

Review of Premises Licence of Live Nation (Music) UK Ltd. for Finsbury Park, Seven Sisters Road, London, N4 2AB (LN/000012182)

Application by The Friends of Finsbury Park dated 4 July 2018

Decision of Licensing Sub-Committee following hearings on 15 and 16 October 2018

- 1 This represents the decision of the Licensing Sub-Committee on the above application for review brought by the Friends of Finsbury Park under s.51 of the Licensing Act 2003 (as amended).
- 2 The LSC had before it a bundle running to 1286 pages (further documents submitted at the hearing are referred to in the decision below as relevant) including the review application and supporting documentation, the Licensing Officer's Report, representations made by other persons and responsible authorities in response to the review application, and representations made on behalf of the Premises Licence Holder (LiveNation) with supporting documentation.
- 3 A hearing under the Hearings Regulations 2005 took place across two evenings (15 – 16 October) during which representations and evidence was considered from and on behalf of FOFP, other persons, responsible authorities, and LiveNation, amplifying the written documentation before it.
- 4 The LSC has given careful consideration to the bundle both before, during, and after the hearing (during deliberations), together with the representations and evidence presented at the hearing. Numbers in square brackets refer to the bundle but the absence of reference to representations or to particular pages of the bundle should not be taken to suggest that they have not been considered. The LSC is mindful that the decision to be taken on this application ultimately involves the exercise of an evaluative judgement pursuant to s.4 of the 2003 Act following consideration of the application and representations before it and a discussion led hearing.
- 5 The LSC reminds itself that it must take its decision on this review application with a view to promoting the licensing objectives. In taking that decision, the LSC must also have regard to its Licensing Policy and the s.182 National Guidance.

6 The grounds for the review application are stated to be [3]:

(1) The Wireless Festival 2017 has caused very serious disturbance amounting to a public nuisance.

(2) The Wireless Festival 2017 has given rise to crime and disorder.

7 The LSC note that, based on the above grounds, the focus of the review is on the impact of the Wireless Festival of 2017 and limited to the licensing objectives of the prevention of public nuisance and the prevention of crime & disorder. Nonetheless, the LSC heard and considered evidence relating to the impact of Wireless in previous years as well as in 2018, and relating to the other licensing objectives of public safety and the protection of children from harm.

Preliminary issue regarding role of the Licensing Officer

8 At the start of the hearing on 15 October, FOFP objected to the involvement of Ms. Daliah Barrett as Licensing Officer on the basis of allegations of apparent bias and alleged obstructive behaviour towards FOFP.

9 The objection sought to exclude the Licensing Officer's Report and anything sought to be said by Ms. Barrett on the basis of apparent bias against FOFP. It was stated that the context was unusual and highly sensitive because of the financial gain which the Council derived from Wireless and because it had waived any potential conflict by Philip Kolvin QC acting for LiveNation when he had acted previously for the Council in other litigation involving FOFP.

10 Section 14 of the Report [21-22] was referred to as setting out the separate roles which the Licensing Officer, and Licensing Authority as Responsible Authority, should have in relation to licensing applications. Email correspondence between LiveNation and Daliah Barrett had been disclosed by the Council at lunchtime, to which reference to parts of the wording was made as demonstrating that there was an overfamiliarity between Ms. Barrett and LiveNation. It was said that Ms. Barrett was working hand in glove with the operator in a way which was not independent in that she had negotiated conditions with one party and not another. Conditions had been agreed With LiveNation but Ms. Barrett was not representing the Responsible Authority. FOFP had been completely cut out of such discussions. Justice must be seen to be done in the eyes of a fair-minded observer.

- 11 When asked which parts of the Report were of concern, FOFP stated that it was the thrust of the Report. Specifically, the comments in the Report as to the use of expletives by artists (paras. 7.4 – 7.5 [13]), which it was said were extremely surprising given the position in the National Guidance, and the position in relation to Nitrous Oxide Gas canisters (para. 7.1 [13]) were stated to disclose apparent bias against FOFP.
- 12 Finally, it was alleged that Ms. Barrett had been obstructive in dealing with FOFP in the run up to the hearing. Hard copy papers had been sent late, and little assistance had been given in opening the online links to the papers.
- 13 Mr. Asitha Ranatunga (Counsel and Legal Advisor to the LSC) advised as follows.
- 14 The correct place to start was Section 14 of the Report [21-22] which properly referred to paras. 9.17 – 9.18 of the National Guidance and the separation of responsibilities between the Licensing Officer presenting the Report and the Licensing Authority as Responsible Authority making representations to the LSC. This was to ensure procedural fairness and prevent conflicts of interest. The Guidance had been met by Ms. Barrett appearing before the LSC as Licensing Officer and Mr. Malcolm (a separate officer) representing the Licensing Authority. Ms. Barrett's Report did not make representations, which was the correct approach.
- 15 Having reviewed the correspondence which had been disclosed to FOFP, there was nothing in Counsel's view which gave rise to a concern as to apparent bias. Counsel's understanding was that the conditions were being offered by LiveNation (not by any officer of the Council) without prejudice to any decision which the LSC might take, and the correspondence was seeking to agree an appropriate form of wording and conditions on that basis. There was nothing objectionable about Ms. Barrett in her role as Licensing Officer facilitating and being involved in that discussion. It was Counsel's firm view that Mr. Barrett was not biased or apparently biased by discussing those conditions as a Licensing Officer handling the application.
- 16 In Counsel's view, the points made by FOFP about the unusual and highly sensitive context were not relevant to the question of any apparent bias alleged against Ms. Barrett as Licensing Officer. FOFP had been asked which parts of the Report they had concerns about and had identified only 2 examples in a Report which was more than 20 pages long. As to the use of

