

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Council Offices, Spennymoor on **Tuesday 14 July 2015 at 10.00 am**

### **Present:**

**Councillor J Maitland (Chair)**

### **Members of the Committee:**

Councillors A Hopgood and I Jewell

### **Also Present:**

Councillor Carole Hampson

Helen Johnson – Licensing Team Leader

Clare Pattinson - Legal Manager (Governance)

Mark Anslow – Environmental Health and Consumer Protection

Anne-Isabelle Daulon – Applicant

Charles Holland – Counsel for the Applicant)

Stefa McManners – Other Person

Dr Robert McManners – Other Person

Councillor Joy Allen – Other Person

Lucy Hall - supporter

### **1 Apologies for Absence**

An apology for absence was received from Councillor Linda Marshall.

### **2 Substitute Members**

There were no substitute Members.

### **3 Declarations of Interest**

There were no declarations of interest.

### **4 Application for the Grant of a Premises Licence - Eleven Arches, Flatts Farm, Toronto, Bishop Auckland**

Consideration was given to the report of the Licensing Team Leader regarding an application for the grant of a Premises Licence in respect of Eleven Arches, Flatts Farm, Toronto (for copy see file of Minutes).

A copy of the application and supporting documents had been circulated, together with additional documents from the Applicant and Environmental Health.

Members were informed that mediation had taken place between the applicant and the Local Safeguarding Children's Board (LSCB), and additional conditions had been attached to the application. A copy of the proposed conditions were attached at Appendix 3.

Mark Anslow, Senior Environmental Health Officer was invited to address the Sub-Committee. He advised that the application had been discussed in depth with the Applicant and 11 additional conditions were proposed. If these were agreed by the Applicant, Environmental Health would not have any representations.

Charles Holland, the Applicant's representative addressed the Sub-Committee. He stated that Eleven Arches was a registered charity and this was an unusual and significant application for a very significant performance venue. Eleven Arches had imposed the following constraints upon itself:-

- Performances would be held between May and September only.
- Performances would be held on Fridays and Saturdays, and Sundays preceding a Bank Holiday.
- Regulated entertainment would be held between 8pm and 11pm; the sale of alcohol would be from 4pm – 9.30pm on Saturdays and Sundays preceding a Bank Holiday, and from 7.30pm – 9.30pm on Fridays. Alcohol would not be sold during performances.
- Each performance would be no longer than 90 minutes.
- A reduction in the number of performances per annum. The application was originally for up to 30 but if the Sub-Committee was minded to grant the application, the Applicant would agree to a condition limiting the number of performances to less than this.

Charles Holland referred to an error in respect of the conditions agreed with the LSCB. The Applicant had agreed to implement Challenge 25 and not Challenge 23 as stated.

He then referred to the Proposal Document included at pages 184-185 in the Bundle and took Members through it in detail. He provided some background to the site which had been a golf course in recent times and had ceased trading. The viaduct was the route over which visitors would come to the site, either in private cars or using the Park and Ride. The stage covered 7.5 acres.

Members were provided with plans of the site. Taking Members through the first plan he explained that vehicles would arrive from the A689 and the existing turn-off would be improved. 1800 parking spaces would be provided and the capacity of the venue was 8000. There was a deliberate under-provision of parking to encourage the use of Park and Ride.

The bungalow on the site would be converted to a ticket office and modest food and beverage facilities would be provided to encourage people to eat in Bishop Auckland. The driving range and existing farm building would be demolished and the whole area would be half paved to accommodate the footfall. Staff parking would be separate and there would be a menage area for 56 horses.

Charles Holland then referred Members to the second plan of the show area which included a lake, bridges, railway line, hunting lodge and castle. The plan showed seating for 8000 and a further food and beverage outlet separated from the show area by an esplanade. The whole area would be securely fenced.

He felt it was important for Members to understand the idea behind the proposals and introduced Mr Ruffer. The aim was not simply to pile money into the community but to change the way people thought about Bishop Auckland and the character of the neighbourhood for the better. Mr Ruffer had written an article for the Spectator in 2013 on this subject. The project would also complement religious arts to be displayed in the Castle and the market square.

Unusually the supporters outnumbered the objectors by 18:1. A letter of support from South Durham Enterprise Agency explained how it would complement the significant public money being carefully spent to regenerate Bishop Auckland.

Returning to the Proposals Document he continued that Eleven Arches would be a trip attractor in that visitors coming for the day may also stay overnight, hopefully benefitting the local economy. It was technically a daytime show as it ended by 11pm.

As a charity Eleven Arches was not a commercial operation. Profits from the show would fund educational and developmental charities.

The cast would be drawn from volunteers in the area and an open day had seen hundreds sign up to be involved.

