

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held remotely on Monday, 14 September 2020 at 9.30 am

Present

Councillor Claire Udy (in the Chair)

Councillors Tom Coles
John Ferrett

Apologies for Absence

There were no apologies for absence.

21. Appointment of Chair

Councillor Udy was elected as chair for this meeting. She welcomed everyone to the virtual meeting of the Licensing Sub-Committee necessitated by the COVID-19 restrictions and explained how the meeting would work and the procedure that would be followed (for hearings where representations are from "other persons" i.e. residents). Introductions were made by those present. The meeting had been rescheduled from Friday 11 September due to technical issues.

22. Declaration of interests

There were no declarations of members' interests. Although Councillor Udy did not have an interest, she noted that she had worked for Clarence Pier 16 years ago.

23. Licensing Act 2003 - Temporary Event Notice - Consideration of Objection Notice - Clarence Pier Oktoberfest 2020 (3 weekend events)

Derek Stone, Principal Licensing Officer, introduced his report and explained that the hearing was being held as the police had issued an objection notice. The applicant then submitted more detailed documents with capacity reduced from 499 to 75 people. Additional information relating to Covid-19 and site plans were also submitted on 8 September and a revised risk assessment on 9 September.

In response to questions from members, the Principal Licensing Officer explained that Environmental Health and the police are informed when Temporary Event Notices (TENs) are submitted. There is no requirement under the Licensing Act 2003 to notify public health.

The Legal Advisor explained that if the TEN was modified today to limit the number of people attending the event, and the police withdrew their objection, then the applicant would be expected to operate to the revised number. Conditions can only be imposed on a TEN where there is an existing licence, which is not the case here. If there was a previous premises the conditions

could be transposed. TENs cannot be granted; they are technically notifications and can either be allowed or a counter-notice issued if refused.

Under statute numbers are limited to 499 people. If the application is modified then that is what is considered and if it led to a withdrawal of objections the applicant would be expected to abide by any amendments.

Mr Thurston confirmed that the figure of 75 people included staff as well as members of the public.

PC Pearce asked if the amendment to 75 people had to be formally agreed or was a "gentleman's agreement." The Legal Advisor explained that negotiations and modifications to a TEN can take place before a hearing. If the TEN is modified by agreement then a hearing may be unnecessary. The applicant would be bound by an agreement modified by negotiation so it is stronger than a "gentleman's agreement". Mr Thurston said he would be happy to undertake any further formal process to reduce numbers.

There were no other questions for the Principal Licensing Officer.

Applicant's case

Mr Thurston said he understood the sentiment and concerns behind the police objections to the TEN. The event was seen as a large-scale drinking event but the revised plans show that it is a small-scale, well-controlled family event to complement existing attractions in the fairground.

There were no questions for the applicant.

Police case

PC Pearce raised the following points on behalf of the police:

- The backdrop to the application is Covid-19. The situation improved over the summer but infection rates are now increasing. The main priority is to keep rates low and avoid a citywide lockdown.
- The police had concerns around drunkenness, violence, vulnerability caused by drunkenness, loud singing and dancing, and the lack of detail in the application.
- There is still uncertainty over the numbers, bearing in mind that conditions cannot be attached to TENs. The original application stated up to 499 people, further written information stated 75 and now the applicant has given a verbal undertaking. The figure of 75 is open to interpretation as it could refer to 75 people in total or 75 seated people with others standing. Point 3 on page 11 of the risk assessment adds to the confusion. There is dilution from the primary to secondary document and then to the verbal undertaking.
- The application does not have much information on music but the typical music played at Oktoberfests encourages dancing and jumping about.
- Although the applicant has experience of running events they have not done so during a pandemic.
- The applicant says it is a family event but according to the risk assessment children are not permitted in the evenings. Therefore, the evenings are not

family events as they will comprise adults who are singing, dancing and drinking.

- The reference to two family groups on page 10 of the risk assessment may be affected by new Covid-19 regulation coming into force today.
- Egress plans are not clear, especially where people are intoxicated.
- Events sometimes start well but change when inhibitions are loosened by alcohol. The police feel overall that in the current circumstances there is a clear associated risk with the event and that it should not take place at this time.

