

LICENSING AND APPEALS SUB-COMMITTEE
18th July 2018

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

LICENSING ACT 2003

**APPLICATION BY Rhythms Of The World Ltd FOR A PREMISES LICENCE IN
RESPECT OF Rhythms Of The World, High Street Hitchin, Market Square
Hitchin, St Marys Church and Gardens Hitchin, Hertfordshire. SG5 1DY**

REPORT OF THE LICENSING OFFICER

1. BACKGROUND

- 1.1 This is a new application for a premises license. The licensed area applied for is in three separate open space areas of Hitchin Town Centre.
- 1.2 The locations are the same as previous events that have taken place under the event name Rhythms of the World.
- 1.3 The event is being run and advertised as the charity Rhythms of the World and its event marketing and advertising is based upon similar themes to previous events.
- 1.4 This licence application is for the licensable areas to accommodate up to 4,999 people.
- 1.5 In 2007 it was decided by responsible authorities and the charity that it was no longer safe to run an event in the town centre and it was moved to the grounds of Hitchin Priory.
- 1.6 When a similar smaller-scale event was held previously within Hitchin Town Centre temporary event notices were used.

2. APPLICATION

- 2.1 The application is for a premises Licence under section 17 of the Licensing Act 2003 and is attached as **Appendix A**
- 2.2 The application is for the event to run in perpetuity. This will be for one (1) Saturday in the months of either July or August annually.

3. APPLICATION PROCESS

- 3.1 On the 23rd May 2018, Rhythms of the World Ltd made an application for a premises licence.
- 3.2 The application was received electronically by NHDC and was circulated to Hertfordshire Constabulary and the other responsible authorities
- 3.3 A public notice was displayed on open space areas for a period of not less than twenty-eight (28) consecutive days in accordance with the requirements

of the Act.

- 3.4 A newspaper advertisement was placed in a local newspaper in accordance with the requirements of the Act.

4. REPRESENTATIONS

- 4.1 Hertfordshire Constabulary entered in to discussion with Rhythms of the World Ltd during the consultation period regarding appropriate licence conditions but failed to satisfy their concerns.
- 4.2 Hertfordshire Constabulary have made a representation that the premises licence application should be refused.
- 4.3 Should the licensing sub committee be minded to grant the premises licence application, conditions have been produced by Hertfordshire Constabulary that would partly satisfy their concerns.
- 4.4 Hertfordshire Constabulary's representation is attached as **Appendix B**.
- 4.5 NHDC Environmental Health have made a representation that the premises licence application should be refused.
- 4.6 Should the licensing sub committee be minded to grant the premises licence application, conditions have been produced by NHDC Environmental Health that would partly satisfy their concerns.
- 4.7 NHDC Environmental Health's representation is attached as **Appendix C**.
- 4.8 NHDC Environmental Protection had initial concerns with the application and entered into negotiations with the applicant during the consultation period. The applicant subsequently amended the application to include additional operating schedule conditions which resolved the officer's concerns.
- 4.9 The amendments made following negotiations with the environmental protection officer are attached as **Appendix D**.
- 4.10 The Fire Service had initial concerns with the application and entered into negotiations with the applicant during the consultation period. The applicant subsequently amended the application to include additional operating schedule conditions which resolved the officer's concerns.
- 4.11 The amendments made following negotiations with the Fire Service are attached as **Appendix E**
- 4.12 No other responsible authorities made representations.
- 4.13 No relevant representations were received from other persons (e.g. members of the public).
- 4.11 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the licensing officer to determine whether a representation is relevant as specified by the Act.
- 4.12 As the licensing officer has determined that the representations are relevant, it is for the sub-committee to determine what weight to apportion to each representation.

benefits to and impacts on the community as a whole and will take a proportionate view on the weight to apply to representations.

D2.1

Each licence application will be decided by reference to this Policy, the National Guidance issued by the Secretary of State, relevant legislation and to the individual circumstances of the particular application. The Council may depart from the Policy where the individual circumstances of any application merit such a decision in the interests of the promotion of the Licensing Objectives. Full reasons will be given for decisions taken by the Council when undertaking its licensing functions.

