

**Merton Council**  
**Licensing Sub-Committee**  
**30 January 2019**  
**Notice of Determination**

7 Notice of Determination - Blue Fox Events Ltd

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# London Borough of Merton



## Licensing Act 2003 Notice of Determination

**Date of issue of this notice:** 7 February 2019

**Subject:** Blue Fox Events Ltd, Morden Park, London Road, Morden, SM4 5QU

Having considered relevant applications, notices and representations together with any other relevant information submitted to any Hearing held on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

Parties to hearings have the right to appeal against decisions of the Licensing Authority. These rights are set out in Schedule 5 of the Licensing Act 2003 and Chapter 12 of the Amended Guidance issued by the Home Secretary (April 2018). Chapter 12 of the guidance is attached as Annex B to this notice.

**For enquiries about this matter please contact**

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**Telephone:** 020 8545 3357

**Email:** [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)

**Useful documents:**

**Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

**Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

**Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm)

**Merton's Statement of Licensing policy**

<http://www.merton.gov.uk/licensing/>

# Annex A

## Initial Application

Blue Fox Events Limited applied for a new Premises Licence for an annual open air dance music festival event to be held in a defined area of Morden Park, London Road, Morden, SM4 5QU to be known as “Eastern Electrics” to take place over three days in the first weekend of August each year with a maximum capacity of 29,999 persons on each day. The application sought that Premises Licence on the following terms:

Licensable Activities: Friday 11:00-22:30  
Opening Hours: Friday 11:00-23.30

Licensable Activities: Saturday 11:00 – 22:30.  
Opening Hours: Saturday 11:00 – 23.30

Licensable Activities: Sunday 11:00 – 22:00.  
Opening Hours: Sunday 11:00 – 23.00

Licensable Activities: performance of plays, films, live music, recorded music, performances of dance, anything similar to live and recorded music and performances of dance and sale of alcohol.

Circa 58 conditions were offered by the Applicant.

## Representations

81 Representations were received to the application.

Responsible Authority representations were received from the Metropolitan Police, the London Borough of Merton Council’s Licensing Authority and the London Borough of Merton Council’s Environmental Health team.

Representations were received from Siobhain McDonagh, MP for Mitcham and Morden, three Councillors and the Head of Customer Contact/Proper Officers Representative for Registration Services.

Representations were received from 73 local residents, including 5 in support of the application.

## Revised Application

Following receipt of representations, the applicant amended the application to remove the Friday, to reduce the capacities originally requested and to request that the Premises Licence be time-limited to 2019, 2020 and 2021 only. There were a number of further additional conditions proposed by all of the Responsible Authorities following these amendments by the Applicant.

The revised Application considered by the Licensing Sub-Committee was for a Premises Licence that was limited to 2019 and 2020 as follows:

**2019**

Licensable Activities: Saturday 11:00 – 22:30. Capacity: 23,500  
Saturday 11:00 – 23.30 Opening Hours

Licensable Activities: Sunday 11:00 – 22:00. Capacity: 15,000  
Sunday 11:00 – 23.00 Opening Hours

Licensable Activities: performance of plays, films, live music, recorded music, performances of dance, anything similar to live and recorded music and performances of dance and sale of alcohol.

**2020**

Licensable Activities: Saturday 11:00 – 22:30. Capacity: 27,000  
Saturday 11:00 – 23.30 Opening Hours

Licensable Activities: Sunday 11:00 – 22:00. Capacity: 17,500  
Sunday 11:00 – 23.00 Opening Hours

Licensable Activities remain: performance of plays, films, live music, recorded music, performances of dance, anything similar to live and recorded music and performances of dance and sale of alcohol.

The circa 58 conditions offered by the Applicant and further conditions agreed with the Responsible Authorities are applicable to both years.

**Licensing Sub-Committee Hearing**

The Licensing Sub-Committee carefully considered the representations contained in the agenda papers, the 2 supplemental agendas and the oral evidence submitted at the hearing by all parties in attendance.