expletives by artists, that Section of the Report properly referred to the National Guidance (para. 7.2 [13]) and what it said. In Counsel's view there was nothing wrong in a Licensing Officer in a Report expressing a view on the position in the National Guidance which is what the Report sought to do. As to the position in the Report on Nitrous Oxide canisters, there was nothing in para. 7.1 [13] which suggested that Ms. Barrett was biased or apparently biased.

17 Counsel advised that there was no substance to the allegations of apparent bias. Given the very serious allegations which had been made, he suggested both that Mr. Kolvin QC be asked for comment and that Ms. Barrett be given an opportunity to respond (as they felt necessary).

18 The LSC heard from Mr. Kolvin QC as to his involvement. He confirmed that LiveNation had approached the Licensing Officer with conditions which it was seeking to put forward. There was nothing in the 27 page Report which was apparently biased and it would be extremely unhelpful for the LSC to have to proceed without a helpful and detailed Report which set out and summarised all of the issues in a voluminous bundle.

19 Ms. Barrett confirmed that she had discussed the wording of conditions with LiveNation on the basis that they were conditions which LiveNation would put forward without prejudice to any decision which the LSC might take. As to the allegation of obstructive conduct she noted that she had sought to raise the prospect of mediation with FOFP at an early stage, but it had not been taken up.

20 Having conferred briefly, the LSC indicated that they would proceed. The Report would not be excluded, and Ms. Barrett would be allowed to address the LSC in her role as Licensing Officer. In so indicating, the LSC followed the advice of their Legal Advisor and concluded that Ms. Barrett had acted entirely properly. They rejected any suggestion of apparent bias or obstructive conduct.

21 The remainder of this decision is split into the following sub-headings:

- Licensing Objectives
- Evaluation of the representations
- Whether the licensing objectives have been undermined
- The cause or causes of any concerns

- Appropriate and proportionate steps to be taken, including why other steps are not appropriate.

The Licensing Objectives

- 22 The LSC consider that the prevention of public nuisance, the prevention of crime and disorder, and the protection of child safety are engaged by this application.
- 23 With regard to the prevention of public nuisance, the LSC has had regard to para. 2.16 of the s.182 Guidance which advises that public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning. The Guidance advises that it may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Given the wide scope of public nuisance, the LSC considers that this licensing objective is engaged.
- 24 Although not referred to in the grounds of the application, reference was made in the documents supporting the application to issues alleging the dangerous set up for the event which potentially relates to public safety (e.g. [47]). The LSC considers that these issues fall outside of its remit as they do not directly relate to licensable activities. They would be covered in the overall event management plan which is carried out in agreement with the Parks Service and promoter.
- 25 FOFP also made reference to the deaths of 2 young people which it alleged happened at or near the event in 2018 after they had attended the event. It was alleged that an ambulance had been prevented from accessing the festival. It was alleged these matters gave rise to serious concerns as to public safety.
- 26 The LSC reject the suggestion that LiveNation is at fault for the fatalities. The facts and circumstances surrounding the fatalities are the subject of Coroner's inquests and have not been established. The LSC were aware that no overall concern had been raised by the London Ambulance Service [1066-1077].
- 27 For the above reasons, the LSC does not consider that the licensing objective of public safety has been engaged.

- 28 As for the protection of children from harm, having regard to para. 2.22 of the s.182 Guidance - which advises that it includes wider harms such as exposure to strong language - the LSC considers that the concerns raised about the use of expletives by artists at Wireless do engage this licensing objective but only to the limited extent that swearing might be heard by the children of nearby residents (e.g. in the playground).

Evaluation of representations

- 29 Having considered the representations made by FOFP and other persons, as well as the representations made by the responsible authorities, and LiveNation, the LSC consider that there is evidence of the following impacts from Wireless 2017 relating to the licensing objectives which have been engaged:

- Loud music from the event, including bass level noise, causing a nuisance to residents.
- Low level anti-social behaviour and disorder from patrons when they leave, both in and around the roads around Finsbury Park. This includes urination in people's front gardens and doorsteps, and the use and apparent supply of NOS gas.
- Litter both inside Finsbury Park and in the roads around it causing a nuisance to residents.
- A level of crime associated with the event both inside and outside Finsbury Park in the roads around it.
- Use of expletives by artists performing at the event which can be heard by residents, some of whom have children.