Members' questions

The Legal Advisor drew attention to paragraphs 7.36 and 7.37 of the Licensing Act statutory guidance which state that where there is agreement between parties the TEN can be modified and is a formal amendment. Late TENs cannot be modified but the TEN in this case is not a late TEN.

PC Pearce said that although with TENs there is the opportunity to negotiate with applicants and discuss modifications that is not the case where the police have been presented with another set of options. The Legal Advisor said the Sub-Committee can take note and attach weight as to whether they accept modifications presented, depending on any issues the police might have.

Mr Thurston said he had only been offered two alternatives when he received the objection notice from the police via the Principal Licensing Officer on 3 September. Mr Thurston had offered an opportunity for dialogue to discuss the application which was not taken by the police.

PC Pearce agreed with members that the new Covid-19 laws on association, especially the "rule of six", were confusing and that the police did not yet have detailed interpretation. The reference to two family groups on page 10 of the risk assessment is unlikely to be permissible now. However, it seems that ten groups of six could sit separately but a group of 60 could not sit at separate tables of six, which means it may be easier for different groups to meet. PC Pearce explained that although a wedding with 75 people is not permitted a pub can have 100 people as long as they are in groups of six and not connected to each other, which he agreed was an oddity, as both scenarios are large numbers in one room. If there was no Covid-19, the police would probably not object but now there is a real risk.

There were no questions from the Principal Licensing Officer.

Summing up

In his summing up, PC Pearce made the following points:

- There are too many associated risks with Covid-19.
- The event is not just a family event; the evenings are adults only and Oktoberfests are well-known for encouraging singing, dancing and drinking.
- The police have raised their points for the Sub-Committee's consideration at a difficult time for Portsmouth.

In his summing up, Mr Thurston made the following points:

- 75 is the de facto number of people for the entire area of the event.
- The applicant has experience of organising events during the pandemic as they have run open events, drive-ins and a circus during Covid-19. From the point of view air quality the event is open air as it is held in a tent.
- The "rule of six" has come into force since the initial risk assessment but the applicant will comply with current legislation.
- The applicant is happy to discuss concerns over the family orientated nature of the event and is willing to remove the evenings so the event is solely for families during the day. Removing the evenings would also help with egress.

The Legal Advisor said if the TEN was modified to change hours, the modification would have to be made now and the Sub-Committee would have to either allow or disallow it. Then the police would have to give their consent.

Mr Thurston said he was happy to reduce the hours and that the event would close at 6 pm at the latest.

PC Pearce said that a "knee-jerk" response was not appropriate and giving a quick answer was not in keeping with the process. The initial application was followed by an informal undertaking and now a verbal undertaking, which is an unclear process. Changes and negotiations need to be considered before the hearing.

In response to a member question the Legal Advisor said the police have three working days to object or respond to the TEN and this was the case before Covid-19.

Mr Thurston reiterated that he had offered via the Principal Licensing Officer to discuss the application with the police. He emailed them on 1 September so they had had the opportunity to discuss the application before the hearing but they did not respond.

The Legal Advisor said that situation regarding lack of negotiation could not be changed now.

PC Pearce said that any proposed amendments received after the original application would be seen as an informal agreement and with Covid-19 the police feel informal agreements are inappropriate.

The Chair informed the Sub-Committee that the decision would be emailed to everyone concerned later that day.

The meeting ended and the Sub-Committee went into exempt session to determine the application.

The meeting concluded at 10:32 am.

**In the matter of: Licensing Act 2003 - Temporary Event Notice -
Consideration of Objection Notice - Clarence Pier Oktoberfest 2020 (3
weekend events)**

All parties shall receive written confirmation of the decision and reasons.

Decision

The Sub-Committee has considered very carefully the temporary event notices ("TENs") and the objection notice submitted by Hampshire Constabulary. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Sub-Committee considered the representations, both written and given at the hearing, by both parties including additional papers submitted in advance by the proposed premises user (e.g. risk assessment, plans etc.). Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.

