

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE**

Thursday, 24th May, 2012

**Present:-** Councillors:- Gerry Curran (Chair), Dine Romero and Tim Warren

**Also in attendance:** Andrew Jones (Environmental Monitoring and Licensing Manager), Kirsty Morgan (Licensing Officer) and Francesca Smith (Senior Legal Adviser)

#### **1 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **2 ELECTION OF VICE-CHAIR (IF DESIRED)**

**RESOLVED** that a Vice-Chair was not required on this occasion.

#### **3 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies were received from Cllr Douglas Nicol (substituted by Cllr Dine Romero) and Cllr Gabriel Batt (substituted by Cllr Tim Warren).

#### **4 DECLARATIONS OF INTEREST**

There were none.

#### **5 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **6 MINUTES: 23 APRIL 2012**

These were approved as a correct record and signed by the Chair.

#### **7 LICENSING PROCEDURE**

The Chair drew attention to the licensing procedure, copies of which had been made available to those attending the meeting.

#### **8 APPLICATION TO VARY A LICENCE FOR BATH FRINGE - SPIEGELTENT RECREATION GROUND, PULTENEY MEWS, BATHWICK BA2 4DS**

Applicant: Stephen Henwood (Co-Director of Bath Fringe)

Interested Parties: Pulteney Estates Residents' Association (represented by Nigel Websper, Chairman)

Witnesses for Pulteney Estates Residents' Association: Doug White, Caroline Greenwood, Rachel Hushon (in place of Paul Karakusevic, who had work commitments)

The parties confirmed that they had received and understood the licensing procedure.

The Licensing Officer summarised the application as set out in the report.

Mr Henwood stated the case for the applicant. He said that the reason for the application for extended hours was to retain customers who might drift off to other licensed premises once events had ended, and to be able to put on more than one show in an evening. It was planned to have one show finishing at 21.30 to be followed by a break and then another show, which would be at a lower volume and would help customers to wind down before leaving.

He stated that there was no intention of having high-volume, high-intensity music of the kind provided at party and club venues. He said Spiegeltent would only be at the Recreation Ground for 11 days a year. Sound levels inside and outside the tent would be monitored with a decibel meter during performances, to ensure that they remained reasonable. He believed that the sound levels that emanated from Spiegeltent were not high when compared with other venues in Bath. Bath Fringe tried to work co-operatively with the Licensing Authority and Environmental Health and no complaints about events had been forwarded by these agencies to Bath Fringe. Local residents were provided with a contact number for the on-site event manager.

The Interested Parties put questions to Mr Henwood. Mr Websper stated that residents were able to hear the performances inside the tent quite clearly, and asked how the volume of performances was controlled. Residents had told him that, after they had made complaints about noise, the volume had been reduced only to be turned up again later. Mr Henwood replied that volume levels were monitored.

Mrs Hushon said that on occasion when individual residents had complained about noise they had been told that there had been no complaints from anyone else, but at a later date it had come to light that others had complained about the same performance. She had been told by Bath Fringe staff "we do try to control the sound, but the bands override our volume settings". She had small children who needed to sleep. Was Mr Henwood sure that the event managers could control the volume? Mr Henwood reiterated that no complaints had been received through Environmental Health, and that sound levels were monitored inside the tent and at the boundaries of the venue.

Mr White asked Mr Henwood whether he appreciated that the area in which the Recreation Ground was situated formed a natural amphitheatre, where sound, particularly the bass line of music, was amplified. Did Mr Henwood appreciate that many residents lived in listed buildings that could not be soundproofed? Mr Henwood replied that he would be happy to have a condition imposed on the licence requiring sound levels to be measured in particular locations. Mr Websper asked how the volume of music could be controlled if bands were able to turn it up. Mr Henwood replied there were two parts of the music system: the on-stage equipment and the public address system. Bath Fringe had direct control of the public address system. There was also a stage manager, who could ensure that the volume control of the stage music equipment was turned down, if this was required. He did not think that

the kind of music played should give rise to problems. Mr Websper pointed out that one of Mr Henwood's colleagues had told complainants that there was no control of the volume settings selected by bands.

Members put questions to Mr Henwood.

Q: Would it be possible to fit a device that would cut off the amplifier if the volume exceeded a certain level?

A: The problem with this was that separate amplifiers were used on stage and for the PA system. Cut-out systems were mostly used in nightclubs, and he did not think they were appropriate for live music.

Q: Would it be possible to soundproof the Spiegeltent more effectively?

A: He was not aware that the Spiegeltent was available with better sound proofing.

Q: How far in advance would the letter to residents about the event be sent out?

A: Within the next couple of days.

Q: What kind of performances would be given after 21.30?

A: It could be a soloist or a comedian.

Q: Was he aware that people had come to the premises during an event to complain about noise?

A: Yes. The letter sent to residents invited them to make comments.

Q: Did he understand the disturbance caused to residents by noise?

A: The usual trigger for a meeting with residents would be representations made to Licensing or Environmental Health and there had been none, so there was no framework for the discussion of specific noise issues. He did understand that residents had a general problem with noise.

