

Meeting of: LICENSING ACT SUB-COMMITTEE

Date: 27TH JULY 2016

Report of: LICENSING ENFORCEMENT OFFICER

Reference: DWE

Title: HEARING HELD UNDER SECTION 105(2)(a) OF THE LICENSING ACT 2003 – COUNTER NOTICE FOLLOWING AN OBJECTION BY THE LOCAL AUTHORITY EXERCISING ENVIRONMENTAL HEALTH FUNCTIONS

IN RELATION TO:

TEMPORARY EVENT NOTICE – HUSTLE, SPRING GARDEN STREET, LANCASTER

Members of the Sub-Committee have the following documents attached to this report:

- 1. Temporary Event Notices (pages 6 to 23)**
- 2. Notice of Objection (page 24)**
- 3. Notice of Hearing (pages 25 to 27)**
- 4. Premises Licence (pages 28 to 39)**

Details of Temporary Event Notice

On the 15th July 2016 Temporary Event Notices (TEN's) under Section 100 of the Licensing Act 2003 were served upon Lancaster City Council by Mr Scott Pilkington in respect of the premises known as Hustle, 2 Spring Garden Street, Lancaster, for events to take place from 04:00 to 06:00 hours on 31st July 2016 and 19th August 2016 respectively. The notices stated that the events were to include regulated entertainment, the sale by retail of alcohol, and the provision of late night refreshment on the premise. A copy of the TEN's are attached at document 1.

For members' information the premises already has the benefit of a premises licence issued under the Licensing Act 2003. A copy of the licence is attached at document 4. The premises licence permits all types of regulated entertainment, and the sale by retail of alcohol

Monday – Saturday	10.00 to 04.00
Sunday	10.00 to 03.00

late night refreshment

Monday to Saturday	23:00 to 04:00
Sunday	23:00 to 03:00

Details of the objection

On 19th July 2016 in accordance with Section 104(2) of the Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011, the Local Authority exercising environmental health functions has submitted an objection on the grounds of public nuisance. A copy of the objection is attached at document 2.

Legal background to Objection

Under section 104(2) of the Licensing Act 2003, the Chief Officer of Police or a Local Authority exercising environmental health functions may object to a TEN on the basis that use of the premises in accordance with the notice would undermine any of the licensing objectives. Members will be aware that these are:-

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

If the police and/or local authority exercising environmental health functions believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premise user and the licensing authority an objection notice. The objection notice must be given within three working days of their receipt of the TEN.

If the licensing authority receives an objection notice from the police or local authority exercising environmental health functions that is not withdrawn, it must hold a hearing to consider the objection (unless all parties agree that this is unnecessary) within 7 working days beginning with the day after the end of the period within which a chief officer of police or the local authority exercising environmental health functions may give a notice under section 104(2)

Matter for Decision

The Sub-Committee is requested to consider the objection submitted by the local authority exercising environmental health functions.

In accordance with Section 105(2) of the Licensing Act 2003, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event)
- (b) determine that the event would undermine the licensing objectives and serve a counter notice
- (c) allow the licensable activities to go ahead as stated in the notice.

The matter for decision, therefore, is which of these steps should be taken.

Government Guidance under Section 182 of the Licensing Act 2003

Members may wish to note that paragraph 2.33 of the Guidance issued by the Government under Section 182 of the Licensing Act 2003 states that public nuisance is “not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community

Relevant Parts of the Council’s Statement of Licensing Policy

With regard to the prevention of public nuisance the Policy provides as follows:

Prevention of public nuisance

- 8.1 The most obvious aspect of public nuisance is noise. The primary source of noise is amplified music, either uncontained outdoors or emanating from premises, which do not have sufficient measures in place to contain the sound. Late at night or in the early hours of the morning, individuals shouting in the street or groups of people talking in an animated fashion generate a substantial level of noise and in some cases this is aggravated by offensive language.
- 8.2 As customers leave licensed premises, the sound of their conversation can disturb residents. Potentially greater problems arise when customers congregate or accumulate outside the licensed premises. However, it is clear that the person in control of the premises has a responsibility to ensure that disturbance to residents and businesses is kept to a minimum.
- 8.3 In considering licence applications where relevant representations are received, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and disorder having regard to all the circumstances of the application. When addressing public nuisance, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent public nuisance, taking account of the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant’s operating schedule, and may include:
 - The steps the applicant has taken or proposes to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, noise limitation devices and keeping windows closed during specified hours.
 - The steps taken to ensure that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent public nuisance
 - The steps the applicant has taken or proposes to prevent disturbance by patrons arriving at or leaving the premises, for example warning signs at exits, and warning announcements within the premises, and the use of door supervisors to pass on the message
 - The steps the applicant has taken or proposes to prevent queuing, or if queuing is inevitable, to divert queues away from neighbouring premises, or otherwise manage and monitor the queue to prevent disturbance of obstruction, and to prevent patrons congregating outside the premises.

- The implementation of a last admission time, and how the last admission time relates to the closing time of the premises
- The steps the applicant has taken or proposes to take to manage queues so that patrons who will not gain admission before any last admission time are advised accordingly
- The steps the applicant has taken to reduce queuing outside the premises and to minimise the length of time people have to queue at the premises
- The steps the applicant has taken to advise patrons that they will not be admitted if they are causing a disturbance, and the steps taken to implement a procedure for banning patrons who continually leave or arrive at the premises in a manner which causes a public nuisance or disturbance.
- The arrangements made or proposed for parking by patrons and the effect of parking on local residents.
- The arrangements the applicant has made or proposes to make for security lighting at the premises, and the steps the applicant has taken or proposes to take to ensure that lighting will not cause a nuisance to residents.
- Whether there is sufficient provision for public transport for patrons, for example the provision of a free phone taxi service or other arrangements with taxi companies, and whether information is provided to patrons about the most appropriate routes to the nearest transport facilities.
- Whether taxis and private hire vehicles serving the premises or traffic flow from the premises are likely to disturb local residents.
- Whether routes to and from the premises pass residential premises.
- Whether other appropriate measures to prevent nuisance have been taken, such as the use of CCTV or the employment of an adequate number of licensed door supervisors.
- The measures proposed to prevent the consumption or supply of illegal drugs, including any search and disposal procedures.
- The procedures in place for ensuring that no customer leaves with bottles or glasses
- If the applicant has previously held a licence within the area of the Council, the history of any enforcement action arising from those premises.
- Whether the premises would result in increased refuse storage or disposal problems, or additional litter in the vicinity of the premises.
- The steps the applicant has taken or proposes to take in order to ensure that standards of public decency are maintained in any entertainment provided at the premises.
- If appropriate, whether music is played at a lower level towards the end of the evening in a “wind down period”.
- The applicant’s proposals for the length of time between the last sales of alcohol, and the closing of the premises
- The steps the applicant has taken to prevent noise and other public nuisance from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking

Natural Justice and Human Rights

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

Conclusion

Members should consider the objection to the TEN and any steps it considers necessary for the promotion of the licensing objectives.