

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Tuesday, 20 June 2017 at 9.30 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillors Paul Godier
Ian Lyon
Leo Madden

Apologies for Absence

42. Appointment of Chair

Councillor Ian Lyon was elected as Chair for this meeting.

43. Declarations of Members' Interests

There were no declaration of members' interests.

44. Licensing Act 2003 - Application for grant of a premises licence - South Parade Pier Limited for South parade Pier, South Parade, Southsea PO4 0SW

(This hearing had been postponed from 31st May 2017)

Present

Peter Baulf, Legal Advisor
Jon Wallsgrove, Solicitor for the applicant
Derek Stone, Principal Licensing Officer

Interested parties making deputations

Richard Lee (accompanied by Richard Maidment) PCC Environmental Health Plus residents.

The Chair welcomed everyone to the meeting and explained the fire procedures in case of a fire alarm. He asked everyone present to introduce themselves.

At the start of the hearing Peter Baulf, Legal Adviser, reported the request by the applicant's solicitor for a 20 minute break to "narrow the issues"; this was agreed to by the Panel, who were in receipt of the late acoustic report submitted by the applicant. The hearing was adjourned until 9.50am at which point Mr Wallsgrove reported on behalf of his client that discussions had been held with the Environmental Health officers regarding noise levels and

mitigating measures to come to agreement regarding the imposing of a noise condition. This would therefore allow the release of the applicant's expert witness Mr Vine. The Chair confirmed that the two acoustic reports had been received and read by the panel and asked questions on how the proposed condition would be enforced, if wind and tide levels had been taken into account and the effect of opening doors and windows on the premises. Whilst some of this would be answered in the main presentation on behalf of the applicant, it was reported that the equipment would be sealed by the Local Authority to guard against tampering. Mr Wallsgrove reported that his client would be fitting secondary glazing and the proposed condition would set the noise at an appropriate level in discussion with Environmental Health. He would also explain the licence arrangements including the shadow licence for some of the units. The 'off-licence' issue was also raised and one of the resident objectors, Mr Reis, wished to raise his concerns, at which point the legal adviser suggested that the committee should hear more about the application, returning to the set procedure for the meeting. Mr Lee, Regulatory Services Manager, confirmed that the agreed external noise condition would be suitable, at which point the Chair confirmed that the applicant's expert Mr Vine could be released as requested.

Mr Stone, the Principal Licensing Officer introduced the Licensing Manager's report and reiterated the information given on the amendments to opening times (as set out at the end of section 2 of his report). He drew members' attention to the matters that they should have regard to (section 7 of his report) and the main areas of objection had been regarding potential noise, anti-social behaviour and public nuisance and the impact these may have on residents. Appendix E of the report set out the conditions agreed with the police and there had been additional information circulated as submitted by the application regarding the acoustics which had led to the earlier discussion and agreement of an additional noise condition following engagement between environmental health and the applicant.

There were no questions to the Licensing Manager from any party at this stage.

The applicant's case was then presented by his representative/solicitor Mr Wallsgrove, who explained the history of the pier's operation, the shadow licence arrangements, the issues of noise and those leaving late at night should the licence be granted to 2am as requested. The pier was an asset to the local community and he reported that until 2013 it had operated until 3am at the weekends (and 2am weekdays) before the premises licence had been surrendered due to the owner not paying the annual fee to keep it live and transferrable. There would be a very experienced Designated Premises Supervisor (DPS) who would work with the acoustic consultants and run the premises professionally.

Mr Wallsgrove then explained the inclusion of off-licence provision which would be used rarely due to the expense to customers but it was a common operation and in the future a retail unit may wish to have this opportunity, and this offered his client flexibility.

After a short break members asked questions arising from the applicant's submission, which included:

- Whether the kiosk at the front of the pier could be used as an off-licence - Mr Wallsgrove thought it unlikely as there were competing convenience stores nearby but some retail gifts could include an element of alcohol so this flexibility was requested (and Mr Stone explained the application process for off-licences and reviews)
- The involvement of the police - it was noted that they had not raised objections/crime and disorder concerns but had met with the applicant, and this would be the only nightclub in the area and the police had not chosen to attend the hearing
- The siting of the smoking areas and access to these and use of double doors, as well as the dimensions of the corridors and it was noted that some people would smoke outside
- Availability of toilet facilities for customers and how respect for neighbours would be encouraged regarding dispersal at night
- If there was any parking designated for staff - it was reported that the intention was to recruit locally; there was no parking provision and use of public transport was envisaged as well as use of nearby parking
- The capacity of the venue - it was reported that the restaurant was for 275 customers
- The requirement for the late licence - it was reported that this would allow for adult functions, corporate events and live music as well as flexibility for DJ nights (similar late night events operate at other piers) and the viability and business case of the application was raised (but this was commercially sensitive information and not part of the submission)
- The effect of the closure and quieter environment for residents living in the vicinity - it was noted that this was whilst the pier had closed and the client would be taking measures to deal with noise from the site
- How the winding-down and dispersal mechanisms late at night would operate.

