

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Council Offices, Chester-le-Street on **Tuesday 18 October 2011 at 10.00 am**

Present:

Councillor C Carr (Chair)

Members of the Committee:

Councillors E Bell, B Graham, K Holroyd and J Hunter

Also Present:

G Keay – Licensing Team Leader
Y Raine – Senior Licensing Officer
L Cairns – Senior Public Protection Officer, Responsible Authority
J Hayes - Senior Public Protection Officer, Responsible Authority
S Grigor – DCC Legal Officer
N Walton – applicant's solicitor
J Williamson – applicant

Interested Parties:

J McKenna
D Mekins
G Wills
J Bowles
Mark Cant
Marion Cant
C Gilliland-Brown
County Councillor J Robinson
County Councillor D Brown
Councillor A Blakemore – Sedgefield Town Council
J George

1 Declarations of Interest (if any)

There were no declarations of interest received.

2 Minutes of the Meetings held on 24 May 2011 and 5 July 2011.

The Minutes of the meetings held on 24 May 2011 and 5 July 2011 were agreed as a correct record and were signed by the Chair.

3 Application for the Variation of a Premises Licence - Sedgefield Racecourse.

Members: Councillor C Carr (Chair), E Bell and J Hunter

Consideration was given to the report of the Corporate Director, Neighbourhood Services which gave details of an application to vary the Premises Licence in respect of Sedgefield Racecourse, a copy of which had been circulated.

A plan showing the location of the premises was attached at Appendix 1 and the application at Appendix 2. Details of the variation were outlined in the report.

The Licensing Officer advised of an amendment to condition 3 of those conditions requested by the applicant as part of the variation, which should be amended to read as follows:-

'No regulated entertainment will be allowed after 0200 hours and *continuous* monitoring for noise will be performed for any event held externally'.

Since the report had been circulated the following additional documents had been received:-

Applicant's Statement/Representation from Poppleston Allen

Additional documentation from Lyndsey Cairns, Durham County Council's Pollution Control Team

Additional correspondence from interested parties

Plan showing the current licensed area of the racecourse.

Prior to commencement of the hearing N Walton, the applicant's representative referred to a preliminary issue and to an error in paragraph 5 of the applicant's statement. The paragraph stated that Mr J McKenna had made several points when in fact it was Mr J D Mekins and he apologised for the error.

Lyndsey Cairns, Senior Public Protection Officer addressed the Sub-Committee and referred Members to the additional statement dated 11 October 2011.

She reported that a variation application had been received by the Pollution Control Team for Sedgefield Racecourse and subsequently a representation was made against the application under the licensing objective, the Prevention of Public Nuisance.

Residents in the local area acknowledged that a racecourse existed, which hosted licensable activities and as such they would tolerate noise to a certain extent. Environment Protection therefore felt that the existing condition, ("All outside regulated entertainment shall conclude at 23:00hours and for the purpose of the avoidance of doubt events in marquees or similar structures shall be deemed outside for the purpose of this condition"), which the applicant had proposed to remove, was acceptable and it would be unreasonable to extend beyond 23:00hours as this had the potential to give rise to sleep disturbance and public nuisance. The applicant had failed to provide sufficient information accompanying the variation application pertaining to the prevention of public nuisance.

Environment Protection would therefore recommend that the application to vary the premises licence should be refused.

The nature of the proposed application would allow potential large numbers of people to attend outdoor events in marquees and similar structures providing regulated entertainment 365 days a year.

The conditions suggested by the applicant had the potential to allow one or more regulated entertainment events to occur on one night in February. Previous monitoring conducted by the applicant during the Hunt Ball event 2011, had recorded unsuitable noise levels that indicated that there was a problem during the event that could have caused disturbance to local residents and nuisance under the Licensing Act. World Health Organisation (WHO) guidance and the Noise Act 1996 indicated that noise levels above 30dB during night time hours (23:00 – 07:00hours) were sufficient to cause sleep disturbance. Noise monitoring by the Racecourse during February 2011 had recorded levels of 59dB half a mile from the premises during the period 23:00 until 02:00hours.

