

## **APPLICATION OF A NEW PREMISES LICENCE**

REPORT OF: Tom Clark, Head of Regulatory Services  
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Wards Affected: High Weald  
Key Decision No  
Report To: Liquor Licensing Panel

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### **Purpose of Report**

- 1 To provide information in order that the Licensing Committee can determine an application for a Premises Licence.

### **Summary**

- 2 An application, pursuant to Section 17 Licensing Act 2003, has been made by Bluebell Railway PLC for the grant of a Premises Licence at Horsted Keynes Railway Station, Station Approach, Horsted Keynes, RH17 7BB. The Environmental Health Team, a Responsible Authority and six members of the public, referred to as 'Interested Parties' within the Act, have submitted representations objecting to the application on the grounds of the Prevention of Public Nuisance.
  - 3 It should be noted by the Panel that there is a Premises Licence currently issued in respect of the premises. This current application is for the issue of a new Premises Licence as the Bluebell Railway wish to extend the licensable area included in the Premises Licence and also to provide more flexibility in respect of the number of large events that they will be able to hold at the location. This not a review or consideration of the current licence.
  - 4 The Committee is asked to determine the application in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.
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### **Background**

- 5 The Bluebell Railway is a Heritage Railway visitor attraction running through the High Weald. The Bluebell Railway Preservation Society, and thus its Trustees and members, own a majority shareholding in the Railway, a not-for-profit company. Bluebell Railway holds an existing premises license. This new application seeks to provide further flexibility around public events and day to day running by extending the licensed footprint.
- 6 The existing Premises Licence (PWA0014) licenses the Refreshment Rooms situated on the platform together with additional areas identified as the Railway Field and Paddock. The new application proposes to extend the licensed area to include all the Platform areas, the carriage and wagon shed and the Car Park.

- 7 The current Premises Licence allows the following activities:

<b>Licensable Activity</b>	<b>Timings</b>
Sale by retail of alcohol – Station Bar only	Sunday 12:00 - 22:30 Monday to Saturday 10:00 - 23:00
A performance of live music - Outdoors	Everyday 18:00 - 22:00
Any playing of recorded music - Outdoors	Sunday 12:00 - 22:30 Monday to Saturday 10:00 - 23:00

The following conditions are attached to the current licence in respect of the performance of live music.

**Live Music**

No more than 6 times a year.

Live music will not be amplified

- 8 The applicant seeks the following licensable activities and timings:

<b>Licensable Activity</b>	<b>Timings</b>
Supply of Alcohol – On and Off Premises	Mon - Sun 08:00 - 23:00
Provisioning Plays (Indoors and Outdoors)	Mon – Sun 0800-2300
Provisioning Films	Mon – Sun 0800-2300
Performance of Live Music (Indoors and Outdoors)	Mon – Sun 0800-2300
Performance of Recorded Music (Indoors and Outdoors)	Mon – Sun 0800-2300
Performance of Dance (Indoors and Outdoors)	Mon – Sun 0800-2300

- 9 The proposed opening hours of the premises will be:

Mon - Sun 10:00 – 23:00

- 10 The application was correctly advertised at the site between 11<sup>th</sup> April 2022 to 8<sup>th</sup> May 2022 and in the Mid Sussex Times on 14<sup>th</sup> April 2022.
- 11 There have been representations made against this application which have been received from one of the Environmental Protection Team, a Responsible Authority. This representation concerns the Prevention of a Public Nuisance. The detail of this representation is appended to the report.

- 12 Five further representations have been received from members of the public, referred to as 'Interested Parties'. The main points raised in these representations that are relevant relate to the licensing objective of the Prevention of a Public Nuisance.
- 13 The Committee should be aware when reading the representations from the Interested Parties that some of the information contained therein is irrelevant for the purposes of the Licensing Act 2003. They are the comments relating to the provision of car parking, people driving to the location, disturbance to the local wildlife and livestock, noise from locomotives and tannoy announcements, the narrowness of access roads and additional visitor numbers to the location.
- 14 The Committee must focus on the relevant parts only and disregard the irrelevant matters when determining this matter
- 15 There were two further representations made from Interested Parties that are not considered to be relevant under the Licensing Act 2003..
- 16 The Police have agreed conditions with the applicants in respect of the application.
- 17 If the Committee decides to grant the licence, I request that a number of conditions offered in the operating schedule and agreed by the Police be attached. Full details are attached in the appendices.

