

## LICENSING SUB-COMMITTEE

Minutes of the virtual meeting held at 10.00 am on 7 August 2020

### Present:

Councillors Robert Evans, Michael Turner and  
Stephen Wells

#### 1 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Councillor Stephen Wells was appointed Chairman for the meeting.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 3 APPLICATION FOR TWO TEMPORARY EVENT NOTICES FOR CRYSTAL PALACE PARK TOP TERRACES IN THE NAME OF FOR WANDA NATION FOR 15/16 AUGUST

### DETERMINATION:

1. **We determine to issue counter-notices in relation to both TENS and so licensable activities at these events are not authorised.**
2. **Whilst we accept the applicant is a highly professional and able operator, we believe that despite her best efforts and preparations, this large event is likely to lead to a serious risk of COVID-19 infection spreading, and we feel compelled to prioritise the interests of the local community in these exceptional times. Our decision is appropriate and proportionate in order to promote the licensing objectives.**

### REASONS

3. The applicant premises user, Ms Wendy Cummins, on behalf of Wanda Nation, wishes to hold events collectively known as "Radiate Secret Garden & Night Market" over the weekend of 15-16 August 2020 in a new temporary events area on the North West side of the Top Tier of Crystal Palace Park.

4. The open-air events, within this large public park owned by the Council, is proposed to operate from 11:00 – 23:00hrs on both days. The weekend programme of events will be split into two adjacent areas (Areas A & B) separated by a wide pathway.
5. The events over the weekend will be mainly free but require ticketed entry and provide the opportunity for groups of up to 6 people from different households or 2 households to be able to come together in a social outdoor environment with, the applicant states, the added security of being able to social distance whilst enjoying an event. People who turn up without a ticket will be able to wait if the capacity levels have been reached and permitted to enter once capacity levels have eased. The applicant will collect attendees' personal details to enable track and trace procedures to be followed up if required.
6. The applicant served an initial Event Management Plan ("EMP") with her TENS but this has been updated in light of objections and discussions with responsible authorities. The latest EMP is at pages 157-184 of the Agenda Papers. The event will be open to all ages.
7. The applicant states that she hopes and intends to create a COVID-19 secure environment in accordance with Government guidelines. This will include a range of measures including the provision of bubble areas and paid for pods for groups to socially distance as appropriate as well as sanitising measures. These COVID-19 specific actions are set out in a detailed risk assessment, which we have considered.
8. The events will include a mixture of entertainment attractions including three licensed bars (two in Area A and one in Area B), pre-recorded music and DJ's, face and body painting, fancy dress, dance performances, drumming, community group and wellbeing sessions, vendor workshops, group picnic posts, and market stalls with a range of goods and foods for sale. The applicant would, ideally, also like to provide live music to attendees but that is not in the current EMP.

1. The applicant has indicated that she expects people will wish to dance to the music, albeit she hopes they will restrain from dancing with other groups in attendance.
2. The event will be ticketed with SIA door supervisors and stewards monitoring the number of attendees who enter and exit. The applicant states that “the venue will provide an outdoor venue for the local community, but also, draw in a wider audience to enjoy COVID-19 secure leisure activities”. The applicant has indicated that although she will micro-advertise the event to local areas on social media, she still anticipates people from at least five neighbouring London Boroughs are likely attend.
3. Both areas A and B will operate at the same time alongside each other making it similar to a single event in our view, albeit split into two areas. Each area will have a capacity of 499 persons under the TENS, meaning that just under 1,000 persons would be able to attend the events. This number includes staff and traders who will make up some 15% of the capacity. This is, of course, only the maximum capacity at any one time. It is to be expected that the actual number of people who flow through the event over the course of the whole weekend will greatly exceed 1,000 persons.
4. The applicant’s documents indicate that the total event space is over 7,200 m<sup>2</sup> which is said to be “an unusually large area for this number of visitors” (about 8-10m<sup>2</sup> per person). The expectation of the applicant is that attendees will have more than sufficient space to socially distance.
5. There will be separate entry and exit lanes for each side of the event and 2-3 metre wide routes for both entrance and exit to avoid pinch points.
6. Attendees will be able to flow across the two areas so long as capacity has not been reached on the selected side that they wish to enter. Numbers in each area will be monitored.

