

LICENSING SUB-COMMITTEE 1

TUESDAY 1 APRIL 2014 AT 10.00AM

PRESENT: Councillors Allison, Cape and Morton.

ALSO PRESENT: Councillor Mrs Warwick was present at the meeting as the substitute Member.

Mr I Graham, on behalf of the Premises User
Mr M Cunningham, Environmental Health
Canon Manley, Carlisle Cathedral
Sergeant Higgin, Cumbria Constabulary

OFFICERS: Legal Services Manager
Licensing Manager
Licensing Officer (Observer)

There were no objections to the three Members of the Licensing Sub Committee. Councillor Mrs Warwick remained as an observer.

LSC1.01/14 APPOINTMENT OF CHAIRMAN FOR THE MEETING

RESOLVED – That Councillor Morton be appointed as Chairman of Licensing Sub-Committee 1 for this meeting. Councillor Morton thereupon took the Chair.

LSC1.02/14 APOLOGIES FOR ABSENCE

There were no apologies for absence.

LSC1.03/14 DECLARATIONS OF INTEREST

There were no declarations of interest.

LSC1.04/14 CONSIDERATION OF TEMPORARY EVENT NOTICES – MERIENDA, 12 TREASURY COURT, CARLISLE

The Licensing Manager submitted report GD.16/14 regarding the submission of two notices under the Licensing Act 2003 for Temporary Events to take place at Merienda, 12 Treasury Court, Carlisle on 9 and 25 August 2014.

In addition to the Council's Licensing Manager, Legal Services Manager and Lead Committee Clerk, the following people attended the meeting to take part in proceedings:

Premises Licence Holder:

Mr Ian Graham on behalf of Mr John Graham, Premises User

Responsible Authority Representation:

Mr Michael Cunningham, Environmental Health, Carlisle City Council
Canon Manley, Carlisle Cathedral, in support of Environmental Health
Sergeant Richard Higgin, Cumbria Constabulary

The Chairman outlined the procedure for the meeting. He added that additional evidence had been submitted to the Sub-Committee in the form of a letter from Mr Vose, King's Head pub in support of Cumbria Constabulary. The Sub-Committee agreed to take the letter into account when considering the Notices.

The Licensing Manager reported that the Licensing Office had received two applications for Temporary Events (TEN) to take place at Merienda, 12 Treasury Court, Carlisle on 9th and 25th August 2014. The premises were a cafe/restaurant/bar located in a walled courtyard within Carlisle City Centre. The premises had a valid premises licence which permitted the sale of alcohol and regulated entertainment within the building. The TENs, however, included live music within the external courtyard until midnight on both days. On 25 August the event would continue within Merienda until 3.00am.

He added that Paragraph 4 of the application asked if the premises user was a personal licence holder. This had been answered in the affirmative stating that Helen Brown held a personal licence. Ms Brown was not the 'premises user' who submitted the TEN therefore the question should have been answered 'No' as Mr Graham did not, to the Licensing Office's knowledge, hold a personal licence.

Copies of the TENs were sent to Environment Health and the Chief Officer of Police who may object to the event under any of the licensing objectives by way of an objection notice. The licensing objectives were:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm.

Notice of objections to the TENs were received from two Responsible Authorities. Environmental Health made representations against the applications on the basis that they would undermine the licensing objective 'the prevention of public nuisance'. Complaints had been received from residents in the area following an event at the premises in May 2013. Environmental Health felt that an outdoor event of this type with loud dance music could not avoid causing a statutory nuisance. Cumbria Constabulary also made representations against the applications on the basis that it would undermine licensing objectives 'the prevention of crime and disorder' and 'the prevention of public nuisance'. They reported that the previous event held at Merienda resulted in excessive noise and patrons urinating in the street.

Copies of the objection notices had been forwarded to Mr Graham. No modifications to the TENs had been agreed between the parties. The Licensing Manager informed the Sub-Committee that conditions could only be placed on the TENs if they were existing conditions on the premises licence.

In response to questions the Licensing Manager clarified the following:

- The maximum capacity for the Temporary Event was 499, the application stated 400 would be in attendance. The capacity for the inside of the premises was not known to the Licensing Office as it was set out in the Fire Risk Assessment which the Licensing Office did not receive a copy of;
- The applications were for two dates 9 August 2014 4.00pm until midnight and 25 August 12noon until 3.00am;
- He was not aware of any other similar events taking place within the City Centre

Mr Ian Graham, on behalf of the Premises User, informed the Sub-Committee that the Premises User wanted to withdraw the notice for 9 August 2014 and asked the Sub-Committee to consider the 25 August 2014 notice only.