The performances were designed to showcase the history of Britain from Roman times to the present day. The Puy de Fou in north west France was now the second most visited attraction in France and the area in which it was performed was comparable to Bishop Auckland and North East England. It had created 1330 jobs and had won international awards.

Dr Robert McManners of Bishop Auckland Civic Society had written about his visit to France, details of which were set out in pages 68-69 of the Bundle.

The County Planning Committee had been minded to grant planning permission and the Secretary of State had decided not to call the application in. The permission was subject to a raft of detailed conditions, including traffic management and noise.

Training of volunteers would commence in the autumn and there were plans to establish an academy to train young volunteers.

Lengthy and detailed negotiations had taken place with Environmental Health and if Members were minded to grant the application, the applicant would agree to conditions to address the licensing objective 'Prevention of Public Nuisance'.

Public nuisance was obvious in most instances, however this case needed a more sophisticated examination. Objectors suggested that there would be drunken behaviour but this was unlikely. The main focus of public nuisance here would be noise from the performance. Public nuisance was an activity that unduly interfered with the public right to enjoy land as a whole. There was a need to balance Eleven Arches and the social benefit this would bring against the residents who believed that their enjoyment would be affected. Mr Holland referred Members to case *Coventry v Lawrence* regarding a speedway and banger racing track. The court found that there was a social benefit which had to be taken into account. The test was how much a reasonable person could be expected to tolerate and this became even more complex when examining noise.

Noise was not just about volume but frequency, tonal quality, regularity, musicality and repetitiousness etc. The task to strike a balance had been made easier by the hard work during mediation but a key issue was that there had been no events yet and until it was tried and tested there was only so much that could be done academically. The event needed to be tested in a variety of weather conditions to test how sound travelled. He therefore asked Members to attach considerable weight to the agreement reached between Eleven Arches and Environmental Health.

The number of shows was also an important factor. A certain number was required in the first year to break even, and to fund the academy and a day show in the longer term. In the *Coventry and Lawrence* case the judge had allowed 12 weekends per year.

Charles Holland then referred Members to the conditions at pages 189-191 in the Bundle which the Sub-Committee had read and were familiar with.

In response to a question from Councillor Jewell in relation to condition numbered 4 which stated that an acoustic consultant would be appointed to the approval of the Licensing Authority, the Licensing Team Leader advised that the Licensing Authority would liaise with Environmental Health on this.

At this point Charles Holland addressed the issues raised by the objectors:-

- Performance noise – the arguments put forward were an expectation that noise would be created and this was unsustainable.
- A lot of comments had been made about fireworks but one of the agreed conditions required the adoption of a Special Effects Management Plan. In addition the Applicant would abide by Firework Regulations 2004 which provided restrictions.
- Pollution from traffic – this was not a licensing consideration.
- Rehearsals – this was a planning consideration.
- Traffic issues – this was a planning consideration.

- Crime and disorder – objectors had stated that anti-social behaviour fuelled by alcohol would produce crime and disorder. This was a family orientated event with minimal alcohol sales before the performances. This was consistent with the 21 century operation of similar venues such as theatres. Supporters felt that it would reduce crime and disorder in Bishop Auckland as the cause was often boredom and a lack of activities for youths. At least 10 supporters had stated that it would reduce crime and disorder as it would provide a community focus. The Police had been very positive at a Safety Advisory Group meeting and had welcomed the proposals.
- Protection of Children from Harm – this had been dealt with by agreed conditions with the LSCB.
- Public Safety – there were no issues.
- Public Nuisance – as already stated this had been mitigated by proposed conditions.

At the close of Charles Holland's representations Members watched a short video presentation about Eleven Arches.

Councillor Jewell referred to the potential for noise and disruption and asked about arrangements for rehearsals.

Charles Holland stated that, with the exception of pyrotechnics, the sound-track was pre-recorded so there would be no need for testing in advance. Rehearsals would be held during the day but these would not be noise generating. There would be some sound-checks in advance of a performance but these would not be at the same level as the actual show.

Councillor Jewell asked how vehicles would exit the site and if this would be a phased process.

Anne-Isabelle Daulon, the Applicant advised that professionally trained volunteers would be responsible for directing traffic and there would be a temporary signal system on the highway. Traffic would be managed from the site to ensure that there was a staged approach to leaving the car park. 8000 people would not all leave at the same time or pace. Eleven Arches would work with the Highways Authority on a Travel Plan.

Councillor Hopgood referred to the letter from South Durham Enterprise Agency and noted that it was signed by Rob Yorke who was also a County Councillor.

Councillor Hopgood, having heard in detail about Eleven Arches acknowledged that the project was exciting but made the comment that this was not what the Sub-Committee were required to consider. She considered that an 11pm finish, which had been referred to as being the end of the day, was challenging particularly for families with young children, and she also struggled with the comparison of Eleven Arches to a football venue where games were played during the daytime and in winter months. The Member asked if the performances would include encores.

