

# **Response to representations regarding the Thoulstone Park Premises Licence Application**

## **Introduction**

I have prepared this response as the solicitor who drafted and submitted the above application, in the hope that it will address concerns raised by those who have objected to the application and assist the Committee in coming to its determination. I will refer to the bundle of documents that I have prepared and intend to rely on at the hearing.

## **Objectors**

I have prepared a schedule listing all of the objections that have been received with a very brief summary of the issues raised by each – of necessity, this does not repeat each and every point that has been made and the sub-committee will of course have regard to the letters and emails in full (pages 1 and 2).

Before the application was even drafted, a meeting took place involving all members of the Wiltshire Multi Agency Group (“MAG”) on 1<sup>st</sup> October 2015 and lengthy discussions then took place once a draft application had been prepared. (The MAG consists of representatives from a variety of official agencies including the police, planning, environmental health, licensing, public protection and the fire authority and is charged with providing advice to event organisers and oversight to ensure that events taking place in the locality are safe and properly run).

As a consequence, the only responsible authority that raised any issue was the environmental health department and we have now reached agreement with officers in that department which has led to the withdrawal of their representation. I will be submitting to the sub-committee that they should attach great weight to the fact that none of the Responsible Authorities object to the application as it now stands and give credit to the applicant for its efforts to work with the various officers.

## **The Applicant**

Thoulstone Park was once a prestigious golf course and luxury hotel but has not been in that use for some 15 years and the hotel is now derelict and unsafe. It was bought some three years ago by James Hughes-Hallett who is the finance director of a multi-national company that has interests in airlines, shipping etc. His vision is to rebuild the hotel and bring the land back into a vibrant and sustainable use. He has been granted outline planning position (see pages 3-15) for the proposed hotel etc but has no direct involvement in the present application nor the applicant company (but see letter from him at pages 15 and 16)

In 2013, one event took place on the land. This was known as Sunrise and was the subject of a Premises Licence granted specifically for that event to one Daniel Hurring. This was a large, commercial event (but small to medium sized in the context of musical festivals such as those that Mr Lepingwell has been involved with – see below) that attracted a number of

complaints but no formal action for breach of any licence condition – these incidentally included noise conditions summarised at pages 17 and 18 of the bundle. There were some 7,000 attendees over a period of 5 days with a maximum occupancy on any day of about 5,000.

The Sunrise event was not repeated in 2014 nor would the present application, if granted, permit such an event – see further below.

During 2014, a number of events took place, which are summarised at page of the bundle. These were ultimately organised by Sustainable Land and Events Limited, trading as Thoulstone Sustainable Event Company (“TSEC”). TSEC was permitted by Mr Hughes-Hallett to use the land for these purposes without payment. TSEC was owned equally by Mr Hurring and Mr Lepingwell, both of whom were directors of the company.

During 2014, Mr Lepingwell’s primary interests were in a stewarding company (Green Stewards) and also providing operational and other support for events run by other people. These included Shambala, Glastonbury, Secret Garden Party, St. Paul’s carnival, Hackney One carnival, Somersault and Wilderness festivals. As a result, he was away from Thoulstone for virtually the entire season and had little involvement with the events that took place (but has vastly more experience in event management than Mr Hurring)

As a direct result of complaints made about certain (but by no means all) of the events that took place at Thoulstone it was decided that Mr Hurring’s interests in Thoulstone should cease. All of his shares in TSEC were transferred to Mr Lepingwell and he has resigned as a director of the company and no longer has any interest in it. (Please note that this may not yet be reflected in Companies House records as they do some take time to be updated). Mr Lepingwell’s focus for 2014 will be almost exclusively on Thoulstone although in the interest of transparency, I can advise that he will again be involved with the Shambala festival for a week in July and The Secret Garden Party for a week at the end of August.

The proposed DPS – Holly Streeter has had no previous involvement with Thoulstone but effectively runs Green Stewards (owned by Mr Lepingwell) on his behalf. Her CV is at pages 32-33

### **Why make the application at all?**

In short – to ensure that all future events at Thoulstone are subject to a proper regulatory regime.

The events that took place in both 2013 and 2014 did not need any specific planning consent for technical reasons that I do not propose to trouble the sub-committee with (although I have included for the sake of completion a planning consent granted to Mr Hurring to use part of the golf course as a Yurt campsite – pages 19-21) . There was no premises licence in force at all. Some of the events did not require an authorisation under the Licensing Act and it is (I am afraid) necessary to go into some detail about why that is the case.

