LICENSING SUB-COMMITTEE MINUTES

Friday 18 September 2020 at 2.00 pm

Present: Councillor Fred Cowell, Councillor Emma Nye and Councillor Becca Thackray

Apologies:

1 ELECTION OF CHAIR

MOVED by Councillor Emma Nye, SECONDED by Councillor Becca Thackray
RESOLVED: That Councillor Fred Cowell be elected Chair for the meeting.

2 DECLARATION OF PECUNIARY INTERESTS

None were declared.

3 LICENSING APPLICATIONS FOR THE GRANT / REVIEW OF A PREMISES LICENCE

3a ZONE B, BRIXTON VILLAGE, LONDON, SW9 8PS (COLDHARBOUR)

Presentation by the Licensing Officer

The Sub-Committee was informed that this was an application for a new premises licence. The Sub-Committee’s attention was drawn to Chapters 2, 3, 9, 10 and 15 of the Statutory Guidance, and to Chapters 5, 6 and 14 of the Statement of Licensing Policy, as the ones particularly relevant to this application. The options available to the Sub-Committee were set out in paragraph 6.2 of the report on page 12 of the agenda papers.

For application 3b, the Sub-Committee was informed that this was an application for a new premises licence. The Sub-Committee’s attention was drawn to Chapters 2, 3, 8, 9, 10 and 16 of the Statutory Guidance, and to Chapter 5 (Policies 1, 3, 4 and 8) of the Statement of Licensing Policy, as the ones particularly relevant to application 3b. The options available to the Sub-Committee were set out in paragraph 6.2 of the report on page 224 of the agenda papers.
The Licensing Officer confirmed:

- Two applications had been submitted by the applicant. One premises was located in Market Row, the other was located in Brixton Village.
- The application made on behalf of the applicant was being represented by Mr Mark Browning and Mr Chris Bouchier.
- Representations had been made against the application including from the Licensing Authority, Police and Public Protection.
- Subsequent to the publication of the agenda papers, additional information had been submitted by Public Protection. The papers submitted had been circulated to all relevant parties.
- The applicant intended to apply for an adjournment of the hearing.

**Presentation by the applicant**

Mr Mark Browning, representing the applicant, informed the Sub-Committee that:

- The application had been submitted in March 2020 and since that time, a series of discussions had been held between the applicants and Responsible Authorities. A number of additional documents such as plans and documents regarding disposal and safety management plans had been submitted. The documents also included Fire Safety plans and an overall operational management plan.
- Further discussion had been held amongst the applicant and Responsible Authorities and progress was being made.
- The applicant had applied on 2 September 2020 for an adjournment.
- In relation to the application to adjourn, the applicant felt that this was a sensible course of action so that further progress could be made and the Sub-Committee could be provided with sensible operational strategies and it would give the applicant an opportunity to provide the Sub-Committee with a more detailed discussion on specific points that had been raised.
- He wished to seek an adjournment until late October 2020, where all parties would be able to come to a resolution and not waste the Sub-Committee’s time.

In response to questions from Members, Ms Sophie Costello, Public Protection Officer, informed the Sub-Committee that:

- She was happy to agree with the application to adjourn.

In response to questions from Members, PC Mike Constable informed the Sub-Committee that:

- He was happy to agree with the application to adjourn so that all relevant evidence could
be considered by all parties.

In response to questions from Members, Ms Bina Patel, Licensing Manager, informed the Sub-Committee that:

- She had no objections with the application to adjourn.

The Chair stated that he felt that it would be productive if the Sub-Committee could address the applicant on matters the Sub-Committee felt had arisen as a result of having considered the application as outlined in the agenda papers.