He then addressed the Sub-Committee, highlighting the following:

- The event was promoted by Matthew Tyson, son of local businessman Peter Tyson, who would not want to do anything that would be to the detriment of his father's business;
- The event attracted famous DJs from across the Country and had appeared in a national newspaper's top 10 of events of a similar nature;
- The numbers would be limited to 350 and the event would be a ticket only event;
- Anyone leaving the event would not be permitted to return unless there were mitigating circumstances;
- There had been a need for more toilet facilities and the number of portaloos would be increased if the notice was agreed;
- A different sound system would be used which was specifically designed for events of this nature to reduce the bass and travelling sound. Sound reduction curtains would be used at the entrances and over the courtyard;
- Loud and Bright Sound and Lighting would be used for the event and they had a vast amount of experience in this type of event;
- The Premises User was happy to limit the outdoor part of the application to 4.00pm to 10.00pm;
- The event was only once a year and attracted a lot of people to the City who might not ordinarily visit Carlisle;
- The Carlisle Story stated that Carlisle was a vibrant City, events such as this one helped to make it vibrant in a time when there was a lot of empty premises;
- There would be door security in place to manage the event;
- There was no evidence of drugs use at previous events, one of which he had attended;
- Mr Vose only stayed at the Kings Head on occasion and actually lived elsewhere in the City;
- John Graham took his licensing responsibilities seriously and was anxious to put measures in place to reduce disturbance to those in the vicinity;
- The event was an example of the event the landlord of Merienda wanted John Graham to promote in the courtyard.

In response to questions Mr Graham stated:

- The door security would restrict access to the building and control access to the courtyard;
- The event would be recorded/DJ music only;
- The tickets would be clear that attendees would not be allowed back into the event if they left it. He agreed that this could potentially cause disorder through confrontation;
- Door supervisors would be inside the building and in the courtyard;
- There was a different pedestrian route available if the courtyard was closed;
- The Designated Premises Supervisor had been involved in the arrangements for the event and would be in attendance;
- John Graham was in the process of applying for a Personal Licence

The Licensing Manager confirmed the residential properties in the area and the location of the premises in relation to those properties.

The Legal Services Manager advised Mr Graham that any restrictions to the public right of way through the courtyard would require a Stopping Up Order and advised him to contact Cumbria County Council.

Mr Cunningham, Environment Health, addressed the Sub-Committee, highlighting the following:

- Environmental Health's concerns had been based on the previous year's event, three complaints about noise and urinating in Rosemary Lane had been received;
- The complaints had come from The Abbey, the Kings Head and Hodgson Court, this demonstrated how far the noise from the event's entrances travelled;
- The structure of Treasury Court meant it acted as an amplifier;
- Pictures of the Uber Disco showed a full DJ stage and the nature of the event meant it had to be loud;
- This type of event was common in nightclubs or rural areas but not in a central location;
- The amplification of sound would cause noise problems even with restrictions;
- 12noon to 3.00am was unacceptable;
- There were concerns with regard to the control of people outside of the event especially those who congregated to listen to the music without going into the event;
- The premises was allowed 12 TENs per year and if this notice was granted it would set a precedent allowing licensees to play amplified music outdoor.

Canon Manley supported Environmental Health's representation explaining that he had complained in person and via telephone several times during the previous event. Although the door staff were polite he had suffered abuse from an attendee. The music was extremely loud and he could hear shouting. He added that a number of the residential properties in the historic quarter did not have double glazed windows. The music could be heard until 2/3.00am. He did not understand how 400 people from the courtyard could move inside the premises.

Mr Graham clarified that the music would move indoors but not all of the people; they would remain out in the courtyard.

The Sub-Committee had serious concerns with regard to the occupancy level for the inside of the premises and as Mr Graham did not have the information the Chairman asked the Licensing Manager to contact the Fire Service for further information.

The Sub-Committee adjourned at 10.40am to allow the Licensing Manager to contact Cumbria Fire Service.

The Sub-Committee reconvened at 11.00am.

The Licensing Manager reported that he had spoken to the relevant Fire Officer who was unable to confirm the occupancy levels for Merienda. The Fire Service did not keep copies of the Fire Risk Assessment and it was the responsibility of the Premises User to hold the Assessment and produce it at inspection times. The Fire Officer explained that the Risk Assessments varied as the dynamic of the building changed and therefore the capacity also altered. A previous application in 2009 showed the indoor capacity at 150 including the terrace but this was not up to date.

In response to questions Mr Cunningham stated:

- The sound curtains would have an effect on the noise but it would not be possible to confirm the effect until the event;

- If there was an issue during the event Environmental Health could serve a notice under the Environmental Protection Act and this would cause additional problems due to the number of people in attendance.

The Legal Services Manager clarified that approval of the Notice would not set a precedent as each TEN was considered on its own merits.

Sergeant Higgin, Cumbria Constabulary, addressed the Sub-Committee, highlighting the following:

- Cumbria Constabulary had no problems with Merienda or how it was being run;
- The objection fell within the Prevention of Crime and Disorder and Public Safety Licensing Objectives;
- This would be the third year for the event and each year Cumbria Police had received a number of complaints via telephone or by contacting Sergeant Higgin;
- Three complaints had been received in 2013 regarding noise; the Police had attended the event and arrested a person for being drunk and disorderly;
- One local business owner/resident Mr Vose had been unable to attend the meeting but had submitted his objections in support of the Police representation which the Sub-Committee had previously agreed to consider;
- Amplified dance music in an enclosed courtyard was not acceptable to the local residents and businesses and would result in more complaints and disruption.