The Applicant's Barrister, Michael Bromley-Martin stated that:

- The first application for this event in this location had been in 2017 when the event was for one day. This application received a number of representations from Responsible Authorities. However the Premises Licence was granted with a capacity of 17,000 persons. It was the applicant's view that the 2017 event was a success.
- The second application for this event in the location was granted in 2018. It was accepted that the 2018 event had seen considerable difficulties. The event was two days with a capacity of 19,999 on both days.

- Although the Applicant accepted that the 2018 event had not been a success, in terms of the number of complaints and issues that arose, this was despite no breaches of any of the licence conditions having occurred.
- There had been extraordinary co-operation and consultation with the Responsible Authorities and the application submitted at the end of 2018, which was considered at this hearing, had been subsequently amended as a result of this. The Responsible Authorities are content with the application in its amended form.
- A number of conditions have now been offered to deal with the three aspects of noise, security and litter/sanitation that were principle issues in 2018, as well as other aspects of concern.
  - o Noise: whilst it was accepted that the noise limits in 2018 had been fully complied with, it was felt that those limits were too high and had therefore been reduced for this application. These limits were now the lowest of any comparable festival and were below the “Pop Guide” (“Guidance on the Control of Environmental Music Noise and its Impact on Communities Close to the Events” provided in the Noise Council Code of Practice on Environmental Noise at Concerts 1995 Chartered Institute of Environmental Health) levels although that Guide is now withdrawn and was only an unofficial guide of EHOs and acoustic specialists.
  - o Security and Stewarding: the security would now be split between two companies – one for the inside of the event and one for outside the event. This had been agreed with the SAG (Safety Advisory Group). Within that was a commitment to provide wrap around security and provide security at all transport points i.e. tube, rail stations.
  - o Litter and Sanitation: all the conditions had been complied with in 2018. However, it was clear that more toilets were required. This had been reassessed by the applicant and this would be split between two companies one for the interior and one for the exterior of the event.
  - o In respect to the offered condition relating to ID scanning, the Metropolitan Police were happy that not all persons should be scanned and the condition would be removed.
- The Applicant was not complacent and still conscious of the potential for disturbance. The applicant believed they had done everything necessary and more to ensure the event would be nuisance free, safe and successful.

Responding to questions from Interested Parties, the Applicant advised that:

- With respect to the paddling pool, it would be 800mm deep (approximately knee height) in a secure area, with a number of lifeguards and with SIA staff monitoring the area. The pool would be situated in an area with its own capacity control and the pool would not be in use for the duration and would be restricted from 7pm.
- There had been no breaches of conditions in 2017 or 2018.
- In relation to the issues with Anti-social behaviour, in an area with large numbers of people there would always be some disturbance and there had been issues identified in 2018 which required addressing.

- The event would take place on the first weekend in August each year.
- The company providing security for the event in 2018 had not provided welfare for their staff and in future there would be a number of companies providing external security. The Applicant advised these companies would be providing welfare for their staff including toilet facilities and breaks.
- There would be separate companies providing cleaning for the internal and external areas and there would be the facility to send cleaners to particular areas if concerns were raised.
- There is a handover with the Council Parks team once the event is complete and the park cannot be handed over until the Parks team are satisfied with the condition of the park.
- Representations had been factored into the plans for external security.
- The Applicant worked closely with the Council Parks and Ecology teams and included a statement within the Supplemental Agenda advising that trees cut down were not as a result of last year's festival. The Applicant advised there were large areas of the park where trees were fenced off during the event to protect both the trees and attendees. The site plans took into account areas of wildlife.

