

FALKIRK COUNCIL

Subject: APPLICATION FOR THE GRANT OF A TEMPORARY PUBLIC ENTERTAINMENT LICENCE
Meeting: CIVIC LICENSING COMMITTEE
Date: 30 January 2014
Author: CHIEF GOVERNANCE OFFICER

1. INTRODUCTION

- 1.1 An application, dated 16 September 2013, was received on 16 September 2013, for the grant of a temporary Public Entertainment Licence from **James Patterson**.
- 1.2 The application discloses that the applicant proposes to operate a fairground at the car park at the Tesco superstore, Colliery Road, Redding from 12 February to 17 February 2014. The applicant has previously held licences to operate fairgrounds within Falkirk.
- 1.3 The applicant initially stated two preferences for the location of the fairground within the car park of the store. Preference 1 was the location where the fairground operated from in February 2013. Following on from discussion with the licensing office, the applicant confirmed on 2 October 2013, that he wished to proceed with preference 2 detailed on the location plan. The licensing section thereafter undertook a consultation exercise on this basis. A copy of the location plan showing both areas is attached to the report as Appendix 1. A supplementary plan showing the location of local residents is also attached as Appendix 2.

2. BACKGROUND

- 2.1 In January 2013, a temporary Public Entertainment Licence was granted to Mr Patterson for the operation of a fairground at the Tesco car park in Redding. The licence allowed the fairground to operate between 8 and 18 February 2013 from 12 noon to 8pm.
- 2.2 Following on from a consultation process with statutory consultees that resulted in no adverse comments being received, that temporary licence was granted by officers under delegated powers.
- 2.3 Prior to the commencement of the fairground on 8 February 2013, a local resident of Livingstone Terrace, Redding contacted the licensing office to complain about the proposed fairground. The resident was advised that the licence had already been granted and that, in any event, there was no requirement for the neighbouring properties to be notified. The resident was subsequently advised that the operation of the fairground would be monitored by Environmental Health to ensure potential noise nuisance was kept to a minimum.

- 2.4 The licensing section gave an assurance to the resident that should the fairground operator submit an application in the future then the licensing section would notify him of the proposals.
- 2.5 The fairground passed with two complaints made to Environmental Heath from residents of Blair Cottages in respect of noise issues and the close proximity to Blair Cottages, Redding. The complaints were investigated and noise levels at the fairground were reduced.

3. PROPOSED OPERATION OF FAIRGROUND

- 3.1 The applicant seeks consent to operate between 4pm and 8pm on Wednesday 12 Feb 2014 and between 12 noon and 8pm each day from Thursday 13 Feb until Monday 17 Feb 2014, both dates inclusive. The application sets out that the fairground would consist of 6 adult rides, 8 children's rides, 5 stalls and 2 side-shows.
- 3.2 The applicant has submitted all the appropriate paperwork to the licensing section, namely: -
- A copy of the insurance for each ride
 - A risk assessment for each ride
 - A declaration of operational compliance for each ride

4. TEMPORARY LICENCES

- 4.1 Paragraph 7 of Schedule 1 to the Civic Government (Scotland) Act 1982 sets out the provisions relating to temporary licences. It provides that a licensing authority may grant a licence to have effect for such period not exceeding 6 weeks as it may determine subject to such conditions as it thinks fit. It also prescribes a mechanism for limited consultation.
- 4.2 In accordance with the Act, applications for temporary licences go through a pared down procedure. In particular, the following provisions of the Act that would otherwise apply to licence applications **do not apply** to applications for a temporary licence:
- where the application relates to premises (which includes land as in this application), the requirement to display a public notice setting out that an application has been made and the broad outline of that application;
 - the power to the licensing authority to cause public notice to be given of the application;
 - the power to any person to make objections or representations;
 - the provisions in paragraph 4 of the said schedule that empower the licensing authority to make such reasonable enquiries as they think fit in respect of an application and to take into account the results of those enquiries when taking their decision.

- 4.3 Notwithstanding the limitations set out in the preceding paragraph, the licensing authority must still determine whether, in their opinion, any of the grounds for refusal set out in paragraph 5 of the Act apply to the application (expanded upon in part 8 of this report). If they do, the application must be refused. Conversely, if they do not, then application must be granted.

5. CONSULTATION

- 5.1 As noted above, specific consultation rules apply to applications for temporary licences. The Chief Constable must be consulted and, where the application relates to an activity carried on in premises, the relevant enforcing authority for fire prevention purposes. The application which is the subject of this report was accordingly served on both the Chief Constable and the Scottish Fire and Rescue Service. Neither body submitted any representations in response.
- 5.2 As is our custom, other Services within the licensing authority were also advised about the application and asked for any relevant input they wished to provide.
- 5.3 The Environmental Health section of Development Services commented that a more suitable location would be on the other side of the car park by the canal close to the shop. The area suggested was not available to the applicant. Environmental Health also advised that event noise levels must not exceed 65dB(A) Leq over a 15 minute period at any noise sensitive premises. Noise sensitive premises would include residential properties. This criterion is based on the Noise Council's Code of Practice for controlling noise from pop concerts. It has been used previously for other funfairs and for events such as Big in Falkirk. Environmental Health have statutory powers enabling them to deal with noise nuisance.
- 5.4 The Roads section within Development Services was invited to comment with specific reference to proposed bridge repair works in the vicinity of the fairground. It is understood that Network Rail will commence bridge replacement works at Redding Road, Falkirk which will involve a full road closure overnight on 1st February and single lane closures with temporary traffic lights from 3rd February until 20th March 2014. Roads have confirmed that the proposed works will have a significant impact on road traffic during peak hours. However, the proposed hours of operation for the fairground do not coincide with peak hours. Roads further advised that the location of the fairground in the Tesco car park is well sited for easy access and egress being close to, but not on, a B class road.

