

Meeting:	Licensing sub-committee
Meeting date:	8 March 2021
Title of report:	Application for a grant of a premises licence in respect of El-Dorado Festival, Eastnor Deer Park, Eastnor, Ledbury. HR8 1RD – Licensing Act 2003
Report by:	Technical Licensing Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Ledbury South

Purpose

To consider an application for a grant of a premise licence in respect of El-Dorado Festival, Eastnor Deer Park, Eastnor, Ledbury. HR8 1RD.

Recommendation

THAT:

The 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 appropriate 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 Statement of Licensing Policy 2020 - 2025.**

Options

1. There are a number of options open to the sub-committee:

- 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 sub-committee considers it appropriate 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.

Key Considerations

Licence Application

- 3. The application for the grant of a premises licence has received relevant representations and is therefore brought before the sub-committee for determination.
- 4. The details of the application are:

Applicant	Out of Nowhere Ltd	
Agent	Rob Dudley, We Are The Fair Ltd, Unit 301 – Brickfields, 37 Cremer Street, London. E2 8HD	
Type of application: Grant	Date received: 12 January 2021 28 day consultation started: 13 January 2021	28 Days consultation ended: 9 February 2021

Summary of Application

- 5. The application (appendix 1) requests the grant of a premises licence to allow up to 19,999 people at any one time and the following licensable activities, during the hours shown, as follows:

Plays (indoors/outdoors), Films (Indoors/Outdoors), Live Music (Indoors/Outdoors)
Recorded Music (Indoors/Outdoors), Performance of Dance (Indoors/Outdoors),
Anything Similar (Indoors/Outdoors)

Thursday 10:00 – 02:00

Friday, Saturday & Sunday 10:00 – 04:00

Late Night Refreshment (Indoors/Outdoors)

Thursday 23:00 – 02:00

Friday, Saturday, Sunday

23:00 – 04:00

Sale/Supply of Alcohol (consumption on and off the premises)

Thursday 12:00 – 02:00

Friday, Saturday, Sunday

11:00 – 03:30

Summary of Representations

6. No representations have been received from the responsible authorities
7. One (1) relevant representation has been received from a member of the public that the licensing authority have accepted as being relevant. (Appendix 2).

History of the Premises

8. The premises was first licenced in 2016 under the name Cirque du Soul El-Dorado. The licence was granted on 18 February 2016 for a one (1) year licence (Occasional Premises Licence).
9. A permanent premises licence was granted under the name Cirque Du Soul El-Dorado on 16 January 2017 following a 28 day consultation period where conditions requested by Environmental Health were agreed.
10. On 1 March 2018 an application was received to transfer the premises licence to Out of Nowhere Ltd and to change the premises name to El Dorado Festival. This was granted along with an application to vary the Designated Premises Supervisor (DPS) on 14 March 2018.
11. On 2 July 2018, a noise complaint was received by the council's Licensing Department from a member of the public (appendix 3). This was passed to Environmental Health.
12. On 20 November 2018, the El Dorado team wrote a letter to the complainant addressing the noise issues and a copy was also received by the council's Licensing department (appendix 4).
13. On 28 June 2019, a licence was granted following an application for a minor variation. The purpose of the application was to update the premises plans in regards to the sound system layout and stage positioning as agreed with Environmental Health.
14. Forty two (42) noise complaints have been received by the council's Environmental Health team between 2016 – 2019.
15. No noise complaints were received in 2016, one (1) received in 2017, forty (40) in 2018

and one (1) in 2019.

16. The noise complaints in 2018 came from residents of the Ledbury area and the reason being, was that the speakers at the festival, were directed towards this area. The issue was addressed for the 2019 festival and as a result, only one (1) noise complaint was received.
17. Due to the COVID-19 pandemic, the festival did not go ahead in 2020.
18. It is understood that at the time of the report being published, the premises licence holder will be looking to surrender their current licence should this application be granted.

Community Impact

19. Any decision may have an impact on the local community.

Equality duty

20. There are no equality issues in relation to the content of this report.
21. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
22. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

23. There are unlikely to be any financial implications for the licensing authority at this time.

Legal Implications

24. As relevant representations have been received, the sub committee must determine the application under Section 3.5.7 (c) of the Herefordshire Council constitution. The representations must relate to the licensing objectives and the sub committee must determine the likely effect of the grant of the premises licences on the promotion of the licensing objectives.
25. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions

under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.

26. The sub committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
27. 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. 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.

28. 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.
29. 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'.

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

Right of Appeal

31. Schedule 5 of the Licensing Act 2003 gives a right of appeal which states:

Decision to grant premises licence or impose conditions etc.

- (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).
32. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

Risk Management

33. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

34. All responsible authorities and members of the public living within Herefordshire.

Appendices

- Appendix 1 - Application Form
Appendix 2 – Public Representations
Appendix 3 – Complaint to Licensing Authority July 2018
Appendix 4 – Response to Complaint

Background Papers

None.