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LICENSING SUB-COMMITTEE

Friday, 18 May 2018

**Present: Councillor Heasman (Chairman)
Councillors Nuttall and Podbury**

Officers in Attendance: Kimberley Chung (Environmental Protection Officer), Sharon Degiorgio (Senior Licensing Officer), Robin Harris (Senior Lawyer (Contentious)), John McCullough (Environmental Protection Manager) and Mike McGeary (Democratic Services Officer)

Others in Attendance: Mr Iain Love (applicant), Mr Thomas (applicant's solicitor), Mr Bowie (landowner), PCs Oakley and Tranter (Kent Police), Mr Kennard (Environmental Protection Team Manager, Tonbridge & Malling Borough Council), Ms Ugwu (Environmental Protection Officer, Tonbridge & Malling Borough Council), and Mr Tranter (objector)

APOLOGIES FOR ABSENCE

LSC4/17 As all members of the Sub-Committee were present, there were no apologies for absence to report.

DECLARATIONS OF INTEREST

LSC5/17 There were no declarations of interest made, within the provisions of the Code of Conduct for Members.

DETERMINATION OF AN APPLICATION FOR A PREMISES LICENCE - COLEBROOK PARK

LSC6/17 The Chairman of the meeting – Councillor Heasman – began by explaining the procedure which would be followed in the determination of an application for a premises licence for Colebrook Park in Tunbridge Wells.

It was noted that the application had been made by Mr Iain Love, who was represented at the hearing by his solicitor, Mr Stephen Thomas. A list of suggested conditions had been submitted by the applicant, which had been circulated as part of the agenda at Appendix B.

Members were advised that there was already a current premises licence in place for this venue, such licence being held by Sound and Light Event Management Ltd, with the current 'designated premises supervisor' – Mr Tranter – being present and registered as an objector to the current application.

It was noted that there had been a number of other representations made during the formal consultation stage, namely from the Borough Council's Environmental Protection Manager, from his equivalent at Tonbridge and Malling Borough Council, from Kent Police and from two private residents.

Sharon Degiorgio, the Borough Council's Senior Licensing Officer, outlined the key aspects of the licence application, which was for a mix of events at the site. She summarised the representations made during the formal consultation period, which had focused on the issues of: (a) the need for a robust noise management plan; (b) concerns over having two premises

licences for the same site and how these might be harmonised; (c) previous 'noise pollution' arising from earlier events held at this venue, leading to allegations of public nuisance.

Mr Thomas, on behalf of the applicant, said that, in view of the concerns raised, there had been an effort made to attach the same conditions to this licence as existed with the current one, but with some variations. Importantly, Mr Thomas said that, to allay fears over the number of 'category 1' and 'category 2' events held at the venue, the total number for the site as a whole would be no greater than that set out in the existing premises licence. He stressed that there would be no 'doubling-up' of the category 1 and category 2 events on the site, across any 12 month period. Mr Thomas added that this would be controlled by a booking system maintained by the owner of the premises – Mr Bowie.

In response to the complaints regarding excessive noise from earlier events held at the premises, Mr Thomas advised that the current applicant, Mr Love, had been the production manager, not the operator. He added that the complaints had come as a surprise, as the monitors employed at that stage had been satisfied with the sound levels generated by the event. Mr Thomas acknowledged the importance of having a robust noise management plan in place, adding that he would ensure that Tonbridge & Malling Borough Council would be fully consulted, as well as Tunbridge Wells Borough Council.

In accordance with the procedural rules for licensing hearings, the applicant next answered questions from 'responsible authorities', in this case, the Environmental Protection representatives present as well as Kent Police, and from Sub-Committee members. Amongst the issues raised, Mr Thomas and Mr Love emphasised the significance of the 'site dispersal plan' to encourage a 'graduated dispersal' of people from specific events.

PC Oakley, on behalf of Kent Police, sought an assurance that, through improved diary management, the Police would be provided with 12 months' notice of what events were taking place at Colebrook Park (Item no. 8 in the list of proposed conditions.). PC Oakley added that, should the licence application be approved, reassurance was required as to which designated premises supervisor was responsible in each case. Mr Thomas confirmed that Mr Love would comply with that condition, adding that a monthly update of events would be provided. The Chairman of the meeting said that the existing licence-holder, Mr Tranter, should make a similar undertaking.