Following questions from the Licensing Sub-Committee, the Applicant stated that:

- One of the reasons why issues and complaints markedly increased in 2018 from the 2017 event, might have been because the 2018 event had a longer duration and a larger capacity. It was also noted that more people in the area were aware of the event occurring and how to make a complaint. The Applicant noted that there were other festivals with much larger numbers - therefore it did not follow that the increased attendance was the only reason why more problems ensued.
- The Applicant conceded that ultimately no one knew why there had been so many more issues and complaints in 2018.
- The requested capacity of 23,500 persons on Saturday and 15,000 persons on the Sunday for the 2019 event was a reduction of 5,000 in capacity (but a potential increase of 7000 in attendance) on the previous year for the Sunday and an increase of 3,500 for the Saturday.
- The Metropolitan Police had been on site in 2017, but the Applicant appeared to suggest that this was not the case in 2018 due to legal issues preventing the Applicant paying for such support. The Applicant confirmed they were willing to make a financial contribution to the Police to cover policing for the event if that became legally possible in the future.
- There would be an amnesty procedure for drugs - if any were found during a search, based on the type and the attitude of the individual they would be ejected or have the substance confiscated and only then be permitted to attend. A Drugs Policy would be developed in discussions with the Police. There was a ban on Nitrous Oxide.
- There would be an external fence surrounding the perimeter with a sterile area in between that and the fence surrounding the event. This would ensure that any persons attempting to throw items over the fence would not be able to throw them directly into the event and they would land in the sterile area.

- There would be a noise hotline for any complaints or concerns from local residents to contact during the event. This would have an answerphone with an automated email alert to the team. There were built in contingencies to allow for staff absence. There would also be an email address to contact and a website with live dB levels updated regularly. The Applicant had also employed a new noise consultant.
- For this application, a new area had now been included in the noise management plan to assess low frequency/bass noise, which had related to a number of the complaints in 2018. These levels would also be monitored from 2019 onwards.
- In relation to noise, an additional member of staff had now been employed, there would be better quality speakers or Public Address system and there would be a reduction in the dB levels.
- There would be an egress plan provided as part of the ESMP and this would include a phased closedown of the different areas. In terms of stewarding, there would be two dedicated teams each to separately staff the exterior and the interior. This would assist as staff would be positioned in those specific areas, not expected to cover one and then re-deploy for egress. The Applicant had identified areas off-site which required additional stewarding including at Morden station and would work with BTP on those staffing provisions.
- There would be a dedicated Uber pickup spot, with the possibility of two being looked at for 2019.
- The Applicant had now been made aware of hotspots for litter and would plan resources accordingly, including an overnight response team.

PC Russ Stevens, speaking on behalf of the Metropolitan Police representation, stated that:

- The communication with the applicant had been excellent and they had met with the Police and debriefed after each event.
- Most of the Police concerns related to outside the event.
- Contrary to what the Applicant had appeared to suggest, PC Stevens thought approximately the same number of officers had been on site in 2018 as 2017 although this was not sufficient because of the increased size of the event.
- The Metropolitan Police estimated that the event had cost something in the order of £50,000 to police.
- There had been a number of discussions to ensure the 2018 issues did not re-occur and the Police believed that these concerns had been addressed with the conditions offered that had been agreed between the Police and the Applicant.
- The Applicant had agreed to everything the Police had asked for.

Sarah Le Fevre, representing the Licensing Authority (with the assistance of Barry Croft Licensing Team Leader), stated that:

- The applicant had proved they were more than willing to engage in the planning process.



- Whilst the applicant was still a relative newcomer and there was a great deal of learning to be done, the Licensing Authority was grateful the Applicant had accepted the conditions requested by the Licensing Authority addressing its concerns.
- In response to a question from the Licensing Sub-Committee, Sarah Le Fevre advised that the Licensing Authority had considered requesting a one year licence but had noted that the event had taken place over 2 years thus far and there was the option available to ask the Licensing Sub-Committee to Review the Premises Licence, if any issues occurred at the 2019 event. The offer to reduce the application to two years was a significant reduction to the permanent Premises Licence application that they originally sought.

Andrew Pickup, speaking to his representation:

- Stated that staff from Environmental Health would be present at the event if the Premises Licence was granted, to monitor and ensure compliance and would carry out independent monitoring.
- Conceded (after a protracted discussion and interventions from both the Applicant's barrister and sound specialist) that, despite describing (in his additional memorandum) the removal of a peak level condition (included in his original report) as introducing nothing more than "some slight flexibility on noise levels", there would now be no maximum limits on peak low and high frequency sound levels.