D2.4

In determining applications, the Council will focus primarily on the direct impact of the proposed activities on persons that may be adversely affected in relation to the licensing objectives. The scope of those persons that may be affected will be determined on a case by case basis taking into account all relevant factors.

D2.6

Where problems with a direct causal link to premises exist in relation to the promotion of the licensing objectives but they cannot be mitigated by the imposition of appropriate conditions, a Licensing Sub-Committee will seriously consider refusal of the application. For example, patrons from a licensed premise that are causing disorder in a town centre after leaving the premises cannot be controlled by conditions, however the problem may be resolved by the refusal of the application or revocation of the licence.

D2.9

The Council will carry out its licensing functions in the promotion of the licensing objectives and, in addition, will support the stated aims of the Act which are as follows:

- (i) protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- (ii) giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;*
- (iii) recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;*
- (iv) providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and*
- (v) encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.*

D6.2

The Council recognises that 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 activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. A standardised approach to imposing conditions must be avoided and conditions will only be lawful where they are deemed appropriate to promote the licensing objectives in response to relevant representations.

D6.3

Conditions will only be imposed when they are appropriate for the promotion of the licensing objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities or the surrounding areas of the premises, places or events. Conditions are likely to be focused towards the direct impact of those activities on persons living in, working in or visiting areas affected by, or likely to be affected by, those activities.

- policies in relation to admission and readmission particularly control of capacity and queuing
- policies in relation to the safe dispersal of patrons from the premises and locality
- sufficient basic first aid provision and responsibilities for contacting the emergency services.

E2.7.2

In order to assist applicants with promoting the public safety licensing objective, NHDC's Commercial Team has compiled the following table of considerations. This table is not exhaustive and does not supersede or replace any other statutory obligations. The level of detail required will be proportionate to the size of the premises and the requested activities.

<p><u>Planning and Management</u> The applicant should have a written explanation of the management arrangements of the premises, including cover during periods of absence. The maximum capacity of the premises, including individual room capacities, based on available space excluding fixtures, fittings and furniture, number of available exits and exit widths and stairs and other hazards. The applicant should have a means of accurately counting the total number of customers and staff on the premises. The applicant should have arrangements for supervising contractors on the premises, including the ability to act on poor performance.</p>
<p><u>Venue Design</u> The premises should be designed so any change in level is clearly indicated by contrasting colour nosings (or similar) to reduce the risk of tripping.</p>
<p><u>People Management</u> Where a premises employs door supervisors there needs to be an effective means of communication between staff.</p>
<p><u>Transport Access</u> Pedestrian and vehicle access routes need to be clearly separated wherever possible</p>
<p><u>Barriers</u> Any barriers must be of an appropriate type and installed by a competent person in accordance with an appropriate risk assessment.</p>
<p><u>Temporary Demountable Structures</u> Any temporary structure (for example marquees, stages, etc.) should be installed and signed-off as 'fit for purpose' by a competent person. The structure should be monitored throughout its use by a competent person to ensure the safety of staff, performers and customers at the premises.</p>
<p><u>Electrical Installations and Lighting</u> Needs to be checked and maintained by a competent person in accordance with national standards. Temporary electrical installations needs to be suitable for the intended use and checked in accordance with national standards.</p>
<p><u>Water Supply</u> If extending the water supply network outside of fixed premises, please seek advice from Environmental Health.</p>
<p><u>Special Effects</u> Any special effects (for example, lasers, smoke machines, pyrotechnics, etc.) should be installed and operated by a competent person in accordance with manufacturers' instructions.</p>
<p><u>LPG</u> Any LPG containers should be stored, used and disposed of in accordance with manufacturers' instructions.</p>

E3.1.1

Licensed premises may have significant potential to impact adversely on communities through public nuisance that arises from their operation. The Council interprets 'public nuisance' in its widest sense and takes it to include such things as noise, light, odour, litter and anti-social behaviour, where matters arising at licensed premises impact on those living, working or otherwise engaged in activities in the locality. Ordinarily, the

restriction of licensable activity timings, removal of licensable activities, suspension or revocation of the licence will be seriously considered.