If the Sub-Committee was minded to vary the premises licence, Environment Protection would recommend that it be varied as outlined in the additional statement dated 11 October 2011.

Councillor Carr referred to Appendix 6, Section 7 of the Council's Licensing Policy relating to the Prevention of Public Nuisance and asked why Environmental Health had not made reference to light pollution.

L Cairns responded that there was no history of complaints about light. It was not considered that light from the marquee would affect residents because of the distance it would be located from their properties.

N Walton asked a number of questions of the Officer. He referred to the document dated 11 October 2011 which stated that at present Environment Protection had no confidence that management would be capable of preventing public nuisance if the application was granted. He asked how many times L Cairns had spoken to and visited the applicant. L Cairns responded that she had spoken to his client once since the Hunt Ball and had met with her twice since June 2009, although she did not have precise details available. She advised that the statement was based on the results of noise monitoring taken during the Hunt Ball, the levels of which were shown to be very high, and if the variation was granted there was nothing within the application to demonstrate how management would control noise levels to prevent public nuisance.

In response to a further question she advised that the measurements taken by Environmental Health could not be produced as there had been technological issues with their equipment.

N Walton referred to the FOI request, details of which were included in the additional documentation and asked why the Environmental Health report referred to 11 complaints, yet the FOI results amounted to 10.

L Cairns advised that a complaint had been received on 3 June 2011 but this had not been logged onto the system at the time the FOI request was made.

In response to a further question about people and vehicles leaving the racecourse she advised that she had not received any complaints in this regard but reminded the Solicitor that in considering the application Environment Protection were required to take into account the potential for public nuisance to occur.

N Walton considered that for an objection to be accepted as valid, real evidence had to be produced, and to support this he referred Members to the Thwaites case.

Councillor J Robinson addressed the Committee stating that he was representing the residents who had contacted him about the application. He had received 46 representations against the variation and none in support of it.

He referred to his submission within the bundle and stated that the conditions applied in 2009 should remain and were adequate. 23:00hours was late enough for an outdoor event and concurred with the comments made in relation to noise nuisance.

He continued that reference had been made in the bundle to discussions with Planning Officers. He considered that these should have taken place before this hearing and that this should be borne in mind for future applications.

With regard to the marquee he asked how such a structure could be soundproofed.

There were sufficient indoor areas for late night entertainment on site and if the application was approved the residents would have the added problem of people leaving the premises after 02:00hours.

He made reference to the article in the Northern Echo which stated that the application was for the Hunt Ball only, yet this application would make it possible for events to be held over the whole year. If approved it would be like 'signing an open cheque'.

Whilst the current manager had stated that the application was for the Hunt Ball only she may leave and a new manager may not be so accommodating, potentially resulting in a number of events being held across the whole year.

Councillor Brown gave credit to the racecourse for the continued success of the business which had grown from a racecourse to an events centre. He advised that whilst he was not altogether against the application and he had an open mind, he appreciated that there had been issues about noise in the past. He had not personally experienced these problems but was concerned for those residents who did. He considered that dialogue between all parties would help.

Councillor Blakemore, Sedgefield Town Council stated that his Council did not want to inhibit the business and they had negotiated successfully with the management over the years about events that had been held there. Strong representations had been made by the residents from all parts of the town, expressing a lack of trust

and fear that a number of events were going to be held, some of which would be in a marquee.

He accepted that TENS were ending, however the Town Council wished to maintain the present 'status quo' and also considered that it would help if mediation could take place in advance of events. If the application was for the annual Hunt Ball only, he did not envisage any serious problems.

At this point the Chair invited the residents who had made written representation to address the Sub-Committee. Their views were summarised as follows:-

Joe McKenna

He had lived in Sedgefield for over 29 years, 1 mile from the racecourse. He could hear the crowd on race days in his garden but not in his home, however he was able to hear noise on the evening of the Hunt Ball. He had been disturbed to such an extent that he had registered a formal complaint.