Councillor Pearce, speaking to his representation stated:

- he was concerned about drugs particularly in relation to sales to under 18s and felt there should be a zero tolerance policy, noting that drug taking and selling would happen in the rest of the park even if not in the event itself.

Councillor McLean, speaking to his representation questioned:

- whether the event was the right type of event for the area and whether the management team were competent to run the event. Councillor McLean stated that the original application had been overambitious and he was not convinced of their sincerity and competence.

Councillor Southgate, speaking to his representation questioned:

- whether the conditions were sufficient and expressed concern regarding the momentum of the increase in drug supply from 2017 to 2018, which could attract other gangs to the event. Councillor Southgate also queried the effect on the new Morden Leisure Centre which would be being used by large numbers of families.

Sean Cunniffe, Head of Customer Contact and Proper Officers Representative for Registration Services, speaking to his representation advised that:

- whilst his concerns had been addressed in the conditions now proposed, it should be noted that the vast majority of complaints went through to the out

of hours emergency line at the Council (MASCOT), and he requested that the applicant liaise with him with regard to the hotline.

Kim Birch, speaking to her representation:

- recounted her experience of the 2018 event in relation to men and women urinating in her road whilst children were walking past, and the hundreds of drugs canisters discarded in the area, as well as bottles. Ms Birch said that there had been no action taken following her complaint to the noise complaint line in 2018.

Elsbeth Clarke, speaking to her representation:

- stated she felt the applicant had asked for too much in the original application to then give the appearance of negotiation. She felt that the applicant had had two 'bites of the cherry' but did not deserve a third.

Suzanne Denne, speaking to her representation:

- questioned how the issues could be addressed this year if the applicant didn't understand why the issues arose in 2018.

Mr & Mrs Hamid, speaking to their representation:

- advised that there should be no discussion on drugs as they are illegal and stated that it was unacceptable to have to shut doors and windows on a hot day/evening.

Clare Heath-Whyte, speaking to her representation:

- stated that the applicants had not kept their earlier promises and they had not received a visit despite requests. She felt the noise was worse in 2018 and that there had been 'traffic chaos' on London Road. Clare advised that whilst there were toilets close by a festival goer had stated they were too dirty and refused to use them. Clare stated that Morden is a residential area and this was an inappropriate place for the event.

David Heath-Whyte, speaking to his representation:

- advised that the cars and buses were not managed safely and parked outside the Church which caused jammed roads and risks to pedestrian safety. The Uber blackout had meant that attendees were confused where to go and that having two areas would increase this problem. Mr Heath-Whyte felt that a reduction of 5dB would not make a difference and that having met all the conditions in 2018 the event had still caused issues.

Russell King, speaking to his representation:

- questioned if the applicant didn't understand what had gone wrong how could they demonstrate they could fix what went wrong. Mr King noted that Morden was a residential area and advised that there had been canisters everywhere in 2018.

Susan Liang, speaking to her representation:

- stated that the application had been reduced as a negotiating tactic and that it was against all 4 of the licensing objectives. Stewarding in previous years had meant that the behaviour had been displaced elsewhere. The Applicant had promised in 2017 to resolve the issues for 2018 and this had not happened. Ms Liang questioned whether there were sufficient toilets and how the applicant could ensure they were used. Ms Liang felt that there needed to be more family friendly events.

Pippa Maslin, speaking to her representation:

- stated that the location was not appropriate and the event should be moved to a different location.

Liz Sherwood, speaking to her representation:

- advised that in 2017 she could hear the event but could not in 2018. In 2018 attendees had parked in their CPZ and received parking tickets. However it had not caused her inconvenience. Ms Sherwood stated that all the greenspaces in Merton required funding to sustain them and questioned where else the funding would come from. The event was one event over two days in a year and, whilst she appreciated all the concerns, the event would bring in a significant sum for the parks, and these events were vital to ensure the future of the greenspaces in Merton.