Councillor Nye stated that after reading the application, she had noted that the application was seeking licensable activity between 08:00 – 01:00 Monday to Sunday and stated that this was excessive for a premises located closely to residential areas, especially for an application seeking the displaying of films, the playing of recorded music and the supply of alcohol. There appeared to be considerable concern regarding noise issues, especially when taking into consideration that the premises themselves did not have its entry and exit areas shut off from the public in order to insulate sound emanating from the premises. Councillor Nye also noted that the applicant was seeking a licence for the consumption of alcohol both on and off the premises. Page 12 of the agenda papers appeared to suggest that the applicant had a well-managed complaint system for noise, but Councillor Nye felt that this statement could be challenged to some extent. The statement itself had been rebuffed on page 104 of the agenda papers. Councillor Nye stated that she was aware of antisocial behaviour in the area and although it was not clear as to exactly how this antisocial behaviour had originated, granting the application could further exacerbate the situation. It was not clear how the applicant would be able to contain the noise and therefore it would be useful for the applicant to provide mock plans of what the applicant would do to mitigate the risk of high noise levels. The dispersal plan was not clear and it appeared that many of the patrons at the premises would be exiting to the main road near to where residents lived, which already had a high level of noise. The applicant needed to address how this would be mitigated. The applicant had stated that the proposed taxi service was of a high standard, but it was not clear where customers using the taxi service would be picked up from and there was no natural waiting place for these customers. In relation to the hours applied for by the applicant, there were residents who lived in the area who wished to be able to rest in their homes. A premises licence being operated until 01:00 on weeknights and weekends could have a significant impact on residents. There would also be more alcohol consumed in the area generally and this could also lead to a significant impact on residents living in the area. There were already a number of licensed premises literally inside the premises itself. This could lead to a blurring of responsibility from different operators regarding the upholding of licensing objectives, especially considering that the walkway area had tables and chairs for the smaller banks of premises that were located inside. There was also a lack of clarity regarding the maximum number of people who could occupy the premises. This had been referenced on page 191 of the agenda papers. There were concerns regarding overcrowding and it would be useful if a tally of the number of patrons entering the premises could be kept.

Mr Browning stated that there was an electronic footfall measurement system, which could measure how many were going in and out of the premises, but more was needed to be done to demonstrate how the system operated.
Councillor Nye stated that it was not clear what the maximum capacity of the premises could actually be and it was not clear how many people entering the premises would then lead to a risk of overcrowding. It was also not clear if the applicant had sought the views of the existing licenced premises operators inside the markets and residents living close by to see if people were comfortable with the application. The additional information that had been circulated to all parties was troubling to read and it was not clear how many members of SIA staff would be on duty to manage any problematic situations. The market area was supposed to have an even split between retail and food and drink-led premises; but this application would lead the market area into becoming a predominantly food and drink-led establishment. The Sub-Committee wished to know how the applicant felt about this. In relation to protection of children from harm, it was important to note that the premises had a day market and a night market. The newly proposed hours of licensable activity would put the premises between both of those positions and the application did not refer to how children would be protected from the negative impact of alcohol consumption. It was also not clear what films and plays would be shown (or if they would contain adult sexual content). For example, the age certification of the films that would be shown had not been clarified. There had been drug-taking in the toilets and in other parts of the premises and the applicant needed to address if, after a certain time of day, children could only enter the premises with adult supervision. As a ward councillor, Councillor Nye stated that she had dealt with the applicant in the past and it was clear that the applicant wished to increase footfall into the premises and the level of footfall needed to be measured. It was important to note that footfall in the premises at present time would be different from footfall at the premises in the future.

Councillor Thackray stated that it was important for the applicant to consider ‘sound modelling’ as there would be an impact on the different sides of the market given the lack of sound insulation. Details of activities, types of entertainment and the times they would be held would reflect the number of people attending the premises and this would also be reflected in the overall noise levels. It was not clear what would predict the number of people entering the premises and the general impact this would have on the local area. The applicant would operate during the afternoon and evenings and was likely to have sound-check sessions before main bands played. It was traditionally the case that the most popular artist headlined an event. Some clarity needed to be offered on when certain types of sounds were likely to be predicted and when the largest crowds were likely to be gathered. There were likely to be ‘bottle-neck’ areas near the bars and surrounding areas (in addition to the entry and exit points). It was possible that tickets for public events could be bought in advance, so there could be a reduction of the physical exchange of currency from customers buying drinks from the bars. It was important to support single use plastic and events had been held where beer would be served in plastic glasses that could be refilled. It was important to also note the carbon emission factors in relation to outdoor heating.