He did not trust the racing and events organisers, especially if regulated entertainment was allowed after 23:00hours. If the Sub-Committee was minded to approve the application, he requested that condition numbered 6 of the existing licence relating to the terminal hour remain unchanged.

He noted that the applicant had taken issue with some of his comments around the breach of their conditions during the Hunt Ball when it was a TEN, and therefore not covered by their Premises Licence. Whilst he accepted this, in his opinion conditions had been breached.

He stated that the newspaper article in the Northern Echo was misleading as it stated that the application was for 1 event only. The reporter had confirmed that the article was reported accurately.

Since the licence was granted in 2009 not one event had been held which demonstrated that they were able to hold an event in accordance with their current conditions.

To demonstrate that they cared about complying with conditions and that they cared about residents, they should hold one more Hunt Ball before a licence for the hours requested was granted.

David Mekins

Mr Mekins made reference to the level of control over amplified sound from the racecourse and what he considered to be shortcomings in the current methods employed to monitor noise levels and the flaws in the use of sound limiters.

He believed that the only satisfactory way to prevent noise pollution at night was to stop all outside noise at 23:00hours.

The typical noise from these outdoor events was music with a highly repetitive low frequency drumbeat. This was what the residents had to suffer, it did not have to be loud, just had to be heard. If it could be heard then this caused disturbance.

If the variation was granted he considered that the Licensing Department would, in effect, have enabled the noise nuisance to happen.

Mr Mekins referred to Article 8 of the Human Rights Act and to the cases of *Oliuc v Croatia* and *Moreno Gomez v Spain*.

He asked Members to reject the application and urged Environmental Health to continue their reactive control of noise nuisance up until 23:00hours.

Marion Cant

She and her husband had lived at Morden Moor Farm for 25 years and had a 16 year old son.

The racecourse was their closest neighbour, located 200m from the house. There were no other buildings to create a sound barrier.

They always had good relations with the racecourse but since the events had increased they now suffered significant noise nuisance.

Monitoring equipment was installed at their home in 2010 to monitor noise from the Hunt Ball but had been faulty. It had been installed again in 2011 when levels were found to be extremely high.

She considered that they could not rely on the premises for controlled management of external events.

Events other than the Hunt Ball caused a nuisance too and the noise was having a detrimental effect on her 16 year old son's studies.

There were 20 racing fixtures and other events across the year and if granted the variation would exacerbate the situation, having a detrimental effect on the health and wellbeing of her family.

In response to a question from the Chair concerning traffic and light nuisance, Mrs Cant advised that her complaint related only to noise.

Julia Bowles

J Bowles advised that she had lived in Sedgefield for over 40 years and was Chair of the Residents Forum.

One of the roles of the Forum was to give a representative view on issues, and opinions often varied, however in this case no-one was in support of the application and everyone was concerned about noise nuisance.

Residents wanted the local business to be successful and acknowledged that it was part of the character of the village, however it had grown from a racecourse into an events centre and this had caused problems.

Sedgefield had many other licensed premises in and on the edge of the village, some of which had caused noise nuisance in the past but they had worked with these and one venue in particular to successfully resolve issues.

Even low level noise caused health and sleep issues. In addition customers parked their vehicles near homes, and there were problems with litter and patrons shouting as they left the premises.

In respect of Mr Walton's submission that real evidence should be provided, she considered that the word of the residents should be enough.

To conclude she stated that she wished the business every success but that this should not be at the expense of local residents.

In response to a question about Mrs Cant's reference to noise nuisance from other premises in the village, J Bowles advised that volume of complaints made about other premises had been low compared to those made relating to the racecourse.