There were no questions to the applicant from Mr Stone or Mr Lee as responsible authorities.

The Chair varied the order before the lunchbreak to allow 3 residents who could not stay the for the whole hearing the opportunity to raise any issues as 'other persons':

- i) Val Parker was concerned regarding yobbish behaviour as customers left clubs (as previously experienced), and the effect on the residents of the new McCarthy & Stone flats and hotel guests and the effect on these nearby businesses; 11pm closing would be acceptable. Whilst welcoming the restoration of the pier she did not want disturbance in the early hours.
- ii) Mr Ciccarone - residents in Villiers Road had previously had cars smashed and needed to call the police when people left the nightclubs and residents had suffered from anti-social behaviour late at night.

- iii) Liz Birch - spoke of the problems parking in the vicinity and the late night disturbance, suggesting that parking at the seafront be reviewed and some free evening parking be made available to help alleviate the problems.

Following the lunchbreak further questions were raised by members of the public as 'other persons'

- i) S Carroll asked for clarification on the closing times and the effect of the BST extra hour when the clocks changed
- ii) Mr L Reis queried the comments by the police who felt that rather than not raising objection they were saying there was not recent evidence of problems and he referred to a consultants tourism plan (the Chair clarified that this was not part of the evidence for this hearing)
- iii) Ms J Wright - questioned the need to have an off-licence provision
- iv) Margaret (of Granada Road) asked if staff would help to stop people walking through the residential roads linking to Albert Road - Mr Wallsgrove reported on the dispersal methods with encouragement of exiting quickly and quietly and the applicant was in discussions with a taxi company, but means of transport are a choice
- v) Ms C Tweedy-Smith - asked that so as to avoid the problems of anti-social behaviour previously suffered due to the nightclubs in the area, whether a trial period could take place for the effects of a new licence to be seen? Mr Wallsgrove explained the review process for granted licenses which were constantly monitored.
- vi) Mr P Hartley - asked if it was practicable to disperse and close within an hour of finishing serving alcohol? Mr Wallsgrove reported that there was an experienced management team and security on site to deal with the dispersal policy and also reiterated that the the previously the pier had operated with a late night licence until the change in ownership in 2011 when action had been taken (an abatement notice)
- vii) Councillor Symes stated that once the other nightclubs had moved from the seafront the pier had become a burden and it was eventually sold but had not been constantly opened until the times permitted under licence
- viii) Mr N Courtney also spoke about his previous experience as a music promoter with events until 2am on the pier.

Mr Richard Lee then made his case as a responsible authority, as Regulatory Services Manager (Environmental Health is a statutory consultee) and outlined his previous experience as a noise nuisance investigator for 20 years, so he had considered the areas of public nuisance including the low level noise nuisance affecting those in the locality. His initial response had been submitted to the Licensing Authority on 19 April 2017 to object to the proposed opening times on the grounds of prevention of public nuisance (as set out in Appendix C) as he did not believe that the renovation of the pier would stop low frequency noise causing a nuisance to neighbours. There had been a noise abatement notice served in 2011 as the music had disturbed local residents. The sound could be enhanced by reflection from the water

and with wind and was worse at 1st floor level or above. He would therefore favour granting permission with restricted hours until 11pm and the use of Temporary Events Notices (TENs) where necessary.

On 24 May Mr Lee had been contacted by Mr Vine the applicant's acoustic consultant with a noise assessment which was responded to and then there was no further contact from the applicant until 7 June with further suggested conditions and acoustic report with new mitigation levels and acoustic curtains and there were some contested areas regarding methodology and it did not address those leaving the premises. On 7th June Environmental Health reiterated their concerns and the need for safeguarding measures and maintained their original position of restrictions with music levels to be reduced. On 9th June the applicant had agreed to secondary glazing. On 14th June he emailed the Licensing Authority on the window re-specification, as whilst there may be marginal compliance there would still be a significant impact on the McCarthy & Stone building and the Royal Beach Hotel (noise contour maps were displayed to illustrate this). The day before this hearing further information had been received (a 13 page acoustic report) from the applicant; the view of Environmental Health remained that the measures did not resolve the potential noise disturbance or provide sufficient evidence of control of music levels and there was insufficient regard to patrons leaving the premises. He was disappointed that there had not been sufficient time to assess the last evidence submitted the previous night.