Adjournment and Decision
At 2:38pm, the Sub-Committee withdrew from the meeting together with the Legal Advisor and Clerk to deliberate in private. The Sub-Committee had heard and considered representations from all those who spoke. Legal advice was given to the Sub-Committee on the options open to them and the need for any decision to be proportionate. The Sub-Committee decided to grant the application to adjourn.
RESOLVED: To grant the application to adjourn.

Announcement of Decision
Members returned to the meeting and the Chair informed those present of the decision to grant
the application to adjourn.

The Sub-Committee resolved to adjourn the hearing of the application until 22 October 2020 to allow all parties sufficient time to make further progress on the application and to afford the applicant sufficient time to address concerns raised by the Sub-Committee and Responsible Authorities. The Sub-Committee informed the applicant that they also wanted clarity on where specifically in the premises alcohol would be sold as it was not clear if it would be in specific sites on Market Row, fixed places in the premises itself or an individual roaming the licensed area selling alcohol. The query was inclusive of the concern of over-crowding and the general flow of people in the area.

3b ZONE C, MARKET ROW, LONDON, SW9 8LD (COLDHARBOUR)

As application 3a.

4 CONSIDERATION OF AN OBJECTIONS TO A TEMPORARY EVENT NOTICE

4a SECRET GARDEN, 53 MOUNT EPHRAIM LANE, LONDON, SW16 1JE (ST LEONARDS)

Presentation by the Licensing Officer

The Sub-Committee was informed that this was a hearing to consider objections to a Temporary Event Notice (TEN). The Sub-Committee’s attention was drawn to Chapters 7, 9, and 15 of the Statutory Guidance, and to sections 5, 5.11, 5.20, and 5.27 of the Statement of Licensing Policy, as the ones particularly relevant to this application. The options available to the Sub-Committee were set out at paragraph 6.1 of the report on page 8 (and page 140) of the additional agenda papers.

The Licensing Officer confirmed:

- That objections had been submitted by the Police and Public Protection to a Temporary Event Notice.
- The Notice Giver was Mr Grist who sought an authorisation for the sale of alcohol for consumption on the premises between 18-20 September 2020 from 18:00 to 22:00.
- The premises would have a capacity of no more than 100 persons
- Additional information had been received and had been circulated to all parties.

In response to questions from Members, the Licensing Officer informed the Sub-Committee that:

- Correspondence had been received from residents regarding the premises, but as this was a TEN, representations could not be made by residents.
- The correspondence in relation to the premises had been submitted in support of both the Notice Giver and the objectors.
The Chair stated that he had seen correspondence in connection with this matter suggesting that it would be improper for himself and Councillor Thackray to consider the item. The Chair stated that the complaint that had been made related to an incident whereby his email address had been posted on social media by the Notice Giver and therefore, it had been argued that he should not be considering the item. In addressing the matter, the Chair declared that attempts had been made by members of the public to contact him about this event and that he had received several emails regarding the item. However, these emails would play no part in his consideration of the item or deliberation. His email address was public information and a matter of public record. He had no control over what people sent him. The only thing he would be considering when deciding the outcome of the item would be all the information contained in the agenda papers and additional agenda papers. He had consulted with the Legal Officer and had determined and satisfied himself that there was no conflict of interest in relation to his considering the item.

Councillor Thackray felt that the issue raised a point worth addressing as it related to all committees that Councillors attended - that there was an underlying presumption that when councillors sat on committees, they automatically took a political position regarding a certain matter. She acknowledged that when councillors considered matters they would do so from a political perspective, but that it was not possible for a councillor to sit on a committee if he or she had a pre-determined view. She had been a magistrate locally for 20 years and the weighing up of information was generally important. At times, suggestions had been made that as there were only five Green Party Members elected at the Council, all the Green Party Members conferred with issues and spoke with one voice. However, it was not possible to do this, not only due to time constraints, but councillors also took any objections they read very seriously. Councillor Thackray stated that she did not feel that she had a pecuniary interest regarding the application, felt no sense of bias and had not pre-determined the outcome of the item.

The Chair stated that the Legal Officer had informed that there was no legal impediment to either himself or Councillor Thackray hearing the application on the aforementioned basis.

The Chair then read out a statement regarding the item and informed the meeting that the statement would be attached to Sub-Committee’s reasons following conclusion of the item itself.