A further question was asked about comments that had been made in relation to traffic. Mrs Bowles advised that vehicles belonging to customers at the racecourse parked in the Queen's Drive area and some residents were concerned at the volume of traffic through the village. She was unable to confirm that the traffic problems were specific to the Hunt Ball.

Gloria Wills

Gloria Wills advised that she represented 2 residents, Mr Holloway and Mr Allenson, who were both retired professionals. As the Hunt Ball was held at different venues there was no guarantee that it would be held at the racecourse in future, therefore their concerns were for events arranged there in general.

Their concerns related to noise nuisance and Mr Allenson also had a disabled son who was affected by the noise from the racecourse.

A lot of residents had not formally submitted complaints in the past and had tolerated the noise but they were no longer prepared to.

The noise monitoring carried out by the applicant showed that it was a continuous 59 decibels. World Health Organisation guidelines stated that no more than 55 decibels was acceptable during the day and that it should not exceed 30 decibels at night.

Mrs Wills also expressed concern that up to 4999 people could be in attendance at any one event, a concern which was shared by other residents.

She also pointed that this was the first opportunity they had to view the full bundle and that the plan was inaccurate.

It was clarified that the application did not request a variation to the existing licensed area and the plan in the bundle had been included to show the location of the marquee. The plan enclosed with the additional documentation was accurate.

To conclude she stated that unless the residents could be assured that entertainment would be controlled with conditions then there were no guarantees that they would be protected from noise nuisance.

The demise of TENS was not an argument to vary the licence and it was for the applicant to demonstrate their ability to control activities at the premises before a variation was granted, not for the Licensing Sub-Committee to seek a remedy.

Mark Cant

In addition to his wife's comments Mr Cant commented that he had also been aware of light and traffic in the evening of the Hunt Ball. His wife and son had stayed with relatives during the 2011 event and were therefore not aware of these issues.

He considered that the 'open cheque book' analogy by Councillor Robinson captured the essence of the application.

Noise nuisance was a concern of Environmental Health and the character of the village was being torn apart. They had failed to comply with 2009 conditions both in licensing and planning terms and he had therefore serious considerations about their ability to control the activities in future.

He reiterated the points put forward by other residents both verbally and in their written statements regarding the recommended decibel levels during the day and at night, breach of the Human Rights Act, loss of sleep, and the management style and operation of the business.

Mr Cant acknowledged the error that he had made about the racecourse being under investigation for noise pollution and accepted that there was no evidence to suggest that the noise monitoring application used by the applicant was inadequate.

C Gilliland-Brown

Mrs Gilliland-Brown stated that there appeared to be some confusion as to what the applicant was applying for. Her understanding was that it was up to 02:00hours for outside events over 365 days with up to 4999 attendees. However the applicant's statement only referred to the Hunt Ball.

She lived on Station Road and outlined to Members the impact the application would have on herself and her husband:-

- Public Nuisance - the loudspeakers could be heard on race days but the prospect of loud music was a different matter. Problems had been experienced with other premises in Sedgefield and she did not want a repeat of that
- Litter
- Increased traffic
- A possible 4999 attendees at an event would increase the risk of anti-social behaviour and crime and disorder.

She did not consider that the racecourse had addressed any of their concerns which demonstrated that the company did not recognise the importance of these issues or the serious impact on residents.

She appreciated that the company wanted to generate income but this could not be to the detriment of local residents.

To conclude she did not feel that the recommendations of Environmental Health went far enough and that events should be limited to 12 per year and the number of attendees restricted.

Janet George

Mrs George stated that she had never complained formally before but she had experienced sleepless nights because of noise nuisance. She was worried that this application would open the floodgates and cause even more problems, with noise and cars parked on Queen's Drive. If an event finished at 2am it would take a while to clear the premises and noise would occur well into the night.

At 12.46pm the hearing was adjourned over the lunch period and re-convened at 1.46pm.

N Walton, the applicant's representative addressed the Committee. He commenced by discussing the events that had created the noise complaints.

