

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>20 APRIL 2011</b>
<b>TITLE OF REPORT:</b>	<b>APPLICATION FOR GRANT OF PREMISES LICENCE 'BIG CHILL FESTIVAL, EASTNOR CASTLE, DEER PARK, EASTNOR, LEDBURY. HR8 1RQ.' - LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENTAL HEALTH &amp; TRADING STANDARDS PUBLIC HEALTH DIRECTORATE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Ledbury

### **Purpose**

To consider an application for the grant of a premises licence in respect of the 'Big Chill Festival, Eastnor Castle, Deer Park, Ledbury, HR8 1RQ.'

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are necessary to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy.

### **Key Points Summary**

- The police, EHO (Pollution) & EHO (Commercial) have made representations as a Responsible Authorities
- Two (2) representations from Parish Councils
- Five (5) representations from members of the public

## Options

- 1 a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,
- b) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

## Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

## Introduction and Background

### 3 Background Information

Applicant	<b>Melvin John Benn</b> <b>The Big Chill Festival, c/o Festival Republic Limited, 35 Bow Street, Covent Garden, London. WC2E 7AU</b>	
Solicitor	<b>N/K</b>	
Type of application:	Date received:	28 Days consultation
<b>Grant Application</b>	<b>24/02/11</b>	<b>23/03/11</b>

### Licence Application

- 4 The application for the grant of a premises licence has received representation and is brought before the committee for determination.
- 5 The application is for a permanent premises licence. It is requested that the festival will take place over the first or second weekend in August each year subject to unforeseen circumstances (*force majeure*). In the case of '*force majeure*', the date of the festival could be held between 1 June and 1 September, although this must be agreed with the Safety Advisory Group.

### Previous Licence in 2010

- 6 For comparison, the licence last year authorised: -

Plays, Live Music, Recorded Music, Performance of Dance, Activity like Music or Dance, Facility for Making Music, Facility like Music and Dance

Thursday 12:00 until 00:00

Friday, Saturday and Sunday 00:00 until 05:00  
12:00 until 00:00

Monday 00:00 until 05:00

#### Films

Thursday 12:00 until 00:00

Friday, Saturday, Sunday 00:00 until 05:00  
10:00 until 00:00

Monday 00:00 until 05:00

#### Indoor Sporting Events, Boxing and Wrestling

Thursday 12:00 until 23:00

Friday, Saturday, Sunday 12:00 until 23:00

#### Facility for Dancing

Thursday 12:00 until 00:00

Friday, Saturday, Sunday 00:00 until 05:00  
12:00 until 00:00

Monday 00:00 until 12:00

#### Late Night Refreshment

Thursday 23:00 until 00:00

Friday, Saturday, Sunday 00:00 until 05:00  
23:00 until 00:00

Monday 00:00 until 05:00

#### Supply/Sale of Alcohol

Thursday 11:00 until 00:00

Friday, Saturday, Sunday 00:00 until 05:00  
11:00 until 00:00

Monday 00:00 until 05:00

<i>Staff only</i>	Monday (proceeding)	11:00 until 03:00
	Tuesday (proceeding)	11:00 until 03:00
	Wednesday (proceeding)	11:00 until 04:00
	Tuesday (following)	11:00 until 03:00

## Summary of Application

7 The application requests the following hours:

### Plays, Live Music, Recorded Music, Performance of Dance, Activity like Music or Dance, Facility for Making Music, Facility for Dancing, Facility Like Music and Dance

Thursday 12:00 until 00:00

Friday, Saturday and Sunday 00:00 until 05:00  
09:00 until 00:00

Monday 00:00 until 03:00

### Films

Thursday 12:00 until 00:00

Friday, Saturday, Sunday 00:00 until 05:00  
09:00 until 00:00

Monday 00:00 until 03:00

### Indoor Sporting Events, Boxing and Wrestling

Thursday 12:00 until 23:00

Friday, Saturday, Sunday 12:00 until 23:00

### Late Night Refreshment

Wednesday 23:00 until 00:00

Thursday, Friday, Saturday, Sunday 00:00 until 05:00  
23:00 until 00:00

Monday 00:00 until 03:00

### Supply/Sale of Alcohol

Wednesday 14:00 until 00:00

Friday, Saturday, Sunday 00:00 until 05:00  
11:00 until 00:00

Monday 00:00 until 03:00

### Notes:

In respect of plays, films, live music, recorded music, performance of dance, activity like music or dance and facility for making music, the application states:

Performances between 09:00 and 12:00 will take place as children's entertainment in the Castle Field

In respect of Adult Entertainment the application states that 'Classification 18 films may be shown in the Licensed Premises. The attention of the Committee is drawn to Section 12 of the Licensing Policy in respect of this.

#### Non Standard Hours

None applied for.

#### Opening Hours of Premises

Wednesday 14:00 to 16:00 Monday

### **Summary of Representations**

- 8 A copy of the representations can be found within the background papers.
- 9 Representations have been made by:
- i. The police
  - ii. The EHO (Pollution) – although noise issues have now been resolved
  - ii. The EHO (Commercial)
  - iii. Colwell Parish Council
  - iv. Birtsmorton Parish Council
  - v. Five (5) members of the public

### **Key Considerations**

- The steps that are necessary to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy
- Stated cases

### **Community Impact**

- 10 The granting of the licence as applied for may have an impact on the Community.

### **Legal Implications**

- 11 The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
- 12 The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, before the Honourable Mrs Justice Black.
- 13 In this case it was summed up that: -  
A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

14 Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

15 This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

16 Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1 Where a licensing authority—

- (a) rejects an application for a premises licence under section 18,
- (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
- (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
- (d) rejects an application to transfer a premises licence under section 44,  
the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2(1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision—

(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section,  
or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) "relevant representations" has the meaning given in section 18(6).

17 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

## **Consultees**

- 18 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 19 A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.
- 20 The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days. In addition, notice of the application was required to be published in a newspaper which was circulated within the vicinity of the premises.
- 21 The applicant has produced a copy of that advertisement.

## **Appendices**

- 22
  - a. Police representation
  - b. EHO representation
  - c. Application Form
  - d. Public Representation
  - e. Correspondence from representees relating to application

## **Background Papers**

**Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.**