

**LICENSING PANEL
(Non-Licensing Act 2003
Functions)**

Agenda Item 3

Brighton & Hove City Council

Subject: Brighton 'O' Highway Licence
Date of Meeting: 25 August 2011
Report of: Head of City Infrastructure
Contact Officer: Name: David Fisher Tel: 29-2065
Email: david.fisher@brighton-hove.gov.uk
Ward(s) affected: Queen's Park

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report relates to the application by Paramount Entertainments for a Licence to place an observation wheel on Dalton's Bastion, Madeira Drive which forms part of the Public Highway.
- 1.2 The application may be decided by the panel under part VIIA of the Highways Act 1980.

2. RECOMMENDATIONS:

- 2.1 That the Panel determines the application for a Licence.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Paramount Entertainments were granted planning permission on 19th May 2011 for the "*Erection of a 45 metre high observation wheel including extension of promenade over beach, new beach deck, ancillary plant, queuing areas, ticket booths and merchandise kiosk (for a temporary period of 5 years, except beach deck which is permanent)*" under planning application BH2011/00764.
- 3.2 Part of the structure will be placed on the Public Highway on Madeira Drive and therefore requires permission from the City Council as Highway Authority. (Appendix 1: Area plan).
- 3.3 Section 130 of the Highways Act 1980 imposes a duty on highway authorities to assert and protect the rights of the public to the use and enjoyment of the highway. This duty will include a duty to prevent, as far as possible, the obstruction of highways.

However, Part VIIA of the Highways Act (sections 115A – 115K) allows highway authorities carry out works or place objects on the highway, or permit others to do so, for purposes of enhancing the amenity of the highway and its immediate surroundings, or of providing a service for the benefit of the public or a section of the public.

Permission is sought under Section 115E Highways Act 1980 (as amended) to obstruct part of the public highway.

In deciding whether to grant the permission regard should be had to the relevant highway policy (HP 8-4) together with the further policy adopted by the Licensing Committee on 24 April 2009 (Appendix 2: Highway policies).

- 3.4 Any licence granted by the panel will be bound by a set of conditions (Appendix 3: Draft Conditions). It will be a condition of the Licence that the terms of the lease of the seafront land are complied with. Copies of the lease will be made available to the Panel on the day of the hearing
- 3.5 The council received 22 objections to the placing of the wheel (Appendix 4: Objections). Objections are summarised below, with Officer's comments on those objections.

The objections relate to the obstruction of the public highway along the east-west route of Madeira Drive and to concerns regarding access to the beach.

Many of the objections refer to the status of Daltons Bastion and Madeira Drive as being part of a public right of way and ask the council to carry out its duty as highway authority under section 130 of the Highways Act 1980.

Comment:

The Council acknowledges that the area to which the application relates is part of the public highway.

Whilst the council does have a duty to protect the public highway, as Highway Authority it may grant consent to place items upon the highway provided that the correct statutory procedures are followed.

The area taken by the wheel (Dalton's Bastion) does not block either the steps or ramp to the beach, nor does it block the footpath and cycle lane. It will be a condition of any licence granted that full access to the beach must be maintained at all times and that the main east-west route is clear. There will be at least 9m of clear pavement available.

The proposal is consistent with the Council's adopted policies referred to above.

- 3.6 One objection asks for the queue area to be located both sides of the wheel.

Comment

The queue area was agreed as part of the planning permission to catch people heading towards the wheel after parking their cars on Madeira Drive. This will give visitors the opportunity to buy their tickets at the ticket booth next to The Volks Railway station, rather than heading straight to the base of the wheel and causing potential congestion.

- 3.7 Any licence granted will be temporary and will mirror the length of the lease granted for the council owned properties below Dalton's Bastion.

- 3.8 Many of the objections make representations in relation to the view, or to possible alternative locations for the Wheel, or to the economic impact of the proposals.

Comment:

These issues were fully considered in deciding whether to give planning permission for this development. The decision as to whether to grant the Licence must be taken on the basis of highway considerations and whether the proposals would amount to an unreasonable obstruction of the highway.

4. CONSULTATION

- 4.1 A 28 day consultation period has been carried out as required by the Highways Act 1980. Notices were attached to the surrounding area to invite representations on the proposal. 22 representations were received.
- 4.2 A number of objections refer to the consent of “frontagers with an interest” to the placement of items on the highway being required under section 115E of the Act.

The relevant legislation on this point is section 115A of the Highways Act 1980. Subsection (7) of section 115A states that

In this Part of this Act “frontagers” means the owners and occupiers of any premises adjoining the part of a highway on, in or over which an object or structure would be placed or on which facilities for recreation or refreshment or both have been, are being or would be provided; but frontagers have an interest under this Part of this Act only in proposals to place objects or structures or provide or operate facilities wholly or partly between their premises and the centre of the highway.

If this application is granted, the wheel will be placed on the South side of Madeira Drive. It will not be between the centre of the highway and any of the premises fronting Madeira Drive, and therefore there are no “frontagers with an interest” whose consent is required under the Act.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 Any costs associated with determining the application for licence have been met from within existing revenue budgets.

Finance Officer Consulted: Karen Brookshaw

Date: 16/08/11

Legal Implications:

- 5.2 These are mainly set out in the body of the report. The Panel's decision must take into account all relevant considerations including representations made.

Lawyer Consulted: Carl Hearsom

Date: 15/08/11

Equalities Implications:

- 5.3 The council seeks to ensure that public highways are used in a manner that maximises the benefit to the most number of users. However in the busiest areas of the city competing interests can come into conflict. It is the council's responsibility to manage these interests and to ensure equality of access particularly for those with mobility issues.

Sustainability Implications:

- 5.4 There are no sustainability issues identified.

Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications arising from this report

Risk and Opportunity Management Implications:

- 5.6 There are no risk and opportunity management implications identified.

Corporate / Citywide Implications:

- 5.7 There are no corporate/citywide implications identified.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan
2. Highway Licensing Policy
3. Licensing Committee Minutes 24th April 2009
4. Draft licence conditions
5. Representations

Documents In Members' Rooms

None.

Background Documents

None.