F8.1

The Council acknowledges that conditions cannot be imposed on an authorisation where it would be either impracticable or impossible for the licence holder to comply with such conditions when customers have left the premises and are beyond the control of the licence holder.

F8.2

That said, if behaviour of customers beyond the control of the licence holder can be causally linked to a specific premises and it is causing crime and disorder or a nuisance it is wrong to assume that the Act cannot address this; section 4 of the Act gives the Council a positive duty to deal with it proportionately. Whilst conditions would be inappropriate in these scenarios, the Council is strongly of the view that activities and/or operating times of an authorisation should be restricted, or an authorisation refused or revoked, where appropriate for the promotion of the licensing objectives.

G1.1

This section of the Policy deals with events with an intended capacity of five hundred and above. Capacities below that figure can be dealt with ordinarily by way of a temporary event notice which applies a 'light touch' approach to licensing, however, this does not preclude an application for a premises licence/club premises certificate.

G1.2

This section is to be read in conjunction with and supplementary to all others sections of the Policy.

G1.3

This section of the Policy is designed to assist applicants, responsible authorities, the public and Licensing Sub-Committees with applications in relation to large-scale events provided outdoors. Events such as music festivals, community fun days, etc. which take place on land open to the air but with the use of temporary demountable structures are considered to be outdoor events for the purposes of this Policy.

G3.1

The Council requires the following minimum periods in order to process applications for large scale events, however, the Council encourages the submission of applications as early as possible:

<i>Maximum capacity at any one time (inc. staff and performers)</i>	<i>Minimum Notice Period for Application</i>
<i>500 - 900</i>	<i>2 months</i>
<i>1000 - 4999</i>	<i>3 months</i>
<i>5000 - 14999</i>	<i>4 months</i>
<i>15000 - 19999</i>	<i>5 months</i>
<i>20000 +</i>	<i>6 months</i>

Note: the starting point of two months is based on the minimum amount of time needed for an application to be considered allowing for the prescribed consultation period and a Hearing if necessary.

Where relevant representations have been made and the application is referred to a Licensing Sub-Committee for determination, the Council will generally refuse all such applications that are not submitted, and duly made, in accordance with the minimum notice periods prior to the event, except in exceptional circumstances.

- (ii) *It must be considered that the legal responsibilities connected to holding such events rests primarily with the organiser and land owner. Where an application does not contain reference to such guidance and expertise, statutory bodies may be placed in an untenable position where they may be open to litigation due to the level of input/advice they may have to provide, and by implication may have taken an inappropriate degree of legal responsibility/liability in connection with the event. The Council believes it is pertinent, therefore, to attempt to avoid such a problem arising.*
- (iii) *Where an applicant does not consider such advice and guidance before making an application, this can place responsible authorities and/or other persons in a difficult position due to the fact that many aspects of an application may be lacking and it may not allow full and proper consideration of the proposals during the consultation period. This may undermine their full and proper consideration of an application.*

G5.1

In addition to encouraging applicants for occasional/annual events to apply for a permanent premises licence, the Council actively encourages applicants to build flexibility into their operating schedules. This allows for the event to evolve and incorporate best practice without undo restrictions on the management of the event and the site layout.

G5.2

The Council recommends an operating schedule that contains basic management control conditions that would apply from event to event but with the majority of event management details to be incorporated into an Event Management Plan (EMP). One of the basic management control conditions can then link the final EMP to the operating schedule making it an enforceable operating schedule condition.

G5.3

The content of the EMP can be defined by an operating schedule condition, ordinarily under generic headings, with any specific requirement of a responsible authority included as sub-headings. Varying timescales for each responsible authority and the provision of specified information can be incorporated within the EMP ensuring flexibility for the licence holder to develop the event and react to evolving issues such as ground/weather conditions or the availability of products/service providers.