Mr Tranter raised a number of issues of concern, many of which were considered to be outside the remit of this hearing as they were essentially commercial matters between the landowner, Mr Bowie, and Mr Tranter. However, one of the points raised was seen by Robin Harris, Tunbridge Wells Borough Council's Senior Lawyer (Contentious), as highlighting one of the remaining concerns about the existence of two, concurrent, premises licences for the site. In an effort to overcome the difficulties faced, Mr Bowie, the landowner, suggested a modification to the current application, under which the new licence would be in the joint names of Mr Love and himself. Mr Harris advised that this was a positive proposal, as it would lead to the landowner having joint legal responsibilities for the operation of the licence.

It was agreed to have an adjournment at this stage, in order to determine the legality of amending the application at this juncture.

Upon reconvening, the legal representatives present – Mr Harris and Mr Thomas – agreed that the current application could proceed towards determination and that the transfer into joint names could follow its required path but, should the application be approved, its implementation would not take effect until after the completion of the transfer process.

The Chairman welcomed this view but sought clarification over one of the key concerns, namely the site overall would still be subject to a maximum of one category 1 event and two category 2 events each year. Mr Thomas stressed that the inclusion of the landowner as one of the joint licence-holders would provide added legal force over the limitations on the number of events permissible.

The relevant parties were asked for their informal opinion as to whether they would support an application to transfer the application into joint names, as proposed. It was felt that, with the reassurances that had been provided at the hearing, no objections were likely to be made.

Members of the Sub-Committee next had the opportunity to question the applicant and his solicitor. The Chairman sought an assurance that proper arrangements would be in place to deal rapidly with any complaints of noise nuisance. Mr Thomas said that these would be dealt with by the licence-holder without delay.

Councillor Podbury pursued that issue further: she asked Mr McCullough the extent to which Tunbridge Wells Environmental Protection team visited the site during previous major events. Mr McCullough said that his staff had visited on the first night of the event, which established a 'baseline' against which subsequent complaints over noise levels could be accurately assessed. He added that, after that first night, he saw the main responsibility for dealing with complaints lying with the event organisers and their noise consultants. Mr McCullough added that, in view of the level of past complaints, he felt there was a case for the Environmental Protection service installing more monitoring equipment.

The meeting then received statements from the other parties who had made representations. Mr McCullough considered that the main concerns raised by the Environmental Protection team had been adequately addressed. Mr Thomas had no questions he wished to raise with the Tunbridge Wells Environmental Protection team.

PC Oakley said that, as far as Kent Police were concerned, he was satisfied with the responses provided by the applicant and his solicitor, and the landowner, made at the meeting.

Mr Kennard, the Environmental Protection Team Manager for Tonbridge & Malling Borough Council, said that his primary concern was for the residents of his Borough. He was very conscious of the potential impact that base noise had from events and stressed the need to address that aspect in the conditions of the licence, were it to be approved. Mr Thomas had no questions he wished to raise with the Tonbridge & Malling Environmental Protection team.

Mr Tranter, the existing licence-holder, who had made formal representations on this application, made his statement. He had a number of issues which he felt remained unanswered and he also responded to some of the inaccuracies which had been raised during the discussion. He defended his own position regarding past events arranged under his own licence and emphasised that there had been no unanswered complaints over noise on his phone, adding that the event 'hotline number' was in fact that of the noise consultant.

Mr Tranter also believed that the proposed site dispersal plan was unlikely to be effective, as it was not an enforceable condition. He also believed that the addition of the landowner's name to the licence would create a clear conflict of interest.

Mr Thomas had no questions he wished to raise with Mr Tranter.

Mr Harris said that, while a number of the points made by Mr Tranter were commercial matters and therefore outside the remit of the Sub-Committee, one aspect raised was an allegation that the current licence application was being made by someone who had breached licensing conditions in the past. In short, Mr Harris said, it was an allegation that Mr Love was not a suitable licence-holder.

Mr Thomas acknowledged the point made but chose not to pursue it further.

At Mr Harris' invitation, Mr McCullough advised that, in the case of the specific event mentioned, the Environmental Protection team had received no indication of a breach of conditions.

Mr McGeary, the Democratic Services Officer, then read out in full the final statements submitted by the two private residents (Mrs Lambert and Mrs Disbrey) who had made formal representations in response to the current licence application. Both of these submissions focused on the significant noise pollution of past major events, leading to claims of public nuisance, and also on the inadequacy of noise monitoring procedures.

