

MINUTES OF THE LICENSING (HEARING) SUB COMMITTEE

HELD ON WEDNESDAY, 24TH JANUARY AT 2.30 PM

APPLICANT: Barbican Centre, Silk Street, London EC2Y 8DS
PREMISES: Beech Street Tunnel, Silk Street to Bridgewater Street,
London EC2Y 8AD

Sub Committee:

Ms Sophie Anne Fernandes (Chairman)
Deputy Jamie Ingham Clark
Ms Marianne Fredericks

Deputy Ingham Clark and Ms Fredericks advised the Sub Committee that they had excused themselves from any deliberations or decisions when this event appeared on agendas on other City committees they served on.

Officers:

Town Clerk – Julie Mayer/Leanne Murphy
Comptroller and City Solicitor – Paul Chadha
Markets and Consumer Protection – Peter Davenport

Given Notice of Attendance:

Applicant:

Sir Nick Kenyon, Managing Director – Barbican Centre
Huw Humphreys, Head of Music – Barbican Centre
Alistair Pickard, Site Production Manager – Barbican Centre

Making representations:

Jo Boait	Barbican Estate resident – Ben Jonson House
Robert Barker	Barbican Estate resident – Cromwell Tower
Sandy Wilson	Barbican Estate resident - Shakespeare Tower

Licensing Act 2003 (Hearings) Regulations 2005

A public Hearing was held at 2.30pm in Committee Room 1, Guildhall, London, EC2, to consider the representations submitted in respect of an application for a recorded music license in respect of Beech Street Tunnel, Silk Street to Bridgewater Street, London EC2Y 8AD, the applicant being the Barbican Centre.

The Sub Committee had before them the following documents: -

Annex – Report of the Director of Markets and Consumer Protection

APPENDIX 1	Copy of application
APPENDIX 2	Representations from other persons
APPENDIX 3	Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales
APPENDIX 4	Plan of Premises

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1. The Hearing commenced at 2.30pm.
 2. At the commencement of the Hearing, the Chairman invited the Applicant to set out their application and noted a supplementary report, which had been shared with Members of the Sub Committee, those making representations and added to the City of London Corporation's Web site. It was noted that of those making representations, one was as previously advised, two were absent and two new speakers were agreed.
 3. Sir Nicholas Kenyon, Managing Director of the Barbican Centre, introduced the Barbican Centre's application by explaining that, as part of Culture Mile and the Barbican Centre's Open Fest weekend, the essential element would be a contemporary/classical music light and sound event, which required a licence for recorded music. There would be no sale of alcohol at the event and neither the police, emergency services nor responsible authorities had made representations. The Barbican Centre had met with the Barbican Association in November 2017, ahead of submitting their Licence application on 1st December 2017. The Sub Committee were advised that, due to the tight timescale, it had not been possible to conclude the consultation process, but this had been on-going, via a residents' sub committee, which had continued to meet.
 4. In respect of road closures, the Sub Committee noted that this decision was outside the remit of this Hearing, but Members of the Policy and Resources Committee had asked for this to be reduced.
 5. Mr Huw Humphreys, Head of Music, Barbican Centre set out the artistic aspirations for the event and the involvement of '59 Productions', who had been involved in the 2012 Olympics Opening Ceremony. The Sub Committee were advised that music would be played at 30-minute intervals, on the hour, at a range of levels and with controlled sound levels.
 6. Resident Access would be maintained at all times, including the car parks. Some of the works would curtail access to the tunnel, on a few occasions and for safety reasons, and pedestrians would be directed over the high-walk.
 7. Those making representations were then invited to put their case. Mr Wilson (Shakespeare Tower) accepted that residents were accustomed to a certain amount of ambient traffic noise but was concerned about some unknown elements associated with the event. However, Mr Wilson acknowledged the high standard of Barbican exhibitions generally and the Film Night at Frobisher Crescent, which had been particularly well organised, albeit in different circumstances. Given the likelihood of further Culture Mile Events, Mr Wilson also

suggested that a more robust consultation should have been in place. Ms Boait (Ben Johnson House) endorsed Mr Wilson's comments in respect of consultation. Furthermore, she did not fully understand the technical nature of 'low sound pressure' and was concerned about the repetitive nature of the music.

