

SURREY HEATH BOROUGH COUNCIL
LICENSING SUB-COMMITTEE

(HEARING DATES: 19 & 30 AUGUST 2016)

NEW PREMISES LICENCE APPLICATION FOR “CAMBERLEY ON ICE”

NOTICE OF DETERMINATION

1. The applicants, Event by Event Ltd, have applied for a new time-limited Premises Licence relating to London Road Recreation Ground, Grand Avenue, Camberley, Surrey GU15 3QH. They wish to hold a single-event, to be known as “Camberley on Ice” for a 32-day period from 1 December 2016 to 1 January 2017 (“the event”).

2. The event will include the construction of a temporary public ice-rink, a “skate-lodge”/refreshments tent, Christmas retail market stalls, a bandstand and a limited number of amusements for young attendees. Food and beverage will be sold among other items. The event, as suggested in the application, will include the sale of alcohol from 13:00 – 21:00hrs daily (on and off the premises) but with a start time of 11:30hrs on Saturday and Sunday. In addition, regulated entertainment will be provided, namely live music (e.g. school choirs/bands, Salvation Army Band and singers), recorded music and the performance of dance both indoors and outdoors from 11:00 – 21:00hrs daily. The music will, according to the application, “*be played across the site at a low ambient level for the duration of the opening hours*”. The opening hours of the premises will be 11:00 – 21:30hrs daily. Following a representation from the Environmental Health Officer (“EHO”) the applicant no longer seeks extended hours for New Year’s Eve and this satisfies the EHO’s original objection. The applicant has also agreed not to operate on Christmas Day. The EHO remains a party to these proceedings.

3. Four representations from “other persons” were received objecting to the application citing one or more of the licensing objectives. These include a representation from the Southwell Park Residents Association whose honorary legal advisor, Mr Christopher McDonald, has made substantial oral submissions to us. Their concerns echo those of the other residents who have also made representations and include the following issues:
 - a. The unsuitability of the location given its proximity to residential premises and congested local roads.
 - b. Inadequacy of detail in the application.
 - c. Noise disturbance and public nuisance.
 - d. Crime and disorder and anti-social behaviour.
 - e. Light pollution.
 - f. Traffic congestion and parking management.
 - g. The potential impact on the Recreation Ground (including to shrubbery and trees) and the temporary deprivation of recreational facilities (e.g. tennis courts) and loss of public amenity in general.
 - h. The welfare of children and other visitors.
 - i. Disruption to local residents and businesses both during the event and in the set-up and take down of the attractions.
4. One representation from the Business Services Manager of Surrey Heath Borough Council, was made in support of the application and cited the local benefits to be accrued by the event taking place and the good track record of the experienced applicant. It is noteworthy that none of the statutory responsible authorities charged with safeguarding the licensing objectives (including the police) have made a representation objecting to this application.
5. We have considered all the written representations (including supporting documentation submitted before both hearing dates) and oral submissions made by the parties.
6. This event is, in our view, likely to be enjoyed by many visitors including local residents and in particular families with children. It is likely to benefit the wider

community both economically and socially by drawing in visitors and trade, as indicated by the Council's Business Service Manager and the applicant. However, we recognise that this event has the real potential to disturb and inconvenience some residents who live nearby. We have taken this issue seriously and given it considerable thought.

7. The Licensing Act 2003 and its associated Guidance provides that applications for premises licences should be granted unless doing so would undermine the licensing objectives of preventing crime and disorder, preventing public nuisance or jeopardise public safety or the protection of children from harm. We have also considered and taken into account our own Statement of Licensing Policy.
8. Notwithstanding the Council's interest in owning this land, the licensing sub-committee has approached this case in a "quasi-judicial" manner and wholly independently. We did not need to be reminded, as we were during the course of the hearing, of our duty to act impartially and fairly to all parties.
9. In all licensing cases we have to carry out a careful balancing exercise. Where risks to the licensing objectives are identified we have looked to see whether conditions attached to the premises licence will assist in mitigating those risks so any resulting disturbance is not unreasonable or disproportionate.
10. We have been assisted by the submissions of those who have attended the hearings to represent the views and concerns of residents. They have done a considerable service to themselves and for their neighbours.
11. The application was initially heard on 19 August 2016 but in the course of that hearing it seemed clear to us that insufficient attention had been paid by the applicant to meeting the proper concerns of local residents. The hearing was therefore adjourned until today 30 August. We wish to thank the applicant for their work during this interim period in seeking to meet residents' concerns. It has helped us to reach our balanced decision.

