

Agenda Item No:

Licence Reference WK/201003127

Report To: LICENSING SUB COMMITTEE

Date: 3RD JUNE 2010

Report Title: **Licensing Act 2003 - Application for a premises licence –
Great Chart Golf and Leisure, Bridge Farm,
Great Chart, Ashford, Kent, TN23 3BZ**

Report Author: Licensing Manager



Summary:

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: **Application for a premises licence**

Applicant: **Cheeky Events**

Premises: **Great Chart Golf and Leisure, Bridge Farm, Great Chart, Ashford, Kent, TN23 3BZ**

Members are asked to determine whether to grant the premises licence.

Key Decision: NO

Affected Wards: Great Chart with Singleton North & Weald Central

Recommendations: **The Committee is asked to determine the application and decide whether to grant the premises licence.**

Policy Overview: The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

Financial Implications: The costs associated with processing the application are taken from licensing fee income.

Other Material Implications: **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

**Exemption
Clauses:**

LEGAL: Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.
Not applicable

**Background
Papers:**

None

Contacts:

james.hann@ashford.gov.uk – Tel: 01233 330721

**Report Title: Licensing Act 2003 - Application for a premises licence
Great Chart Golf and Leisure, Bridge Farm, Great Chart,
Ashford, Kent, TN23 3BZ**

Purpose of the Report

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.
Application type: Application for a premises licence.
Applicant: **Cheeky Events**
Premises: **Great Chart Golf and Leisure, Bridge Farm, Great Chart, Ashford, Kent, TN23 3BZ**

Issue to be Decided

2. Members are asked to determine whether to grant the premises licence.

Background

The Licensing Objectives

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

Application details

4. The application is for a premises licence.
5. See Appendix A for the application for a premises licence, along with a plan. The application has been made in the proper manner.
6. Representations have been received hence the determination coming before Members.

Additional steps

7. The applicant states within section P of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed variation is granted.
8. The conditions put forward by the Licensing Manager as taken from section P of the application form are as given within Appendix E. Note it is the responsibility of the Licensing Authority to prepare conditions that are "consistent" with the operating schedule (s.18).

9. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation, it may not issue a licence with conditions that are illegal.

Representations from Responsible Authorities

10. No representations were received from the responsible authorities, although the Senior Environmental Health Officer and the Environmental Protection Manager suggested a number of conditions regarding the prevention of public nuisance and the public safety licensing objectives.
11. These conditions were accepted by the applicant and a copy of the letter agreeing these additional conditions is provided in Appendix B.

Representations from Interested Parties

12. Two parties have made representations, both of which live approximately $\frac{3}{4}$ of a mile from the premises. Copies of the letters are contained in Appendix C.
13. While the distance from the premises is further than is often regarded as being "in the vicinity" of the premises, both parties have experienced noise nuisance from the premises in the past and are therefore considered to be directly affected by the proposed licensable activities.
14. The representations have common themes in terms of the licensing objectives and they can be summarised as follows:
 - Noise generated from amplified music is likely to cause a public nuisance.
 - The issue of whether the premises has the correct planning permission is an issue which members considering this application should discount. The Licensing Act states that planning is a matter for planning legislation and that only matters relating to the four licensing objectives may be considered when determining this application.
 - While the noise generated by the paint-ball activities may be an indication of how noise can be heard at the parties properties, the paint-ball itself is not a licensable activity and so should not be considered as part of this application.
15. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party or responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.
16. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority on 9th April 2010 and the last date for receipt of relevant representations was therefore 8th May 2010.

17. As all representations were not withdrawn and a compromise could not be agreed, the matter is brought before members for consideration.

