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GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING SUB COMMITTEE MEETING

Tuesday, 11 October 2022

PRESENT: Councillor K Dodds (Chair)
Councillor(s): H Kelly and M Ord

LSC1 APPLICATION FOR THE REVIEW OF A CLUB PREMISES CERTIFICATE

RESOLVED - That the decision of the Licensing Sub Committee as per the attached Summary of Decision be approved.

Chair.....

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**GATESHEAD COUNCIL
LICENSING AUTHORITY****SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE**

Name of Premises:	Thomas Wilson Club
Address:	16 Chowdene Bank, Low Fell, Gateshead, NE9 6JD
CPC holder:	Thomas Wilson Working Mens Club and Institute Ltd
Date of Hearing:	11 October 2022
Type of Hearing:	Review of Club Premises Certificate

The Sub Committee has decided as follows:

1. To modify the club premises certificate by adding the following conditions:
 1. A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of, and in consultation with, Northumbria Police and the Licensing Authority. Such a system shall:
 - I. Be operated by properly trained staff;
 - II. Be in operation at all times that the premises are in use
 - III. Ensure coverage of all public entrances and exits, till areas and other areas accessible by members of the public
 - IV. Ensure coverage other areas as required by Northumbria Police and other responsible authorities
 - V. A competent, trained person in the use of and operation of the CCTV will be in available for attendance at the premises at all times that premises are open and be able to fully operate the CCTV system to enable a download of any information requested by the Police or authorised responsible authority officer
 - VI. Cover the inside and outside of the premises.
 - VII. Be capable of recognition of all persons entering the premises
 - VIII. The CCTV system clock should be set correctly and maintained (taking account of GMT and BST);
 - IX. Provide continuous recording facilities for each camera to a high standard of clarity. Such recordings shall be retained on disc/hard drive or otherwise for a minimal period of 28 days and shall be supplied to an authorised officer or Police Officer on request. Images recorded are to be retained in an unedited format and the CCTV system must continually record whilst the premises is in use.

2. The Club Secretary / DPS or other responsible person shall ensure that at all times when the premises are open for any licensable activity there is sufficient and competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the CPC / Premises Licence and for preventing crime and disorder

3. A 'Challenge 25' policy shall be adopted, implemented and maintained ensuring that all members of staff are trained to refuse supply to anyone who appears to be under the age of 25 and who is seeking to obtain any age restricted product unless that person provides credible photographic proof of age evidence. Such credible evidence shall include a photograph of the customer and acceptable form of ID. Examples of acceptable ID are limited to photo card driving licence, passports, military identification or proof of age cards bearing the 'PASS' hologram. No other evidence of age and identity may be accepted.

4. The operator and premises licence holder shall conduct a risk assessment for the general operation of the premises and in the case of individual bespoke events. Such risk assessments shall take into account the level of staffing, including the number of registered door or security staff, to be employed at the premises during peak times, such as during specific events, evenings and during weekends.

5. Records will be kept of any bookings for a function to be held where the function room is let out to one hirer

6. All staff involved in the provision of licensable activities under the premises licence shall be trained in accordance with Licensing Act 2003 prior to making sales of alcohol. The training shall include the prevention of underage sales & correct forms of ID, proxy purchasing, sales to drunks, zero tolerance to drugs, conflict resolution. The training will be followed up by tests & on-going refresher training. The training manual & all staff documented training records will be made available to officers of the Local Authority or Northumbria Police upon request

7. Staff shall refuse to supply alcohol to any adult who they suspect to be passing the alcohol to those underage. Details of such refusals shall be documented and made available to police or local authority on request.

8. An incident book shall be kept at the premises which is utilised and maintained at all times. This book will be made available to the Police or local authority on request.

9. The DPS shall ensure that a register is kept at the licensed premises in a form approved by the licensing authority showing the following details for each period of duty of any door supervisors employed at the premises, namely:

- Full name, date of birth, registration details and residential address
- Date and time when that person finished duty with a signed acknowledgement by that person
- Details of any times during the above period when that person was not on duty, with a signed acknowledgement by that person.

10. No patrons shall be allowed to leave the premises whilst in the possession of any open drinking vessel, open bottle, or can, whether empty or containing any alcoholic beverage.

11. No customers carrying open or sealed container containing alcoholic beverage intended for the consumption on the premises, shall be admitted to the premises at any time.

12. Clear and legible notices shall be displayed at exists and other circulatory areas requesting patrons leave the premises having regard to the needs of local residents. In particular, the need to refrain from shouting, slamming car doors and the sounding of car horns shall be emphasised.

13. An operation policy shall be implemented and adhered to in respect of the management of the outside areas to include staffing, monitoring, reminding patrons of their public responsibilities when leaving where necessary, clearance of litter and general management of the area on a daily basis. The operations policy shall be submitted to the Local Authority for prior consideration and agreement.

14. In respect of 'VENUE/FUNCTION ROOM USE' a Noise Limiter and Contactor shall be utilised to regulate the noise level for all entertainment activities set at an agreed level with environmental health.

15. A noise management plan shall be implemented and adhered to, to include all noise sources associated with the premises, noise reduction/ mitigation, noise monitoring by competent staff, complaints procedure, staff training and review. The noise management plan shall be submitted to the Local Authority for prior consideration and agreement.

2. As a condition has been included in certificate in respect of entertainment consisting of a performance of live music, the exemption to live music entertainment to be regarded as the provision of regulated entertainment was now removed. Only the requirements of 177A (1) (a) to (c) Licensing Act 2003 are satisfied. Because the requirements of section 177A (4) are no longer satisfied, the provision of entertainment consisting of a performance of live music is now regarded as the provision of regulated entertainment.