Mr Lee presented 4 slides:

1. Extent of the impact from bass at 63 Hz
2. Bass at 63 Hz against background level 1200 -0200 hours, predicted noise level
3. Impact after glazing had been installed
4. At 2200hours breach criteria as agreed with the applicant that day

Members then asked questions of Mr Lee as a Responsible Authority:

- if the report submitted the day before could be assessed (as it was only available to the panel on the day of the hearing)? - Mr Lee confirmed that this had led to the noise condition being agreed earlier in the session which reduced the internal noise level so it would not breach the level to cause nuisance to residents. He also clarified that the secondary glazing would have a significant impact in the reduction of noise.
- The impact of noise for residents was further explored, including at ground floor and higher levels for neighbours - it was stressed by Mr Lee that the secondary glazing and other conditions relating to noise would mean that residents should not hear noise if these conditions were complied with and the equipment was calibrated correctly, and the noise condition agreed that morning would mean that the level of volume of music played inside the venue would be reduced. There may be some noise audible if residents had their windows open.
- Mr Lee was asked if he was withdrawing his previous objection in the light of new evidence: he stated that this was not the case as his

position was that as stated at 19th April 2017 with the use of TENS to assess the controls in place and the impact on residents.

Mr Wallsgrove then asked questions to Mr Lee on behalf of the applicant:

- If the Local Authority would set the levels on the noise condition once the premises was completed? Mr Lee responded that he did not believe that it was the responsibility of Environmental Health to set the volume levels on the device installed, although tags would be supplied and enforced and Richard Maidment would arrange presence to advise on whether the conditions could be met.
- Why the responsible authority was claiming there would still be nuisance? Mr Lee also clarified that his comments had been on audibility not public nuisance in the last session of the hearing and **if** the conditions were complied with there should be no public nuisance.

Questions were asked of the Responsible Authority (Mr Lee) by residents as 'other persons':

- Mr Reis asked regarding the noise levels of boxing/wrestling matches in comparison to music - Mr Lee responded that music levels should be lower than a crowd of patrons outside the premises.

Residents as 'other persons' were then given the opportunity to make their case, with the Chair calling people who were on the list of those having made representations and asked to be present (some of whom were not present at the meeting) whose points are summarised:

- i) Mr Robin Townsend, from Saulet's Solicitors, on behalf of several residents (including some at Clearwater Apartments, the Clearwater Residents' Association and the Royal Beach Hotel), added to their representations that were within the written submissions. Their concerns included their previous problems with public nuisance, crime and disorder due to late night entertainment and they had seen a transformation in this residential area whilst the clubs and pier had been closed. This had been helped with the decision by the police and council to transfer the nightclubs to the Guildhall area. His clients would object to a 2am closing time. They were concerned that whilst the application did not say it was a nightclub, it was a blanket application and so this may come in by creep. Whilst the corporate events may have a different age group attending, the default position of music and DJ events would attract the 18-30 age group, and their concern was the public nuisance when they left the premises. It would be hard to clear the venue in an hour. His clients did not understand why an off-licence element was necessary. One of his clients Mr Handami would have trouble in leasing his nearby properties and the hoteliers were also concerned that their businesses would be affected. They were concerned by the problems caused by noise travelling to upper levels. Therefore if the licence was granted it should be with restricted hours and heeding the advice of Environmental Health.

