



City and County of Swansea

Minutes of the **Statutory Licensing Sub Committee**

Multi-Location Meeting - Council Chamber, Guildhall / MS Teams

Tuesday, 7 February 2023 at 10.00 am

Reconvened on Monday, 13 February, 2023 at 11.00 am

Present: Councillor P M Matthews (Chair) Presided

Councillor(s)
V A Holland

Councillor(s)
M W Locke

Officer(s)

Aled Gruffydd

Rachel Loosemore

Lindsey Stock

Samantha Woon

Associate Lawyer

Operational Lead - Licensing

Licensing Officer

Democratic Services Officer

Also Present:

Tom Price – Team Leader, Pollution Control and Private Sector Housing

Randolph – Applicant's Representative

Apologies:

None.

1 Disclosures of Personal and Prejudicial Interests.

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

2 Statutory Licensing Sub Committee Procedure (For Information).

The Lawyer advising the Committee, presented the Statutory Licensing Sub Committee Procedure, for information.

3 Licensing Act 2003 - Section 100 - Temporary Event Notice - Cinema & Co, 17-19, Castle Street, Swansea, SA1 1JF.

The Licensing Officer advised that the Applicant had requested that the matter be deferred as her representative was unable to attend due to a bereavement.

Resolved that the matter be adjourned.

The meeting stood adjourned until 11am on Monday 13 February 2023.

The Chair welcomed all attendees to the Re-convened Meeting of the Statutory Licensing Sub Committee at 11.10 on Monday, 13 February, 2023.

The Democratic Services Officer stated that there were no apologies for absence. No Members or Officers present disclosed any declarations of personal or prejudicial interest.

Following formal introductions the Associate Lawyer outlined the procedure to be adopted by the Sub Committee in considering the application.

The Licensing Officer reported on the application for a Temporary Event Notice (TEN) in respect of Cinema & Co, 17-19, Castle Street, Swansea, SA1 1JF received on 30 January, 2023 for an event on 3 and 4 March, 2023.

She referred to the licensing objectives, policy considerations, guidance from the Home Office and action following consideration of the relevant persons objections. Specific reference was made to Temporary Event Notice (TEN) at Appendix A, and the objection from Relevant Persons at Appendix B.

In response to a question from Randolph (the Applicant's representative), the Associate Lawyer detailed the process for dealing with Objections from Relevant Persons which was via the Sub Committee Hearing which had been adjourned from 7 February, 2023 (at the request for the Applicant) and reconvened today.

The Team Leader, Pollution Control and Private Sector Housing (Relevant Persons), advised that the objection to the Temporary Event Notice (TEN) had been submitted on the 1 February, 2023. He advised that the reason for the objection was as a result of complaints being received in respect of the premises (Cinema and Co). Complaints had been received in May 2017, November 2021, April 2022, October and November 2022. The objections related to DJ type events that had been held up until approximately 2:00 am.

It was noted that Pollution Control Officers attended on 4 of November 2022 and were satisfied that they had witnessed a statutory noise nuisance under the Environmental Protection Act 1990.

Following the visit on 4 November, 2022, e-mail correspondence was entered into and a pre-notice letter was sent to the Applicant.

Given the nature of the premises (ground floor with residential above) an attempt was made to discuss the issues on site to see what actions potentially could be taken and how a statutory noise nuisance at a future date could be prevented. A visit was undertaken on 25 January 2023, where advice was given to the Applicant and her sound engineer.

On Friday the 27 January, 2023, following that meeting, there was a temporary event (a DJ type event) and Pollution Officers attended the premises at 9:50pm as a result of a complaint. When they arrived music was clearly audible on the highway outside the premises. Upon entering the block of flats, music could be clearly heard in the

corridors within the stairwell and also within the complainant's living room and kitchen dining area. The predominant issue being the base music being driven from the music downstairs to such an extent the floorboards and the cupboards were vibrating and could be clearly heard over the volume of conversation within the premises within the residential dwelling.

Pollution Control Officers were satisfied that the statutory nuisance was in occurrence and as a result are looking to serve an Abatement Notice under section 80 of the Environmental Protection Act 1990 to prohibit the recurrence of a statutory nuisance at Cinema and Co.

There is an appeal period within an abatement notice once it is served of 21 days and that notice is to be served this week. Therefore the proposed event would fall within that appeal period.

In conclusion, the Team Leader Pollution Control and Private Sector Housing stated he was satisfied that a statutory nuisance was likely to recur from this premises should the event be held, and therefore an objection to the Application is made on those grounds.