The Chair stated that whether or not the event breached Regulation 5 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (‘the Regulations’) was a matter for the Police to determine and not directly a matter for Sub-Committee. The Sub-Committee’s sole function was to promote the licensing objectives. All individuals would also be aware of the expectation in the Guidance that when discharging its function, the Sub-Committee was not to act so as to duplicate or gold-plate requirements in other legislation.

The position the Sub-Committee had taken was that the issue (regarding the aforementioned Regulations) was not relevant to the Sub-Committee’s decision making and that the situation of hearing this application was similar to instances where the Sub-Committee has had to determine a licensing application that conflicted with the planning permission in place for a premises.

Even if the Sub-Committee refused to issue a counter notice, the event could only lawfully proceed if the operator brought themselves within the requirements of the Regulations. The Notice Giver submitting a Temporary Event Notice would not shield him from enforcement action being taken by the Police if the event breached the Regulations, just as having a premises licence would not protect a premises licence holder from being prosecuted for breaching a planning permission, health and safety law, fire regulations or any other criminal statute. It merely ensured that the Notice Giver complied with the requirements of the Licensing Act (2003).
Presentation by Responsible Authorities

Mr Keith Badrick, Public Protection Officer, informed the Sub-Committee that:

- Regardless of the type of music that would be played at the premises, the Public Protection team had received many complaints from residents regarding noise at the premises.

- The Public Protection team spoke to the complainants and was satisfied that the complaints were genuine and consistent.

- As per the team’s licensing related obligations, the Public Protection team had to consider the objections made in relation to the TEN submitted in relation to upholding the licensing objective of public nuisance.

- He was aware of the level of support for the event and understood that the Public Protection team had a duty to take that into consideration also.

- The negative impact on residents regarding the noise generated by previous events of a similar nature included noise from patrons entering and exiting the event and noise from the area being cleared away. This interfered with residents’ right to enjoy their homes.

- Under the licensing objectives, the Notice Giver had a duty to prevent statutory noise nuisance. The Council had a limited noise prevention service due to the coronavirus crisis.

- Residents that had previously complained regarding the premises were likely to complain to Public Protection again and, under the ongoing circumstances of reduced services, this would put a strain on the Public Protection team being able to complete their roles and responsibilities properly.

At this point in the proceedings, the Legal Officer informed the Sub-Committee that in relation to live unamplified music, it was important to note the Deregulation Act (2015) had in certain circumstances deregulated performances of unamplified live music as a form of regulated entertainment and that this applied here. Therefore, this aspect of the proposed event was not a matter for the Sub-Committee to consider. The only matter for the Sub-Committee to consider was the provision of sale of alcohol in relation to the temporary event.

In response to questions from Members, Mr Badrick informed the Sub-Committee that:

- The complaints had originated from three separate households. He had not been able to visit these households but had spoken to the residents. Two of them were opposite the premises and one of them was further up the road in the area.

- It was not clear in which direction the noise from the event would travel.

- There were no intervening buildings between the noise and the other residential households.

- In the conversations he had held with residents and in noting some of the written statements and emails, some comments had been made regarding noise due to staff clearing away the event area, loud conversations between people attending the event and noise as people were entering or leaving the event. There was also noise emanating
from premises staff staying later than the hours of licensable activity.

- The noise in the area had not been measured. He recognised that due to the Deregulation Act (2015), the issue was also not something that could be considered by the Sub-Committee.

- At present, there was a limited number of staff members to discharge the noise services functions within the Public Protection team. There was a pragmatic approach made by the team to deal with noise assessments.

- The noise nuisance issues reported by residents could be considered a statutory noise nuisance if the nuisance was to be substantiated.

- Other than the presence of noise, there was no other noise specific issues for public protection to consider under the Licensing Act in relation to the temporary event.

- Parking during the event was not a Public Protection issue. The only parking related issues that concerned Public Protection was if the parking was causing additional noise nuisance. There were some reports of car doors slamming, people talking and laughing, causing residents to wake up in their homes.

- The majority of the complaints related to activities occurring during the evening. Some had mentioned noise during rehearsal time which took place during the day, but the majority of the complaints had occurred as a result of the event itself taking place.