Michael Bromley-Martin advised in response to Interested Parties that the road closure in London Road had been put in as an emergency in 2018 but that a Traffic Management Order had been requested this year. Issues with the use of half of London Road and buses on diversion etc would be addressed in the planning stage not on the day of the event as had happened in 2018.

PC Russ Stevens advised that he felt that the control measures offered were the best that they could achieve for this event.

In closing, Michael Bromley-Martin stated that:

- whilst the Applicant understood the disturbance an event such as this could cause to residents the applicant had never broken promises or breached conditions and that none of the Responsible Authorities had doubted the integrity of the applicant and had congratulated its attitude of co-operation.
- The original application of 29,999 persons was a reflection of the demand for the festival and whilst it must not be an unreasonable disturbance, the

applicant urged the Licensing Sub-Committee to also think of the attendees of the festival.

- Mr Bromley-Martin stated that the applicant had been willing to compromise and had now come to an agreement with the responsible authorities. 66 additional conditions had been put forward and it was clear that the 2018 conditions had been insufficient.
- Whilst there had been issues in 2018, Mr Bromley-Martin stated that whilst there was drug usage this was not a festival that suffered from a drug problem to the degree of the larger festivals and other than references to nitrous oxide the police had not expressed any concern in relation to drugs.
- The Applicant felt that in 2018 there had been too much concentration on checking compliance such that the bigger picture was missed, and that they now knew that more conditions were needed and more would be imposed which was different to 2018.
- In relation to the Paddling Pool, the applicant was prepared for it to be remitted to the SAG for re-consideration.
- The Applicant stated that We Are the Fair and Blue Fox Events who were working on the event together had extensive experience and knowledge and they hoped that all the things that had been done in conjunction with the Responsible Authorities would ensure that disturbance was kept to a minimum.

### **Determination**

The Licensing Sub-Committee decided to grant the application to the hours/licensable activities now sought by the Applicant but only for one year. The Premises Licence is, accordingly, to be limited to one event to take place in 2019 on the 3<sup>rd</sup> and 4<sup>th</sup> August 2019 for the following licensable activities and hours:

- Licensable Activities:
  - performance of plays, exhibition of films (indoors and outdoors), live music, recorded music, performance of dance, anything of similar description to live music, recorded music, performance of dance 11:00-22:30 on Saturday and 11:00-22:00 on Sunday.
  - The retail sale of alcohol (on sales only) 11:00 – 22:00 on Saturday and 11:00 – 21:30 on Sunday.
- Opening Hours:
  - The site will be open between 11:00 until 23:30 on Saturday and 11:00-23:00 on Sunday.
- Capacity:
  - The maximum capacity of the event is limited to 23,500 on Saturday and 15,000 on Sunday.
- Conditions:

The Premises Licence is subject to the following conditions:

- Offered Conditions: Conditions as offered, agreed and extracted from the Applicant's Operating Schedule in their Premises Licence Application (pages 22-26 of the Agenda) subject to the following amendment to Condition 9 on page 23 which was amended to read "A list of all artists and performers who will be appearing at the event will be provided to the Police a minimum of 3 months prior to each event. If MPS identify concerns within 14 days of the submission of this information regarding a particular artist or group the event organiser will remove that artist or performer from the line up. If at any time MPS identify valid concerns regarding a particular artist or group, the event organiser will work closely with them to attend to the issue raised."
  
- Agreed Conditions: Metropolitan Police Conditions:
  1. The event site shall be closed and clear of patrons/members of the public by 23:30hrs on the Saturday and 23:00hrs on the Sunday.
  