7. We note that there are plans for waiting and queuing prior to entry. The applicant hopes and intends that these queuers will abide by social-distancing guidance.
8. We have been told that this event was originally intended to be a different style of event known as the “Windrush Festival” which has a much larger capacity of nearly 5,000 people. But, due to the COVID-19 pandemic, the applicant has changed the style and size of the intended event to the one now subject to these TENS.
9. The larger Windrush Festival, organised by the same applicant, took place last year at this site in 2019. We note from the Agenda Report (at paragraph 3.10) that, according to Council officers, she “failed to meet all of the requirements of the noise management plans contained within the event documentation approved with the licence”. However, we are aware that the applicant is a highly responsible and impressive operator and the Windrush Festival overall was a great and welcome success last year.
10. In order to provide licensable activities at this year’s events, on 20 July 2020 Ms Cummins gave two temporary event notices (“TENS”) to the licensing authority under s.100 of the Licensing Act 2003. The licensable activities indicated in the TENS are the sale of alcohol, the provision of regulated entertainment and late night refreshment.
11. On 22 July 2020, Pc Tina Dandridge of the Metropolitan Police served an objection notice in response to both TENS citing concerns in relation to the crime and disorder and public safety licensing objectives.
12. The Environmental Health department of the Council did not serve a separate objection notice to the TENS, seemingly due to an administrative oversight caused by the extraordinary pressures on Council officers who are busy serving the public interest during the pandemic.

13. However, as evidence in support of their own objection to the TENS, the police rely on a letter from Ms Joanne Stowell, the Council's Assistant Director of Public Protection (dated 5 August 2020) as well as a significant letter from the Council's Director of Public Health, Dr Nada Lemic (dated 4 August 2020). We have considered the interests of justice, and any likely prejudice to any party in considering this more recently served evidence. We are satisfied that the information from Ms Stowell and Dr Lemic, relied on by the objecting police officer, can and should be properly take into account in our determination.
14. Today's hearing to consider the objection notice, has been convened remotely using remote video-conferencing. The applicant, Ms Wendy Cummins, the objector Pc Tina Dandridge, as well as Ms Joanne Stowell (the Assistant Director for Public Protection) have all spoken at the remote hearing and been questioned by the parties. Mr Steve Phillips (Head of Licensing) has also provided some clarification information on our request. Our legal advisor was Mr Gary Grant, Barrister.
15. The applicant clearly explained how the event was intended to operate and the COVID-19 secure measures that will be carried out. She strongly believes that the event will not pose any serious risk of infection to attendees.
16. The police, with Ms Stowell as their witness, maintain their objections on the grounds of public safety and crime and disorder. (Ms Stowell also pointed out that the public nuisance objective may be engaged). Whilst acknowledging that this event is in a large open space, rather than a confined premises, the police have raised proper concerns that their current experience in Bromley is that there is a worrying lack of social-distancing by attendees of licensed venues and events, despite the best intentions and measures that operators endeavour to enforce. Pc Dandridge describes it as a "huge problem" and people are "not obeying" social-distancing requests by operators, albeit we are in the middle of a pandemic.

