

Item: 5

Licensing Committee: 8 July 2021.

Civic Government (Scotland) Act 1982.

Application for Temporary Public Entertainment Licence.

Funfair – Bignold Park, Kirkwall – 8 July to 1 August 2021.

Joint Report by Chief Executive, Executive Director of Development and Infrastructure and Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To determine an application from Thomas Vance Smith, Glasgow, for a temporary public entertainment licence in respect of a funfair at Bignold Park, Kirkwall, from 8 July to 1 August 2021 inclusive.

2. Recommendations

It is recommended:

2.1.

That the Licensing Committee determines the application from Thomas Vance Smith, Glasgow, for a temporary public entertainment licence in respect of a funfair at Bignold Park, Kirkwall, from 8 July to 1 August 2021 inclusive, subject to evidence of public liability insurance for £10 million and safety certification for each funfair ride.

3. Application and Background

3.1.

Mr Smith (the applicant) has brought a funfair to Orkney each year for a number of years up to and including 2019 in relation to the Dounby and County Shows. Licences for the funfair at Bignold Park in 2018 and 2019 granted operating hours between 18:00 to 21:00 on the Friday of County Show Weekend and 09:00 to 18:00 on the Saturday.

3.2.

With no County Show being held in 2021, the applicant sought and was granted permission by the Leisure and Culture Service for the use of a site at Bignold Park – namely the area of hard standing inside the top gate of the Meadows road in to Bignold Park.

3.3.

On 17 June 2021, the applicant submitted a partial application for a temporary public entertainment licence in respect of a funfair on the permitted site at Bignold Park, Kirkwall, from 8 July to 1 August 2021 inclusive.

3.4.

The application is incomplete, as no documentation in relation to insurance and safety certification for the funfair rides has been provided. The applicant advised the Licensing service by email that he could not “send over all paper work just now as I’m only getting tested and insured if I get the licence. I will send over all paper work one week before the event, so you will have all relevant paper work.”.

3.4.1.

This is not usual practice and presents practical difficulties, but the Licensing service agreed to progress the application as far as they could pending receipt of all outstanding insurance and safety documentation. The service advised the applicant by email that the timescale he set out could only increase the possibility that the authority would not have time to fully process the application by the date on which he hoped to start operating, namely 8 July 2021, and that the documentation was required as early as possible.

3.4.2.

It should be noted that, in accordance with standard, published Council procedures for consideration of applications for public entertainment licences, no licence would be issued until evidence of public liability insurance for £10 million and safety certification for each funfair ride was received by the Licensing service.

3.5.

The application states that the maximum number of persons to be admitted to the premises at any one time will be 500.

3.6.

The application seeks the following operating dates and times:

8 July – 1 August 2021:

- Opening on Thursday 8 July at 18:00 – 21:00.
- Friday 9 July at 18:00 – 21:00.
- Saturday 10 and Sunday 11 July at 13:00 – 21:00 with 3 operating periods between 13:00 – 14:45; 15:00 – 17:45; and 18:00 – 21:00 to permit turnover of attendees.
- Monday 12 July to Friday 16 July at 18:00 – 21:00.
- Saturday 17 and Sunday 18 July at 13:00 – 21:00 with 3 operating periods between 13:00 – 14:45; 15:00 – 17:45; and 18:00 – 21:00 to permit turnover of attendees.

- Monday 19 July to Friday 23 July at 18:00 – 21:00.
- Saturday 24 and Sunday 25 July at 13:00 – 21:00 with 3 operating periods between 13:00 – 14:45; 15:00 – 17:45; and 18:00 – 21:00 to permit turnover of attendees.
- Monday 26 July to Friday 30 July at 18:00 – 21:00.
- Saturday 31 July and Sunday 1 August at 13:00 – 21:00 with 3 operating periods between 13:00 – 14:45; 15:00 – 17:45; and 18:00 – 21:00 to permit turnover of attendees.

3.7.