The Hunt Balls had both been held by way of TENs because of the restriction on hours of the current Premises Licence. No conditions were attached to a TEN and the only responsible Authority who could have objected were the Police under the licensing objective of the prevention of crime and disorder.

At both events his client had monitored noise levels voluntarily and had shared the results with everyone. In response to comments that the kit used was not BSI approved, he maintained that the noise meter application on the iPhone was of a high technological standard and was reproducible. Environmental Health had made two attempts to monitor noise but there was no data available.

One complaint had been made in 2010, yet the applicant had not received any personally. She lived on the premises with her 13 and 16 year old children who were not disturbed by the events.

In 2011 a number of complaints had been received. The applicant had received one complaint directly and had turned down the music.

He continued that with regard to Mr McKenna's comments about the newspaper article, he clarified that he had not misled anyone and that the original application for 365 days became 1 application for the Hunt Ball prior to the item going to press.

He referred to the additional bundle and to his attempt on 6 October 2011 to open negotiations with Environmental Health about including an additional condition to allow for the Hunt Ball. This had been done many times at other venues for events such as music festivals and concerts. He had heard nothing further until the statement submitted by Environmental Health dated 11 October 2011.

The application was for 1 event in February each year on a date near to Valentine's Day. With regard to residents concerns about attendance figures that whilst the licence stated up to 4999, their events were never attended by that number of people. If Members were minded to grant the licence, then the applicant would offer a maximum capacity of 800.

Most events were held indoors and there was no demand or need for events to be held in a marquee until 02:00 hours other than the Hunt Ball.

At this point he referred Members to Ms Williamson's statement and highlighted specific points from it.

He advised that the comments in relation to her failure to communicate with the populous of Sedgefield were unjustified. She wrote to individual neighbours with invitations to events and placed a regular flyer in Sedgefield local news advising of what was going on at the racecourse.

With regard to the issues raised about light pollution/car parking, he did not consider that these were matters for consideration within the provisions of the Licensing Act 2003 and were planning/highways matters. He asked that the representations in relation to these be not taken into account.

Councillor Carr stated that the Council's own licensing Policy included light pollution under the prevention of public nuisance, as detailed in Appendix 6 in the bundle.

The Police had offered no concerns under the licensing objectives and had only been called to 2 incidents relating to the Hunt Ball.

He referred to the conditions recommended by Environmental Health. Condition 4 requested that recorded music be played through a noise limiting device and he stated that this would prevent a performance by a live band. J Hayes clarified that a noise limiter was for recorded music only and that condition numbered 5 addressed live music.

With regard to the condition suggested by Environmental Health that recorded music should cease at 01.30 hours he requested that background music be allowed

until 02:00hours. This allowed people to naturally adjust their voice levels from loud when the live music was playing to a quieter level for when they left the premises.

Noise limiters did not work in structures that were not fixed and he asked that a condition be applied that noise levels be agreed in conjunction with Environmental Health.

With regard to the reference to a dispersal policy, Mr Walton advised that the racecourse had operated a policy since 2009 and read it out to Members for information.

At this point the Chair intervened. He suggested that as 'status quo' may be acceptable, that the application was for one event only and that the applicant was willing to negotiate with Environmental Health, mediation take place between all parties to try to reach an agreement, prior to the Sub-Committee making a decision.

With the agreement of all parties, the hearing adjourned at 2.45pm and re-convened at 3.40pm.

S Grigor, Legal Officer stated that all parties had agreed to the conditions numbered 1 to 4 proposed by Environmental Health in their statement dated 11 October 2011, and that the applicant had agreed that the maximum number of persons at the Hunt Ball would be 800.

Members retired to deliberate the application at 3.42pm and returned at 3.45pm.

In reaching a decision Members had taken into account the relevant provisions of the Licensing Act 2003, Section 182 Guidance and the Council's Licensing Policy. The Sub-Committee also took into account the written and verbal representations of the applicant's representative, responsible authority and interested parties, and had regard to the agreement reached between all parties.