Reasons

Prior to the hearing taking mediation took place. Thomas Wilson Working Mens Club and Institute Ltd provided Environmental Health and the Licensing Authority with a document detailing fifteen conditions which they proposed.

The Licensing Authority were satisfied that these conditions addressed their concerns.

No resolution could be reached between Environmental Health and the Thomas Wilson Club about the wording of a condition about a noise limiter (proposed condition 14).

It was established that the sole issue for Sub-Committee was the type and quality of noise limiting equipment to be installed which would sufficiently address the licensing objective of Public Nuisance.

The hearing was attended by:

- Paul Christer and Andrew Ridley (Environmental Health)
- Tracey Johnson (Licensing Authority acting as a Responsible Authority)
- Allyn Walton, CIU Solicitor

- Brian Nicolson, Club Secretary for the Thomas Wilson Club
- George Smith, CIU President

Environmental Health requested that the Sub-Committee add the following condition to the Club Premises Certificate:

A noise limiting device agreed with Environmental Health shall be fitted in the concert room and set to an agreed level. It shall be set up and programmed by a competent noise engineer and maintained annually. All amplified music in the concert room shall be played through the fitted system.

The Solicitor for the Thomas Wilson Working Mens Club and Institute Ltd presented that the reequipment of all amplified music to be played through the fitted system, as suggested by the responsible authority, did not fit with modern systems because musicians and DJs provided their own equipment because of the modernised state of IT and that the plugging into the venue's sound system was no longer a generic concept. They requested that the Sub-Committee add the following condition instead:

In respect of 'VENUE/FUNCTION ROOM USE' a Noise Limiter and Contactor shall be utilised to regulate the noise level for all entertainment activities set at an agreed level with environmental health

The Sub Committee received legal advice was given in open session.

The Sub Committee were asked to decide on Application by Environmental Health for review of club premises certificate.

The Sub-Committee were advised that in choosing which course of action to take, they should have regard to:

- The Licensing Act 2003,
- the Home Office Guidance,
- the Licensing Authority's own Statement of Licensing Policy
- the individual facts.

The Sub Committee were advised of their duty under the Licensing Act 2003 to carry out the Licensing Authority's functions with a view to promoting the Licensing Objectives, and that the Home Office Guidance states that they should do so with regard to the overall interests of the local community.

The Sub Committee were referred to paragraph 6.2 of Gateshead Council's Statement of Licensing Policy states that The Licensing Authority considers:

- the effective and responsible management of premises
- instruction, training and supervision of staff;
- the adoption of best practice to be amongst the most important control measures for the achievement of all the licensing objectives".

The Sub Committee were referred to appellate court judgments which may assist:

R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates' Court & Ors [2011] EWCA Civ 31 in which Lord Toulson stated paragraph 42:

“Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.”

R (on application of Daniel Thwaites plc) v Wirral Magistrates’ Court and Others (2008) EWHC 838 (Admin), in which the Honourable Mrs Justice Black said para 55:

“Drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act’s approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.”

East Lindsey District Council v Hanif (t/a Zara’s) (2016) EWHC 1265 (Admin) with regard to the approach to be taken to determining the appropriate and proportionate action in light of the salient Licensing Objectives; and in particular their approach should involve:

- consideration of the antecedent facts;
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The Sub Committee were advised that any conditions or restrictions they placed on the licence must be appropriate for the promotion of the Licensing Objectives; and that they should consider:

- the harm they were seeking to prevent
- what weight to attach to the concerns they had, and
- what would be a proportionate measure to prevent that harm.

The Sub Committee were referred to that if they considered that the variation could be granted if certain conditions were imposed, they should ensure that such conditions are sufficiently clear that they can be understood and enforced.

The Sub Committee were advised of the licensing objectives with consideration of the policy. LA 2003 and the H.O. guidance, particular to this application, the nature of the factors raised would require particular attention to:

H.O. guidance - paragraphs 2.15 – 2.21 which deals with public nuisance.

H.O. guidance – paragraph 2.16 advises that public nuisance is given a broad common law meaning and not narrowly defined in the LA 2003.

H.O. guidance – paragraph 2.17 which is in respect of noise and advises on music and noise limiters.

H.O. guidance – paragraph 16.55 which deals with the suspension of live music under general conditions not being regulated entertainment, but the option to add a condition in respect of the music as if it were regulated.

Paragraph 16.55 gives brief guidance on this.

The Sub Committee determined that the version of condition 14 submitted by Thomas Wilson Club satisfied the Public Nuisance objective.

Thomas Wilson Club were advised that because a condition has been included in certificate in

respect of entertainment consisting of a performance of live music, the exemption to live music entertainment to be regarded as the provision of regulated entertainment was now removed. Only the requirements of 177A (1) (a) to (c) Licensing Act 2003 are satisfied.

Because the requirements of section 177A (4) are no longer satisfied, the provision of entertainment consisting of a performance of live music is now regarded as the provision of regulated entertainment.

Rights of appeal

Environmental Health has the right to appeal the Sub-Committee's decision to add the condition (14) proposed by Thomas Wilson Working Mens Club and Institute Ltd rather than their proposed condition.

Pursuant to section 181 and Schedule 5 of the Licensing Act 2003, any such appeal is to be made to the Gateshead Magistrates' Court and within 21 days of the date of service of this notice of decision.

In reaching these decisions the Sub Committee has been persuaded by the individual circumstances of this Application and does not intend to create a general exception to its Policy or to create a precedent.

Dated : 18 October 2022