

SOUTH STAFFORDSHIRE COUNCIL**LICENSING AND REGULATORY SUB-COMMITTEE – Monday 26th June 2023 @ 2pm****APPLICATION FOR A PREMISES LICENCE – Kewford Eagles Football Club 3 Swindon road, Kinver Kingswinford DY6 0AW****REPORT OF LICENSING OFFICER - ENVIRONMENTAL HEALTH & LICENSING****PART A – SUMMARY REPORT****1. SUMMARY OF PROPOSALS**

To consider the premises licence application submitted by Dangerous Sheep Events Ltd, in respect of Wolverhampton Half Penny Green Airport Crab Lane, Bobbington DY7 5DY

2. RECOMMENDATIONS

- 2.1** That the Licensing Authority (Sub-Committee) determine the Premises licence application for Kewford Eagles Football Club 3 Swindon road, Kinver Kingswinford DY6 0AW

3. SUMMARY IMPACT ASSESSMENT

POLICY/COMMUNITY IMPACT	Do these proposals contribute to specific Council Plan objectives?	
	Yes	A safe and sustainable district.
	Has an Equality Impact Assessment (EqIA) been completed?	
	Yes/No	Not applicable as item relates to individual determination within the existing policy.
SCRUTINY POWERS APPLICABLE	Yes/No – Report to Legal and Regulatory Committee	
KEY DECISION	Yes/No	
TARGET COMPLETION/ DELIVERY DATE	Details – Not Applicable	
FINANCIAL IMPACT	No	
LEGAL ISSUES	Yes/No	The sub-committee must seek to ensure that this premises promotes the objectives of the licensing regime. The sub- committee must have regard to the authority's licensing policy (where relevant) and any central government guidance. The sub-committee is entitled to question the applicant, Pattingham Vineyard so as to satisfy itself that the licensing objectives will be met.
		All parties have a right of appeal to a Magistrates Court. Appeals should be in writing to the

		Magistrates Court within 21 days from the date the applicant is notified of the licensing authority decision.
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	Summary of Details
IMPACT ON SPECIFIC WARDS	No	Details as necessary

PART B – ADDITIONAL INFORMATION

4. INFORMATION

4.1 An application for a premises licence was received from Mr Darren Patrick McClure via the GOV.UK portal on the 3rd April 2023. This was forwarded to the 'other responsible authorities' and notices displayed and was advertised in accordance with the requirements of the Act. The application and plan are attached as **Appendix A and A1**

4.2 The premises are situated between Swindon Road and Kidderminster Road site plan is attached as **Appendix B**.

4.3 The application requests the following licensable activities:

Proposed Licensable Activities	Days of the Week	Time from /Time to
Live Music, Performance of Dance; Anything similar to Live and Recorded Music and the performance of dance (outdoors)	Saturday & Sunday	Sat 12 noon – 9pm Sun 12 noon – 6pm
Recorded Music (Outdoors)	Saturday & Sunday	Sat 11.30 – 9pm Sun 11.30 – 6pm
sale of alcohol	Saturday & Sunday	Sat 12 noon – 9pm Sun 12 noon – 6pm
Opening and closing times	Saturday & Sunday	Sat 12 noon – 10pm Sun 12 noon – 6pm

4.4 It is the understanding of the Licensing Authority that the application for the premises licences has been properly made. The statutory requirement to give notice of the application has also been complied with.

4.5 No outstanding representations have been received from any of the responsible authorities namely: Planning Enforcement and Environmental Protection;; Development Control;; Children and Lifelong Learning; Primary Care Trust (PCT), Staffordshire County Council (Trading Standards) and Home Office (immigration).

4.6 Staffordshire police, Staffordshire Fire and Rescue and South Staffordshire Environmental Health Food and Health & Safety team have objected to the application all seeking for additional conditions to be added to the licence if granted, the letters are attached as **Appendix C**, The grounds for the representation are made against the licensing objectives of :

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance
- Public Safety

4.7 Copies of all the objections have been served on the applicant, to which there has been no response.

5. Licensing Act 2003 - Section 182 Guidance

Licensing objectives and aims

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.

Section 182 Guidance

Determining actions that are appropriate for the promotion of the licensing objectives

9.34 Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by the application before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.

9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- 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.