## **Representations**

### **Responsible Authority Representations**

- 18 Representations the Environmental Protection Team.

Objections have been received on the grounds of Prevention of a Public Nuisance

The applicant seeks to license the whole premises to allow various events every day between 08:00 and 23:00. Given the very quiet rural location of this venue and that noise complaints have been received regarding previous events, Environmental Protection has concern that outdoor events involving amplified music and sound such as plays, dance performances, drive in movies, live bands and recorded music provided at celebrations such as weddings, will cause disturbance to people living in the vicinity of the railway.

Environmental Protection can resolve this representation if an agreement can be reached with the applicant concerning the maximum number of days per year on which events will be held. In addition, Environmental Protection would require a condition be included on the licence requiring the applicant to submit a suitable Noise Management Plan to the Licensing team for approval by Environmental Protection before the first event is held under the new licence.

## **Interested Parties Representations**

### **Peter Clarke**

Mr Clarke has made objections on the grounds of the Prevention of a Public Nuisance.

He has stated that:

*The application seeks to extend "further licensing flexibility" to the Bluebell Railway when planning events at Horsted Keynes Station. As a resident of Railway Cottages, which are in the middle of the areas for which permission is sought, I have very serious concerns about the public nuisance and safety of the scope of this application and object to it in its current form.*

*The application seeks permission to play music indoors and outdoors in every area of the station from 0800am until 1100pm 7 days a week all year round. This is totally unacceptable. The cottages are directly opposite area no 5. "Railway field" and adjacent to no 8. "Paddock" show on the map attached to the application. There is no way any indoor or outdoor event (wedding, film, dance, theatre production) playing music in these areas will not impact the lives of the residents. We could potentially have to listen to it all day every weekend or even all day on week days in the holidays.*

*Furthermore, live music is limited to 18 "events" per year. One event could cover the 3 weeks of Christmas Carole's and music on the platform which lead up to Christmas. Another event could conceivably cover an entire weekend music festival or theatre production. As such 18 events could actually cover many weeks of live music activity.*

### **Adam Hackett**

Mr Hackett has made objections on the grounds of the Prevention of a Public Nuisance.

He has stated:

*Events in the past 5 years at Bluebell Railway under special licenses have produced excessive and widespread noise*

*The application is for a wide area which covers the entire Bluebell Railway buildings at Horsted Keynes Station , nearby field and car parks . This is a huge platform for generating greater noise and disturbance*

*A license to 23.00 on every or any day is unacceptable . To allow it at 18 Live Events per year with music and bands is excessive and a nuisance and disturbance of our peace*

### **Camilla Witheridge**

Camila Witheridge has made objections on the grounds of the Prevention of a Public Nuisance.

She has stated:

***The Bluebell events are and will be a public nuisance because of the noise they generate. During the events staged by the Bluebell railway in summer 2021 we could hear revellers, loud music, announcements and general noise.***

*The bands were playing music in the open air with amplifiers and no sound proofing. The music was audible inside our house.... The acoustics of the valley that the Horsted Keynes Railway station is situated in does not lend itself to the dissipation of sound. Horsted House is 700m away but the sound is clearly audible. Our garden is filled with noise and you cannot get away from it unless you go inside and close the windows. It would not be so bad if these events happened in the winter but in the summer it makes it difficult to get to sleep.*

*If you extend the license, there will not be a single Saturday to enjoy the peace because 18 days would license the Bluebell Railway to disturb every weekend all summer (18 days equals four Saturdays a month for three and a half months, ie. from end May till mid September)*

### **Damien Poole**

Mr Poole has made objections on the grounds of the Prevention of a Public Nuisance.

He has stated:

*The increased area of this application includes a Paddock immediately adjacent to 6 residential cottages. They have previously held weddings and events here. The noise and disruption to residents has indeed constituted a public nuisance in the past.*

*The events involve loud music which penetrates the cottages and the increased frequency of these events and closer proximity will simply cause even more public nuisance by way of noise pollution. On a weekend band event, held in the field opposite the station about a year ago, the noise disturbed people over a mile away.*

*This application, however, takes things to a whole new level of disruption, anxiety, and stress. The weddings and concerts that they want to hold in the fields and paddock will seriously and detrimentally affect our quality of life and health. Previous concerts and weddings have produced an unbearable level of noise pollution which penetrates all of the cottages.*

### **Jake McQuitty**

Mr McQuitty has made objections on the grounds of the Prevention of a Public Nuisance.