  2. An Event Safety Management Plan (ESMP) shall be developed to address the method by which the premises licence holder proposes to manage the potential risks for the following matters in accordance with the four licensing objectives:
    - a. Crowd Safety
    - b. Procedures in the event of an emergency
    - c. The reduction of crime and disruption of the supply and possession of drugs and illegal substances from inside and outside the venue
    - d. Regulation of the number of persons attending the event at any one time
    - e. Stewarding of the event inside and outside the venue
    - f. The responsible sale and supply of alcohol
    - g. The welfare of persons working at the event site during the build-up, breakdown and open period of the event
    - h. Missing persons, vulnerable persons and children's safety
    - i. Ticket sales and conditions of entry
    - j. The provision of First Aid
    - k. Accident reporting procedures
    - l. The control of noise and the prevention of public nuisance
    - m. Fire Safety
    - n. The use of pyrotechnics and special effects
    - o. The safety of food
    - p. Control of litter
    - q. Sanitation and the disposal of waste materials
    - r. The safety of temporary structures and amusements
    - s. Traffic management
    - t. Provision of facilities for disabled persons
    - u. The structure for the operational management of the event, including the composition and functions of the event liaison team.

3. The Premises Licence Holder, or their appointed representative, shall present, by oral and written presentation, the draft ESMPs to the London Borough of Merton's Safety Advisory Group (SAG) no later than three months prior to the date of the event. Following this presentation a second presentation shall be organised and take place no later than six weeks prior to the event whereby the premises licence holder, or their appointed representative shall present, by oral or written presentation, the final versions of the ESMPs to the LBM SAG.
  4. Anyone found in possession of any drugs and/or Nitrous Oxide having passed the last amnesty opportunities, to be ejected/refused entry to the event.
  5. Swimming Pool Conditions:
    - a. No entry will be granted to the Pool area to anyone who is drunk
    - b. Only drinks in coloured paper cups to be allowed in the pool area
    - c. Users of the Pool must wear suitable swimwear. Underwear is not suitable.
    - d. Nudity is not permitted in the Pool
    - e. Pool capacity will be set at 1 square metre per person
    - f. Qualified life guards and water trained security guards will be present at all times that the event site is open
    - g. Lockers and changing cubicles will be closely monitored by staff
    - h. Pool chlorination and water testing will take place regularly throughout the event.
    - i. There shall be no petting in the pool or pool area. [added by agreement between the MPS and the Applicant]
- Agreed Conditions: Licensing Authority Conditions:
    1. An initial Event Safety Management Plan (ESMP) (first draft) shall be made available to the Licensing Authority at least 100 days prior to the commencement of the event period that will include any additional information or improvements identified and agreed from the previous event's multi-agency debrief.
    2. The ESMP shall contain detailed proposals for each event in policies and plans to promote all the licensing objectives of public safety, prevention of crime and disorder, prevention of public nuisance, protection of children from harm. The ESMP shall be made up of the following documentation:
      - 1) Alcohol Management Plan;
      - 2) Campsite Management Plan;
      - 3) Command, Control and Communications Plan;
      - 4) Crime Prevention/Reduction Plan;

- 5) Crowd Dynamics Plan;
- 6) Fire Safety Management Plan;
- 7) Major Incident Plan;
- 8) Medical and Welfare Plan;
- 9) Noise Management Plan;
- 10) Sanitary Facilities Plan;
- 11) Security and Stewarding Operational Plan;
- 12) Site Plan;
- 13) Ticket and Entry Policy;
- 14) Trader Information Management Plan;
- 15) Traffic Management Plan;
- 16) Venues Plan;
- 17) Waste Management Plan;
- 18) Water Supply Plan;
- 19) Villages Proposal;
- 20) Public Safety Management Plan; and
- 21) Schedule of Key Dates

3. A final ESMP shall be made available to the Licensing Authority and Responsible Authorities no less than 30 days before the start of each event period. The contents of the EMP shall be fully complied with each year which shall convert to a condition of the Licence on receipt of the approval in writing from the Licensing Authority.
4. No changes will be made to the ESMP without the prior written consent of the Licensing Authority within the 30 days prior to the event period.
5. The Licence Holder shall produce a public facing document based on the ESMP to ensure that local residents and others are kept informed. The public facing document shall be produced not later than 56 days before the start of each event period.
6. The Premises Licence Holder will set up a publicised meeting with local residents prior to the event date. This meeting will be to discuss plans for the Event and receive residents' feedback.
7. The Premises Licence Holder will set up a publicised meeting with local residents after the event date. This meeting will be to receive residents' feedback.
8. Following the circulation of the draft ESMP's, the Premises Licence Holder, or an agent on behalf of and under the authority of the premises licence holder, shall consult with all Responsible Authorities and shall take due account of any representations made by a responsible authority regarding the content of the ESMP documents.