Relevant premises history

18. The Great Chart Golf and Leisure facility consists of golf driving range and archery practice area and a nine hole pitch and putt course surrounding a building housing a golf related shop, a kitchen, toilets and a small bar and catering area.
19. A permanent marquee was constructed to join to the bar area and this was licensed in 2008.
20. The application before members does not include the current licensed premises, but is an application by an events company to license an area to the rear of the current buildings for a single event to be held on Saturday 28th August 2010. Further details of those involved in the event and the nature of the event are contained in Appendix D, which was submitted by the applicant when the application was made. Members should note that this 6 page submission is for guidance only and has no legal barring.
21. The application proposes the playing of recorded music outside from 09:00 to midnight on Saturday 28th and on Sunday 29th August 2010. It is not known why the premises licence is sought for the two days.
22. The sale of alcohol for consumption on the premises, performance of dance, the facilities for making music and dancing are sought for the same dates and times.
23. Late night refreshment is proposed until midnight on both days.
24. The premises is proposed to be open for licensable activities until midnight on both days.
25. The golf practice area will be out of action when the event is planned to take place.
26. Our records show that the Council received four complaints regarding the Great Chart Golf Club in the summer of 2009. However this application concerns marquees in a area not previously used for events
27. As part of the process, the applicant was informed of the objections and the following suggestion was put to the two parties by the applicant via the Licensing Manager.
 - a. A private tour of a safari park based in Smarden for the afternoon of the event
 - b. Anyone living in the properties owned by the objectors to be admitted to the event free of charge.
28. Neither party was happy to accept these suggestions and as the objections were not withdrawn, the matter is brought before members for determination.

29. The main issue is the whether a premises license for a weekend event in this particular location should be granted.

Options

General

30. Members attention is drawn to the following matters:

- All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
- Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
- The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
- The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
- Where problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
- The conditions put forward within this report are suggested on the basis of:
 - information contained within the application form;
 - interested parties representations and
 - on those measures currently in existence.
- The 2003 Act requires licensing authorities following receipt of relevant representations to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities focus on

impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. 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 interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and 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 may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.
- The Guidance states "the conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's risk assessment which should be undertaken by applicants or clubs before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule that it is proposed to take to promote the licensing objectives."
- It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions, which are relevant

and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

Decision options

31. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider the following conditions:

Prevention of Public Nuisance

- a) A decibel limit be imposed on the event that is measured at the exterior of the parties making representations at a level to be determined by Environmental Protection Officers.
- b) The measurement to be the responsibility of the Licence Holder.
- c) The Licence Holder and appropriate staff will regularly monitor noise levels outside the premises and specifically near the residents of the parties making representations to ensure that are not excessive or likely to disturb neighbours.
- d) The Licence Holder or representative shall receive and respond to complaints on the day of the event.
- e) Events involving licensable activities to be limited to 23:00.
- f) The premises licence is restricted to Saturday 28th August 2010.

Legal options open to members

32. Members may grant the licence with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.

Consultation

33. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

Implications Assessment

34. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

Human Rights

35. While all Convention Rights must be considered, those which are of particular relevance to the application are:
- Article 8 - Right to respect for private and family life
 - Article 1 of the First Protocol - Protection of Property
 - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix F.

Handling

36. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

Conclusion

37. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

| | |
|--------------------|---|
| Contact: Email: | Licensing Manager James.hann@ashford.gov.uk |
|--------------------|---|

APPENDIX E

CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCHEDULE

Mandatory Licensing Conditions from 6 April 2010

The Premise Licence Holder, Designated Premises Supervisor, Club Premises Certificate Holder or authorised person (Responsible Person) shall take all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises, including:

- games or other activities that require or encourage, or are designed to encourage, individuals to drink a quantity of alcohol within a time limit, or to drink as much alcohol as possible
- providing unlimited or unspecified quantities of alcohol free, or for a fixed or discounted fee
- providing 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
- providing free or discounted alcohol in relation to viewing of a sporting event on the premises, where provision is dependent on the outcome of the event, or the likelihood of anything occurring or not occurring
- selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises that could be considered to encourage or condone anti-social behaviour or refer to the effects of alcohol in a favourable manner.

The Responsible Person shall ensure that no alcohol is dispensed by one person into the mouth of another. (This is referring to the use of 'Dentist Chairs'.)