There are (in this context) three licensable activities:-

They are - the sale of alcohol (or the supply of it in a member's club), the provision of "regulated entertainment" and the supply of late night refreshment (i.e. hot food and drink provided between 11 p.m. and 5 a.m.).

Alcohol – it is the sale that is licensable, not the drinking nor the consumption of alcohol. No licence is required if alcohol is supplied free of charge – for example at a free bar at a wedding or corporate event. If people bring their own alcohol to any sort of event, they do not require a licence to drink it.

"Regulated Entertainment" - there is a list of things that might be regulated entertainment, including live and recorded music, showing films and theatrical and dance performances but there are a number of exemptions notably that unamplified live music may be performed to an audience of any size, anywhere in England and Wales between 8 a.m. and 11 p.m. without a licence and from 6<sup>th</sup> April 2015, amplified live and recorded music may be played in pubs, restaurants and any other premises that have a licence authorising the sale of alcohol for consumption on the premises, again between 8 a.m. and 11 p.m. without the need for a licence, provided the audience does not exceed 500 persons. Another provision effectively exempts the playing of background or incidental music.

However, there is another requirement that must be satisfied before any form of regulated entertainment becomes licensable and that is that either the entertainment is provided to any extent for members of the public for the purpose of entertaining them or "for consideration and with a view to making a profit".

In the context of Thoulstone, what this means in practice is that if a purely private event takes place (for example a wedding, a corporate event such as "team building" or a private function booked by an organisation for its members), any entertainment that might be provided would not be licensable if it is organised or arranged by whoever has "booked" the site for the event and the entertainment for example has not been arranged (and charged for) by Sustainable Land and Events Limited..

"Thanks to" these legislative provisions (which might perhaps be viewed by some as "loopholes"), a number of events that took place at Thoulstone in 2014 did not require any form of licence or authorisation under the Licensing Act.

Those that did require an authorisation mainly took place under the "TEN" system. This is a regime that allows events involving less than 500 people to take place if the organiser of the event gives notice to the Council, Police and Environmental Health Officer ("EHO") at least 5 working days' notice (but usually at least 10) of a proposed event. The police and EHO can object but didn't do so on any occasion that TEN's were used in 2014. Local people do not need to be advised of any TEN "application" and have no right to object.

More to the point, if there is no Premises Licence in place for whenever the TEN is given, no conditions can be attached – the TEN is either granted or not and those sought in 2014, either by Mr Hurring or by the organisers of the specific events were all "granted".

However, if there is a Premises Licence in force for the premises covered by the TEN, then it is possible to “grant” the TEN subject to any and all conditions that attach to the underlying Premises Licence.

In summary, it is therefore very much in the interests of local residents that the “loophole” of allowing events to take place under the auspices of TEN’s without conditions attached, be closed.

I would add that on three occasions last year, Noise Abatement notices were served by the Council regarding the premises. Two of those were for specific events and were served before the event took place. These were limited in time and are no longer in effect. A third (copy at pages 24-27) remains in force. No proceedings have been taken or threatened in respect of any alleged breach of these notices.

### **The Application – some clarifications**

#### The “event site”

Some objectors appear to be under the impression that that application is for the entire golf course. This is not the case – please refer to the plan at page 31.

#### Hours applied for (and conditions)

It would appear that many of those who have objected have relied solely on the either the site notice (which was worded identically to the newspaper public notice) or the notice published by the Licensing Authority on its web site. Whilst both are accurate, they (of necessity) do not spell out precisely what it is that has been applied for, particularly with regard to the conditions that have been offered up.

For example – some of the residents appear to be under the impression that the licence if granted would authorise music and alcohol sales until 5 a.m. This is not the case. The only licensable activity permitted that late would be the provision of hot food and/or (non-alcoholic) drink and this would only be to people staying on the glamping/camping site.

#### Community Events

This aspect appears to have caused more concern than any other single issue as many residents have come to the conclusion that the inclusion of such events would allow a repeat of the 2013 Sunrise festival on numerous occasions throughout the year. This is not the case for a number of reasons.

Firstly, “community events” “shall not be run for the private benefit of any individual, company or other organisation.” Sunrise was a commercial event intended to make a profit for its then organisers and would not therefore “qualify” as a community event.

Secondly, “any and all profit from the event shall be applied for charitable purposes or good causes”. Again, this was not the case with Sunrise.