- Agreed Conditions: Environmental Health Conditions:

1. The Noise Management Plan, which incorporates details of resources, monitoring strategy, noise levels, monitoring sites, sound attenuation at each 'venue', noise and sound system management together with Local Authority Liaison and complaint handling shall be implemented and adhered to throughout the duration of the event.
2. Noise levels monitored should be applied one metre from the façade of the nearest noise sensitive premises.
3. The organisers for the festival are to take full responsibility for the setting up and management of the noise hotline which must be available throughout the event.
4. Amplified music for the event shall not be permitted outside the hours of 11:00-23:00 Saturday and 11:00 to 22:00 on Sunday with the exception of sound tests.

### **Reasons**

The Licensing Sub-Committee carefully considered the representations contained in the Agenda Pack, the Supplemental Agenda 1 and the Supplemental Agenda 2 submitted before the meeting and all the oral evidence submitted at the hearing by all parties. The Licensing Sub-Committee carefully balanced the interests of all parties and discussed at length all aspects and merits of the application to make a proportionate and appropriate decision based on the evidence provided.

The Licensing Sub-Committee felt there were sufficient grounds to refuse a two year Premises Licence given that none of the Responsible Authorities could guarantee that the additional conditions imposed, despite their reasonable belief they would be fully complied with, would fully address the issues that arose in 2018, although (in their considered and unanimous best judgement) that was expected to be the case. The Licensing Sub-Committee decided to grant a one year time limited Premises Licence. The Licensing Sub-Committee considered that the revised application, approach, conditions, and the Management Plans were, once agreed with the SAG, likely to address the concerns of crime and disorder / disruption / nuisance / security on the event day that had been at fault in 2018.

The Licensing Sub-Committee felt it was incumbent to listen to the concerns of residents and to take note of their representations. However, the Licensing Sub-Committee noted that there had been extensive negotiation with and substantial agreements made between the Applicant and the Responsible Authorities that should address the issues that affected the residents in the 2018 event. Where conditions address the concerns of residents following agreements reached with Responsible Authorities, the Licensing Sub-Committee must consider grant of an application. The Responsible Authorities serve as the Licensing Sub-Committee's eye and ears in considering applications. The Home Office Guidance under section 182 of the Licensing Act 2003 entitled "Revised Guidance issued under section 182 of the Licensing Act 2003" April 2018 reads as follows:



“9.12 In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.”

“9.13....It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

“21. Licensing authorities should look to the police as the main source of advice on crime and disorder”

The Licensing Sub-Committee considered the application for the Premises Licence to be time-limited to two years, but noted that there remained issues from the 2017 event which had not been resolved in 2018 as well as additional issues which occurred in 2018. These included, but were not limited to:

- the sale and consumption of drugs within and in the vicinity of the premises,
- litter and insufficient clearance thereof,
- public urination and defecation,
- language used by performers,
- excessive, particularly low-frequency, noise,
- anti-social behaviour and drunkenness by attendees,
- traffic issues and lack of security and stewarding.

The Licensing Sub-Committee had to have confidence both that the applicant would deliver on what had been submitted by way of conditions, management plans, the operating schedule or the substantive application AND that, unlike in 2018, the various measures agreed with the Responsible Authorities would ensure no repeat of the problems that occurred that year. If there were to be a problem with the same, or other, issues at the 2019 festival, the Licensing Sub-Committee did not consider that it would be appropriate for there to be a further festival the following year pending (despite the potential for Review). The Licensing Sub-Committee were cautiously optimistic that the application with the conditions and management plans to be proposed and negotiated would result in minimum disturbance. If the 2019 festival were to proceed without

issue, then the Licensing Sub-Committee could envisage that an extended application may be submitted for consideration. The 2018 event did not proceed without such issues, and the Licensing Sub-Committee felt it was proportionate and appropriate to limit the Premises Licence to one year.