In response to a question from the Applicant's Representative, the Team Leader Pollution Control and Private Sector Housing stated that:

- Two experienced Pollution Officers attended the premises to gather evidence in order to determine the existence of a statutory noise nuisance. The nature of evidence gathering encompassed the duration, intensity, locality and suitability of the building. Officers witnessed regulated entertainment which was an activity which the Applicant is not licensed for and the premises was unable to contain.
- In relation to a building of this nature and use, Officers would look to set a noise limit potentially upon discussion with appropriately qualified acousticians.
- There is a recurrence of the statutory nuisance and numerous letters/email of complaint have been received from tenants.
- For this particular site, when the residential development took place, conditions were placed as part of the planning process for certain levels to be achieved. However, that was for the licensed use of the premises, the provision of the DJ Entertainment for example, was not the licensed use and is a different sound pressure to the licensed use. The normal everyday use from the cinema, has not generated complaints.
- Discussions with the Applicant regarding appropriate levels to carry out future events will form part of the abatement notice when that notice is served, Officers would be happy to discuss that point.
- Following receipt of the Abatement Notice, the Applicant would need to ensure that work is carried out and designed in an appropriate way to satisfy the Council that once implemented, it would mitigate and prevent the statutory nuisance recurring.

The Team Leader Pollution Control and Private Sector Housing stated that he was satisfied that a statutory nuisance was likely to recur and given the lack of evidence from the Applicant the objection remained.

The Applicant's representative stated that, in his opinion, the process should be more robust at the time of any complaint. He referred to the lack of consultation with the Applicant on the night Pollution Officers attended and that the Applicant had not been party to the details of the complaint.

In response to a question regarding the Abatement Notice, the Associate Lawyer stated that the role of the Committee Hearing today was to determine whether or not the event on the 3/4 March should go ahead.

The Team Leader Pollution Control and Private Sector Housing confirmed that a site meeting had been held on site prior to the event in January, with advice given about acceptable noise levels.

The Applicant's representative stated that he was unable to detail what steps could be taken to allow the proposed event on 3/4 March to proceed without concern.

In response to a question regarding sound protection, the Team Leader Pollution Control and Private Sector Housing stated that as part of the initial planning process, documentation would be available on the planning portal and the Applicant would be able to access these details.

The Applicant's representative queried whether Pollution Control Officers had attended on all the dates referred to in the Complaints log. The Team Leader, Pollution Control and Private Sector Housing confirmed that Pollution Control Officers were present on 4 November 2022 and 27 January, 2023 and that the Applicant had been advised following the Pollution Officers evidence gathering. This was followed up with email correspondence which resulted in a site meeting on 25 January, 2023 where advice was given. Further advice was given after 27 January, 2023, where the Applicant was informed that the Council were in the process of drafting an Abatement Notice under the Environment Protection Act 1990.

In response to a question from the Chair, the Applicant's representative stated that he was not aware of discussion with the neighbours who had made complaints and was unsure of any measures the Applicant had put in place to avoid any occurrence of noise nuisance.

It was **Resolved** that the press and public be excluded from the hearing in accordance with paragraph 14 of the Licensing Act (Hearings) Regulations 2005, to enable the Sub-Committee to take legal advice.

(Closed Session)

Members discussed the issues relating to the application.

(Open Session)

The Associate Lawyer gave a comprehensive overview of the legal advice tendered.

The Chair indicated that the Sub-Committee had considered the application and representation made and the needs and interests of all parties in terms of the

Council's Statements of Licensing Policy, statutory guidance and the requirements of the Licensing Act 2003.

The Sub-Committee **Resolved** to **Refuse** the application.

Reasons for Decision

- 1) The Licensing Sub-Committee noted that the Pollution Control Officer raised concerns from neighbours regarding a statutory noise nuisance. It was noted that the complaints related exclusively to the premises' DJ nights and not to any film screenings held.
- 2) There was no evidence before the Licensing Sub-Committee of any attempts made by the Applicant to engage with the complainants regarding the noise concerns raised.
- 3) It was recognised that sound proofing measures to reduce noise pollution cannot be installed in the timescale before the event.
- 4) The Applicant provided no evidence of steps that would be taken to promote the licensing objectives other than turning the music volume down. Since the noise of the crowd would also add to the noise generated by the event and that cannot be controlled by the volume of the sound system, then the Licensing Sub-Committee were not satisfied that that would be an appropriate step without the additional measure of sound proofing.

The meeting ended at 12.13 pm

Chair