Thirdly, “the event shall be held for the primary benefit of the local community, meaning residents and organisation living or based within a radius of 5 miles from the premises”. Again, this was certainly not the case with Sunrise.

Fourthly, there is a limit on the number of such events to 4 days a year and the event can only be open to the public between 8 a.m. and 11 p.m. Granted that Sunrise was a 4 day event but it was in effect open to the public beyond those hours. Further, the conditions expressly provide that no other licensable activities take place after 10.30 p.m. on the day of the event nor before 8 a.m. the following day – in other words, late night music entertainment could not take place.

It follows that if anyone were to propose another Sunrise type festival on the site, it would be necessary to make an entirely separate licensing application which would have to be considered on its own merits.

#### Noise controls

It is clear that the principal concern of many residents is noise from music. This aspect has been the subject of lengthy exchanges with the relevant officers from Environmental Health, both before the application was formally submitted and during (and beyond) the consultation period. Quite apart from the fact that there is an extant noise abatement order in place (see above) the application contains a number of conditions designed to ensure that noise levels are controlled and that drumming for example is strictly limited. This simply cannot be done if events are licensed under the TEN regime (see above).

#### Crime and Disorder

This is a matter principally for the police. I understand that to all intents and purposes, the events that have been held at Thoulstone have not resulted in any concerns on the part of the police about crime and disorder (even though it is accepted that certainly some of the events caused other issues). The sub-committee will be aware of Guidance issued by the Secretary of State to the effect that it should “accept all reasonable and proportionate representations made by the police.....” (paragraph 9.12 March 2015 Guidance). It follows that when the police have made no representations, significant weight should be attached to that.

#### Traffic Management

The application requires that there be a formulated traffic management plan for all licensed events – again something that cannot be achieved with a TEN.

#### Duration of the Licence

The application limits the licence to events taking place between 1<sup>st</sup> April and 30<sup>th</sup> September each year. It is however an application for a permanent licence. That is not to say that the licence would last for eternity because the Licensing Act gives not only responsible authorities such as the Council and the Police the power to call for a review of a licence, it gives the same right to “any other person”. The right to call for a review of a licence is

exercisable at any time (and no fee is payable on the making of the application); once an application has been made, there has to be a hearing and at that hearing, the licensing sub-committee can decide to do nothing, amend or add conditions, remove licensable activities, restrict hours, suspend the licence, remove the designated premises supervisor and even revoke the licence. If an offence has been committed, the licensing authority can prosecute and the penalty for breaching licence conditions is now an unlimited maximum fine and/or up to 6 months in prison.

### **Planned 2015 events**

The licence conditions will require that the Council, Police and residents living within an area defined by Environmental Health are given advance notice of any and all planned licensable events and any changes to the proposals. To date the events planned are as follows:

24<sup>th</sup> May – Thoulstone Big Picnic. This would be the first event of the year and would be a daytime community event aimed squarely at families living in the locality involving games, food, possibly a cider bar and a small amplified stage in a new 40 foot yurt. It is anticipated that the site would be clear of all visitors by 10 p.m. at the latest.

19 - 21 June – Private wedding booking for between 120 and 150 guests.

17 – 19 July – Private wedding booking for between 200 and 260 guests.

20 – 23 August – Private wedding booking for between 120 and 150 guests.

The first event could not involve any music entertainment unless the premises licence is granted but otherwise could take place without a licence because any cider bar could be covered by a TEN.

The other events do not strictly require a licence but if the licence were to be granted, then any licensable activity (including for example a pay bar) would be subject to the constraints of the licence, even if a TEN were given.

### **Conclusion**

I entirely understand why it is that so many of the local residents have concerns and are deeply sceptical about this application. The sub-committee will however be aware that the Licensing Act is essentially a permissive piece of legislation – it is effectively presumed that a licence will be granted as applied for by the applicant unless it is shown to be appropriate to restrict it in order to promote one or more of the licensing objectives and full reasons must be given for any decision.

The balance that the Act provides are serious sanctions for breaches of licensing conditions, an assortment of enforcement powers given to the police and environmental health officers in particular and the right of any person to seek a review that might result in the revocation of the licence.

Put another way, the sub-committee will be invited by me to give Mr Lepingwell the opportunity to show that he is capable of running events at Thoulstone in a responsible manner that respects the concerns of local residents, safe in the knowledge that if he does not, he puts himself at risk of prosecution and the licence at risk of revocation.

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