish at 22.30 to limit noise pollution.
4. We aim for the tent to be situated on the furthest point away from any neighbours in the park, away from commercial and residential properties.

Protection of children from harm

1. This will be a strictly over 18s event.
2. IDs will be checked on the door, enforcing the challenge 25 scheme and anyone without ID will be refused entry.
3. If anyone is found using a fake ID, it will be confiscated and police will be notified.

Informative/s -

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Background Papers:	Application Ref PR202302-31243 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.