Mr Vose's letter had been submitted to the Sub-Committee, the main issues were:

- Noise levels throughout the day were excessive and intruded on local residents ability to relax within their own homes;
- He had struggled to hear his television in his home and had heard the same from people living within the Lanes;
- The 2013 event had been an improvement regarding late night noise but it was unbearable for residents from the start of the event;
- The events in the past had made it very difficult to run his business as well as he usually did;
- People were constantly trying to use the toilets in his premises without becoming a customer, they informed him that the toilet facilities were 'non existent' in Treasury Court despite having portaloos;
- By challenging individuals who wanted to use the toilets he had on several occasions been involved in situations of confrontation;
- People were too intoxicated to be served on his premises and took exception at being told so causing more confrontation;
- He took his responsibilities under the Licensing Act very seriously and did not think the same could be said of his neighbours after seeing the condition of some of the people they allowed in and the condition of those that left;
- People did not expect to see events like this in the most historic part of the city centre or in the middle of the afternoon.

In response to questions Sergeant Higgin stated:

- The complaints had come from Corporation Road, Hodgson Court, Mr Vose from the Kings Head and Canon Manley at Carlisle Cathedral;
- The residential properties he was aware of in the area were at the Cathedral, Spinners Yard and Hodgson Court;
- There had been no arrests made relating to drug use;
- There had been no complaints from Spinners Yard regarding the Brickyard.

In summing up Mr Graham reiterated that the event was only once a year.

At 11.15am, all parties, with the exception of the Sub-Committee Members, Legal Services Manager and the Lead Committee Clerk, withdrew from the meeting whilst the Sub-Committee gave detailed consideration to the matter.

The parties returned at 11.23am to hear the Sub-Committee's decision.

The Sub-Committee's decision was:

CONSIDERATION OF TEMPORARY EVENT NOTICES
Section 105 (2)(b), Licensing Act 2003
Merienda, 12 Treasury Court, Carlisle

This matter concerned the submission by Mr John Graham of two Temporary Event Notices for Premises at Merienda Treasury Court, Carlisle. The first Temporary Event was to take place on 9th August 2014 and the second on 25th August 2014. During the course of the meeting, the Temporary Event Notice for 9 August 2014 was withdrawn. The Sub-Committee, therefore, only considered the Temporary Event Notice for 25 August 2014.

The Sub-Committee had considered the application and had taken into account the evidence before it. In particular, it had listened to the submissions made by:

1. Mr Ian Graham
2. Mr Michael Cunningham
3. Sergeant Higgin
4. Canon Manley

The Sub-Committee had also considered written evidence in the form of a letter from Mr Vose who lived and worked in the vicinity.

After careful consideration, the Sub-Committee had unanimously decided to issue a counter notice to prevent the event taking place.

The Sub-Committee gave the following reasons for this decision:

1. The Sub-Committee had regard to the provisions of the Licensing Act, the National Guidance and the Local Licensing Policy. In particular it had regard to paragraphs 4.3.1 and 4.5.10 of the Licensing Policy.
2. The Sub-Committee noted that the Event was to take place in the open courtyard. When a similar event was held last year complaints were received both by Environmental Health and by the Police. Those complaints related to noise, disorderly behaviour and to persons urinating in the street. The Sub-Committee was satisfied that those incidents were connected to the Temporary Event and that, were the proposed event to take place, similar nuisance and crime and disorder would occur.
3. Policy 4.3.1 stated that this Authority may grant a licence if the Premises User could show that a positive reduction in crime and disorder would result, or that it would not increase, as a result. The Sub-Committee did not consider that the Premises User has demonstrated this and it was in fact likely that disorder would increase as a result of the Temporary Event.

4. Policy 4.5.10 stated that this Authority would not normally grant a licence if it were likely to result in increased noise nuisance to people living or working in the vicinity. The Sub-Committee was satisfied that this was likely to be the case bearing in mind the numbers attending, the location and the type of entertainment ie DJ music.
5. The Sub-Committee was therefore of the opinion that, were the Temporary Event to take place as proposed, two of the licensing objectives, namely the prevention of crime and disorder and the prevention of public nuisance, would be undermined. It also considered that public safety may be at risk due to the number of people in a confined space.
6. The Sub-Committee had considered whether to impose any conditions; however, in view of the nature of the events and the location of Treasury Court, with the surrounding lanes, it did not consider that any of the existing conditions on the Premises Licence could make the Temporary Event acceptable. Although measures had been proposed by the Premises User, it was not open to the Sub-Committee to impose those by way of conditions today, as they were not specified on the existing Premises Licence.

The decision would be confirmed in writing.

(The meeting ended at 11.37am)