RESOLVED

That following mediation between all interested parties the variation application be agreed with the following conditions:-

Annual Hunt Ball event to take place once during the month of February on a Friday or a Saturday from 18.30hours until 02:00hours and operated in accordance with the following conditions:

- a) The date of this event shall be provided to the Pollution Control Team 8 weeks prior the event.
- b) Live music shall cease at 23:00hours.
- c) Recorded music shall cease at 01:30hours.
- d) Recorded music shall be played through a noise limiting device, installed in order to control the sound / noise during recorded regulated entertainment. The device shall be fitted / installed and set under the directions of a Pollution Control Officer and must be in full working order during the performance of recorded regulated entertainment. No recorded regulated

entertainment shall take place unless any amplified system used during the performance is linked/powered to/by the limiting device.

- e) An Environmental Noise Procedure, in accordance with The Noise Council 'Code of Practice on Environmental Noise Control at Concerts' 1995, shall be produced, implemented and adhered to, subject to agreement in writing by the Pollution Control team, prior to any live music being performed. A copy of the Environmental Noise Procedure shall be held on-site and made available to authorised Environment, Health and Consumer Protection Officers for inspection.
- f) Sound checks are permitted only between the following hours: 12:00 – 13:00 and 17:00 – 18:30.
- g) The maximum capacity for the Hunt Ball is 800 persons.

4 Application for a Premises Licence - Agnew Community Centre, Newton Aycliffe.

Members: Councillor C Carr (Chair), Councillors B Graham and K Holroyd

Consideration was given to the report of the Corporate Director, Neighbourhood Services which gave details of an application for a Premises Licence in respect of Agnew Community Centre, Newton Aycliffe, a copy of which had been circulated.

Since the report had been prepared further correspondence had been received from the applicant amending the terminal hour requested to 22:00 hours. A copy of the letter had been circulated to all parties.

A plan and photographs showing the location of the premises was attached at Appendix 1 and the application at Appendix 2.

The Licensing Officer advised that a number of representations had been received from interested parties, and from Environmental Health, Noise Pollution, details of which were attached at Appendix 3.

It was noted that the interested parties and the applicant were not in attendance. The applicant had confirmed that the application could be determined in his absence.

The Sub-Committee deliberated the application, and the Chair delivered the decision.

In determining the application, the Sub-Committee had taken into account the relevant provisions of the Licensing Act 2003, Section 182 Guidance and the Council's Licensing Policy. The Sub-Committee also took into account the written representations of Environmental Health and interested parties, together with the additional letter from the applicant.

RESOLVED

That the application for a Premises Licence be granted as follows:-

Activity	Days and Hours requested
A. Performance of Plays-Indoors	Mon-Sun-08.30-22.00
B. Performance of Films-Indoors	Mon-Sun-08.30-22.00
C. Indoor sporting events-Indoors	Mon-Sun-08.30-22.00
E. Performance of Live Music-Indoors	Mon-Sat-11.00-22.00, Sun-11.00-22.00
F. Playing of Recorded Music-Indoors	Mon-Sat-11.00-22.00, Sun-11.00-22.00
G. Performance of dance-Indoors	Mon-Sat-11.00-22.00, Sun 11.00-22.00
H. Performances of entertainment of a similar description to live or recorded music and performance of dance-Indoors	Mon-Sat-11.00-22.00, Sun 11.00-22.00
I. Provision of facilities for making music-Indoors	Mon-Sat 11.00-22.00, Sun 11.00-22.00
J. Provision of facilities for dancing-Indoors	Mon-Sat-11.00-22.00, Sun 11.00-22.00
K. Provision of entertainment facilities of a similar description to those for making music and dancing-Indoors	Mon-Sat-11.00-22.00, Sun 11.00-22.00
O. Opening hours of the Premises-Indoors	Mon-Sun-08.30-22.00

In addition the following condition be added-

1. The premises to be vacated by 22.10 hours every evening.