Mr Thomas said that he understood that these allegations related principally to the event held in May 2017, at which his client was not the key organiser. He added that he planned to address the wider issues in his summing up.

Councillor Podbury asked Mr McCullough whether there were set times for sound hearing readings. Mr McCullough advised that this had been a continuous monitoring process, adding that particular atmospheric conditions – including wind direction – also played a part in the extent to which noise impacted on residents.

Mr McCullough stressed that there was a high level of communication between his service and his equivalents at Tonbridge & Malling Borough Council. He felt that, in discussion with Tonbridge & Malling officers, the concerns raised by private residents were capable of being managed through the development of the applicant's noise management plan.

The Chairman felt that, on the basis of the evidence submitted by Mrs Disbrey, Pembury Road in Tonbridge would be a good location for continuous noise monitoring to take place at subsequent major events. He added that, with base sound known to be the most significant noise factor – and with

attenuation measures generally not dealing with this adequately – he would have liked to see a lower maximum level imposed.

Mr McCullough advised that it was important to keep in mind that the Licensing Act did not necessarily state that local authorities had to ensure that noise generated by music concerts had to be kept to 'tolerable' level.

In concluding this element of the discussion, the Chairman reiterated his wish to see a noise monitoring site being placed in Pembury Road in Tonbridge and urged the two Environmental Protection teams to resolve this specific issue. He also directed the same comments to the landowner, in order that he too understood the significance of addressing the complaints which had been made.

The Sub-Committee then heard the final statements made by the key parties.

Mr McCullough said that he would like to see a minor alteration to the site dispersal plan, to ensure that the music being played at that point was not audible beyond the immediate site, therefore similar to a category 3 event. In order to make this an easily-understood requirement, Mr McCullough suggested that sound levels should not exceed 40db.

Mr Thomas asked whether, instead of this being set out in the conditions attached to the licence – if approved – it could be clearly specified in the noise management plan; this was agreed.

Kent Police, in their final statement, felt that the site dispersal plan, whilst helpful in its intention, would benefit from a greater emphasis on encouraging attendees to go home.

Mr Thomas, in his final statement, addressed the four licensing objectives, under which the licence application was being determined. With 'public safety', 'prevention of crime and disorder' and 'protection of children from harm', he said that there were no issues of concern.

Under 'prevention of public nuisance', Mr Thomas felt that the conditions proposed – as submitted by the applicant and amended during the course of the meeting – provided a good level of reassurance for the Sub-Committee. Regarding the comments made by private residents, Mr Thomas reiterated that the applicant, Mr Love, had not been the event organiser on any of the previous occasions; however, in view of the strength of feelings expressed, he reassured members that Mr Love would liaise fully and directly with the Environmental Protection teams from both authorities and added that he would be agreeable to place sound monitoring at the homes of both private complainants. On that basis, he requested that the Sub-Committee approve the licence application, on the conditions now set out.

The Chairman thanked all parties who had contributed to what he felt had been a thorough hearing. The Sub-Committee members retired at this point, to consider the evidence and to make their decision.

Upon resuming, the Chairman read out the decision of the Sub-Committee:

RESOLVED – That the application be granted, subject to the conditions previously offered and the further conditions offered at the hearing today,

which will be confirmed in writing in five working days.

NB – The full decision notice is appended to these minutes.

NOTE: The meeting concluded at 2.45 pm.

LICENSING SUB-COMMITTEE HEARING – 18 MAY 2018

LICENSING SUB-COMMITTEE DECISION NOTICE (Decision made by the Sub-Committee on 18 May 2018)

NAME AND ADDRESS OF PREMISES: Colebrook Park, Kingstanding Way, Tunbridge Wells, TN2 3UP.

NAME OF APPLICANT FOR PREMISES LICENCE : Mr Iain Nicholas Love c/o Mr Stephen Thomas, Stephen Thomas Law

REASON FOR HEARING: On 23 March 2018, an on-line application was made, under the provisions of section 17 of the Licensing Act 2003 for a new premises licence at Colebrook Park. During the 28-day public consultation period, a number of representations were made:

(1) The Borough Council's Environmental Protection Team had objected to the application on the grounds of the prevention of public nuisance, particularly: (a) querying the robustness of the Noise Management Plan; (b) in respect of an existing licence for the premises, the potential problems of (i) harmonisation of licensing conditions and (ii) breaches of conditions and any subsequent enforcement action.