The Interested Parties stated their cases.

Mr Websper said that the area around the Recreation Ground was 100% residential. Many properties were listed and could not have double glazing. The noise from bass was particularly intrusive. It had been admitted by the event staff that the bands performing controlled the volume. He noted that the applicant had offered a condition about noise, but the reduction in current levels of noise would have to be substantial to make life tolerable for residents. If the variation were granted, residents would have to put up with the noise to a later hour and for an extra day. The applicant had appeared to say that he would only talk to residents if required to do so.

Mrs Greenwood said that she was a long-term resident in the area, which was a wholly residential one. Her property was directly opposite the tent. Last year she had complained to Environmental Health, the Police and councillors about the level of noise from Spiegeltent. The noise reverberated through properties and disturbed residents' sleep. The playing of music outside the tent should be banned completely.

Mr White said that residents were subject to noise from events taking place in the Recreation Ground throughout the year. Every other Saturday the Rugby Club held an event. Noise could be heard from the public address system at 07:00 on

Sundays. Residents had had enough of it. The area was a natural amphitheatre, from which sound, particularly a thumping bass, was projected upwards. His wife had acute hearing and was much disturbed by it.

Mrs Greenwood read a statement on behalf of David Greenwood. She stated on his behalf that many elderly people lived in the vicinity of the premises and were affected by the noise. Last year complaints had been made to the organiser because music was played outside the tent. He felt that it was not acceptable that there was no independent monitoring of the noise from events.

Mrs Hushon said that if the programme of events was received in advance and it was known that the finish time was 23.00, residents at least had some chance of planning their evenings to minimise the impact on their families, including children being kept awake by the noise. She stated that residents could live with this but not with performances taking place after 23.00. In reply to a question from a Member, she said that noise was really bad on perhaps four or five days out of the ten days of the event. It was particularly bad when music had a strong bass. She added that the music did cease at the terminal hour.

A member asked the Senior Legal Adviser about the possibility of a condition regulating noise levels. The Senior Legal Adviser replied that the Sub-Committee could not impose such a condition today because case law had established that a condition to prevent noise nuisance had to be clear as to which location or premises had to be protected by such a condition and what was meant by inaudibility. Further as Environmental Protection had made no representation to the application and were therefore not present at the hearing, Members were not able to take their expert advice. Members could issue informal guidance to the applicant to have discussions with Environmental Protection.

The Interested Parties were invited to sum up. Mrs Hushon said that residents were already subjected to excessive noise and the nuisance should not be increased. Mr Websper said that he had been contacted by many residents about the application. The prospect having to put up with noise for longer hours was of real concern to residents. It was evident that despite good intentions, the applicant was in fact not able to control the level of noise.

Mr Henwood said that he had felt that he had already made his case.

Following an adjournment, the Sub-Committee **RESOLVED:**

- i. to grant the application for the extension by half an hour of the terminal hour for all licensable activities, save that this shall not apply to the performance of live and recorded music which is amplified;
- ii. to refuse the extra day sought for the period of operation.
- iii. to extend the terminal hour in relation to "other entertainment" to 19:00 hours.

Authority was delegated to the Licensing Officer to issue the licence accordingly.

## REASONS

Members have today determined an application for the variation of a Premises Licence for Spiegeltent, Recreation Ground, Pulteney Mews, Bath.

In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and that they must only do what is necessary and proportionate to promote the licensing objectives based on the evidence before them.

Members took account all of the relevant oral and written representations from the applicant, the Interested Parties and their witnesses, and were careful to balance the competing interests of the applicant and the IPs.

Members noted that the relevant representations made by the Interested Parties related to evidence of existing nuisance, from previous occasions when the events for the Bath Fringe had been held in the Spiegeltent. This was in the form of noise caused by amplified music emanating from the venue together with an excessive beat and tempo combined with the lateness of the hour.

Reference had also been made to Temporary Event Notices, but the Members noted that this was an application to vary a Premises Licence and not an application for a Temporary Event.

Members noted that the premises licence already had a condition imposed upon it stating that noise levels set by Environmental Health shall be complied with at all times and that regular checks on noise levels shall be made during practice and performance sessions and shall be recorded.

They also noted that the applicant had offered to give a mobile number for the venue manager for the use of residents in order that that any issues could be dealt with directly.

Members noted that no representations to the application had been made by the Police or Environmental Health.

However, Members decided that the representations carried much weight and that there was a real risk that the application would add to the existing noise nuisance already experienced by residents.

They therefore granted the variation in part in relation to the provision of regulated entertainment in the form of amplified live and recorded music as they considered that the impact of amplified music would undermine the licensing objective of the prevention of public nuisance and in doing so refused to grant that part of the application for an additional day as they considered that this would also undermine the objective.

They therefore granted the variation as applied for with modifications and imposed the conditions consistent with the Operating Schedule in addition to those already on the Premises Licence.

The meeting ended at 11.42 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**