

IN THE MATTER OF :

S53 LICENSING ACT 2003 PREMISES LICENCE REVIEW

THE MUSEUM GARDENS, YORK

YORK MUSEUMS TRUST

Premise Licence Holder

**WRITTEN SUBMISSION
ON BEHALF OF THE PREMISE LICENCE HOLDER**

1. This is an application by Andrew Dickinson pursuant to S53 Licensing Act 2003. The premises is Museum Gardens annexed to York Museums and situated along Marygate. It is operated by a charitable trust namely York Museums Trust (YMT) and has been part of the cultural background of York since its establishment in 1830 providing for the city a beautiful landscaped area but also a location for art and recreation. It is synonymous with provision of the mystery play cycle and also the Proms in the Park performances along with the provision of artistic exhibitions both of a classical and contemporary nature.
2. In 2023 YMT reviewed its cultural offer and considered that subject to the implementation of best practice, provision of the contemporary pop event similar to those undertaken in the 1970s and 80s would be an appropriate addition to the portfolio of activities offered within the museum gardens.
3. The location of where the event could take place was identified – see Arena Plan at pages 1 of Bundle.
4. A date of the 18th to 21st July was set. The work in the intervening period will be set out below, however, following the undertaking of the event Mr. Dickinson issued Review proceedings and during the consultation period one representation in clear support of the Review has been received along with representation from

Environmental Protection representations from 21 residents opposing the Review including, a representation setting out the position of YMT have been served.

5. The Review hearing is required to determine the application.
6. The representation in support of the Review and the Review itself focus upon the licensing objective of Prevention of Public Nuisance and do not raise questions as to the appropriate and necessary promotion of the remaining three licensing objectives of Prevention of Crime and Disorder, Public Safety and Protection of Children from Harm. YMT's submissions will therefore focus upon the licensing objective of prevention of public nuisance.

Background

7. YMT would refer the Licensing Sub Committee to the representation submitted by them but in addition confirm from the outset that they sought to undertake best practice in a professional manner and during their preparation and planning have considered the amenity of those persons residing in the immediate vicinity. To achieve this YMT engage contractors who have relevant experience and reputation in particular Future Sounds who are event managers and promoters were the principal party and they in turn employed We Organise Chais and Electric star both experts in the field of outdoor events.
8. Initial preparation for the undertaking of the event was commenced during the summer of 2023 so as to ensure that a robust and appropriate Premises Licence existed to support such an event a variation under the Licensing Act 2003 was undertaken, thereafter YMT and We Organise Chaos and Future Sound engaged with the Licensing Authority, the Safety Advisory Group and directly with relevant responsible authorities in particular Environmental Protection, Highways and Emergency Services so as to ensure the procedures, systems and relevant equipment which could be checked and monitored were in place for the three day event. Electric Star providing input on noise management.
9. Attached to the Bundle at page 3 is a chronology of those meetings with the statutory authorities which resulted in amendments to the proposed event which were undertaken during the course of the event.
10. As stated above YMT were always acutely aware of the potential impact on the amenity of residents and therefore from the commencement of consultation with

the statutory authorities engaged directly with those persons living in the immediate vicinity. The chronology includes the dates of the direct engagement with residents but to confirm the event was clearly advertised upon YMT's website and social media postings, mail drops were undertaken and three residents meetings. The final mail drop confirming the details of the event and last resident meeting was circulated to 1,500 premises. It is notable that to those meetings, six residents attended. Mr Dickinson did not attend those meetings. (See in the bundle page 4 template of first resident letter page 7 template of second resident letter, page 9 final local information letter, page 11 map showing leaflet distribution area washed red).