The application is for 7 rides:

- Lady birds (children's ride).
- Toy set (children's ride).
- Chairs (children's ride).
- Waltzer.
- Miami.
- Dodgem.
- Twister.

And 4 side-stalls:

- Hook a duck.
- Lucky number.
- Hang bars.
- Football kicker.

3.8.

A copy of the application was issued to the following consultees on 17 June 2021, intimating the short notice of the application and requesting comments as soon as possible and no later than 30 June 2021:

- Police Scotland.
- Scottish Fire and Rescue Service.
- Leisure and Culture Service.
- Roads service.
- Building Standards service.
- Environmental Health service.
- Trading Standards service.
- Chief Executive's Service (Finance – Insurance).
- Planning service.

3.9.

By email dated 17 June 2021, the Roads service advised that they had concerns about the licence application due to no parking being provided within the permitted site, which would “undoubtedly lead to parking on The Meadows and surrounding streets which will be far from ideal situation. The applicant should therefore be required to address the parking situation to try and minimise disruption on the public road network.”.

3.9.1.

The Licensing service advised the Roads service by email dated 17 June 2021 that the issue of parking was outwith the scope of the purpose of the licence, namely to operate a funfair, and as such the Licensing service could not follow this up with the applicant. Further information on this aspect is provided at section 6 below.

3.10.

On 18 June 2021, the Licensing service advised the applicant by email:

“Your current application requests operation of the funfair for a period of 4 weeks. This is a substantial increase on the period of 24 hours which you usually operate in connection with the County Show in the Bignold Park location. As I have mentioned to you previously, the location is close to residential housing. Accordingly, there may be concerns about noise and disruption over a much longer period than usual.

We’re sure that you will understand that for these reasons your application will require to be determined by our Licensing Committee rather than by officers.

The application will be considered at a meeting of our Licensing Committee to be held on 8 July 2021. Meetings are being held virtually via Microsoft Teams and you will be contacted further with guidance about joining the meeting, etc.”.

3.11.

By email dated 18 June 2021, the applicant indicated to the Licensing service that he may consider amending his proposed dates of operation, given that the date of the meeting of the Licensing Committee fell on the day on which he had originally intended to travel to Orkney and commence operating. The Licensing service asked the applicant to keep them – and the Leisure and Culture service – informed of any proposed amended dates. To date, no further information has been received.

3.12.

On 24 June 2021, the Licensing service advised the applicant by email:

“Please note that the Scottish Government has published COVID-19 advice about “Travelling to the Scottish islands: pre-departure testing” at <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-travel-and-transport/> as follows:

“To reduce the risk of coronavirus being brought into island communities, we are encouraging anyone planning to travel to a Scottish island to test before they do so.

You can order rapid lateral flow tests for delivery to your home anywhere in the UK and they should arrive within 24-48 hours.

You should test three days before you plan to travel and then again on the day of departure. If you test positive, you should complete your period of self-isolation before you begin your journey.

If your test result is negative it is not a guarantee that you do not have coronavirus. You must continue to follow national and local restrictions, including coronavirus guidance. If you develop coronavirus symptoms you must self-isolate and book a PCR test.

This is a voluntary scheme and you will not need evidence of a negative test to travel to a Scottish island. However, we encourage you to participate in order to reduce the risk that you inadvertently carry coronavirus into one of our island communities.”

We are currently experiencing a surge in COVID-19 cases and pre-testing before you arrive in Orkney would be appreciated.”

To date, no response has been received.

3.13.

By email dated 28 June 2021, a Sergeant from Police Scotland advised “I regret to inform you that I am unable to complete this application, or provide any details as to observations as the applicant has not responded to any communication from myself”. The Licensing service acknowledged the email and advised that the response would be included in this report.

4. Corporate Governance

4.1.

This report relates to the Council complying with its statutory duties as a Licensing Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

4.2.

The Council has adopted standard conditions to be attached to public entertainment licences. These are published as a Related Download at https://www.orkney.gov.uk/Service-Directory/P/Public-Entertainment_2.htm.