17. Concerns have also been raised that transport options will be more limited than usual given the restrictions on capacity of buses in the area.
18. We have had regard to the various government issued COVID-19 guidance documents and announcements, included in the Agenda Papers and supplemental submissions, in relation social-distancing, events, safe-working practices, and safe use of council buildings (including outdoor spaces). We also note the guidance issued by the Events Industry Forum, a non-governmental trade body, in relation to holding outdoor events safely during the pandemic. However, we note that none of these documents are statutory guidance.
19. We have had been advised on, and have had regard to, Bromley's Statement of Licensing Policy and the statutory guidance issued by the Secretary of State under :
  - s.182 of the Licensing Act 2003 and, in particular to Chapter 2 of the s.182 Guidance in relation to Public Safety, Crime and Disorder and Public Nuisance as well as Chapter 7 in relation to Temporary Event Notices.
20. We have also had regard to our obligations under the Public Sector Equality Duty set out in the Equality Act 2010 and understand that the proposed event will be attractive to the BAME and wider community.
21. We have carefully considered all the papers presented to us and the written and oral submissions of the parties presented at this remote hearing.
22. We base our determination, primarily, on the legal test set out in s.105(2)(b) of the Licensing Act 2003, namely that having regard to the objection notices whether we should issue counter-notices if we consider it appropriate for the promotion of a licensing objective to do so. We have also considered whether it would be proportionate to do so given the individual circumstances of this particular application.
23. In reaching our decision we have placed considerable weight on the cogent evidence from the Council's Director of Public Health, Dr Nada

Lemic, as set out in her letter dated 4 August 2020. It is worth setting out in full as we accept her evidence, albeit that she has not appeared in person today and so could not be questioned. (The reference to “Windrush” in Dr Lemic’s letter, must refer to the newly named and different style of event proposed in these TENS since it refers to 1,000 attendees. We view the error as one of nomenclature rather than substance). Dr Lemic states:

“I have been a Consultant in Public Health Medicine for over 20 years and Director of Public Health in Bromley since 2002.

Although this advice is of general application, I have also considered the outline proposals for three specific events to be held over August and September 2020 in Crystal Palace Park (Transmission 2020 and Windrush) and in Croydon Road Recreation Ground (Soul Town). I understand that Windrush hopes to attract nearly 1,000 attendees and the other events considerably more.

Considering the current situation with the Covid-19 pandemic, and in order to promote public health, my strong advice is not to permit such events to take place for the following principal reasons:

1. There is an indication from the ONS data that the number of Covid cases is rising nationally.
2. In recent weeks there have been numerous outbreaks, both in London and nationally, indicating that there is still a sustained transmission of Covid-19 in the population.
3. Although the current figures in Bromley are relatively low, they can markedly increase within a couple of weeks. There is an inherent lag between the time when a person is infected with Covid-19 and the time that infection is reflected in a positive test recorded in official statistics.

4. Visitors to the proposed gatherings would most likely come from all over London and nationally which will pose a significant risk for transmission of Covid-19 infection in Bromley. There are unlikely to be any realistic measures taken by the organisers that could effectively prevent a person travelling from an area with a higher infection rate in order to attend a large event in Bromley.

5. Given the nature of music and community-based outdoor festivals and events in Bromley it is unlikely that social distancing and other health mitigation measures will be effectively maintained in a large gathering event outdoors involving alcohol consumption, dancing and/or music. This is despite the best intentions of event organisers. There is a serious risk of transmission of the Covid-19 virus between individuals as there is likely to be close contact between attendees at some stage- whether it be on arrival, at the event itself, or on dispersal.

6. Taking all the above into account, it is my view that the Council should take a precautionary approach and not take unnecessary risks with the public's health by permitting large gathering events to take place in Bromley's outdoor spaces in August and September 2020.

7. I will continue to monitor the situation and, if my opinion changes, I will make it known to the Council."

24. We share Dr Lemic's opinion that – despite the best intentions of the event organisers and the steps proposed in the detailed risk assessment – an event such as this one with a combined total of nearly 1,000 attendees (including staff and vendors) at any one time will give rise to a serious risk of the spread of COVID-19 infection.

25. Attendees are likely to be enjoying themselves in a highly social and entertaining occasion outdoors, accompanied by music and alcohol. High spirits among attendees are to be expected and, if circumstances

were different, welcome in our parks during summertime. But in our judgement there is a likelihood that social distancing measures will not, in practice, be kept to by attendees. In our view the additional mitigating measures set out by the applicant are likely to prove insufficient.

