

LICENSING SUB – COMMITTEE

26 January 2018

Report of the Head of Environmental Health and Licensing

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Application: New Premises Licence

Premises: Boomtown Festival, Matterley Bowl, Alresford Road, Winchester

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Boomtown - PART A

1. The Application:

Applicant: Boomtown Festival UK Limited

Premises: Boomtown Festival, Matterley Bowl, Alresford Road, Winchester

- 1.1 This report is to consider a new Premises Licence application made under section 17 of the Licensing Act 2003 that has been submitted by Boomtown Festival UK Limited (the Applicant) for the area of land known as Matterley Bowl and surrounding land, which currently hosts the 'Boomtown Fair' on an annual basis.
- 1.2 The Applicant currently holds a Premises Licence for the Boomtown Fair, granted on 10 June 2016 (PREM 709). The current Premises Licence, including hours and conditions, is shown in Appendix B1.
- 1.3 On 5 December 2017, Winchester City Council (the Council) received a new Premises Licence Application from the Applicant (Appendix B2), to provide the following licensable activities:
 - To authorise licensable activities for a maximum of 75,000 persons, plus an additional 1,000 Sunday tickets for local residents for the 2018 event.
 - To increase to a maximum of 79,999 persons from 2019. This includes all persons present at the Premises in whatever capacity including ticket holders, performers, guests and staff.
 - Provision of regulated entertainment (plays and films) both indoors and outdoors from Monday (00:00 to 04:00 hours; Wednesday to Friday (10:00 to 00:00 hours) and Saturday and Sunday (00:00 to 00:00 hours).
 - Provision of regulated entertainment (live music) both indoors and outdoors from Wednesday to Friday (10:00 to 00:00 hours), Saturday and Sunday (00:00 to 04:00 hours and 10:00 to 00.00 hours).
 - Provision of regulated entertainment (recorded music and performances of dance) both indoors and outdoors from Monday (00:00 to 04:00 hours), Wednesday to Friday (10:00 to 00:00 hours) and Saturday and Sunday (00:00 to 04:00 hours and 10:00 to 00:00 hours)

- Supply of alcohol both on and off the premises from Monday to Sunday (00:00 to 00:00 hours), the sale of alcohol to the public being from Wednesday to Monday only and, for the crew bar, for 21 days before the commencement of the event and for 14 days after the event . The proposed Designated Premises Supervisor is Christopher Rutherford.
 - Provision of late night refreshment both indoors and outdoors from Monday (00:00 to 05:00 hours), Wednesday (23.00 to 00.00 hours) and Thursday to Sunday (00:00 to 05:00 hours and 23:00 to 00.00 hours).
- 1.4 Under the terms of the Licensing Act 2003, this is an entirely new application, rather than a variation to PREM 709. However, the Applicant has suggested a series of conditions set out in Appendix B2 which can be compared and contrasted to the conditions contained in PREM 709, which are listed in Appendix B1.
- 1.5 The key differences between this Application and PREM 709 are as follows:
- A larger area in which licensable activities can take place.
 - An increase in the number of attendees from 59,999 persons to 75,000 persons in 2018 and 79,999 persons in 2019.
 - An additional day of licensable activities on the Wednesday, with public access limited to 16,000 persons in 2018 and 20,000 persons in 2019.
 - A crew bar to be authorised for the sale of alcohol only to crew members and their bona fide guests for twenty-four hours per day for twenty-one days prior to, and fourteen days after the end of, the public event.
 - A change in the noise levels of Condition PN12 (in PREM 709) in the octave band with centre frequencies of 63Hz and 125Hz from 65dB ($L_{eq, 15 mins}$) between the hours of 1100-0400 to:

68dB ($L_{eq, 15 mins}$)	1100-2100
70dB ($L_{eq, 15 mins}$)	2100-2300
68dB ($L_{eq, 15 mins}$)	2300-0400
 - No restrictions within the area of licensable activities, where regulated entertainment can take place.
- 1.6 It is the understanding of the Licensing Department that, if the Application were to be granted, the Applicant would surrender PREM 709.