Para 16.26 Live Music - Live music is licensable:

- where a performance of live music – whether amplified or unamplified – takes place before 08.00 or after 23.00 on any day;
- where a performance of amplified live music does not take place either on relevant licensed premises, or at a workplace that is not licensed other than for the provision of late night refreshment;
- where a performance of amplified live music takes place at a time when the relevant licensed premises are not open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- where a performance of amplified live music takes place at relevant licensed premises, or workplaces, in the presence of an audience of more than 500 people; or
- where a licensing authority intentionally removes the effect of the deregulation provided for by the 2003 Act when imposing a condition on a premises licence or club premises certificate as a result of a licence review

Para 16.28 A public performance of live unamplified music that takes place between 08.00 and 23.00 on the same day no longer requires a licence under the 2003 Act in any location. An exception to this is where a specific condition related to live music is included following a review of the premises licence or club premises certificate in respect of relevant licensed premises.

Key terms used in relation to live music

Para 16.30 Under the live music provisions, "music" includes vocal or instrumental music or any combination of the two. "Live music" is a performance of live music in the presence of an audience which it is intended to entertain. While a performance of live music can include the playing of some recorded music, 'live' music requires that the performance does not consist entirely of the playing of recorded music without any additional (substantial and continual) creative contribution being made. So, for example,

a drum machine or backing track being used to accompany a vocalist or a band would be part of the performance of amplified live music. The performance of a DJ who is merely playing tracks would not be classified as live music, but it might if he or she was performing a set which largely consisted of mixing recorded music in a live performance to create new sounds⁵⁸. There will inevitably be a degree of judgement as to whether a performance is live music (or recorded music) and organisers of events should check with their licensing authority if this consideration is relevant to whether the activity is authorised by a licence or certificate. In the event of a dispute about whether a performance is live music or not, it will be for the licensing authority initially and ultimately, for the courts to decide in the individual circumstances of any case.

Para 16.32 A “relevant licensed premises” for the purposes of this chapter is one which is authorised to sell or supply alcohol for consumption on the premises by a premises licence or club premises certificate. Premises cannot benefit from the deregulation introduced by the 2012 Act by virtue of holding an authorisation for the sale or supply of alcohol under a TEN.

Recorded music

16.33 No licence is required for recorded music where it takes place on premises which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises. However, recorded music remains licensable:

- where the playing of recorded music takes place before 08.00 or after 23.00 on any day;
- where the playing of recorded music takes place at a time when the relevant licensed premises are not open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- where the playing of recorded music takes place at relevant licensed premises in the presence of an audience of more than 500 people; and
- where a licensing authority intentionally removes the effect of the deregulation provided for by the 2003 Act (as amended)

Licence conditions - Live Music or recorded music

16.36 Any existing licence conditions (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music or recorded music remain in place, but are suspended between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

16.37 Whether a licence condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of regulated entertainment all doors and windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.

16.38 More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.

16.39 Chapter 9 of this Guidance sets out how a licensing authority must determine applications for a new licence or to vary an existing premises licence. Licence conditions imposed, in accordance with paragraphs 9.41 to 9.43, for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and/or the activities are taking place between 23.00 and 08.00.

16.40 These conditions will, in effect, be suspended between 08.00 and 23.00 if a performance of live music or the playing of recorded music takes place before an audience of 500 people or fewer, but will remain on the face of the licence for when these activities may take place under other circumstances.

16.41 Where a performance of live music or the playing of recorded music on relevant licensed premises is not licensable, it remains possible for anyone to apply for a review of a licence or certificate, if there are appropriate grounds to do so

6. Legal status

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). This Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation.

7. Local Authority's Powers

7.1 Should the Licensing Authority consider it appropriate for the promotion of the licensing objectives it is required to modify the conditions of the premises licence and/or reject the whole or part of the application as appropriate for the promotion of those objectives.

If the Licensing Authority does not consider it appropriate for the promotion of the licensing objectives to take such steps the application must be granted as sought.

In determining the application with a view to promoting the licensing objectives in the overall interests for the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;

- the representation (including supporting information) presented by all the parties;
- the Home Office guidance issued under Section 182 of the Licensing Act 2003;
- its own statement of licensing policy.

The Licensing Authority is not bound to follow such guidance but must have regard to it and if departing from it have rational reasoning for doing so.

8. HUMAN RIGHTS IMPLICATIONS

8.1 This report has human rights implication for the premises licence holder as “every natural or legal person is entitled to the peaceful enjoyment of his possessions.” [a licence]. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. This does not impair the right of a State [the committee] to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

8.2 In addition as regards the conduct of the hearing there is the right to a fair hearing as “in the determination of his civil rights and obligations” everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal [the committee] established by law. “Judgment” shall be pronounced publicly but the press and public may be excluded from all or part of the hearing where the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the committee where publicity would prejudice the interests of justice.

9. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

EqIA not applicable

10. PREVIOUS MINUTES

Not applicable

11. BACKGROUND PAPERS

List of background papers used in preparation of report:

Licensing Act 2003
 Section 182 Guidance
 South Staffordshire Licensing Policy
 Human Rights Act 1998

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