The Licensing Sub-Committee considered whether the issues could be addressed by the extensive conditions offered in the original application and additional conditions offered by various Responsible Authorities and accepted by the applicant. The Licensing Sub-Committee considered that the various conditions imposed to address concerns relating to the Licensing Objectives of the prevention of crime and disorder, promotion of public safety, and prevention of public nuisance, were appropriate and proportionate as required by the Licensing Act 2003, its Regulations, s182 Guidance and relevant case law and would assist to ensure that issues did not re-occur or would reduce.

The linking of management plans for the authorisation and agreement of the SAG allows for the professional advisors, the specialist consultants and expert officers to agree on the reasonable parameters for the event to run, to provide for a safe, secure and successful festival.

The case of *Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008* was applied and considered during deliberations and the Licensing Sub-Committee felt that there was sufficient "proper evidence" presented by the Interested Parties present, and within the representations and evidence presented to the Licensing Sub-Committee of extensive and significant issues with public nuisance and crime and disorder at the 2018 festival event. The Licensing Sub-Committee observed the strength of feeling of those present at the meeting or in their Representations. However, the extensive and improved restrictions sought by conditions or Management Plans (with management of planning with the Safety Advisory Group / Responsible Authorities (well in advance of the festival) were considered to be sufficient to address these concerns and issues. The applicant must be in no doubt that its performance against these criteria was critical for such an event to proceed and for any further licence to be granted in subsequent years.

The case of *Luminar Leisure Ltd v Wakefield Magistrates' Court & Brooke Leisure Ltd, Classic Properties Ltd, Wakefield MDC 2008* was considered during deliberations in so far as the Licensing Sub-Committee considered ingress and egress to and from the event in respect of areas beyond the licensee's control, it being for the Safety Advisory Group / Responsible Authorities to address this in the relevant Management Plans and the operators to minimise crime and disorder, public nuisance and safeguard public safety as festival goers arrive at and leave the festival and are dispersed from Morden within the various Management Plans.

It was noted that some representations referred to the "Dynamic Festival" event that was refused a Premises Licence at the Licensing Sub-Committee meeting on 13<sup>th</sup> August 2018 for a festival with 9,999 people that would have occurred on 8<sup>th</sup> September 2018 (i.e. less than a month after the Licensing Sub-Committee meeting). That festival would have had little or no planning or

negotiation or discussion with the Safety Advisory Group and little opportunity to agree management plans in time to address the systemic issues revealed by the problems and complaints that occurred during the previous month's Eastern Electric festival. The noise levels now proposed are lower than those proposed at the "Diyynamic Festival" event. The extent of the work undertaken by the Applicant's team and the Safety Advisory Group / Responsible Authorities in this application have been extensive and will be ongoing and must be distinguished from that decision.

It is noted that any member of any Responsible Authority, Councillor or member of the public is able to request a Review of the Premises Licence by the Licensing Sub-Committee at any time if issues occur. Interested Parties are reminded that such an application will involve 28 days' notice of the Review and 20 days by which the Licensing Authority must have held a hearing.

## **Annex B**

### **Extract from the Amended Guidance issued by the Home Secretary under Section 182 of the Licensing Act 2003 (April 2018).**

#### **13. Appeals**

13.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

#### **General**

13.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.

13.3 An appeal has to be commenced by the appellant giving a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

13.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police, the Home Office (Immigration Enforcement), or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.

13.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

13.7 On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or

- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

All parties should be aware that the court may make an order for one party to pay another party's costs.

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

## **Licensing policy statements and Section 182 guidance**

13.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

13.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

## **Giving reasons for decisions**

13.10 It is important that a licensing authority gives comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

## **Implementing the determination of the magistrates' courts**

**13.12** As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

## **Provisional statements**

13.13 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

13.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.