(2) Kent Police had raised an objection on all four licensing objectives, on the basis of that they did not wish to see multiple licences at the site, with the potential of further noise and disruption issues, and doubt as to which licence-holder was responsible. They had requested that licensing conditions apply to the whole site.

(3) In addition, written representations had been made by three other objectors – including the Environmental Protection Team from Tonbridge & Malling Borough Council – on the grounds of significant noise pollution, leading to public nuisance. This was particularly during the evenings and night, leading to loss of sleep and significant disruption to family life. Objections were also made regarding the inadequacy of noise monitoring procedures.

(4) A further objection had been made by the existing licence-holder for the site, who felt that the 'prevention of crime and disorder' objective would be compromised through the issue of a second licence for the premises.

The existing licence-holder had also provided the views of the multi-agency Tunbridge Wells Event Safety Advisory Group in support of his objection; the Safety Advisory Group had concluded that a previous event organised by the applicant had been deemed 'unsafe'.

DELIBERATION – LICENSING OBJECTIVES: The relevant licensing objectives were considered by the Sub-Committee:

1. Prevention of Public Nuisance

The Sub-Committee had regard to the representations made in writing and to the Sub-Committee at the hearing.

The Sub-Committee heard from the applicant that a sound consultant, familiar with the site, would be instructed to assist in the creation of a noise management plan which would be agreed with the Environmental Health team. The Environmental Health team agreed that there were ongoing discussions with the applicant to create a noise management plan that would address the concerns under this licensing objective. The applicant offered a condition whereby Tonbridge and Malling Environmental Health team would also be consulted in all circumstances that Tunbridge Wells Environmental Health were to be consulted.

Kent Police had raised concerns that, due to the possibility of confusion being created by two licences being operative simultaneously, they would prefer if the land owner would be the licence-holder. The applicant subsequently proposed a condition whereby, if agreed, the licence would be transferred to the current applicant and the land-owner jointly, with the licence not taking effect until such time as that transfer was completed.

Tonbridge and Malling Borough Council confirmed that they were working with Tunbridge Wells Borough Council regarding the premises and were happy with the proposed condition that they would be consulted regarding activities on the site.

The Sub-Committee heard representations from other persons regarding nuisance from the premises. However, there was contradictory evidence that the nuisance could have been from other premises.

On balance, having considered the evidence of all parties, the Sub-Committee has determined that the application, as it is currently made, combined with the further conditions that were offered during the Sub-

Committee, meets the objective of the Prevention of Public Nuisance and further notes that there is the opportunity in the future to review the licence in the event of a public nuisance occurring.

2. Prevention of Crime and Disorder

The Sub-Committee had regard to the representations made in writing and to the Sub-Committee at the hearing today.

The Sub-Committee noted that Kent Police were satisfied with the application and conditions proposed by the applicant with regard to this licensing objective.

3. Public Safety

The Sub-Committee had regard to the representations made in writing and to the Sub-Committee at the hearing today.

The Sub-Committee was of the view that the operating schedule as applied for was sufficient to promote this licensing objective.

4. Protection of Children from Harm

The Sub-Committee had regard to the representations made in writing and to the Sub-Committee at the hearing today.

The Sub-Committee found that there were no representations made in regard to Protection of Children from Harm. However, the Sub-Committee noted the policies and procedures of the event organiser in ensuring the safety of children.

DECISION MADE: That the application be granted, subject to the conditions previously offered and the further conditions offered at the hearing today, which will be confirmed in writing in five working days.

Additional notes made by the Sub-Committee at the meeting:

- This licence, like any other licence, is subject to review at the instigation of any Responsible Authority or Other Persons should there be any concerns regarding the operation of, and/or, breaches of the licence.

- Other Persons and Responsible Authorities were reminded that they may apply for a review of this licence “after a reasonable interval” pursuant to Section 51 of the Licensing Act 2003.
- Entitlements to appeal for parties aggrieved by the decisions of the Licensing Authority are set out in Schedule 5 to the 2003 Act.
- In the case of a Premises Licence, an appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices’ chief executive for the magistrates’ court within a period of 21 days beginning on the day on which the appellant was notified by the licensing authority of the decision to be appealed against.