The Responsible Person shall ensure that free tap water is provided on request to customers.

GENERAL – ALL FOUR LICENSING OBJECTIVE

None Specified

PREVENTION OF CRIME & DISORDER

1. The Licence Holder will adhere to relevant drug related policies as agreed with the Police or other relevant authorities.
2. The Licence Holder will ensure that signs are displayed at the premises stating that any person possessing or supplying any type of controlled drug will be detained and the police called.
3. The Licence Holder will implement a system whereby the toilets are inspected at regular intervals and a record kept, ensuring that controlled drugs are not being used or supplied in these areas.
4. The Licence Holder will ensure that a ratio of 1 door supervisor to 100 paying customers is implemented.
5. The Licence Holder will ensure that there is a written policy in place and implemented for the searching of guests for weapons and drugs.

6. The Licence Holder will implement a written entry policy which all staff are made aware of which includes dress standards, male to female ratios and also prohibits anyone accessing the premises with bottled drinks.
7. The Licence Holder will be a member of the local Pub Watch or equivalent scheme.

PUBLIC SAFETY

1. The Licence Holder will ensure that door supervisors are employed at all times during the event and will control entry to the premises, behaviour within the premises and ensure that all customers have left the premises.
2. The Licence Holder will appoint a local taxi company to ensure that customers are dispersed quickly from the premises.
3. The Licence Holder will ensure that an accurate number of customers on the premises is known at all times during the event.
4. The Licence Holder will ensure that trained first aiders are present at clearly marked points for the duration of the event.
5. The Licence Holder will ensure provision of suitable and sufficient fire exits and fire exit signs.
6. The Licence Holder will ensure the provision of adequate fire extinguishers which will be checked regularly through the event to ensure they have not been tampered with.
7. The Licence Holder will ensure that tower lighting will be installed at key locations on the premises.
8. The Licence Holder will ensure that any caterers at the event will hold a valid Food Hygiene Certificate.
9. The Licence Holder will ensure that all structures are erected by a company that have supplied Cheeky Events Ltd with the relevant health and safety risk assessments and insurance.
10. The Licence Holder will ensure that a site meeting is held with the regulatory bodies a minimum of 8 weeks prior to the event.
11. The Licence Holder will ensure that the following documents are submitted to the local authority a minimum of 2 weeks before the above meeting:
 - A full written health and safety risk assessment for the event and associated activities.
 - An outline of the measure to control the volume of the amplified music from the event and the means of responding to resident's complaints.
 - A detailed site plan indicating the position of the attractions, facilities etc.

PREVENTION OF PUBLIC NUISANCE

1. The Licence Holder will inform all neighbours living within 1km of the site boundary of the event, a minimum of 14 days before it takes place. They will be provided with a mobile telephone number for someone who can deal with complaints during the event. If any such complaints are received the Licence Holder will take steps to ensure that the disturbance is reduced.
2. The Licence Holder will offer all neighbours a free ticket to the event.
3. The Licence Holder will implement a no re admittance policy except in the case of medical emergency.
4. The Licence Holder will ensure adequate signage is in place advising customers to leave the premises quietly and orderly. The policy will be actively enforced by door staff and management.
5. The Licence Holder will at all times demonstrate a responsible attitude to the marketing and sale of alcohol and that any person within the premises who appears to be intoxicated will not be served alcohol.
6. The Licence Holder will have a designated outdoor smoking area.

PROTECTION OF CHILDREN FROM HARM

1. The Licence Holder will not permit entry to the premises of anyone under the age of 18. Acceptable proof of identification will be restricted to: PASS approved ID card, passport, photocard driving licence, European Identity card (excluding the new UK card).
2. The Licence Holder will, through the operation of a recognised 'proof of age' scheme, ensure that any one who appears to be under 21 and is attempting to buy alcohol will be asked to provide adequate and accepted proof of age.

APPENDIX F - HUMAN RIGHTS

Article 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.