



Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	21 MAY 2019
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR DUXMORE FARM, DOWNEND ROAD, NEWPORT, ISLE OF WIGHT, PO30 2NZ.
Report Author	DIRECTOR OF NEIGHBOURHOODS

BACKGROUND

1. A premises licence issued under section 18 of the Licensing Act 2003 authorises the use of premises for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment.
2. An application for a premises licence was submitted to the licensing authority on 12 March 2019, for an event to be known as Dick and Dom's Great Wonder Fest, to be held at Duxmore Farm, Downend Road, Newport, Isle of Wight, PO30 2NZ. (Appendix A).
3. Dick and Dom's Great Wonder Fest is a four day family festival combined with a seven day camping experience (Wonder Camp).
4. Wonder Camp is due to take place between Monday 29 July 2019 and Monday 5 August 2019. The main event (Wonder Fest) will take place between Thursday 1 and Sunday 4 August 2019.
5. A licence is being sought for 14,999 people. It is anticipated that the actual attendance at the event will be in the region of 8,000 – 10,000.
6. The maximum number of tickets being sold for the event is 10,000. The maximum numbers on site including staff will be 11,000 at any one time.
7. The Great Wonder Camp will open at 09:00 hours on Monday 29 July and will remain open until 17:00 hours on Monday 5 August 2019.
8. The main event, The Great Wonder Fest will open at midday on Thursday 1 August until 02:00 hours on Monday 5 August 2019.
9. A site plan can be found at Appendix B.

10. The licensable activities applied for within the premises licence are as follows:

<u>Licensable activity</u>	<u>Day</u>	<u>Times</u>
Live/Recorded Music	Monday – Wednesday Thursday - Sunday	12:00 – midnight 12:00 – 02:00 hours
Performances of Dance	Thursday - Sunday	12:00 – 02:00 hours
Films	Thursday - Sunday	12:00 – midnight
Late Night Refreshment	Monday – Wednesday Thursday – Sunday	23:00 – midnight 23:00 – 03:00 hours
Supply of Alcohol	Monday – Wednesday Thursday - Sunday	11:00 – midnight 11:00 – 02:00 hours

11. The applicant states that entertainment across the site during the main festival days will cease at midnight, with the exception of the 'Lock-In Bar' which will remain open until 02:00 hours.
12. The applicant is required to submit a copy of the application to Responsible Authorities as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
13. Any person may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the application.

CONSULTATION

14. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the application has been correctly served. Applicants are required to serve each of the Responsible Authorities with a copy of the application, advertise the application at or on the premises and also in the local newspaper.
15. The application for a premises licence was received on 12 March 2019. Consultation should have ended on 9 April 2019.
16. However, the application was not correctly advertised in the newspaper as required by Licensing Act regulations and the consultation period was therefore re-started on 26 March 2019. During this period the application was advertised in the Isle of Wight County Press, at the premises and on the Council's website. The consultation period ended on 22 April 2019.
17. The outcome of the consultation in respect of this application is as follows:

<u>Responsible Authorities</u>	
Children's Services	No representation made

Environmental Health	Representation made
Fire and Rescue Service	No representation made - but see below
Trading Standards Service	No representation made
Planning Services	No representation made
Police	Representation made
NHS	No representation made
Licensing Authority	No representation made

Police

18. Hampshire Constabulary originally submitted representations on 14 April 2019. (Appendix C). The representation highlighted a number of errors within the polices and procedures that had been submitted as part of the application, and in particular noted that many of the documents appeared generic having been used at other events.
19. Consequently, information specific to this event was found to be missing. At this point the police stated that they were unable to produce suitable conditions due to the amount of information that was missing. Instead, a list of questions and recommendations was produced and sent to the event organisers in the hope that the information would be forthcoming, and conditions could then be drawn up and agreed.
20. Following this communication further information was submitted by the applicants and from this a list of conditions was drawn up and emailed on 3 May 2019. A list of the proposed conditions can be found at Appendix D.
21. At this time the applicants have agreed all of the conditions with the exception of condition number 22 and condition number 30.
22. Condition 22 states “No ‘shots’ or ‘shooters’ shall be available at the event. Any spirits must be provided with a non-alcoholic ‘mixer’.
23. Condition 30 states “The areas around all bars selling alcohol will have some form of physical boundary around them. No persons under 18 years will be permitted in these ‘bar areas’ after 20:00 hours.
24. In respect of condition 22, it is the view of the police licensing officer that it is not appropriate for ‘shots’ and ‘shooters’ to be being sold at an event that is being marketed as a ‘family event’.
25. In respect of condition 30, it is the view of the police licensing officer that a physical barrier to the front of any bars will provide an additional layer of safeguarding in order to prevent under 18’s from gaining access to the bars, particularly during the evening. It is his view that the likelihood of underage sales occurring is reduced further if SIA

staff are positioned on the entrance to the cordoned off area, and carry out age checks at this point prior to access being gained to the bars.

26. Fire

At the time of writing this report there are a number of minor queries that are being dealt with outside of the hearing. If necessary, these issues will be addressed under the Regulatory Reform (Fire Safety) Order 2005.

