

REPORT TO MARR AREA COMMITTEE – 22 MAY 2018

CIVIC GOVERNMENT (SCOTLAND) ACT 1982 APPLICATION FOR GRANT OF TEMPORARY PUBLIC ENTERTAINMENT LICENCE – REQUEST FOR EXTENSION OF OPERATING HOURS FOR KERRY FARQUHAR, FUNFAIR AT BALLATER DUCK FESTIVAL ON 03 JUNE 2018

1 Recommendations

- 1.1 It is recommended that the extension of the hours of operation of the funfair be granted as sought.**

2 Background/Discussion

Council's Operation Policy for Fairgrounds and Circuses

- 2.1 Aberdeenshire Council's agreed policy in respect of Circuses and Fairgrounds, sets out standard operating hours of –

1400 hrs – 2100 hrs (Monday – Thursday);
1400 hrs – 2200 hrs (Friday-Saturday); and
1400 hrs – 1700 hrs (Sunday).

- 2.2 Any requests for operating hours outwith the policy must be agreed in advance by the relevant Area Committee.

Request for Additional Operating Hours

- 2.3 Kerry Farquhar of Drummond Cottage, Cummington, Burghead IV30 5XY submitted an application for the grant of a temporary public entertainment licence relating to the operation of a funfair at Ballater Duck Festival on 03 June 2018. The applicant wishes to operate as follows:

1000 hrs – 1600 hrs (Sunday)

- 2.4 Any extension to operating hours granted does not absolve the operator from operating within the terms of their licence, including meeting any noise limits or other conditions which might be imposed.

Consultations

- 2.5 At the time of writing this Report, the application has been to consultation with Police Scotland, Scottish Fire & Rescue Service, Environmental, Building Standards and Outdoor Services. No objections or adverse representations have been received to date in respect of the application.

Procedure

- 2.6 The Committee is NOT being asked to determine whether the application for the Public Entertainment Licence should be granted. This will be determined by officers, in the absence of any objections or adverse representations using

officer powers as outlined at Section 8.8 of the list of officer powers set out at Part 2B of the Scheme of Governance.

- 2.7 The decision of the Committee in relation to the request for extended operating hours will be final.

Grounds for Refusal

LEGAL TEST

- 2.8 A Licensing Authority SHALL refuse an application to grant or renew a licence if, in their opinion:
- a. 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 –
 - i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
 - ii. Not a fit and proper person to be the holder of the licence
 - b. 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 renewal of such a licence if they made the application themselves;
 - c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
 - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
 - ii. The nature and extent of the proposed activity
 - iii. The kind of persons likely to be in the premises, vehicle or vessel
 - iv. The possibility of undue public nuisance; or
 - v. Public order or public safety; or
 - d. There is other good reason for refusing the application;

And otherwise SHALL grant the application.

Options for Disposal

- 2.9 The Committee's options in disposing of the Application are:-
- (a) To grant the hours of operation as sought.
 - (b) To grant restricted hours of operation; or
 - (c) Refuse to grant the extended operating hours in which case the funfair will operate the hours outlined in Aberdeenshire Council's policy for fairgrounds and circuses.

- 2.10 When coming to a decision the Committee must consider the evidence heard and the grounds of refusal outlined at paragraph 2.8 of this report. Supplementary advice and information can be requested, if required.
- 2.11 The Head of Finance and the Monitoring Officer within Business Services, have been consulted in the preparation of this report. Their comments are incorporated within the report and they are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3. Scheme of Governance

- 3.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.2 (h) of the List of Committee Powers in Part 2A of the Scheme of Governance as officers have declined to use their delegated powers to determine the part of the application relating to extended operating hours in terms of Section 8.8 and Section 4 of the General Provisions to officers at Part 2B of the List of Officer Powers in the Scheme of Governance, as it relates to a request for hours sought out with policy.

4 Implications and Risk

- 4.1 An Equality Impact Assessment is not needed in this case because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 4.2 There are no staffing or financial implications.
- 4.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.
- 4.4 The Town Centre Principle does not apply in respect of this matter as the Committee is considering the application as Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.

Ritchie Johnson Director of Business Services

Report prepared by Elaine Neave, Legal & Governance

Date: 09 May 2018

References: J:\la\Licensing Shared\1LICENSING\MEETINGS\AREA COMMITTEES\MARR\Marr2018\Kerry Farquhar - Ballater Duck Festival\Kerry Farquhar - Report