The TENs outline three proposed events at Clarence Pier on the following dates 09-11/10/2020, 16-18/10/2020 and 27/10/2020 - 01/11/2020 and indicate that sale by retail of alcohol (the licensable activity) shall take place between 12.00 (midday) and 22.00 hours for all of the three sets of dates.

The Sub-Committee noted that the police objection was based on all four of the licensing objectives.

The Sub-Committee accepted legal advice that as the proposed premises did not have a premises licence, conditions could not be imposed. Accordingly the decision was whether the events could be allowed to proceed or alternatively whether they would undermine the licensing objectives. If found to undermine the licensing objectives the Sub-Committee is bound to issue a counter notice.

After having heard all of the above evidence the Sub-Committee determined to issue a counter notice.

Reasons

The Sub-Committee heard that the TENs when initially submitted contained very little supporting information in relation to the proposed events. Following submission, the police lodged objection raising concerns relating to all four of the licensing objectives. In response, the premises user produced a number of documents including a risk assessment, plans and supporting information indicating a reduced number of patrons (clarified during the hearing as a total number including staff on site at any time as 75) and showing seating arrangements etc. At the conclusion of the hearing the premises user indicated that a reduced terminal hour of 6.00pm could be imposed. Legal advice was sought during the course of the hearing as to whether any amendment of the notice could be accepted. Reference was made to paragraphs 7.36 and 7.37 of the statutory guidance and it was confirmed that where the parties reached agreement the notice(s) could be accepted as modified. The Sub-Committee heard during the course of evidence being

given that the proposed amendments were not police suggestions and had not been agreed. The police were unwilling to comment on proposed amendment of the hours at the hearing - having had no prior opportunity to consider the same. The Sub-Committee sought further legal advice on retiring to make deliberations and were referred to s.106 of the Licensing Act 2003 which deals with modification. S.106 (2) makes it clear that where the modification is instigated by and made by the party making representations (in this case the police), acceptance would be required from the premises user for such to come into effect. Further, such is required *before* the hearing and with the consequence that a hearing is no longer necessary. Accordingly the Sub-Committee could not accept that the notices had been modified as a result of the further information provided (dealing with numbers allowed onto the premises, seating arrangements, limiting the amount of alcohol consumed to 4 pints per customer, only providing recorded music etc.) or as a result of assurances made during the hearing (e.g. a six o'clock closing hour).

The Sub-Committee is also restricted in consideration of the matter and cannot amend the notice or, in this case, impose conditions.

In any event, the point is considered to be academic by the Sub-Committee because all the evidence was very carefully considered and even if the proposed amendment was effective in law the Sub-Committee is of the view that the event would nonetheless likely undermine the licensing objectives, after hearing from the police.

This is an unprecedented and highly unusual climate with a pandemic posing considerable risks and the staging of an Oktoberfest event, in this location - even if restricted in the terms outlined, is considered very likely to undermine the crime and disorder objective and thereby present a risk to public safety. In addition, the Sub-Committee could not ignore the risks to transmission of the virus if the event were allowed to proceed. This is a time when there is a significantly increased infection rate and those under the influence are at increased risk of vulnerability to transmission of the virus. The police outlined experience that where alcohol is available at this type of event spontaneous dancing and singing can occur, even if well managed at the outset - with inhibitions waning as alcohol is consumed. There was some difficulty, on its face, in reconciling the event as being family oriented - e.g. the plans labelling the premises as a family beer tent, notwithstanding the cultural benefits of the food and music etc.

The Sub-Committee has the utmost admiration of those running businesses at this time and wholeheartedly acknowledges the importance of the economy and creating employment. However, it must have, as its overriding objective, the promotion of the licensing objectives.

There has been considerable uncertainty as to the nature of the event with attempted unilateral amendment which has not succeeded. Whilst it is accepted that the position is constantly changing with new guidance being issued regularly, the Sub-Committee was of the view that at this point in time the event posed a risk and police concerns - who are tasked with enforcing regulation cannot be ignored.

On balancing the needs of the business against the potential risks associated with the activity the Sub-Committee could not help but conclude that the risks to the licensing objectives meant that a counter notice would have to be issued.

There is a right of appeal, for the premises user, to the Magistrates' Court and formal notification of the decision will set out that right in full.

Councillor Claire Udy
Chair