G5.4

The Council encourages an applicant to include an operating schedule condition stating required timescales for the issue of a draft EMP and the final EMP, ideally a specified number of days prior to the commencement of event build-up on site or the opening of the event to the public. This condition should also include any consequence of the failure to meet this requirement, for example, certain licensable activities are not permitted until compliance has been achieved or the event will not be permitted without the express approval of the licensing authority.

G5.5

This type of EMP operating schedule condition (in effect a 'promise to provide' licence) allows the applicant flexibility to amend the details and layout for each event without the need to vary the premises licence whilst maintaining suitable control measures for the responsible authorities and the Council to ensure the promotion of the licensing objectives. As the EMP would be attached as a licence condition, failure to comply with its content would render the licence holder liable for operating otherwise than under an authorisation (section 136 of the Act).

G5.6

The Council has encouraged this type of event premises licence for a number of years leading to successful annual events at venues such as Knebworth Park and recommends applicants to enter into pre-application discussions at the earliest opportunity to explore the suitability of this option.

- *safe capacities in identifiable areas of the event site, including camping and car parking, that can be evacuated quickly in the case of emergency;*
- *policies in relation to ingress, re-admission and egress, particularly control of capacities, queuing and safe dispersal from the locality;*
- *policies in relation to securing the safety of patrons whilst at the event, including camping and car parking; and*
- *sufficient on-site medical provision, including procedures for contacting the emergency services.*

G8.2.1

Large scale outdoor events have significant potential to impact adversely on communities through public nuisance that may arise from their operation, in particular in relation to noise from live or recorded music. The Council expects applicants to seek early engagement with NHDC's Environmental Protection & Housing Team when preparing an operating schedule.

G8.2.2

Where the applicant's operating schedule does not fully address concerns in relation to the prevention of public nuisance objective, NHDC's Environmental Protection & Housing Team will initially request the applicant to volunteer additional conditions to avoid the need for a representation. Example conditions specific to large scale outdoor events are included in the attached appendix of model conditions to assist applicants with the wording of suitable conditions. The applicant is under no obligation to agree to the suggested conditions if he/she believes they are not appropriate or proportionate to the application. If the applicant does not wish to volunteer the suggested conditions then a representation is likely and the matter will be referred to a Licensing Sub-Committee for determination.

G8.2.3

Applicants should be aware that if a Licensing Sub-Committee is not satisfied that an operating schedule adequately promotes the prevention of public nuisance objective it is likely to impose conditions from the model conditions attached to this Policy. In cases where there are insufficient conditions to fully address the prevention of public nuisance objective or the risk of nuisance is so significant a Licensing Sub-Committee is likely to refuse the application.

7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE

7.1 The following paragraphs from the Guidance issued by the Home Office under section 182 of the Licensing Act 2003 (April 2018 version) may be relevant to this application. This section does not prevent the sub-Committee from considering other paragraphs of the Guidance where they deem it appropriate and the determination should be based upon consideration of the full document.

1.2

The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

1.3

The licensing objectives are:

- *The prevention of crime and disorder;*
- *Public safety;*
- *The prevention of public nuisance; and*
- *The protection of children from harm.*

1.4

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

2.3

Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.7

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.12

"Safe capacities" should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.

2.15

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.

2.16

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

- *its own statement of licensing policy*

9.42

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44

Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

10.8

The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. This provision also applies to minor variations.

10.9

It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

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. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. 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 for 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.

8. LICENSING OFFICER COMMENTS

- *the measure must be necessary to achieve the aim (that there cannot be any less onerous way of achieving it); and*
- *the measure must be reasonable, considering competing interests.*

The Council is aware that their determinations must be proportionate to the evidence received in respect of an application and will have regard to this definition.

F2.5

The Council acknowledges that proportionality is a key factor in assisting with the definition of 'appropriate'.

9. APPENDICES

- 9.1 Appendix A Original application.
- 9.2 Appendix B Representation from Hertfordshire Constabulary.
- 9.3 Appendix C Representation from NHDC Environmental Health.
- 9.4 Appendix D Conditions agreed with NHDC Environmental Protection.
- 9.5 Appendix E Conditions agreed with the Fire Service.

10. CONTACT OFFICERS

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