PC Mike Constable informed the Sub-Committee that:

- An updated risk assessment would have been appropriate in order to supplement the Temporary Event Notice.

- Risk assessments were important due to the concerns as a result of the coronavirus crisis.

- Many of the complaints that had been submitted had been made by key workers who had stated that they were looking after the elderly.

- It was important for him to be able to address the concern and resolve this as quickly as possible.

- It was important to ensure that people’s lives were not disturbed and it was important to take into consideration the government’s recent statutory instrument of the ‘Rule of Six’.

In response to questions from Members, PC Constable informed the Sub-Committee that:

- Legislation regarding public gatherings had changed earlier on in the week and therefore it would be useful for the Notice Giver to reduce the maximum capacity for the event as part of the government’s guidance.

- The public safety concerns were mainly related to the coronavirus crisis and the recent legislation passed down regarding the ‘Rule of Six’ and was not related with the risk of violence or disorder that could occur during the event.

- Enforcement was generally considered a last resort and it was not something the Police took lightly as resources were already strained. Two shootings and numerous stabbings
had already taken place as a result of unlicensed music events.

Presentation by the Notice Giver

The Notice Giver, Mr Chris Grist, informed the Sub-Committee that:

- He refuted the allegations regarding noise as neighbours living closer to the premises had stated that they had not been disturbed.
- Those complaining about noise issues did not live directly opposite the premises.
- In relation to the noise itself, he found it hard to believe that noise was so loud that it was disturbing other residents. This was partly because whenever he was in his own home with the doors shut, he could not hear the music being played in his own garden.
- It was difficult for him to believe that noise levels were so high that it was disturbing other neighbours in the area.
- As the allegations regarding noise nuisance had not been investigated, it was not possible to uphold the unsubstantiated complaints.
- He was aware of the importance of being respectful to all neighbours. Premises staff were meticulous in ensuring that patrons left the premises by 22:00.
- Email notification was usually sent to all attendees to inform them to remain quiet when leaving.
- The majority of patrons arrived at the premises by foot and therefore there should not be much disturbance caused by cars or other related noises. Furthermore, other patrons arrived by bike.
- The music itself would be completed by 21:30, so he was certain that there was no excessive noise beyond that time.
- The music performed at the premises was unamplified classical music which was not a noisemaking event.
- Efforts were being made to ensure all individuals were quiet and the amount of time for rehearsal was generally limited. Rehearsals often occurred in a different space and a short time was dedicated for sound checks.
- Notice had originally been given for five events but this had now been reduced to three events.
- It was not clear if there was any further tangible effort that could be made to minimise noise.

In response to questions from Members, Mr Grist informed the Sub-Committee that:

- In relation to the coronavirus crisis, no further action was needed to be taken as the premises protocols were exemplary. He could hold the event indoors without the need to submit a Temporary Event Notice, but there would be a greater risk of negatively contributing to the coronavirus crisis.
- There was no amplification of any kind. Announcements were made using his own voice.
- At the event held on 23 August 2020, there was reported noise at 00:45, but he did not
think there was any noise made at that time. It was possible that it may have been his wife and his children but there was CCTV footage to prove that no one else was present in the area at that time.