The Member continued that the licensed premises appeared to be small and asked how the Applicant could confidently implement Challenge 25 and operate a refusals register during the busy period before a performance.

Charles Holland addressed the comments made and stated that the project was a relevant consideration and taking into account social benefit was key to the determination of the application. The performances must be held at night because of the special effects and 11pm was not the terminal hour for every event. A later end time was only needed in the summer months. He wished to make it clear that the Applicant was confident that nuisance would not be caused whatever time the show finished. It was impossible to confirm that noise levels would be inaudible but were expected to be well within levels that reasonable people could be expected to tolerate.

He apologised if he had been misleading with the comparison of Eleven Arches to a football venue but this was an example of an event which could be disturbing but which society tolerated. He reiterated that there would be no encores as the soundtrack was pre-recorded and the show involved so many special effects that it could not continue beyond the end time.

The food and beverage provision may appear small on the plan but this was because of the size of the stage.

Anne-Isabelle Daulon added that irrespective of the size of the facilities for food and drink, the project was not trying to encourage everyone to eat and drink on site. The aim was to encourage visitors to eat in the town. Eleven Arches would cater for impulse buying in advance of the performance. Visitors could bring their own food and drink into the venue.

With regard to Challenge 25 Charles Holland explained that the DPS would manage how this would be implemented. Options for the recording of refusals would be explored which could include through the use of an Epos till system.

Traffic management had been considered by the Safety Advisory Group and the Highways Authority and the Police had given advice. Access and egress were important and would be dealt with appropriately.

In response to a further question from Councillor Hopgood, Charles Holland confirmed that polycarbonate glass would be used.

Councillor Jewell asked if visitors would be able to bring their own alcohol to the show. Charles Holland advised that this was allowed at other venues such as cricket grounds but had not been considered for Eleven Arches as yet. This would be risk assessed.

Clare Pattinson, Legal Manager - Governance asked if the Applicant had considered avoiding events on consecutive days and was advised that this was not a suggested condition and could not be agreed to. The plan was to run the performances as weekend packages, giving more free weekends across the year.

Anne-Isabelle Doulon added that during discussions with Environmental Health there had been no recommendations with regard to configuration of the performances. It would therefore be trial and error to ensure the least impact on residents, however flexibility in scheduling the shows was important. They would closely monitor the impact in the first year.

Clare Pattinson asked if tickets would include an explanation that on site food and beverage provision was limited and was advised that this would be published on the website as part of managing the visitor experience. There would also be links on the website to local places to eat and drink.

At this point Councillor Joy Allen addressed the Sub-Committee in full support of the proposals. This was a family friendly event and by way of example of the benefit it could bring to Bishop Auckland, stated that the Edinburgh tattoo delivered £450m over 20 consecutive days excluding Sunday. The impact on residents had not been overlooked. Bishop Auckland had seen significant development at Tindale Crescent which had changed the character of the area and where traffic had been successfully managed.

She continued that free training would benefit young people in the town. There was a correlation between late night nuisance and school holidays and was pleased to note that the interest from young people had been incredible. The Applicant would implement spectator management to ensure the smooth running of the performances. This was not 24/7 over 365 days but 15 days in the first year. If agreed Eleven Arches would be ahead of Russia and China in bringing one of the best entertainment shows in the world.

Dr Robert McManners addressed the Sub-Committee to clarify a point made by objectors regarding the potential for problems caused by alcohol. He had visited Puy de Fou in France and found that this was not an alcohol based environment at all. Eleven Arches was a family show and young people would be the performers where there would be no alcohol at all. He did not think there was any cause for concern.

Lucy Hall, a supporter of the application stated that as a Prisoner Custody Officer she had seen an increase in drugs, alcohol and anti-social behaviour in young offenders in the area. Young people felt that there was nothing going for them in Bishop Auckland. She believed that Eleven Arches would give structure and guidance to youths, and would help to reduce crime and disorder significantly.

Stefa McManners stated that having worked in education she wished to reinforce the statement by Lucy Hall. She had worked with youths on various social activities and there was documentary evidence that crime rates reduced when young people were involved in these.

**Resolved:**

That the application be granted as follows:-

<b>Licensable Activity</b>	<b>Timings</b>
The sale of alcohol (consumption on and off the premises)	Friday: 19.30 – 21.30 Saturday: 16.00 – 21.30 Sunday: 16.00 – 21.30
Plays, films, boxing or wrestling entertainment, live music, recorded music, performance of dance, anything of a similar description to live music, recorded music or performance of dance (outdoors only)	Friday: 20.00 – 23.00 Saturday: 20.00 – 23.00 Sunday: 20.00 – 23.00
Opening hours of the premises	Friday: 19.30 – 00.00 Saturday: 16.00 – 00.00 Sunday: 16.00 – 00.00  Performances will only take place during the months of May to September inclusive each year, and only on Sundays preceding a Bank Holiday Monday.