11. During the course of the event no communication was received regarding anti social behaviour or potential crime and disorder there is no objection by the Police.
12. The event was attended by 4,000 people per night – total attendance 12,000. The artists were Jack Severetti and then for two nights York's own Shed 7.
13. There was a suitable number of staff working at site to ensure the safety of those attending along with the provision of refreshments. Liaison was undertaken during the SAG consultation as to the need for suspension of parking in the vicinity of the premises in particular so as to ensure safe evacuation of attendees, safe passage for emergency vehicles along with reasonable access and facilities for transport required to support the event. Application in relation to road closure orders were made in April 2024 and issued the week prior to the event at which point relevant notices were posted confirming terms of the Closure Notice.
14. Experts in the undertaking of large scale events were engaged by YMT so as to ensure the event ran to appropriate standards. These included a number of entities but of particular importance in relation to the hearing the following:
 - Future Sound Group – Organiser and promoter.
 - Blue Sky Acoustics – background level noise assessment at locations designated by EHO.
 - We Organise Chaos – promoters and press media providers.
 - Electric Star – (creative acoustics) having worked at venues of historic significance and unusual sensitives.Electric Star in particular have over 30 years experience in live production. Representatives from the Sound Production element will be available at the hearing to answer questions. These entities brought with them the ability

to implement the fundamental principle of sound quality against avoiding public nuisance and the ability to monitor levels so as to prevent breach.

- Reel Productions – sound system providers.

15. YMT endeavoured to ensure any impact upon third parties were minimised or within approved levels for the duration of the event. Agreed limits as to the nature of the operation were set out in the event risk assessment which was approved by the Safety Advisory Group. This is a substantial document covering numerous areas but there is attached at page 17-43 of the Bundle – Sound Management Plan to provision of music, monitoring of noise systems and equipment.

16. Implementation of this element of the risk assessment required input from a number of external entities all of which had experience of large scale external events and relevant expertise. These were in particular BSA who were commissioned to undertake an assessment of background noise levels in April of 2023 so as to identify the potential dB ratings which could be undertaken during the course of the event without adverse impact upon the immediate community. Extracts from this report is at page 13-16 of the Bundle and confirms that a base reading at Marygate being the residential accommodation closest to the complainants property was an average of 45 dB. All other locations prescribed to be assessed by EHO are higher. There will be present at the hearing representatives from Electric Star along with Future Sounds Group who will be available to give direct evidence on points raised by the Licensing Sub Committee as to the background levels, Noise Management Plan and readings recorded on the nights and set out in the Sound Management Report which is contained within the Bundle on pages 45-56.

The Licensing Objectives.

17. Central to the statutory regime are the four licensing objectives which are the only relevant areas for consideration and licensing objectives. They are as follows

- Prevention of crime and disorder.
- Public safety
- Prevention of public nuisance.
- Protection of children from harm.

The Guidance

18. Under Section 182, the Secretary of State is required to issue Guidance to Licensing Authorities on the discharge of their functions under the Act. Section 4(3) requires Licensing Authorities to have regard to the Guidance.

19. So whilst the requirement to have regard to the Guidance is binding on Licensing Authorities, paragraph 1.9 of the Guidance recognises that :

“This Guidance cannot anticipate every possible scenario such as circumstances that may arise and, as long as Licensing Authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an Appeal or Judicial Review and the reasons given will then be a key consideration for the Courts when considering the lawfulness and merits of any decision taken”.

In respect of this review hearing the licensing sub committee have to consider the potential impact from the outcome of the Review itself.

Validity of Representation by Mr. Dickinson

20. The Review has been commenced by Mr. Dickinson and is supported by a resident of Marygate. However that persons representation principally focusses upon parking which is outside the remit of the Licensing Committee. The EP representation makes it clear that although there may have been a minor breach of the Noise Management Plan such breach was indiscernible to the human ear. Licensing Sub Committee is referred to page 57 of the Bundle providing Google Map showing the distance from the event to the complainants property (1.1 km approx).

21. It is raised as a preliminary point that the alleged noise nuisance pleaded by Mr Dickinson, does not constitute a ‘Statutory Nuisance’. Issues concerning noise breakout which can be dealt with under the Statutory Nuisance are distinct from the complaint made and this is on 2 counts.

Firstly YMT would confirm that steps taken to abate the noise arising from the music within the premises were implemented by agreement between the Environmental Health Officers and the Premises prior to the commencement of the

event and during the event liaison was undertaken to the satisfaction of those professionals present. No enforcement action has been necessary.

