

REPORT TO: LICENSING SUB-COMMITTEE 27th November 2017

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

Licensing Act 2003 - Review Application - Mutiny In The Park, Mutiny Festival Summer Carnival, King George V Playing Field, Cosham

1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider and determine a review application pursuant to section 52 of the Licensing Act 2003 ("the Act") and in respect of the following premises:

Mutiny In The Park, Mutiny Festival Summer Carnival, King George V Playing Field, Cosham.

The holder of the authorisation is recorded as Mutiny In The Park Limited.

2. THE REVIEW APPLICANT

The application and grounds for the review are attached as **Appendix A** together with supporting documents (**Police Annex A - G**) and has been submitted by the Chief Officer of Police and relates to the following licensing objectives:

- Prevention of crime and disorder
- Public safety
- Protection of children from harm

The concerns relate to access to the event by persons under 18 years of age and the risk to these young persons in attendance.

3. BACKGROUND INFORMATION

Mutiny is a music festival held on Portsmouth City Council owned land at King George V playing fields in Cosham. The capacity for this event is limited to 15,000

A copy of the current authorisation is attached as **Appendix B**. The premises licence has a number of conditions attached and excludes persons under 16 years of age. Amongst the conditions, there are conditions around entry of persons 16 or 17 being accompanied by an adult, separate entrances dedicated to persons under 18 and how the premises licence holder will operate to the final event management plan submitted to the responsible authorities at least 14 days prior to the event.

In accordance with the act and prescribed regulations, public notice of the review application was given both at the premises and also at the Civic Offices. In addition, a notice of the review application was also posted on the council website.

The review application was also served on the responsible authorities.

4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

Further representations have been received from Portsmouth City Council Licensing manager Nickii Humphreys with regard to the protection of children from harm in relation to the admittance and welfare of children present on site. Alison Jeffery Director of Children, Families and Education has submitted a review supporting the police seeking a complete overhaul of the terms of Mutiny's licence to prevent harm to children. Rob Anderson-Weaver on behalf of the Director of Public Health has submitted a representation raising concerns in relation to the protection of children from harm and the prevention of crime and disorder. As part of this representation not only is there evidence regarding the exposure of young people to drug misuse there is additional data produced with regard to hospital admissions to Queen Alexandra Hospital at Cosham and a comparison between the Mutiny weekend in May 2017 and the first weekend of July 2017. Richard Lee Regulatory Service Manager has submitted a representation on the grounds of public nuisance, raising concerns around noise. He is requesting conditions to be added to the premises licence to set the control and management of noise on a formal basis. Mrs Sandra Patterson a regular patron of the event has made a representation regarding the protection of children from harm in relation to drug availability and misuse. Councillor Linda Symes has submitted a representation supporting the event organisers, suggesting that proposals submitted in Police Annex G should be allowed to be introduced and monitored prior to any changes to the current premises licence. These representations are attached as **Appendix C**.

5. POLICY AND STATUTORY CONSIDERATIONS

When determining the review application, the committee must have regard to:

- Promotion of the licensing objectives which are;
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- The Licensing Act 2003;
- The adopted Statement of Licensing Policy;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current statutory guidance issued by the Home Secretary in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

The Statutory guidance under the protection of children from harm says as follows

Paragraph 2.22 *"The protection of children from harm includes the protection of children*

from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions."

Paragraph 2.26 *"Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule, to set out the steps to be taken to protect children from harm when on the premises"*

Paragraph 2.29 *"Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively."*

The Statutory Guidance also provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 11.1 - *"The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate."*

Paragraph 11.2 - *"At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives."*

Paragraph 11.10 - *"Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation."*

Paragraph 11.16 - *"The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives."*

In reaching a decision upon a review application, the guidance offers assistance to the licensing authority as follows:

Paragraph 11.17 - *"The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder."*

Paragraph 11.18 - *"However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker."*

Paragraph 11.19 - *"Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence."*

Paragraph 11.20 - *"In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review."*

Paragraph 11.21 - *"For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be*

sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."

Paragraph 11.22 - *"Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."*

Paragraph 11.23 - *"Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again."*

However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence."

A copy of the Statement of Licensing Policy, current statutory guidance and the Act has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

6. APPEALS

An appeal against any punitive sanctions may be made within 21 days of the authorisation holder being notified of the licensing authority's decision to a Magistrates' court. An appeal may be made by:

- The applicant for the review;
- the holder of the premises licence or club premises authorisation; or
- any other person who made relevant representations in relation to the application.

The decision of the committee, following the review hearing, will not have effect until the end of the period allowed for appeal, or until any submitted appeal is disposed of.

7. APPENDICES

- A.** Copy of the redacted review application together with any supporting documents
- B.** Copy of the current authorisation
- C.** Copies of any other relevant representations received

THE COMMITTEE IS REQUESTED TO DETERMINE THE REVIEW APPLICATION



For Licensing Manager
And on behalf of Head of Service