- a) The total number of night shows where regulated entertainment can take place shall not exceed:-

15 in the calendar year 2016

17 in the calendar year 2017

18 in the calendar year 2018 and any year thereafter

Provided that any increase in the number of shows over and above 15 in 2017, and for any year thereafter, is with the written consent of the Environmental Health Department following consultation with the Premises Licence Holder, such consent not to be unreasonably withheld or delayed.

- b) No later than 8 weeks prior to the commencement of each year's event season, the Premises Licence Holder shall give local residents written notice of the details of the events to be held during that season, to include the dates of the events, their start and finish times, and the dates and times of any sound checks. The notice shall include a telephone number of the



telephone complaints line referred to in the next condition. The notice shall be given to all residential properties situated on a list of streets to be agreed in advance with the licensing authority.

- c) A telephone complaints line shall be made available for the duration of the event. The Premises Licence Holder shall ensure that all noise complaints received are logged with the time and details of the complaint and address of the complaint recorded. All complaints shall be investigated and the log should include the result of the investigation and any action taken as a consequence. The complaints log shall be made available to the Licensing Authority on request.
- d) The Premises Licence Holder shall appoint a suitably qualified and experienced acoustic consultant (the Acoustic Consultant) to the approval of the Environmental Health Department.
- e) The Acoustic Consultant will undertake a noise propagation test at least 48 hours before the first event in order to set appropriate control limits at the sound mixer position to ensure adherence to conditions 7, 8 and 9. The sound system shall be configured and operated in a similar manner as intended for the event and the sound source for the test shall be similar in character to the sound produced during the event.
- f) The Acoustic Consultant shall establish a suitable written procedure and system for the monitoring and recording of sound levels during events from both the sound mixer position and at specified outside locations agreed with the Environmental Health Department. The written procedure shall be submitted to the Environmental Health Department for its written approval at least 4 weeks prior to the first event. The duly approved procedure and system shall be adhered to and only amended thereafter with the written agreement of the Environmental Health Department.

A record shall be kept of the sound levels from both the sound mixer position and the agreed outside location which shall be made available to officers of the Environmental Health Department on request.

In the event that the noise limits conditioned below are exceeded, immediate action will be taken by the Premises Licence Holder to reduce sound levels at the sound mixer position to within acceptable levels.

- g) The sound level from the sound track for the event shall not exceed 65dB LAeq, 15 minutes at one metre for the façade of any noise sensitive property.
- h) The low frequency sound level from the sound track for the event in either of the 63Hz and 125 Hz octave frequency bands shall not exceed 70dB leq, 15 minutes at a distance in excess of 2km from the sound mixer position.

- i) The sound level from the sound track for the event measured at the sound mixer position shall not exceed a set target level of noise defined in terms of LAmax, such target level to be agreed in writing with the Environmental Health Department no later than the time of the noise propagation tests referred to in condition 5.
- j) The Acoustic Consultant shall in consultation with the Premises Licence Holder and pyrotechnic engineers produce a written Special Effects Management Plan to minimise as far as practicable the noise impact at nearby residential locations from fireworks and other special effects which do not form part of the sound track. The written plan shall be submitted to the Environmental Health Department for its written approval at least 4 weeks prior to the first event. The approved Special Effects Management Plan shall be adhered to and only amended thereafter with the written agreement of the Environmental Health Department.
- k) No lighting unit shall be directed at any adjacent residential property in a way that is likely to cause public nuisance.
- l) The Premises will operate a documented Age Certification Policy (Challenge 25) whereby all patrons believed to be under the age of 25 who seek to purchase alcohol will be asked to provide proof of age in the form of a UK Driving Licence, Passport, Military ID card or photo identification which is endorsed with the government PASS holographic logo. The actions of staff operating the policy shall be regularly monitored.
- m) All staff responsible for selling age restricted goods must be trained to implement the age verification policy and in their obligations under the Licensing Act 2003, with a record being kept of the date and detail of each training session for each member of staff, and refresher training provided annually. The training records shall be available for inspection by the Police or other Responsible Authorities upon reasonable request.
- n) All incidents occurring at the premises (including refusals) will be recorded in an Incident Book maintained by the Premises Licence Holder or a nominated member of staff. The details which will be recorded in the Incident Book are: the time and date of the incident; the name or full description of any person(s) involved (including staff members), whether the incident was recorded on CCTV, and the signature of the person making the entry. This book will be available at all times for inspection by the Police and other Responsible Authorities upon reasonable request.
- o) Safeguards must be put in place to ensure that alcohol is not purchased or obtained for young people by relatives or older friends (proxy provision). The Premises Licence Holder shall work with the Police to minimise this risk, and training shall include the risk from proxy sales.