12. Throughout this matter we have considered what steps are appropriate and proportionate to promote the licensing objectives.
13. In our judgement this **premises licence can be granted in a manner that promotes the licensing objectives although it will be subject to strict conditions** designed to minimise the risk of disturbance and inconvenience to nearby residents in particular.
14. We recognise, however, that it is inevitable that some residents and local businesses will be impacted by an event of this scale. Indeed, the only way of avoiding *any* impact from such licensed premises would be to never permit such events to take place. Such an approach would, in our opinion, be to the overall detriment of our community. We have heard that the present site is the only practicable one in the locality to hold the event.
15. We have been reminded of the observations of the Court of Appeal in the case of *Hope and Glory* [2011] EWCA Civ 31 , where Toulson LJ said [at paragraph 42]:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

16. This is also reflected in Surrey Heath Borough Council's Statement of Licensing Policy which states (at paragraph 72):

"The Council will endeavour to strike a fair balance between the needs of licence holders, the patrons of the licensed premises and the effect that those licensed premises will have on local residents particularly with regards to disturbance and noise"

17. On balance, we believe the benefits to the wider public interest outweigh the proper private concerns raised by some residents although we do not dismiss them and have specifically sought to address those concerns in the strict conditions we will impose on the Premises Licence.
18. A legal issue was raised at the first hearing relating to the suggested inadequacy of the original plan attached to the Premises Licence application. We accept that the original plan did not satisfy all the requirements of regulation 23 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005). The applicant has submitted a new plan that better fulfils the requirements of the regulations. We have considered carefully whether this defect has caused any real prejudice to any interested party (in the widest sense) and whether there has been "substantial compliance" with the regulations. In doing so we have been referred to the principles established in the High Court cases of R (D&D Bar Services Ltd) v Romford Magistrates Court [2014] EWHC 213 and R (Akin t/a Efe's Snooker Club) v Stratford Magistrates' Court, (Unreported, 28.11.14, QBD).
19. We do not believe this defect has caused any real prejudice that this licensing process cannot cure and, indeed there is no evidence before us to suggest otherwise. We also consider that the submission of the two plans amounts to substantial, if not perfect, compliance with the regulations. In the absence of any real prejudice we do not consider that the interests of justice requires this application to be dismissed on procedural grounds and so we have dealt with it on its merits. We also note that this issue has, rightly in our opinion, not been vigorously pursued by any party.

20. Our decision is to grant the premises licence application to the extent of the hours and licensable activities applied for. However the premises licence will be subject to a number of comprehensive and robust conditions which are appropriate and proportionate in promoting the licensing objectives and are designed to mitigate potential disturbance to local residents. Those conditions are attached at Annex A
21. Nothing in this licensing decision is intended to, or can lawfully, relieve the applicant of the need to obtain the appropriate planning permission and complying with the terms of that permission.
22. Finally, may we wish the applicant good luck with this event and remind them of their continuing and paramount duty to operate this event in a manner that minimises the impact on local residents and promotes the licensing objectives at all times. In line with our Statement of Licensing Policy, they have a duty to act as "*good neighbours to residents and to other business interests in the area*". As responsible operators with a good track record we are confident this will be achieved and encourage the applicant to communicate with and respond to all reasonable residential concerns in the planning and operating stages of this event.
23. The applicant or any person who has made representations have the right to appeal this decision to the magistrates' court within 21 days.
24. Thank you all for coming and for participating in this hearing.

Meeting concluded.