

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Thursday, 21 July 2022 at 3.30 pm at the Guildhall, Portsmouth

Present

Councillors Scott Payter-Harris (Chair)
Tom Coles
Leo Madden

34. Appointment of Chair (AI 1)

Councillor Payter-Harris was duly appointed as Chair for the meeting. He welcomed everyone and explained how the meeting would work and the procedure that would be followed. Introductions were made by those present.

35. Apologies (AI 2)

There were no apologies

36. Declarations of Members' Interests (AI 3)

Councillor Payter-Harris declared an interest in relation to a support letter that had been received. He had previously lived next door to them but had not known them or ever spoken to them.

37. Licensing Act 2003 - Temporary Event Notice - Consideration of Objection Notice - Pier Decking At Gaiety Bar, South Parade Pier, South Parade. (AI 4)

The following documents were circulated prior to the meeting:

- Decking area of the pier covered noise abatement notice reference 11.
- Decking area of the pier covered noise abatement reference 12
- Email correspondence between Regulatory Services and Big Sky Acoustics.
- Email from Colin Garner
- Example of comments from complainants
- NAN Decking at South Parade Pier
- NAN South Parade Pier Ltd Decking at South Parade Pier
- Plan South Parade Pier complaints
- Regulatory Services contact log.

The Principal Licensing Officer introduced the report which was submitted on behalf of the Head of Regulatory Services. The report was prepared by the Licensing Manager who was unable to attend. The TEN application was attached as appendix A to the report.

Only the Police or Environmental Health officers can intervene to prevent a proposed TEN event from taking place on any of the four licensing objectives if, within 3

working days of receiving the TEN they are satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective.

Members' questions

In response to Members' questions the officer clarified:

- Regulatory Services were objecting to the event on 31 July 2022.
- They had not had any communication with the applicant on any previous TEN applications.

There were no further questions.

Applicant's Case

Jon Wallsgrove presented the applicant's case. He firstly offered an apology on behalf of his client for any nuisance caused to local residents on 2 July.

Mr Wallsgrove drew attention to the history of South Parade Pier and the considerable amount of money Messrs Ware had invested into the redevelopment of the Pier and the ongoing cost of maintaining the pier to the high standards that are in place now. Such maintenance entailed looking at commercial opportunities to assist with costs and to ensure it maintained its iconic status. The event on 2 July was an example of such a commercial enterprise.

A live event was held in September 2021, via a Temporary Event Notice (TEN), and as far as the applicants were aware, no noise complaints were raised by any local residents in relation to this event. Following the success of this event, plans were made to hold four further weekend events over the course of the summer. These events were planned to be held at reasonable hours and not late into the evening.

Mr Wallsgrove observed it was for Environmental Health to prove, on the balance of probabilities, that there would be an adverse impact on the prevention of public nuisance if the event on 31 July were allowed to continue. Mr Wallsgrove asserted that lessons had been learnt from the event on 2 July and that sufficient measures had been put in place to ensure no public nuisance re-occurred.

The applicant had engaged the services of Richard Vivien of Big-Sky Acoustics, to compile a noise management plan which included a complete change of personnel and equipment for the next event. Andy Thomas had been engaged as the primary point of contact on the sound system. Mr Thomas had worked with PCC on a number of outdoor events over the years and could be trusted as an advisor to the pier, with the sound system employed being entirely appropriate for this type of event. In addition, Mr Ware had confirmed he would be at the event personally to oversee the management of the event.

Mr Wallsgrove drew attention to the Noise Abatement Notices against both Mr Bratty and South Parade Pier Ltd for that specific area on the pier. Should this be breached, a prosecution would follow. Therefore, the situation was significantly different to that on the 2 & 3 July, meaning the committee could be confident the noise nuisance would not arise again due to the threat of this prosecution. Mr

Wallsgrove asked the committee to attach the appropriate weight to this element of their case.

Mr Wallsgrove drew attention to Environmental Health's report and clarified that when Lorraine Astill spoke to Mr Bratty and the sound engineer on the pier, the sound system levels were turned down in her presence. Mr Wallsgrove acknowledged that the noise nuisance was substantiated by the noise recording in a complainant's flat at 7:25pm but noted that this did not continue through to the event end at 10pm.

Mr Wallsgrove referred to the map that had been produced detailing the areas from which complaints were received and in particular those east of the pier in the Festing Grove area. He advised that a member of the pier staff had informed them of a private party happening in Festing Grove that day, with drum and bass dance music blaring out from the system in the garden. Therefore, it could not be substantiated that the noise complaint specifically referred to music from South Parade Pier.

Mr Wallsgrove outlined the high number of comments in favour of the events on the Pier, in the online Portsmouth News article and in particular four favourable written comments.

Mr Vivien of Big-Sky Acoustics outlined his experience, qualifications, and the noise management plan which had been drawn up in dialogue with the Environmental Health Officer.

Members questions to the Applicant

In response to Members' questions the applicant clarified:

- Sound propagation tests can be carried out but are usually employed before an event and can produce negative results as they are set at the very loudest to see how the sound system works. The applicant considered that as long as the various points are being regularly visited and checked as the day progresses, a propagation test would not be necessary.
- The music was turned down when requested by the Environmental Health officer, in her presence. There were issues on the day with the equipment being used and the running of the sound system. This had been corrected with the instruction of Big-Sky Acoustics and the monitoring and supply of the sound equipment by Andy Thomas.
- The Noise Management Policy had been bullet pointed for ease of use by staff on the ground. There had been extensive dialogue with PCC technical officers during which the technical details have been fully documented.
- A decibel level has not been set for this event. PCC guidance for larger events (5000 people plus) sets a limit of 65 decibels at the residential boundary. This will be a much smaller event with a much lower level and with the aim being not to cause material interference in any residential property.