Secondly YMT respectfully submit that they do not believe that the alleged noise constitutes a 'Public Nuisance'. If, upon consideration of the evidence presented to the Committee, they are not satisfied that a 'Public Nuisance' exists then no action can be taken by the Committee in this matter.

Legal Arguments

1. A The Committee are directed to the case of Crosby Homes (Special Projects) Ltd -v- Birmingham City Council [Birmingham Magistrates' Court 13/08/08].
 2. This case was an Appeal against the decision of Birmingham City Council's Licensing Committee in respect of Review proceedings instigated by Crosby Homes (Special Projects) Ltd against the licence of the Nightingale Club. There are similarities in the facts insofar as the Applicant in those proceeding raised issues of alleged nuisance arising, in part, from an external area. We would draw the Committee's attention to paragraph 26 of the judgement of DJ Zara which reads:
 - a. *"I move then to the central issue that had been the subject of this appeal. The duty to promote the prevention of public nuisance involves a consideration of what is meant by the term "public nuisance". The term is undefined in the Act, but is referred to in the Guidance, where at paragraph 2.33 it is claimed that it "retains its broad common law meaning". Ms. Clover seeks to persuade me that the use of the word "broad" denotes a distinction between the concept under the Act and the concepts of common law nuisance and statutory nuisance. Notwithstanding the words which follow ("low-level nuisance perhaps affecting a few people living locally") I am not persuaded that this distinction is valid. Indeed, I accept Mr. Bennett's submission to the effect that the Guidance on this issue is in effect a fudge. I take the view that I must rely on established precedent and in particular the decision of the House of Lords in the cases of R -v- Rimmington, R -v- Goldstein [2005] UKHL 63.^[1]"*
 3. The case referred to by the learned Judge is a lengthy critique of the law of nuisance. There is a clear and unequivocal distinction between 'Public' and
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'Private' nuisance. In the House of Lords case referred to above Lord Bingham categorised a Public Nuisance as:

- a. *"any nuisance... which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects. The sphere of the nuisance may be described generally as 'the neighbourhood'; but the question of whether the local community within that sphere compromises a sufficient number of persons to constitute a class of the public is a question of fact in every case."*^[2]

4. He continued in his Judgment to quote and thus confirm the earlier judgment that:

- a. *"a public nuisance is a nuisance so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that should be taken on the responsibility of the community at large."*

22. Additionally or in the alternative for a noise level to be classed as a nuisance it has to be determined objectively to be so. The professional arbiters of sound by reference to the Pop Code, World Health Organization recommendations and under their own expertise set a volume threshold over which they considered a public nuisance would arise. Readings from areas in the vicinity of Nr. Dickinson's accommodation illustrate that the volume levels were significantly lower than that threshold and thus could not have created a public nuisance. (See anticipated prediction plan at J in the Sound Management plan – bundle page 42). The readings of Marygate are at the threshold prescribed by the experts.

Conclusions

23. In this instance the alleged nuisance does not constitute a Statutory Nuisance and affects a group no greater than 2 persons. Neither individual has complained in the past and there are positive comments as to other events.

24. YMT conduct all its operation in cooperation with the Authorities and this has been applauded and it is eminently reasonable that in this instance the Committee should not act, to do so would be outside of the remit of the Committee as defined by the Act.