- ii) Mr Hann spoke on behalf of McCarthy & Stone (who are in the process of developing the Savoy site as accommodation for 100+ elderly persons). Whilst they encouraged the opening of the pier the application for a late licence caused concerns regarding noise, crime and disorder, and fear of anti-social behaviour. Even if the hours were being reduced by the applicant, there was still the concern of those leaving the pier at 2am, especially as McCarthy & Stone's residents were mainly aged in their eighties. They were concerned what leases could be given to the kiosks at the front which could cause a nuisance. They were worried that there would be breaches of conditions and the noise of those leaving the site, as at the front of their own sheltered living building there were balconies not protected by glazing. Therefore he asked that there be careful consideration given to timings and if a licence was granted this be with reduced hours.
- iii) Dawn Sait, of Ocean Hotel & Apartments outlined the previous experience of late night entertainment patrons hanging about in bus stops and on the beach after leaving premises, and the noise caused by groups leaving having been drinking all evening. She was concerned that the McCarthy & Stone residents would not be able to open their windows and would have disturbed sleep. There was also concern regarding mess left in the area in the mornings, and disturbance caused by people having alcohol on the beach or taking legal highs until the early hours. There are enough pubs in the area and the police had removed the nightclubs as they could not enforce those in Southsea. If a licence was given it should be to 11pm or 12 midnight at the latest.
- iv) Mr Reis, chief resident on behalf of others, felt that most of the concerns had been covered and asked that an off-licence was not permitted, but that individual businesses should apply for their own licences rather than an aggressive blanket application. He was worried about the effect on the community, with residents having previously suffered from anti-social behaviour (urination in gardens, car mirrors kicked off) and felt that there should have been a wider neighbourhood notification as there would have been even more objections. He also spoke on behalf of Mr Denny asking for the closing times to be limited and the applicants had not tried to alleviate problems for residents.
- v) Councillor Jennie Brent felt that whilst the renovation of the pier was to be welcomed she had spoken to residents who were concerned by the off-licence and late closing elements of the application. There should be respect for the community and encouragement of family use and there was concern regarding alcohol being taken onto the beach.
- vi) Councillor Linda Symes commended the work being undertaken to renovate the pier but was concerned by the licensing application and would favour a 11pm close with leaving by midnight and use of

Temporary Events Notices (TENS). She felt that the licence should only cover the 2 areas of the restaurant and entertainment venue.

- vii) Mr Courtney was to speak for Mrs Rose but had not heard from her as to her representation.

There were no questions put to the residents by any other party.

Summing Up

No-one wished to sum up for 'other persons'.

Mr Lee summed up as a responsible authority - the opinion of experts had been heard and there was a consensus to move forward even where there were differences in opinion regarding the modelling of future scenario. Therefore there was an element of uncertainty as to how much noise will be produced and if there would be sufficient controls in place - in particular regarding bass frequencies, so he maintained his recommendation of 19th April 2017 as the sensible way forward with the use of TENS which would enable the demonstration of whether control measures put in to control public nuisance would work for the security of residents.

Mr Wallsgrove summed up on behalf of the applicant; his client had agreed to the noise condition suggested by Environmental Health. His submission was that a licence should be granted rather than trial by TENS which was not an appropriate way to monitor activity and there is a better way via the review process for a licence. If the bass line or conditions were breached this would be a statutory noise nuisance. There is some conflict between the two experts but his client had agreed to reduce the music level by the agreed condition. His client would run the pier well and the late events would be for Thursday to Saturday for which they asked for 2am and there was a credible history of the pier operating late. The Police had not objected. He therefore asked that the licence be granted as applied for.

Mr D Stone, Principal Licensing Officer, reinforced the review process, the need for the committee to consider the four licensing objectives and the appeal provisions.

Mr Baulf, legal adviser, advised that the panel members would withdraw for their private deliberations for at least an hour.

Decision: In the matter of the Licensing Act 2003, in the application for a grant of premises license South Parade Pier, South Parade, Southsea Portsmouth PO4 0SW, the application was granted as amended and subject to conditions imposed by this Committee.

The Committee carefully considered the application before it for a grant of a licence and had also considered the representations made in relation to this application, both made orally and in writing. The Committee also heard the comments of the applicant's advocate and the expert from the Responsible Authority, that being Environmental Health at Portsmouth City Council. In

addition to the information given to the Committee has included in excess of 150 representations from members of the public.

The hearing was required by reason of the objections being received from the Responsible Authority and members of the public, by reason of objections being received from the Responsible Authority and members of the public, by reason of this fact the discretion of the Licensing Committee is engaged to consider all matters.

This hearing was the first hearing of the application, the previous hearing being postponed from 31st May 2017.

The Committee had been informed that the original operating schedule had been amended with the applicants now confirming that they would propose a closing time of 02.30 with live music stopping at 23.00 with all other regulated entertainment to stop at 02.00(am).