27. Environmental Health

At the time of writing this report there is further information required by Environmental Health in respect of the following:

- a) noise management
- b) the management of food traders
- c) the management of pedestrians in the car park/bus/taxi drop off.

Some concerns have also been raised in respect of the ground condition in one of the main fields and further advice is being sought on this.

It is hoped that by the time of the hearing these issues will have been addressed to the satisfaction of this department.

Other Persons

28. Island Roads

Island Roads have confirmed that they have no objections to this application, subject to having received a Traffic Management Plan (TMP) which is approved as suitable for the event at least fourteen days prior to commencement of the event.

FINANCIAL/BUDGET IMPLICATIONS

29. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

30. The 28 day consultation period ended on 22 April 2019. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

31. National Guidance

32. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:

33. Each application on its own merits –

1.17 Each application must be considered on its own merits and any conditions attached to licences and certificates 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 where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in any individual case.

34. Proportionality

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or of the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

35. Public nuisance

2.18 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.

2.19 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 is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also 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.

2.20 Conditions relating to noise nuisance will normally 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 more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the

community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 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.
- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.

Implications under the Crime and Disorder Act 1998

36. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

37. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
38. There is one convention right, which needs to be considered in this context:

Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

39. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted

and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council's legitimate aim.

40. It is considered that the following paragraphs from the Licensing Authority's Statement of Licensing Policy 2019 – 2022 have a bearing upon the application. Members' attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	4.1-4.3, 4.6, 4.7
Paragraph 5	Approach to Licensing Applications	5.1 – 5.4
Paragraph 6	Major Events & IOW County Council Act	N/A
Paragraph 7	Cumulative Effect	N/A
Paragraph 8	Representations, Reviews, and Appeals	8.1-8.6, 8.12-8.15
Paragraph 9	Enforcement	9.5
Paragraph 10	Operating Schedules	10.1-10.26
Paragraph 11	Data Protection	All

EQUALITY AND DIVERSITY

41. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
42. The equality impact assessment looks at how a service promotes equality and diversity to ensure legal compliance and that the services we provide and the decisions that we make meet the needs of our local community.
43. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

- Option 1: Grant the licence as per the application.
- Option 2: Grant the licence as per the application with all of the additional conditions that have been agreed with the Responsible Authorities and Other Persons, with the exception of condition 22 & 30 of the police conditions.

Option 3: Grant the licence as per Option 2 but add any additional conditions that the Sub-Committee deem reasonable and proportionate to promote the licensing objectives.

Option 4: Refuse the whole or part of the application.

RISK MANAGEMENT

44. With regard to Option 1: To grant the licence as per the application may not adequately mitigate concerns raised by the police. The decision not to address the concerns raised may subsequently be appealed by them.
45. With regard to Option 2: To grant the licence as per the application with all of the additional conditions that have been agreed with the Responsible Authorities and Other Persons, with the exception of condition 22 & 30. The police may consider that this does not adequately address the concerns that they have raised in respect of the Licensing Objective of the Protection of Children from Harm and the Prevention of Crime and Disorder, and may subsequently appeal the decision.
46. With regard to Option 3: To grant the licence as per Option 2 but to add any additional conditions that the Sub-Committee deem reasonable and proportionate to promote the licensing objectives. The risk of crime and disorder or concerns around the protection of children from harm could be reduced by attaching police conditions 22 & 30 or any other conditions that the Sub Committee see fit in order to promote the licensing objectives. Conditions must be appropriate and proportionate. Any decision to attach additional conditions may be appealed by all parties if they believe the conditions do not adequately promote the licensing objectives.
47. With regard to Option 4: If the Sub-Committee decides to refuse all or part of the application, the decision may be appealed by all parties.

EVALUATION

48. The applicant has submitted written representations regarding the police conditions that they are not in agreement with. These representations can be found at Appendix E. In summary it is the view of the applicants that police conditions 22 & 30 are unclear and unenforceable.
49. The Committee should determine the application in accordance with section 52 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005 and with a view to promoting the licensing objectives, which are:
 - a. The Prevention of Crime and Disorder
 - b. The Prevention of Public Nuisance
 - c. Public Safety
 - d. The Protection of Children from Harm
50. In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
51. The Committee must have regard to all of the representations made and the evidence it hears.

RECOMMENDATION

52. Members should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

APPENDICES ATTACHED

[Appendix A](#) Application for a premises licence under section 17 of the Licensing Act 2003

[Appendix B](#) Site plan

[Appendix C](#) Police representation

[Appendix D](#) Proposed police conditions

[Appendix E](#) Applicants response to proposed police conditions 22 and 30.

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2019 – 2024.
<https://www.iow.gov.uk/azservices/documents/1226-Approved-Licensing-policy-2019-24.pdf>

Contact Point: Andrea Bull, Licensing Officer ☎ 823159 ext 6126
e-mail Andrea.bull@iow.gov.uk

COLIN ROWLAND
Director of Neighbourhoods