

Annex 4

Representation by Public Protection

Environmental Protection are making representation against the premises licence application by Future Sounds for The Museum Gardens on the grounds of the prevention of public nuisance.

Guidance

The Noise Council's code of practice on the control of music from outdoor events is national guidance and restricts the number of days that should take place for outdoor events at any given location. The guidance also limits the noise levels at the nearest noise sensitive receptors. These limits are below:

Concert days per calendar year	Venue Category	Guideline
1 to 3	Urban Stadia or Arenas	The maximum noise level (MNL) should not exceed 75dB(A) over a 15 minute period
1 to 3	Other urban and rural venues	The MNL should not exceed 65dB (A) over a 15 minute period
4 to 12	All venues	The MNL should not exceed the background noise level by more than 15dB(A) over a 15 minute period

Existing licence

As York is a small City which sits in a vale, it is particularly vulnerable to challenges caused by geography and weather conditions which can and do result in noise from outdoor music events travelling far across the City and thus impacting on a large number of the local population.

The Museum Gardens constitutes a museum and a quiet park, the latter of which is normally open to the public in the city centre of York. The site is surrounded by housing on all sides including houses approximately 85 metres to the north, a substantial block of apartments at approximately 199 metres to the south west and housing at 167 metres towards the east of where the stage is proposed to be. There is also a library approximately 140 metres to the west. There is a natural pathway for sound to travel down the river and therefore affect a large number of residents both around the site and across the city.

Museum Gardens already has a premises licence in place which allows the site to hold events such as live and recorded music, films, plays and dance on any day of the week. Environmental Protection initially made representation against the application on the grounds of the prevention of public nuisance, however, we managed to agree conditions that both parties were happy with. Due to the sensitivity of the area and concerns about noise from events condition (8) was attached which deliberately restricted the number of live and recorded music events to 6 days per year. This meant that Museum Gardens could hold up to 6 music events per calendar year but were not restricted on the number of other lower risk events they could have such as plays, the Roman parade and historic events.

Further to this, the Museum Gardens were obliged to submit a noise management plan which had to be agreed by City of York Council Environmental Protection. In condition (9). Which required a noise management plan to be submitted and approved by Environmental Protection, this noise management plan was only agreed so long as there was a maximum of 3 noisier days of music events with a noise limit of 65dB and 3 quieter days with a limit of 15dB above background.

This was a flexible interpretation of the guidance which can be interpreted that where venues have more than 3 days, **all** events should be run at a maximum of 15dB above background. This would make running any events at 65dB impractical.

So long as the all of the other guidance in our local code of practice guidance was adopted and the number of days limited to a maximum of 3 louder music events and 3 quieter music events, this was deemed to have struck a balance which allowed Museum Gardens to host the 3 day music event, the proms night, another 2 possible events at a lower volume and retain the flexibility to run other quieter events whilst protecting local residents from unwanted noisy from multiple music events throughout the year.

This approach is the same as has been used for other sites around the city where practicable and has been found to be successful when used in conjunction with a very comprehensive noise management plan that incorporates all of our local guidance and a restriction that there are no more than a maximum of 4 days noisy events per calendar year.

There is no indication that Museum Gardens intend to withdraw their current premises licence and so 6 music events could still take place at the site on top of what is being applied for with this new premises licence.

Recent history

Three years ago, Museum Gardens applied for a premises licence to allow them to run larger events at the site. After much negotiation, the licence was granted with the safeguards above, in order to protect the local residents from public nuisance due to noise from music.

Environmental Protection were largely supportive of the applicants wish to run the 3 day event and although there were a number of breaches on the first weekend, by

the third day the events were being run in compliance with the noise limits agreed. For the second year, the stage was re-orientated and the events were compliant with the noise limits at nearby residential premises on all three nights.

Having said this, in the first year of the events 4 complaints about noise due to music were received and a member of the public called for a review of the premises licence. There was then a further 18 complaints by 14 complainants last year. These complaints were as far as the Fishergate and Fulford areas of York.

This demonstrates that even with only three noisy days and a fourth quieter day per year, a substantial section of the city is affected by the noise from these events and any increase in the number of days is likely to result in more complaints and the risk of a public nuisance.

Due to the number of noise complaints the applicants have started to engage with the residents in community liaison meetings to assure them that the events are compliant with guidance and will be well managed.

Whilst we have been supportive of the events to date, any increase in the number of days for such events is likely to result in more noise complaints and would not be supported by Environmental Protection as this would be a departure from the current mutually agreed licence and also from best practice in both local and national guidance on control of noise from outdoor events.

What this Application would mean

As there is already a premises licence in place which allows 3 noisy days of events at 65dB (A) and 3 other days at 15dB (A) above background, this application would be adding to this number with another possible 12 days of noisy music led events.

This would be a total of **18** possible days of music events. This would mean that the limit on the number of days as agreed with the Local Authority and the noise limits set out in both the national and local guidance on outdoor music events would be exceeded and this would be an unacceptable move away from our advice and best guidance and be likely to result in a public nuisance.

Further to the public nuisance, there is a risk that noise from the events could constitute a statutory nuisance, which if witnessed would require Environmental Protection to serve a legal notice on anyone responsible for causing the nuisance. In this case, this could be on either or all of the applicants, the event organisers and the Museum Gardens Trust. If the noise abatement notice is breached, we may take further legal action which could incur fines of up to £20,000 per offence. We may also likely call for a review of the premises licence.

Should the application be granted and a member of the public or group call for a review of the either of the premises licences at Museum Gardens in the future, we would not be able to support the applicants or the Trust.

Proposed Conditions

Owing to the fact that Environmental Protection object outright to this application, we are unable to agree any conditions.

It is worth mentioning that there are a number of proposed conditions which would not be acceptable and in some instances are completely unworkable as they suggest advice from the Local Authority on sound levels, when our advice is that the extra events do not take place.

Summary

A perfectly good premises licence is already in place with no indication or requirement that it will be withdrawn. This application would allow the increase in the number of loud music days from 3 noisier events at 65dB (A) and 3 quieter events at 15dB (A) above background to 18 days of music events per year with no clear restrictions on what the noise levels would be. The conditions proposed by the client are not acceptable or robust enough to satisfy us that a public nuisance will not be caused. Whilst currently the guidance limits are not being breached, there are already a number of complaints about the current events and the granting of this licence would be an unacceptable increase in the number of event days and a departure from both local and national guidance and we can only see that this will result in a public nuisance in the city.

We would therefore definitely advise that the application is refused on the grounds of the prevention of public nuisance.

Regards

Michael Golightly
Technical Officer