He has stated:

*In short, we object to any licence that results in an excessive number of events at the station and environs, and which are liable to run late into the night with live bands and crowds of people creating significant noise that can be heard from our house. Our children will be kept awake for a start but more importantly this would constitute a public nuisance*

## Rufus Clarke

Rufus Clarke has made representations on behalf of himself, Bunty Clarke, Rory Clarke and Harriet Clarke. Separate representations have not been made by each party.

He has stated:

*Noise emanating from the premises as has been experienced from previous events held at this location. This has resulted in our family being unable to sit outside or have windows open in the summer months.*

*Previous events have resulted in loud music and excessive noise from attendees at the event, which has caused disturbance for an entire weekend and as such has caused a public nuisance.*

*The likely effect of granting a new licence will be increased disturbance and restrictions to our peace during afternoons and evenings, when we would be keen to be outside in the garden. Keeping our windows open has been problematic during these events as the sound has affected our children when trying to sleep.*

The full representations are appended to the report

## Policy Context

### 19 Determination of Application for a Premises Licence

The Committee must determine the application in accordance with the Licensing Act 2003 (LA03), MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations.

### 20 Section 18 LA03 deals with the determination of the application:

Grant of premises licence

18. Determination of application for premises licence

(1) This section applies where the relevant licensing authority—

(a) receives an application for a premises licence made in accordance with section 17, and

(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to—

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

- (3) Where relevant representations are made, the authority must—
- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
  - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.
- (4) The steps are—
- (a) to grant the licence subject to—
    - (i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and
    - (ii) any condition which must under section 19, 20 or 21 be included in the licence;
      - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
      - (c) to refuse to specify a person in the licence as the premises supervisor;
      - (d) to reject the application.
- (5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.
- (6) For the purposes of this section, “relevant representations” means representations which—
- (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,
  - (b) meet the requirements of subsection (7),
  - (c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and
  - (d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).
- (7) The requirements of this subsection are—
- (a) that the representations were made by a responsible authority or other person within the period prescribed under section 17(5)(c),
  - (b) that they have not been withdrawn, and

(c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

21 Relevant Representations

The Licensing Act 2003 requires representations to address the four licensing Objectives which are

1. Prevention of Crime and Disorder
2. Promotion of Public Safety
3. Prevention of Public Nuisance
4. Prevention of Harm to children and young persons

22 A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a *likely* effect of a grant - (ie more probable than not)

23 Guidance Issued Under Section 182 of the Licensing Act 2003

9.3

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

9.4

A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.

9.37

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.



9.38

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- Guidance issued under Section 182 Licensing Act 2003;
- its own statement of licensing policy.

9.42

Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

### **Other Options Considered**

- 24 In order to lawfully provide licensable activities as applied for, they must be conducted under the authority of a Premises Licence.

### **Financial Implications**

- 25 The final decision made by the Committee in this matter is subject to appeal in the Magistrates Court by any party to the proceedings.

### **Risk Management Implications**

- 26 None

### **Equality and Customer Service Implications**

- 27 None

### **Other Material Implications**

- 28 Section 136 Licensing Act 2003 – A person commits an offence if he carries on or attempts to carry a licensable activity on or from any premises otherwise, than under and in accordance with an authorisation or he knowingly allows a licensable activity to be so carried on.
- 29 A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine or both.

## **Sustainability Implications**

30     None

### **Background Papers**

Appendix 1 – Application Form and plan of premises

Appendix 2 – Plan of Current Licence

Appendix 3 – Map of area

Appendix 4 – Photos of location

### **Representations**

Appendix 5 – Representation from Environmental Protection Team

Appendix 6 – Representation from Peter Clarke

Appendix 7 – Representation from Adam Hackett

Appendix 8 – Representation from Camilla Witheridge

Appendix 9 – Representation from Damien Poole

Appendix 10 – Representation from Jake McQuitty

Appendix 11 – Representation from Rufus Clarke

### **Other Documents**

Appendix 12 – Schedule of proposed conditions