5. Financial Implications

The appropriate application fee of £146.00 has been paid.

6. Legal Aspects

6.1.

The Council, as licensing authority, has resolved, in terms of the Civic Government (Scotland) Act 1982 (the Act), that a public entertainment licence shall be required for the use of premises as a place of public entertainment. This means any place where members of the public are admitted or may use any facilities for the purposes of entertainment or recreation and includes, as resolved by the Council, the provision of funfairs. The premises in the context of the current application would be an area of hard standing inside the top gate of the Meadows road in to Bignold Park.

6.2.

Paragraph 7 of Schedule 1 to the Act provides that a licensing authority may grant a licence to have effect for such period not exceeding 6 weeks from its being granted as they may determine, and such a licence shall be known as a “temporary licence”. Normal requirements in relation to the provision of public notice for a period of 21 days, the consideration of objections and representations received within a period of 28 days, appeals and other procedural requirements do not apply in relation to applications for temporary licences. The Council is still required to consult the Chief Constable and, if appropriate, the Scottish Fire and Rescue Service and is permitted to grant the licence subject to conditions. The licensing authority is required to consider the matter within 3 months and determine it within 12 months, otherwise the application will be deemed to be granted for a period of up to 6 weeks.

6.3.

The Licensing service has received a number of applications for temporary public entertainment licences for many years from various applicants and, notwithstanding the restrictions in processing referred to above, has always, as a matter of procedure, consulted a number of Council services, as appropriate, as well as Police Scotland and the Scottish Fire and Rescue Service and their predecessors.

6.4.

The Licensing service has received applications for temporary public entertainment licences from the applicant for many years, but usually for short periods such as 24 hours in connection with annual agricultural shows. The current application is for a period of 25 days on a site close to residential housing. Accordingly, there may be concerns about noise and disruption over a much longer period than usual.

6.5.

The Roads service advised that they had concerns about the licence application due to no parking being provided within the permitted site, which would “undoubtedly lead to parking on The Meadows and surrounding streets which will be far from ideal situation. The applicant should therefore be required to address the parking situation to try and minimise disruption on the public road network.”

6.6.

Case law has established that licensing authorities cannot stray from the purpose of the licence application – in this case the operation of a funfair – into broader aspects such as parking.

6.7.

Services were concerned that, as it is an area of Council land which the applicant is being permitted to use and possibly a licence granted, those decisions may lead to an impression that the Council had granted permission for the proposed funfair without, corporately, considering all potential impacts. For that reason, the Head of Legal Services determined not to use his delegation to grant an unopposed licence application in this instance and, instead, refer the matter to the Committee for determination.

6.8.

A licensing authority may grant an application for temporary licence subject to such conditions as they think fit.

6.9.

Paragraph 5(3) of Schedule 1 to the Act provides that a licensing authority shall refuse an application to grant ... a licence [including temporary licences] if, in their opinion:

- the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either:
 - for the time being disqualified under section 7(6) of the Act; or
 - not a fit and proper person to be the holder of the licence;
- the activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or refusal of such a licence if he made the application himself;
- where the licence applied for relates to an activity consisting of or including the use of premises ... those premises are not ... suitable or convenient for the conduct of the activity having regard to:
 - the location, character or condition of the premises ...;
 - the nature and extent of the proposed activity;
 - the kind of persons likely to be in the premises ...;
 - the possibility of undue public nuisance; or
 - public order or public safety; or
- there is other good reason for refusing the application;

and otherwise shall grant the application.

6.10.

Each application requires to be considered on its own merits.

7. Contact Officers

John W Mundell, Interim Chief Executive, extension 2101, email john.mundell@orkney.gov.uk.

Gavin Mitchell, Head of Legal Services, extension 2233, email gavin.mitchell@orkney.gov.uk.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

Garry Burton, Leisure and Culture Service Manager, extension 2440, email garry.burton@orkney.gov.uk.

Donald Wilson, Roads Authority Officer, extension 2302, email donald.wilson@orkney.gov.uk.