8. Mr Barker (Lauderdale Tower) also challenged the account of the consultation, as he understood this had not taken place before the application was submitted. However, Sir Nicholas challenged this statement as the first consultation meeting had taken place in November 2017, at which Mr Barker had been present, and the application was submitted on 1st December 2017. Mr Barker had further concerns in respect of the public safety aspects of queueing and dispersal, which may spread into parts of the Barbican Estate and sought assurance that the sound would not reach residents' flats. He was also concerned that there might be further inconvenience generally as a result of increased traffic in the area, although the Sub Committee were reminded that road closures were beyond the remit of this Hearing.
9. The City Solicitor was called on to provide advice on enforcement and confirmed that, in the event of a breach of any of the provisions of the Licensing Act 2003 the City of London Corporation would not be able to take action against itself.
10. Sir Nicholas responded to the above representations by advising the Sub Committee of the rationale behind the requested hours, i.e. the performances would run from 3.00pm on Saturday 17th March with the last performance starting at 22.00 hrs and ending at 22.30 hrs; likewise, on Sunday from 12.00pm to the last performance starting at 22.00, lasting 30 minutes. The Comptroller and City Solicitor informed the Panel and the Hearing that the times allowed for sound checks were outside the remit of this Sub Committee as they do not fall within the definition of "regulated entertainment" which requires the presence of an audience. The Barbican Centre were fully aware of residents' concerns in respect of access and this would be discussed with the consultation group closer to the event.
11. The Barbican Centre was also very aware of noise concerns and advised the Sub Committee that, whilst part of Beech Street Tunnel bordered Shakespeare Tower, the event would be to the east of the area and a structure within that part of the tunnel would contain the sound to a certain degree. Sir Nicholas advised the Sub Committee that the nature of the event would be a low volume experience, immersed in sound and not a raucous gathering. The Barbican Centre were also keen to work with Environmental Health to keep volumes appropriate during testing across the Estate. Mr Humphreys further explained that this would need to be done once the equipment was installed; hence the length of the sound check times on both Friday and Saturday, 16th and 17th March 2018. In response to a question about the drapes at either end of the tunnel, the Sub Committee noted that they would be made from noise reducing materials, commonly used in theatres and the openings in the roof would be inside this area. The Barbican Centre would be in full control of the noise levels at all times.
12. During the event, signs would be clearly displayed along the tunnel reminding patrons that this was a residential area and directing them to the most convenient

and least intrusive exits. The projectors used during the event would also be used to convey these messages. Members asked if the event could be evened out to prevent surges and the applicant advised that the ticketing software would enable this, and it had worked well during their 'Basquiat' event.

13. During questions to the applicant, Members suggested that the original application should have addressed the 4 Licensing Objectives in more detail. They also asked about engagement with residents during sound testing, particularly affecting those residents above the tunnel, and suggested that sound checks be made at 10.30pm on the Friday evening, as this would be a more realistic comparison. Mr Pickard referred Members to the supplementary report and advised that safety planning meetings with Health and Safety Advisors and Traffic Planners would be ongoing up to the time of the event, covering queueing, dispersal and number of stewards, etc, and the event would not go ahead if these parties were not satisfied. The Sub Committee noted that the safety planning group would also be considering safe areas for bag checks, hostile vehicle mitigation and a possible double entry system.
14. There were further questions about public safety within the event, i.e. trip and fall hazards, and the Site Production Manager advised that the maximum capacity of the event would be 1,000, which was very low density for a public event (i.e. 1 person per sqm; usually such events were 2/3 per sqm). This low density would provide patrons with comfortable space to move between the carriageways, there would be barriers against equipment and stewarded crossing points to limit the risk from tripping over kerbs. The event would be free but ticketed to control numbers.
15. In response to a question about possible carbon monoxide levels in the tunnel, which might rise as a result of shutting off draughts, the applicant would be monitoring this with experts and safety planners and, should it rise above an unsafe level, excavation panels would be opened, and it would be fully evacuated if necessary. However, levels were likely to be considerably below the normal traffic level within the tunnel, in line with the City's future aspirations for the area.
16. Sir Nicholas advised that the start time was in keeping with the Barbican's family friendly offers generally and would be running at the same time as the Centre's 'Open Fest'.
17. The Chairman then requested final summary statements, as follows:
18. Sir Nicholas Kenyon felt that he had demonstrated how the Barbican Centre would work with their environment and safety partners and his team were very experienced in running outside events. The process of resident consultation, via the Barbican Association, was dependent on their on-going communications with the Barbican House Groups and the Barbican Centre was not responsible for how they shared information. He suggested that, as Culture Mile developed, so too would a strong communications plan with residents, to enable early discussions. Whilst he regretted Members' views in that the original application had been remiss, he felt the application laid out all the principles on which the event would

be taken forward and he hoped that the supplementary report demonstrated the activity underway, in addressing the principles of the Licensing Act, which had moved on since the application was first submitted. The Barbican Centre felt they could deliver a safe and enjoyable event and the Sub Committee were reminded that neither the police, emergency services nor responsible authorities (including the City of London Corporation's Environment Health Team) had made representations,

19. Whilst accepting that the Barbican had presented a good case today, those making representations still felt that some of the measures, particularly in respect of decibel levels, were largely subjective. Should the event go ahead, they would like to be consulted on the matter of sound levels. They also felt there was too much uncertainty surrounding dispersal, which may flow onto the highwalks, whether a concrete ramp would provide a safe queuing area and queue management generally.