- The complaints that had been made regarding noise emanating from the premises at 16:00 would have been a soundcheck that would have lasted between 30 to 45 minutes.
- 10% of patrons attended by bike, 80% attended by foot and 10% attended by car. He was not aware of anyone parking directly in the area.
- The total number of individuals present at the premises during an event was 85 people. He had applied for an additional 15 people to employ as additional staff to keep the protocols relating to coronavirus regulations high.
- The event would hold 69 patrons, eight performers and five members of staff.
- Alcohol would be sold between 18:00 - 22:00. The bar would be open continuously, but patrons did not use it during performances.
- Patrons would be told to be respectful to neighbours. However, people who attended classical music concerts were used to a theatre environment. If one were to stand outside the fence and listen to the premises when no music was playing, that individual would not be able to deduce that there was any noise coming from the premises.
- The complaints regarding noise nuisance had not been substantiated. It was not clear why the three objectors had submitted their objection, but it was debatable if the noise was actually particularly loud.
- Some evidence would need to be gathered to see if the event really had an impact on the houses in the area.
- If he were approached by neighbours raising concerns about noise, he would offer them a ticket to the event and he would ask about the specific problems such as the times they would hear the music and see if there was any way he could mitigate the issues raised by residents.
- Last week, he had invited all the neighbours to have ‘socially distanced drinks’ at the premises and thanked them for their support. All neighbours had been invited.
- Temperature tests were taken for all patrons. A list of symptoms were displayed and individuals were not allowed to enter the premises until they confirmed that they had none of the symptoms listed. Sanitised chairs would be supplied and the chairs were socially distanced using a tape measure.
- No children typically attended the event other than his own children.
- The premises employed a professional bar manager who would ask for identification if patrons wished to buy an alcoholic drink.
- The alcoholic drinks sold at the fence included wine, beer, gin and tonic and mocktails. The premises had a filtered water system which could supply patrons with water.
- All the events held at the premises had been held at a financial loss. However, it was important to put on these events for the performers and members of the community. The money was paid the to the performers, who had not worked in several months.

Mr Badrick was recalled to address matters arising. In response to questions from Members, Mr Badrick informed the Sub-Committee that:

- The complaint submitted in the agenda papers had been received retrospectively of the
previous temporary events having taken place at the premises. Therefore, there would have been no way to substantiate the claims made by residents due to the time that had lapsed since those complaints had been made.

- Public protection officers spoke to the residents and adjudged that the complaints made were genuine.

The Legal Officer stated that regardless of whatever decision the Sub-Committee took, it would not absolve the Notice Giver from ensuring the event was lawful in light of the Rule of 6 amendments made to the Health Protection Regulations and if the Notice Giver was responsible for ascertaining whether the event was lawful in relation to Regulation 5 of those Regulations. The Sub-Committee would discharge its function regarding Licensing matters. It had no role or function or role in relation to the application of the Rule of Six to this event.

**Adjournment and Decision**

At 3:51pm, the Sub-Committee withdrew from the meeting together with the Legal Advisor and Clerk to deliberate in private. The Sub-Committee had heard and considered representations from all those who spoke. Legal advice was given to the Sub-Committee on the options open to them and the need for any decision to be proportionate. The Sub-Committee decided to not issue a counter notice.

RESOLVED: To not issue a counter notice.

**Announcement of Decision**

Members returned to the meeting and the Chair informed those present of the decision to not issue a counter notice.

The Sub-Committee had reached a decision and it was in line with the conduct of Sub-Committees when hearing objections to Temporary Event Notices.

In relation to breaches of Regulation 5 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (‘the Regulations’), this was a matter for the Police to determine and not directly a matter for the Sub-Committee. The expectation in the Guidance was that when discharging its function, the Sub-Committee not act so as to duplicate or gold-plate requirements in other legislation. The Sub-Committee would urge the applicant to comply with the Regulations and ensure that all participants in the event were compliant with the coronavirus restrictions including the recent updates that came into effect on 13 September 2020. In relation to the substance of the temporary event, the noise from the event was unamplified and remained unamplified throughout the entire course of the evening. This was a deregulated form of entertainment and therefore was not a matter for the Sub-Committee as this activity did not require a licence for it to proceed. The Temporary Event Notice authorised the sale of alcohol, which was what the Sub-Committee focused upon. There was no evidence presented at the meeting that suggested the sale of alcohol would cause public nuisance. The element of the complaints presented in the Responsible Authorities’ representations that related to licensable activities, such as dispersal and the noise of patrons upon dispersal were adjudged by the Sub-Committee to be reasonable in the context of the event being held on a residential street and on a weekend evening. There was nothing to suggest in any of the evidence submitted by the Responsible Authorities that the event would breach any of the four licensing objectives. Therefore, the Sub-Committee would not be issuing a counter notice against the event, but would recommend that the applicant comply in full with the coronavirus regulations. The Sub-Committee would also recommend that the applicant inform neighbours in the vicinity of the area of when noise was likely to ascent from the premises, such as soundchecks, and, if possible, provide a mobile number (easily accessible to the Notice Giver).
to residents so they could raise concerns if they needed to do so.

The meeting ended at 4:31 pm.