26. We note that the current COVID-19 infection rate in the Borough is, fortunately, “relatively low” at the date of this hearing. But we are acutely aware that outbreaks are being reported around the country and the London Boroughs are unlikely to be immune. As the Council’s Director of Public Health points out, the official statistics have an inherent lag in them of a few weeks. People infected today may not be positively tested, and so recorded in the figures, until a week or more from today.
27. Moreover, attendees to the event will not necessarily be limited to local residents. People may well attend from all over London, and we expect a smaller number from further afield too. This may well include people visiting from areas that are currently experiencing higher increased outbreaks of COVID-19 infection.
28. We are satisfied that the risk of COVID-19, a potentially fatal respiratory disease, spreading at such a large gathering as the one proposed in these TENS properly engages the licensing objectives. In particular, the prevention of public safety and this crosses-over into the prevention of public nuisance and prevention of crime and disorder.
29. We take the view that “public safety” is engaged due to the real and serious risk of immediate and specific infection on site. We are aware that this objective does not cover more general public health concerns.
30. We are satisfied that “public nuisance” includes the real risk of serious infections spreading that may endanger the life and health of the public.

31. We are aware that it is a criminal offence to “cause a public nuisance” punishable with up to life imprisonment and so the “crime and disorder” objective is also potentially engaged.
32. Although we have primarily reached our determination on the basis of the legal test set out in S.105 of the Licensing Act 2003 itself, rather than on non-statutory guidance, we note that current Government “Guidance on the use of Council Buildings” (which also covers outdoor spaces owned by the Council, such as Crystal Palace Park), as well as the guidance on “Working safely during coronavirus”, both of which were updated as recently as 31 July 2020, state:

“Local authorities should avoid issuing licenses [sic] for events that could lead to larger gatherings forming and provide advice to businesses on how to manage events of this type.”
33. We see no difference in substance between a large event taking place under a premises licence than one under TENS.
34. Both these revised Government guidance documents post-date the industry guidance on Outdoor Events published by the Events Industry Forum on 10 July 2020.
35. We have considered the Government’s announcement on 31 July 2020 that it is adjusting the “roadmap to recovery” it had set out just two weeks earlier in light of “warning signs that the virus may be growing again”. The proposed pilots testing the return of crowds to sporting and performing arts events from 1 August will not now go ahead as planned.
36. We have also considered whether any further undertakings the applicant could have given might sufficiently mitigate against the risks but do not believe they will do so.

37. **We therefore determine to issue counter-notices in relation to both TENS and so licensable activities at the events will not be authorised. We understand that the practical impact of this decision is that the events cannot proceed.**

38. We acknowledge the considerable and impressive efforts of the applicant who has been working with Council officers in an effort to permit the proposed events to take place. We are aware that our decision will severely disappoint both her and the anticipated attendees and will have an adverse economic impact on the event organisers.

39. Nevertheless, on the individual facts of this case, we feel compelled to make our determination in order to appropriately and proportionately promote the licensing objectives in the interests of the wider community.

40. Whilst each application under the Licensing Act 2003 will be considered on its own merits by the Council, and we have done so in this case, during a rapidly changing national public health crisis, the Council intends to make decisions in relation to large gathering events on the basis of the “precautionary principle” in order to safeguard our local community. In other words, where is the serious doubt as to whether an event can safely take place, we are likely to prioritise the risks to the wider community over the interests of any individual operator.

41. Finally, we express the sincere hope that once the COVID-19 pandemic no longer poses a risk to our community, large gathering communal and festive events can once again take place in Bromley to the benefit of all.

42. Ms Cummins is an excellent operator in our experience and we would welcome her and her events back to Bromley in the future.

## **APPEAL RIGHTS**

43. The applicant has the right to appeal this decision to the magistrates' court within the period of 21 days beginning with the day on which the applicant was notified of the decision (i.e. 7 August 2020). However, any appeal must be brought no later than 5 working days before the first day of the event (i.e. by 10 August, by virtue of paragraph 16(6) of Schedule 5 to the Licensing Act 2003).

After a break for the Committee to deliberate, the meeting ended at 2.00pm.

The determination was disseminated to the police and the applicant shortly after the conclusion of the meeting.