

Thomas & Thomas E-News – Special Release

Hyde Park: a Case Study

Thomas and Thomas were instructed in December 2011 by existing client, The Royal Parks to defend an application for Review of the Hyde Park Premises Licence. The existing licence allowed 13 events of up to 79,999 capacity in any year. The application was instigated by the Environmental Health Consultation Team and arose as a result of increased complaints about noise during 2011.

During last summer, there was a substantial increase in complaints although over a quarter of those arose on one day of repetitive bass beat music. The Council wanted a change to the licence so as to reduce:

- capacity to 65,000
- the number of shows over 50,000 capacity from 5 to 4
- the number of concerts from 13 to 6
- the Music Noise Level at the monitoring point to 73dB(A) from 75dB(A) over 5 minutes
- consecutive days and events so they are only over two summer weekends

Conditions were agreed to:

- have additional monitoring at lower music levels in quieter locations where residents were more likely to be affected
- limit the bass-beat frequency at a further monitoring location
- have additional cleaning and sanitary resources outside the immediate vicinity of the Park

The Council also wanted all these conditions to take immediate effect. The Royal Parks were amenable to the decrease in capacity (and indeed had previously proposed such changes by way of variation) but only to take effect from January 2013. However, the Parks maintained that:

- the number of concerts should remain at no less than 9 (and any such change would only take effect from 2013)
- that the number of weekends not be restricted
- that the Music Noise Level remain at 75dB(A)

The Parks are very substantially reliant on funding from the concerts to maintain the upkeep of the open spaces throughout London. The residents who made representations in support of the application wanted a decrease to 72 dB(A) or lower and a further reduction in the number of concerts. Essentially, the case, although about Public Nuisance, came down to balance and what was proportionate.

The Olympic 'Live Sites' programme was also dependent upon the 2012 Summer concert programme. A hearing of the application was considered by the Licensing Sub Committee on the 17 February 2012. Evidence was called by the Parks to support the funding contention. Another major issue for the promoters and artists was the reduction in the Music level and evidence from John Giddings, who manages Madonna and other artists, was that artists would not perform with such restrictions. Evidence was also called that a 2dB(A) change at the Mixing Desk had a very profound

effect on the artists ability to perform and the enjoyment by the audience. Conversely, a 2 dB(A) decrease at the monitoring point would not have any perceptible difference or benefit to local residents.

It was submitted on behalf of the Royal Parks that:

- there was a lack of evidence that there were fewer complaints at lower music levels
- there had been a 'spike' in complaints due to one event, which had now been addressed by way of a bass-beat condition
- the number of complaints from that one event had been 31 compared to 2 from the Bon Jovi concert which had double the capacity
- in order for the changes to be 'necessary' the conditions had to be proportionate; in order to be proportionate, the legitimate interests of the residents who complained had to be balanced against the positives provided by the concerts, not just from funding but also enjoyment, and as an iconic music attraction
- the agreed conditions should be given a chance to 'bite' and see if they have a positive effect
- for the 2012 programme, no changes should be made
- a reduction in the Music Noise Level of 2 dB(A) would have no perceptible difference or benefit to the residents but would have on the artists and audience

The following issues were of particular interest:

Proportionality

It was submitted by the Environmental Heath Team that if there was disturbance to residents, that disturbance equated to public nuisance, and the only remedy was to reduce the number of concerts to no more than 6 and reduce the Music Noise Level to 73 dB(A), with immediate effect.

On behalf of the Parks, it was submitted that other factors, including the Olympic Programme and income from events were important factors which balanced any degree of Public Nuisance and the necessity to impose further conditions which would have resulted in the concert programmes being unviable.

Reference was made to the recent 'Hope and Glory' case in which the Court of Appeal said:

"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.... Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgement rather than a matter of pure fact."

That submission was also supported by reference in the Statutory Guidance and also the Government's wish to promote live music. Evidence as also called that Trustees of the Park, including Trudie Styler and her husband Sting, supported the Park's position.

The effect of a 2 dB(A) decrease

Expert evidence was given by Jim Griffiths of Vanguardia Consulting, supported by the former president of the Institute of Acoustics, that a decrease of 2 dB(A) at 70 to 75 dB(A) is barely perceptible to the human ear, and thus was not necessary as a condition to support or promote the licensing objectives. However, at 95 dB(A), a decrease of 2 dB(A) would be very noticeable and detrimental to the enjoyment of the concerts.

Decision of the committee

Having considering all the evidence, the committee decided it was not necessary to promote the licensing objectives to either make changes in 2012 and where changes were agreed for 2013, those changes should not go further than those already proposed by the Royal Parks.

The reduction in number and size of concerts had been proposed by the Royal Parks before the review was instigated. However, the end result was the same. The committee ultimately preferring to give the additional steps a chance to work and having the option to further Review the licence if such measures did not mitigate the problem. Sometimes, finding balance is not easy and takes a while but found it was in this case.

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