Responsible Authorities Questions to the Applicant

In response to questions the applicant clarified:

- Mr Thomas will definitely be at the event on 31st July. His company will be engaged for the following two events but Mr Thomas' availability for those is not yet known. When the TENs for the next event is submitted the name of the person managing the event will be supplied.
- Of the 200 people who commented on the Facebook article only 1 person disclosed where they live. This was opposite the pier. Other people stated they lived locally.
- The only reference point available for any previous complaints was in relation to the Punk and Roll event on 21st September 2021 held on the decking at the end of the pier.

Responsible Authority's Case

The Principle Regulatory Services Officer presented the local authority's case.

The objection was lodged because of the events that took place on 2 and 3 July and the lack of control by management staff.

The officer on 2 July visited the pier and the complainant's property. The reason there were not more complaints on the night was due to the complainants not having the contact number. A total of 22 complaints for the Saturday and 8 for the Sunday had subsequently filtered through the PCC system. No information or evidence was available for 3 July due to misinformation about the finishing time of the event. The Regulatory Services officer visited at 6:20pm and 8:00pm but did not hear any music on either occasion.

The Noise Abatement notice is still under timescales in which an appeal can be made to the Magistrates Court.

No complaints were received regarding noise coming from a domestic party in Festing Grove area on 2 July.

The Officer was concerned there is further work to be done in relation to the Noise Management policy, specifically in relation to training of pier staff on how to deal with issues and any complaints received. This report made no mention of 'Temporary Threshold Shift' and no mention of propagation effects due to the sea acting as a reflective surface which can carry sound further in still conditions.

The officer had concerns as, despite being assured at the event that monitoring would be carried out, this was only carried out at the end of the pier.

Members questions to the Responsible Authority

In response to Members' questions the Regulatory Services officer clarified:

- There were 2 complaints during the evening of 2 July, as the complainants had the contact number due to previous issues. The remaining 20 complaints came in after the event via the online web complaints form. These complaints filter through via the City helpdesk and can come through up to 5 days after the event.

- No noise measurements were taken on 3 July as, by the time the equipment was set up, the music had stopped. The officer assumed the event had finished early at 6:30pm.
- There was a document detailing the numbers of complaints at each location - members took time to read the document. The complainants on the Saturday were mostly the same people complaining on the Sunday. The wind direction and stillness of the water would have had an impact on the direction in which complaints were received.
- Noise levels can be adjusted depending on the wind direction.
- In order for the event to take place the officer needs to see evidence of training of staff along with a noise consultant being on board, not just a sound engineer setting up the equipment. Confirmation of the sound engineer's qualifications would be needed to ensure confidence in the event.
- The police have no jurisdiction over a statutory noise nuisance, although a complaint was received via the Police Licensing officer from a local resident and a complaint via a Community Warden from a call made on 101.
- The legal officer noted that the Police had been made aware of the TEN and had not made a formal representation objecting, although Environmental Health are the lead authority in relation to noise matters.

Applicant questions to the Responsible Authority

In response to the applicant's questions the Regulatory Services officer clarified:

- No direct observations were carried out further east than St Helen's court and the objections on Sunday were mainly from the area directly around the pier.
- The PCC events team had clarified that Andy Thomas was known to them.

Summing up by the Responsible Authority

The Principle Regulatory Officer noted the applicant still had work to do to satisfy the authority that the noise management plan would be followed, and the event would have better management. The officer noted that the type of music being proposed is not known for low noise levels.

Summing up by the Applicant

The applicant noted that noise levels and frequencies can be controlled no matter the type of music being played. The details on management experience would be supplied the following day, the sound system will be set up on the Sunday morning prior to the event and everything would be in place to manage the event properly. The requisite monitoring would be carried out throughout the event.

The Committee adjourned for deliberations at 17:05 and reconvened at 18:04.

When the hearing resumed, the Chair read out the decision.

In the matter of: Licensing Act 2003 - Notification of Temporary Event for Pier Decking at Gaiety Bar, South Parade Pier - Objection Notice

Decision

The Sub Committee has considered very carefully the temporary event notice ("TEN") and the objection notice submitted by Environmental Health. 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 both parties (e.g., Noise Management Policy, support letters, Noise Abatement Notices, and email correspondence between the parties etc.). Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.

The TEN outlines a proposed event at South Parade Pier on 31 July 2022 and indicates that sale by retail of alcohol and regulated entertainment shall take place between 12.00 (midday) and 20.00 hours.

The Sub Committee noted that the environmental health objection was based on concern regarding amplified music on the basis that a previous event at the same location had caused a statutory noise nuisance leading to the service of noise abatement notices under the Environmental Protection Act 1990. As a result, consideration of the matter before the Sub Committee was limited to whether regulated entertainment at the premises for the proposed event would undermine the prevention of public nuisance licensing objective and whether, in the circumstances, it would be appropriate for the promotion of that licensing objective to issue a counter notice (in accordance with s105 (2) (b) of the Act).

The Sub Committee accepted legal advice that as the proposed premises did not have the benefit of a premises licence, conditions could not be imposed. Accordingly, the decision was, in effect, whether the event could be allowed to proceed.

After having heard all of the above evidence the Sub Committee determined not to issue a counter notice.

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

The meeting closed at 18:15

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Signed by the chair of the meeting