25. YMT contends that they have worked with all parties in connection with the preparatory steps for the events forming the basis of the Review complaint. The event proceeded without issues arising in relation to public safety or crime and disorder. The event falls within the aspirations of York City Council as set out in the city strategy Make It York which seeks to “elevate the city’s tourism experience for residents and visitors”. Furthermore the strategy confirms the desire to by 2032 grow York’s visitor economy sustainably by 1.7 Billion pounds and part of that is by prioritising on five areas but which include culture and providing – a cutting edge approach to creativity which attracts cultural tourists and supports the city’s regenerative visitor economy.
26. The strategy confirms the presence of a diverse music scene within the city expressly mentions York Museums Trust and recommends celebrating York’s headline acts and being the champion for up and coming local talent whilst working with the York Music Venue network and cultural venues. The strategy seeks to blend York’s already outstanding internationally renowned heritage together with cutting edge, contemporary approach to creativity. It is submitted by YMT that this event and events of a similar nature are central to the execution of the strategy going forward. YMT would respectfully request that the Licensing Sub Committee bear in mind the overwhelming positivity expressed by residents to the event and in particular those comments stated within representations served against the Review.
27. YMT respectfully requests the Licensing Sub Committee in determining the application to consider the evidence stipulated within the Environmental Health Officer representation which they would state of a constructive nature for going forward rather than critical or condemning, further that the proposed condition would not enhance the promotion of public nuisance over and above what was already agreed and in place.
28. The Premises Licence Holder respectfully asks the Licensing Committee to bear in mind that no enforcement action has been brought against the premises, it is not subject to any action plan or operating under a warning.

Concerns and Learnings

29. YMT acknowledge that this was an inaugural event and that learnings and improvements can always be achieved, in relation to the points raised by Mr. Dickinson, the resident and Environmental Health they would comment as follows:

(a) Environmental Health Officer request for limiter device to be utilised at forthcoming event. YMT have sought the advice of their acousticians and the opinion of those persons who frequently organise and undertake external live events is that such limiters do not work in the external circumstances of a large event. The limiter sensitivity is as to general noise levels which can be distorted by virtue of other intervening noise generators. For example, noise from emergency vehicles etc.

YMT through their advisors and contractors would be pleased to continue to work with Environmental Health in relation to future events and would be pleased to develop a better reporting system between themselves and the Responsible Authorities to ensure the amenity of third parties is not impacted.

(b) YMT and its advisors will explore with Environmental Health revisions to the layout of events particularly the orientation of the stage to see if this would further promote the prevention of public nuisance.

(c) Parking. Although parking is not a matter for the Licensing Sub Committee to adjudicate upon it is noted that the late display of parking suspension notices following their issue by the Council caused distress. It is therefore proposed that on the final mail shot will be the information providing a clear indication of the expected parking suspension period so as to provide residents with the maximum period of notice so as to arrange their affairs.

(d) YMT will work with the event promoters of any future events so as to ensure those residents who could potentially be impacted are informed of the event and be provided with clear lines of communication to liaise with the YMT and to be able to articulate the nature of their concerns.

Determination of the Application

30. The Guidance sets out direction in respect of Review positions at section 11.

Paragraph 11 Review

In making its final determination the steps the licensing authority can take are:

- the modification of the conditions of the premises licence;

- the exclusion of a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months; and
- the revocation of the licence.

Paragraph 11 Standard Review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
 - modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)^{[\[footnote 10\]](#)};
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.

- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

31. YMT requests the Licensing Sub Committee to consider the quality of the evidence raised and to look at the nature and volume of representations received.

32. YMT requests the Licensing Sub Committee to consider the legal arguments set out above as to whether the licensing objective of prevention of public nuisance is in fact triggered by virtue of the definition of "public" and "nuisance".

33. The Premise Licence Holder respectfully submit that the Licensing Authority must take note of additional sections of the Guidance.

34. Relevant extracts from the guidance are as follows:

- a) All licensing determined should be considered on a case by case basis (9.42).
- b) The Authorities determination should be evidence based justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve (9.43).

- c) Para 9.12 continues to confirm the Licensing Authority should accept all reasonable and proportionate representations made by the Police unless the Authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the Police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

- d) Para.9.44 - Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives.

- e) Para 10.10 - The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.

35. YMT acknowledge the benefit they have been bestowed in the grant of a Licence for the Museum Gardens but would hope that the licensing committee can see that the event was undertaken to the highest standards and there must be questions as to the quality of the evidence supporting the allegations made against the operation of the event. However the learnings they have taken from it will be implemented if allowed to undertake future events and humbly asks that the committee consider the option that no imposition of additional conditions are required to implement the promotion of the licensing objectives going forward.

JOHN GAUNT & PARTNERS

26th September 2024