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6 October 2008

APPLICATION FOR THE GRANT OF A PREMISES LICENCE: THE LAND BETWEEN RIVERSIDE CAR PARK AND THE WETHERBY BRIDGE INCORPORATING THE WETHERBY RIVERSIDE BANDSTAND

On the 7th July 2008 Licensing Sub-Committee heard an application brought by Wetherby Riverside Bandstand Trust for the grant of a premises licence in respect of the land between Riverside Car Park and the Wetherby Bridge incorporating the Wetherby Riverside Bandstand.

The applicant sought the following:

Proposed Licensable Activities

- E Live Music
- F Recorded Music
- H Anything of a Similar Description

Proposed Hours of Licensable Activities

Saturday and Sunday	11:00 hours to 20:00 hours
Bank Holiday Mondays Only	11:00 hours to 20:00 hours

Concerts will only take place between 1st April and 30th September

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This letter represents the formal decision of the Sub-Committee in respect of the application.

Preliminary Procedural Issues

The Sub-Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made. The Sub-Committee agreed that the procedure for the hearing would not be varied. The Sub-Committee then decided to exclude the public from that part of the meeting where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

Prior to the hearing that Sub-Committee had considered the Licensing Officers report which included a copy of the application as submitted. The report also included written representations received from P M Grafton and Noise and Environmental Protection. The Sub-Committee then went on to consider the application

The Hearing

The following parties attended the hearing:

- Mr. K. Bennett, Trustee and Applicant
- Mr. Richard Bilsborough, Environmental Health Services

In determining the application the Sub-Committee took into account the written submissions from the responsible authorities contained within the report and the Notices of Hearing. These had been circulated to the parties prior to the hearing.

After considering the evidence and submissions the Sub-Committee would need to satisfy itself that granting the application would promote the licensing objectives. In reaching its decision, the Sub-Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the council's own Licensing Policy. In particular the Sub-Committee took into account Sections 17 & 18 of the Act because these were the most relevant to the application and Chapter 2 of the Guidance relating to the prevention of crime and disorder, public nuisance and public safety.

The Sub-Committee then went on to consider the following sections of the Licensing Policy as the Sub-Committee took the view that these paragraphs had a bearing on the applications:

Section 6 General Principles

Section 11 Promotion of the Licensing Objectives

Responsible Authorities

The Sub-Committee first considered representations made by Mr. Richard Bilsborough, Leeds City Council Environmental Health Services. Mr Bilsborough informed the Sub-Committee that activity had historically taken place at the Bandstand on a Sunday for a number of years between 14:30 hours and 16:30 hours. There had been no complaints to Environmental Health Services in relation to the events which had taken place however Leeds City Council had a duty to prevent public nuisance and had made a qualified objection to the application. The applicant had proposed to increase the number of days and hours the

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bandstand was in use to 9 hours a days on Saturdays, Sundays and Bank Holiday Mondays. This represented a huge increase in the hours and days of operations. The nearest noise sensitive premises to the premises was ten metres away from the bandstand and with the increase in hours and days of operation and the possibility for amplified music Officers felt that this represented a huge potential for noise nuisance and littering. Environmental Health Services had also proposed that events take place on no more than 30 occasions per year and to finish at 18:30 hours. As the Bandstand was only open for use between April and September allowing only 30 events per year would mean that there could be a performance every weekend.

The following issues were addressed in the questions from the Sub-Committee:

- Mr. Bilsborough informed the Sub-Committee that he felt that proposed conditions 5 and 6 were not appropriate for the Bandstand and was happy to withdraw them.
- Officers were concerned that the Bandstand may attract more people than usual and therefore more litter.
- Mr. Bennett informed the Sub-Committee that the premises indicated as 2 on the Map was a residential property. The premises indicated as 4 and 6 were commercial properties which may have had residential levels also. Mr. Bennett added that both the commercial premises were 100% in support of the Bandstand.
- The Bandstand was located in a natural dip in the land.

Applicant

As there were no public objectors present the Sub-Committee then considered the representations made on behalf of the applicant by Mr. Ken Bennett, Trustee. Mr. Bennett first provided the Sub-Committee with a short background of the premises. The Bandstand was the result of a Millennium project in 2000 for which the local community raised £60,000 to build. A registered charity had been established to organise events and to maintain the Bandstand. This charity was controlled by a charitable deed which only allowed the charity to organise bandstand events. The Charity was not a profit driven business and allowed the Bandstand to be used by local groups and organisations free of charge. Planning permission was granted in 2000 for which there were no objections from residents and as far as Mr. Bennett had been aware Mr. Grafton had lived at the his residence at the time of the application. The Charity had been in contact with Leeds City Council Licensing Team during the initial stages and were advised by a Mr. Housen that they would be contacted should he establish that the Bandstand required a premises licence. However it was the local ward councillor, Councillor Gerald Wilkinson who advised that the Bandstand required a premises licence.