- 1.7 The Licensing Act 2003 stipulates that all major licensing applications are subject to a twenty-eight day public consultation period which, in this case, would have been 1 January 2018. However, the Applicant subsequently agreed to allow a further week for public comments to be received, namely 8 January 2018. Notice of the application was duly displayed outside of the Premises and advertised in a local newspaper.

2. REPRESENTATIONS – RESPONSIBLE AUTHORITIES:

2.1 All of the Responsible Authorities have been served with a copy of the application. The Council, as licensing authority received representaions from the following organisations:

- Winchester City Council Environmental Health Department
- Hampshire Constabulary
- Hampshire County Council Public Health Department
- Hampshire County Council Highways Department
- South Downs National Park Authority (SDNPA)
- Hampshire Fire and Rescue Service (HFRS)

2.2 All of the responses above are listed in Appendix B3.

2.3 Some or all of these organisations may wish to make verbal statements at the Licensing Sub-Committee Hearing.

3. REPRESENTATIONS FROM OTHER PERSONS:

3.1 The Council, as licensing authority, also received 91 valid representations regarding the application from Other Persons (members of the public, parish councils, other interested organisations and elected members).

3.2 Of the 91 received, 88 were objections and 3 were in support of the Application. Some or all of these respondents may wish to make verbal statements at the Licensing Sub-Committee Meeting.

3.3 All of the responses from Other Persons can be found in Appendix B4.

4. LEGAL AND POLICY CONSIDERATIONS:

The Four Licensing Objectives

- 4.1 The Sub-Committee is obliged to determine this application with a view to promoting the Licensing Objectives:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

Other Considerations

- 4.2 In making its decision, the Sub-Committee is obliged to have regard to the statutory Guidance issued under s182 of the Licensing Act 2003, the Council's Statement of Licensing Policy (approved April 2016) and to the National Park Purposes.
- 4.3 The Sub-Committee must also take into consideration all of the representations.

South Downs National Park:

- 4.4 The proposed premises is situated within the South Downs National Park (SDNP). The Sub-Committee must have regard to the National Park Purposes when considering applications. The purposes are:-
- (a) Purpose 1 – to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
- (b) Purpose 2 – to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public of the area's special qualities.

If there is a conflict between the National Park Purposes, Purpose 1 should have priority.

There is also a duty to seek to foster the social and economic well-being of the local communities within the National Park in pursuit of its purposes.

The meaning of the licensing authority's duty to have regard to the National Park Purposes when considering licensing applications, can be explained by reference to Natural England's publication "*England's statutory landscape designations: a practical guide to your duty of regard*" 2010 at page 6 that;

'The duty requires the local authority to consider the potential impacts on National Park purposes, with the expectation that adverse impacts

will be avoided or mitigated where possible. Provided this is done, the duty has been met, irrespective of whether or not the decision ultimately taken conflicts with.. National Park purposes’.

The Issue of Planning

- 4.5 The Licensing Sub-Committee will note that some reference has, in the representations received, been made to the issue of planning permission. It is clear the Applicant would require planning approval in order to carry out the new licensable activities it is applying for. However, that is a separate process.
- 4.6 In accordance with both the legislation and the statutory Guidance issued under section 182 of the Licensing Act 2003 licensing officers notified the South Downs National Park Authority which is the local planning authority, of the details of the Application, in response to which the SDNPA has made representations, which are included in Appendix B3.

Terminal hours

- 4.7 The Sub-Committee should take account of the National Guidance and Section A8 of Part 4 of the Council’s Statement of Licensing Policy with regard to terminal hours and take such steps as it considers appropriate to promote the Licensing Objectives.

Licensing Objective – Crime and Disorder

- 4.8 The Sub-Committee should consider any appropriate conditions to prevent crime and public disorder relating to the premises having regard to the operating schedule and the representations. Sections 1.9, 2.11, 2.17 and Section A of Part 4 of the Council’s Statement of Licensing Policy and paragraphs 2.1 – 2.6 of the statutory Guidance apply.

Licensing Objective – Public Safety

- 4.9 The Sub-Committee should consider any appropriate conditions relating to public safety having regard to the relating to the Premises having regard to the operating schedule and the representations. Sections B3 and B4 of Part 4 of the Council’s Statement of Licensing Policy and paragraphs 2.7– 2.14 of the statutory Guidance apply.