The Committee was able to conclude that having heard and read all matters before them that the principle Licensing Objectives that are in issue pertain to: prevention of public nuisance and the prevention of crime and disorder. There was a dis-connect between what was sought by the applicants and what was objected to by the Responsible Authority and the members of the public who have made representations. Evidence had been tendered and examined as to how noise emanating from the premises may be managed in the sense of mitigation. In respect to the issue of noise which of itself is capable of being a public nuisance, the Committee found on a balance of probabilities the following to be established:

- That the current condition as to noise (as attached*) and agreed will be sufficient to assuage current concerns as to the noise level within the structure and emanating to the adjacent properties.
- It was noted that the operators through their expert (his report) accept that the current measures to avoid noise are being reviewed and improved. The condition is the minimum that is sufficient at this point.

Having reached to above findings the Committee was satisfied that the current level of mitigation is not such as to ameliorate the risk of noise nuisance emanating from the premise when people exit, as such and whilst balancing the evidence and the statutory guidance it is deemed appropriate to limit the provision of live music throughout the week with the operators being responsible for maintaining the noise at no higher than the agreed condition as stated later in these reasons.

With respect to the remaining elements of the application the Committee noted that there have been no representation from any of the remaining Responsible Authorities and notably the police who as the statutory guidance informs this Committee are an essential source of advice and information. Given the amendment and additional conditions imposed by the Committee they were left to consider what steps have been taken to promote the relevant licensing objectives in the context of all other regulated entertainment as set out upon the applicant's operation schedule.

The Committee had read and heard objections from a large number of local residents, all from residents living within the immediate vicinity of the premises, the objections largely pertain to noise and potential anti-social behaviour of a generic description as such in terms of the licensing objectives the two potentially relevant ones are firstly the prevention of public nuisance and secondly crime and disorder. Whilst several of the complaints focussed upon the potential for public nuisance rather than specifically relating to specific incidents linked to the premises or vicinity it is acknowledged that the current operating schedule is extensive. This stated the Committee was able to take comfort from the fact that with respect to any failure on the part of the operators to promote the licensing objective the following can be dealt with:

- Any Responsible Authority can exercise the right to ask the Committee to review a licence (Section 182 of the Licensing Act 2003) as can any member of the public
- Members of the public are able to report matters to the Environmental Health Department at Portsmouth City Council who in addition to being a Responsible Authority have their own statutory regime of measures in existence to deal with noise.

In the circumstances the Committee was prepared to grant the application as follows:

1. The Licence (Licensable Activities) will not be granted to any areas of the premises save: the chip-shop, restaurant and function room. The committee were not persuaded that the other units were such that could reasonably require license given that one is a kiosk, a proposed ice-cream parlour and a convenience shop/newsagents.
2. With respect to the Function Room, chip-shop and restaurant the following is granted:
 - Performance of live music from 11.00 to 23.00, with Friday and Saturday from 11.00 to 23.30
 - Recorded music from 11.00am to 00.00 hours (midnight) with Friday and Saturday 11.00 to 00.30 hours
 - The above to be subject to the agreed condition as previously stated as agreed by Portsmouth City Council Environmental Health Officer and the applicant
 - All other licensing activities to be permissible from 11.00 to 00.30 with Friday and Saturday 11.00am to 01.00am save off-sales which will be 11.00am to 23.30 with Friday and Saturday 11.00am to 00.30 hours.
 - The premises to be closed by 01.30 hours
 - There to be a minimum of 3 doors to and from the clearly designated smoking area with respect to the Function Room
 - No smoking to be permitted to the designated and marked area beyond 00.00 save Friday and Saturday to 00.30 hoursThe above is based upon having attempted to balance the submissions from all parties and is a genuine attempt to promote the relevant licensing objectives within the area paying due regard to the guidance and facts specific to this case.

***Agreed noise condition**

A volume limiting /sound suppression system shall be installed and used to control music noise levels associated with all performances of amplified live and recorded music on the premises. The trigger threshold of the device shall be calibrated and set to ensure compliance with the following criteria:

- The LAeq of the entertainment noise should not exceed the representative background noise level LA90 (without entertainment noise) 2 metres from the facade of any noise sensitive premises.
- The L10 of the entertainment noise should not exceed the representative background noise level L90 (without entertainment noise) in the 63Hz and 125Hz octave bands 2 metres from the façade of any noise sensitive premises.

Once calibrated the equipment shall be fitted with seals provided by the Local Authority to prevent tampering. If at any time the seals are broken the Local Authority must be notified immediately and there shall be no amplified entertainment until the seals have been replaced.

The meeting concluded at 6.35 pm.

Chair