6. INFORMATION FROM RESIDENTS OF LIVINGSTONE TERRACE/OVERTON CRESCENT/ REDDING ROAD

- 6.1 On 29 November 2013, the licensing section contacted the local resident of Livingstone Terrace, referred to in paragraph 2.3 of this report and advised of the licence application that had been submitted for the proposed fairground. On 1 December 2013, the local resident emailed the licensing section stating that he would be objecting to the application and requesting advice on how to submit an objection. The licensing section advised in an email the procedures relating to objections. This advice was incorrect as the normal procedures for objecting to applications do not apply to temporary applications. On 18 December 2013, an email objecting to the grant of the application was received from the local resident of Livingstone Terrace. A copy of this e-mail is produced as Appendix 3.
- 6.2 On 18 December 2013, the licensing section telephoned the applicant and advised him of the e-mail received that day from the local resident of Livingstone Terrace. In response, the applicant offered to meet with the local resident to discuss any concerns and allay any fears that he may have. This offer was conveyed to the local resident but he declined to participate in such a meeting.
- 6.3 On 27 December 2013, the licensing section received a document stating it was an objection containing the names, addresses and signatures of 14 residents from Livingstone Terrace, Redding and 1 resident from Overton Crescent, Redding. A copy of this document is produced as Appendix 4.
- 6.4 On 20 December 2013, an undated letter with associated documents was received, from the local resident of Livingstone Terrace. A copy of this letter and documents are attached as Appendix 5.
- 6.5 On 6 January 2014, the applicant's solicitor contacted the licensing section and queried the legal competency of the purported objections and representations that had been lodged, standing the terms of the Act. He asked what weight and status the Council intended attached to the comments that had been submitted.
- 6.6 In light of the applicant's solicitor's comments regarding objections, the licensing section sought legal advice from within the Governance Division. The provisions of the Act as set out in part 4 of this report were clarified, in particular that there is no right of objection to a temporary licence and accordingly no right in the legislation which would allow local residents to be heard or to participate in the proceedings as objectors. The procedure for considering applications for temporary licences is set out in the 1982 Act. As a statutory body, the licensing authority is obliged to act within the legislative competence accorded to it and licence applicants are entitled to expect that their applications will be dealt with in accordance with the law. Where an application for a temporary licence is received, the Act makes provision for a modified procedure to be adopted which does not include provision for contributions from third parties other than the chief constable or the relevant fire enforcing authority. Recognising that this information would be disappointing to the local resident of Livingstone Terrace and that he (and those whom he said he represented) would naturally be unhappy that the advice they had previously been given was incorrect, a letter was sent to him setting out the correct position and offering a full apology for the earlier advice.

- 6.7 A letter dated 13 January 2014 with associated documents was received from the residents of a property in Redding Road, Redding. The current application was brought to their attention by a letter posted to them from Tesco, Redding Road, who are hosting the event on their premises. A copy of the letter and enclosures is attached as Appendix 6.
- 6.8 Appendices have been redacted removing personal information where appropriate.

7. DOCUMENTATION BEFORE MEMBERS/ DECISION MAKING

- 7.1 There is no objection submitted by or on behalf of the Chief Constable or the Scottish Fire and Rescue Service. These are the only statutory objectors allowed for Temporary Licences. There is information submitted which is from within the Council, including the Roads section and Environmental Health, which is information deemed to be within the knowledge of the Council and can be considered as such.
- 7.2 In relation to decision making, the licensing authority must satisfy itself in terms of paragraph 5(3) of Schedule 1 to the 1982 Act that the premises (which includes the land on which the fairground is proposed to be situated) are both suitable and convenient for the conduct of the activity having regard to (i) the location, character or condition of the premises involved, (ii) the nature and extent of the proposed activity, (iii) the kind of persons likely to be on the premises, (iv) the possibility of undue public nuisance and (v) public order or public safety. Unless the licensing authority is satisfied or feel there is some other good reason for refusing the application, it should be granted.
- 7.3 The licensing authority is obliged to consider all matters of which it is aware including information brought to its attention from whatever source. While the information from the Livingstone Terrace residents came to light following a misunderstanding of the legislative position and the information from the Redding Road residents followed on notice issued by Tesco, that information is now within the hands of the authority and it is considered appropriate that it is placed before the decision making body to determine the extent to which it is relevant. The authority should only consider information which it considers to be relevant. Thereafter, it is a matter for the licensing authority to consider what weight to attach to any relevant information. Members will require to consider what documentation is relevant from the Appendices and what weight should be attached to any relevant information.

8. THE APPLICANT

- 8.1 The applicant has been served with the information provided as part of this report and his views have been sought. Those views must be considered by the licensing authority before a decision is reached. The applicant has been invited to attend the meeting.

9. RECOMMENDATION

9.1 That Members consider the terms of the report and arrive at a decision in light of the information before it.

9.2 The options available to the Members are:-

- (a) to grant the TEMPORARY PUBLIC ENTERTAINMENT LICENCE, subject to such conditions as they think fit; or**
- (b) to refuse to grant the TEMPORARY PUBLIC ENTERTAINMENT LICENCE in terms of the Civic Government (Scotland) Act 1982, under one of the grounds set out in Schedule 1 paragraph 5(3).**

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Chief Governance Officer

Date: 23 January 2014

Contact Officer: Bryan Douglas, Licensing Co-ordinator (telephone 501262)

LIST OF BACKGROUND PAPERS

1. Application dated 16 September 2013 – Not for publication by virtue of Paragraph 6 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973.
2. Noise Council- Code of Practice.