Licensing Objective – Public Nuisance

- 4.10 The Sub-Committee should consider any appropriate conditions to prevent public nuisance caused by activities at the premises, having regard to the operating schedule and the representations. Section C of

Part 4 of the Council's Statement of Licensing Policy and paragraphs 2.15 – 2.21 of the statutory Guidance apply.

Licensing Objective – Protection of Children From Harm

- 4.11 The Sub-Committee should consider any necessary conditions for the Protection of Children relating to the premises having regard to the operating schedule and the representations. Sections D6 and D7 of Part 4 of the Council's Statement of Licensing Policy and paragraphs 2.22 – 2.31 of the statutory Guidance apply.

Human Rights

- 4.12 It is considered that Articles 6 (right to a fair trial) 8 (right to respect for private and family life) and Article 1 of the First Protocol (right to peaceable enjoyment of possessions) may be relevant. As there is a right of appeal to the Magistrates' Court, it is considered that there would be no infringement of Article 6. Article 8 is relevant, insofar as the nearby residents could claim that this right would be infringed by disturbance from customers. This should be balanced against the applicants' right to use of their premises under Article 1 of the First Protocol. Interference with these rights is permitted, where this interference is lawful, appropriate in a democratic society, and proportionate. Likewise, the residents may argue that their rights under Article 1 of the First Protocol would be infringed. If conditions are imposed, there should be no interference with any convention rights. To the extent that any interference may occur, it would be justifiable in a democratic society, and proportionate.

5. Considerations:

Options Open to the Committee

- 5.1 The Sub-Committee must take account of the following steps it considers appropriate to promote the Licensing Objectives:
- (i) Grant the licence subject to conditions in accordance with the operating schedule (modified to such extent as the authority considers appropriate for the promotion of the licensing objectives) and the mandatory conditions;
 - (ii) exclude from the scope of the licence any of the licensable activities to which the application relates;
 - (iii) refuse to specify a person in the licence as the premises supervisor;
 - (iv) reject the application.
- 5.2 The Licensing Sub-Committee needs to ensure that they provide adequate reasons for their decision.

Mandatory Conditions

- 5.3 If the Sub-Committee grants the Application, the following Mandatory Conditions would need to be applied to the Premises Licence:

Supply of Alcohol:

1. No supply of alcohol may be made under the premises licence:
 - (a) At a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Door Supervision:

Where individuals are required on premises to carry out security activities, they must be licensed by the Security Industry Authority.

Exhibition of Films:

Admission of children to the exhibition of any film is restricted in accordance with:

- (1) Where the film classification body is specified in the licence, unless subsection (2)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
- (2) Where:
 - (a) the film classification body is not specified in the licence; or
 - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question;admission of children must be restricted in accordance with any recommendation made by that licensing authority.

In this section: 'children' means persons aged under 18; and 'film classification body' means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 9(c 39) (authority to determine suitability of video works for classification).

The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
 3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
 4. The responsible person must ensure that—
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1-
 - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) “permitted price” is the price found by applying the formula- **$P = D + (D \times V)$** where-
 - (i) **P** is the permitted price,
 - (ii) **D** is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

- (iii) **V** is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence-
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
 4. (1) Sub-paragraph 2 applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
 - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

6. Other Considerations

Corporate Strategy (Relevance To:)

This report covers issues which affect the Outcomes of Active Communities and a High Quality Environment.

There is no direct link to Portfolio Plans as the requirements under the Licensing Act 2003 are statutory functions.

Resource Implications

An application fee of £315.00 set in accordance with the premises’ rateable value, has been received, together with an ‘additional’ fee of £48,000 as assessed against the size of the event being applied for, in terms of maximum numbers in attendance. The annual fee payable will be £24,000. This is expected to cover the cost of administration, officer attendance at Safety Advisory Group meetings and site visits prior to and during the event to check compliance.

Appendices:

- 1 Current Premises Licence and Conditions (PREM709)
- 2 New Premises Licence Application, with Applicant's proposed conditions and plan.
- 3 Representations from Responsible Authorities
- 4 Representations from Other Persons
- 5 Winchester City Council's Statement of Licensing Policy – April 2016