The Charity arranged approximately 20 Bandstand events a year and also allowed local groups to use the premises such as local schools and charities. This happened about five to six times a year. On one Sunday a year the Joint Churches organised Evensong at the Bandstand.

Mr. Bennett had received the help of Licensing Officers when completing the application for the premises licence and was advised to make a wide application to allow for flexibility in the events which could be held at the premises as this would avoid the need and expense of applying for a temporary events notice. The Charity had no intention of increasing the type

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and number of events however allowing the premises to operate from 11:00 hours would allow the events which took place on Saturdays to continue to operate and allowing the premises to operate until 20:00 hours would allow the Evensong performance to continue. To Mr. Bennett's knowledge the Bandstand had not been used on any Bank Holiday Monday but wished to be allowed to hold events on those days if it was requested. Recorded music had been requested although Mr. Bennett felt that it would not be a problem to not have provision for recorded music however amplified music was required to allow bands to present their pieces of music.

Mr. Bennett informed the Sub-Committee that he felt Mr. Grafton had overstated his representation and attempted to represent other residents. Mr. Bennett had in fact spoken to residents in the area and they enjoyed and were in support of the music played at the Bandstand. Mr. Grafton had not made any representations regarding the location of the site when planning had been sought and had not approached the Charity in relation to noise nuisance.

The following issues were addressed:

- Amplification was used to introduced the next piece of music and lasted for about 30 seconds to 1 1/2 minutes on approximately ten occasions per event. The Bandstand did not initially have a personal address system however due to the noise of nearby traffic, the river, car park and the noise of the generator from the ice cream van it was required. Mr. Bennett was conscious of the noise levels of the area and would turn down the personal address system should it cause a nuisance.
- Mr. Bennett felt that the proposed condition to limit the number of events to 30 times a year was not sufficient and the restriction on the hours proposed restricted the Evensong event from taking place. The proposed condition in relation to lighting was also not appropriate as events took place during daylight hours. Mr. Bennett also felt that the conditions in relation to littering were not relevant as the event itself did not produce litter and there were sufficient bins provided by Leeds City Council which were emptied regularly. Mr. Bennett did not think that the Charity could be responsible for the litter of third parties.
- The Bandstand events were not widely publicised. A notice of events was placed in the park and another notice was placed in the local newspaper.
- With the agreement of all parties present Mr. Bennett tabled a letter of support from Wetherby Town Council which he had recently received.
- Concerts had been held for 8 years and there had been no complaints made. The Bandstand was an amenity for all people in the local and surrounding areas.
- To Mr. Bennett's knowledge the Bandstand had not been used for three days in a row over the bank holiday weekend and he would agree to a condition preventing the Bandstand being used on all three days over a bank holiday weekend.
- The Evensong event used an electronic keyboard and some bands which used the bandstand used electric guitars. There was not currently a vetting process for what bands could use the Bandstand but should demand increase or problems arise the Charity would look into vetting the use of the Bandstand.
- Mr. Bennett had asked the local newspaper not to cover the application for the premises licence until the Sub-Committee had reached a decision.
- The Sub-Committee was advised by the legal officer that there was no requirement to have a premises licence which covered Evensong as this constituted a religious celebration which was not covered under the Licensing Act 2003.

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- On considering the representations made by Mr. Bennett, Mr. Bilsborough agreed to remove proposed conditions 4, 5, 6 and 7 and agreed to amend condition 2 to state that events should not take place on three consecutive days instead of limiting the number of events to 30 a year.

The Decision

The Sub-Committee discussed the application in a closed session. Members noted the written submissions objecting to the variation. The representations made by the applicant in support of the application were also taken into consideration by the Sub-Committee.

After careful consideration the decision of the Sub-Committee was to grant the application in the following terms:

Licensable Activities

- E Live Music
- F Recorded Music
- H Anything of a Similar Description

Hours of Licensable Activities

- Saturday and Sunday 11:00 hours to 20:00 hours
- Bank Holiday Mondays Only 11:00 hours to 20:00 hours

Concerts will only take place between 1st April and 30th September

The grant of the premises licence was subject to the following condition:

1. Events should not take place on three consecutive days.

In making its decision the Sub-Committee was satisfied that the grant of the licence with the imposed conditions was in line with the Council's own Licensing Policy and the provisions of the Licensing Act 2003.

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:

Clerk to the Justices

Leeds Magistrates Court

Westgate

Leeds

LS1 3JP

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and accompanied by a copy of this decision letter and the court fee of £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

Yours sincerely

Laura Pilgrim
Governance Services Officer