20. The Sub Committee retired at 3.45pm

1. In reaching its decision, the Sub Committee considered the submissions made both in writing and orally by those opposing the application. Whilst accepting that the Applicant's Supplementary report satisfied some of the objectors' concerns, the Sub Committee felt that some of the mitigations proposed were subjective and felt that the Applicant should provide additional documentary evidence in order for them to reach an informed decision.
2. The Sub Committee therefore decided to defer its decision and advised those still present at the Hearing that, in order to reach a reasoned decision on the application, based on facts and evidence, and in order to satisfy the Licensing Objectives in respect of Public Nuisance and Public Safety, the Applicant was required, by 4.00pm on Monday 29th January 2018, to provide the following evidence, in order for the Sub Committee to reach its decision within 5 working days, i.e. 1st February 2018:
 - a) Technical data in respect of the drapes and the material to be used that will demonstrate their effectiveness in reducing sound.
 - b) The Dispersal Policy covering ingress and exit strategies – to factor in managing security/bag checks and the number of stewards.
 - c) Data from the sound tests conducted in November.

21. The Sub Committee met again on Tuesday 30th January 2018 to continue their deliberations, having received the following evidence, which had been set out under headings addressing the Licensing Objectives of Public Nuisance and Public Safety, as follows:

NB. The Sub Committee noted that the documentation provided as additional evidence formed part of a detailed planning process and would be subject to review and approval by the City of London Corporation's Licensing, Operational

and Safety Planning Group (LOPSG) and Safety Advisory Group (SAG) and was not to be considered to be final approved documentation at this stage.

- A. Indicative Measurements of the Absorptivity of Random Noise Through a Sample of Serge Fabric to be used in 'The Beech Street Tunnel Project and an Acoustic Test report through the fabric.
 - B. Queue/Dispersal Management Plan
 - C. Event Safety Plan
 - D. Site Plan
 - E. Security and Stewarding Staffing Plan
22. The Sub Committee noted that the applicant had further addressed the potential for noise nuisance late at night by amending the last performance time, to start at 21.00 hrs and finish by 21.30 hrs, to this end the Sub Committee sought to amend the terminal hour from 22.30 hrs to 22.00 hrs.
23. In reaching the decision, the Sub Committee were mindful of the provisions of the Licensing Act 2003, in particular the statutory licensing objectives, together with the guidance issued by the Secretary of State in pursuance of the Act and the City of London's own Statement of Licensing Policy dated January 2017.
24. Furthermore, the Sub Committee had regard to the duty to apply the statutory test as to whether an application should or should not be granted, that test being that the application should be granted unless it was satisfied that it was necessary to refuse all, or part, of an application or necessary and appropriate to impose conditions on the granting of the application in order to promote one (or more) of the licensing objectives.
25. In determining the application, the Sub Committee first and foremost put the promotion of the licensing objectives at the heart of their decision; in this instance the most relevant of those objectives being the prevention of public nuisance. In determining whether a public nuisance would arise, the Sub Committee relied upon the definition of "public nuisance" contained in Halsbury's Laws of England which defines public nuisance as "*one which inflicts damage, injury or inconvenience on all the Queen's subjects or on all members of a class who come within the sphere or neighbourhood of its operation. The character of the neighbourhood is relevant to determination of the question of whether a particular activity constitutes a "public nuisance"*".
26. In reaching its decision, the Sub Committee considered the submissions made both in writing and verbally by those opposing the application. Whilst Members agreed that the additional evidence provided by the applicant clearly showed attention to detail and due consideration of the Licensing Objectives, they also felt that it would have been helpful if it had been presented with the initial application or supplementary report, where possible, in the light of security or commercial sensitivity. Having found the

above documents satisfactory, the Sub Committee were satisfied that, with the imposition of suitable conditions, the application did not offend the licensing objectives and consequently agreed to grant a premises license as follows:

<u>Activity</u>	<u>Current Licence</u>	<u>New Licence</u>
Recorded Music	None	<p>Fri 16 March 2018 08:00 – 18:00</p> <p>Sat 17 March 2018 08:00 – 15:00 15:00 – 22:00*</p> <p>Sun 18 March 2018 12:00 – 22:00*</p> <p>The last musical event (of 30 minutes duration) to start at 21.00 hrs on both Saturday 17 March and Sunday 18 March 2018.</p> <p><u>* This will begin 30 minutes earlier than in the application as a 22:00 performance has been cancelled.</u></p>

The Sub Committee then considered whether it was necessary and appropriate to impose conditions on the licence and decided to impose several Conditions on the Licence, as set out below:

1. A double layer curtain of at least the same quality of the example Serge Fabric presented in additional evidence document A to be in place at either side of the tunnel and to be closed at all times, except for ingress and egress to the event.
2. The availability of a contact number to all residents on the Barbican Estate in case of complaints.
3. Very clear signage at the event space in respect of the Barbican Estate being a residential area and urging patrons to leave quietly and quickly. This information to be projected throughout the tunnel and appear as part of the ticket information.
4. The number of stewards as set out in the Security and Stewarding Staffing Plan, dated 26 January 2018, should be considered as a minimum of any final number agreed in subsequent plans.
5. Preparation and development of a Dispersal Policy, including queue management.

The Sub Committee noted the Safety Plan and Environmental Health's recommendations and stressed that the Applicant should work with both Environmental Health and residents in respect of sound levels. The Sub Committee strongly recommended that a proactive and robust communications policy be in place when planning future Culture Mile events.

The meeting closed at 12 noon on 30th January 2018.

Chairman

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