- 30 The LSC considers that the following matters are not within its remit to consider [5-6]:

- Views on whether or not the park should be used for events at all.
- Access to the park on the run up / during and after the event days.
- Not liking the type of music that Wireless offers.
- Parking controls on event days.
- The income generated from the event and what it is used for.
- The cleansing of the Park in general terms.
- The condition of the grassed area during and after events.
- Imposing conditions for Services to derive financial income from the promoters.

- 31 As to NOS gas, the possession and consumption of NOS gas is not a criminal offence. The Police can only deal with someone possessing NOS gas with intent to supply, and the Officer Report notes that the Council's own Enforcement Team has been particularly productive in taking enforcement action against NOS gas sellers found on the periphery of the event [13].
- 32 As to concerns raised about vibration in residential buildings caused by rhythmic jumping at the event by patrons, the LSC considers that this is not at a level considered able to cause structural damage to buildings. This occurs in short bursts and dissipates quickly. The advice of a structural engineer and the Council's Building Control Service has been sought and damage to buildings is not an issue [12]. However, any vibration is relevant to the public nuisance licensing objective.

Whether the licensing objectives have been undermined

- 33 The LSC considers that it is important to consider the evidence of impacts referred to above in its proper context, both when considering whether the licensing objectives have been undermined, but also in considering what steps it would be appropriate and proportionate to take in response to the evidence.
- 34 There are a number of factors which are relevant to that context:
- (1) The review application relates to Wireless Festival. Wireless is an urban music festival where the main licensable activities take place across 1 weekend (3 days) in the calendar year. Although referable to a premises licence which is indefinite, the licensable activities relating to Wireless are not experienced all year round, but across 2 weekends in the summer with the main event held over the second weekend.
 - (2) The event capacity is 49 999 each day, 45 000 of whom are patrons. Large gatherings of people for such events will inevitably give rise to a degree of music and noise disturbance, ASB, and crime & disorder.
 - (3) A maximum of 37 500 patrons attended Wireless each day for 3 days in 2017. LiveNation provided leaflets to 20 000 households in a distribution list around the area of Finsbury

Park. The leaflet contained contact numbers for complaints to be raised [935]. Against that background, the 70 complaints received via people calling the Finsbury Park Residents' Line in 2017 is relatively small, even allowing for a degree of under-reporting, or complaint fatigue. The level of complaints is consistent with that for other major Festival events in and around London. The LSC also notes that there were 76 representations in support of the review application, which is relatively small as a proportion of the households actively made aware of the event and the fact that this was a much-publicised review [872].

- (4) Wireless is a live music event which is culturally significant to London and Haringey, which is an ethnically diverse Borough. The event at least in part has its roots in grime music which emerged in the inner-city estates of London. To that extent, it is a Festival which represents the city in which it is based. The Council is rightly proud to host the event for the benefit of its constituents and Londoners as whole. The fact that supporters of an annual music Festival such as Wireless have not engaged in the licensing regulation process by making representations in support of LiveNation is of little consequence.
- (5) By reference to (3), Wireless represents a live music event which is valuable to the community. Licensing Authorities should avoid inappropriate or disproportionate measures that could deter such events, and in the context of conditions, should be alive to the indirect costs that can arise by their imposition, which could be a deterrent to holding them (s.182 Guidance, paras. 2.12 and 10.10).
- (6) Finsbury Park is an urban London Park. It is sadly unsurprising to find a degree of NOS gas and drug use in an urban London Park. That is not to condone such activities, or to accept them, but to set the baseline against which the impacts of Wireless should be judged.
- (7) Finsbury Park is also well connected in terms of public transport, which helps with the efficient dispersal of large crowds of people.
- (8) The Metropolitan Police, who are the Licensing Authority's main source of advice on matters relating to the promotion of the crime & disorder licensing objective (s.182 Guidance, 9.12), have not made a representation or raised any concerns [1025]. The response of the Met Police to the SAG Debrief in 2017 stated that there was nothing out

of the ordinary required for 2018 and that the event struck a balance between the needs of the locality and policing the event [1067].

(9) The Licensing Authority as Responsible Authority presents the crime figures noting that there were 23 reported crimes over the weekend of Wireless 2017 of which almost 40% were theft related. This can be compared with an average of around 200 reported crimes per year, not all of which result in arrests. In terms of numbers of arrests, these have come down from previous years [747]. Whilst allegations of crime, particularly allegations of sexual assault, should be taken seriously and no doubt will be investigated by the Metropolitan Police, it can be noted that neither the Metropolitan Police nor the Licensing Authority as Responsible Authority presenting the crime data, consider that the licensing objectives have been undermined by the holding of Wireless.

(10) The Council's ASN Specialist Officer on Noise matters, Mr. Charles, provides a representation on behalf of the Council's Noise Team [753-774]. Having reviewed the complaints history of the FOFP's witnesses, the expert noise report submitted by FOFP, the conditions of the licence, the music noise complaints received during 2015 – 2018, and his own monitoring data, Mr. Charles concludes that he does not consider that the prevention of public nuisance licensing objective has been undermined. As a responsible authority providing the main source of advice on public nuisance matters, Mr. Charles' representation carries significant weight.

(11) The grounds for the review refer to Wireless 2017. The continuous improvement model which is followed has meant that several steps have been taken in response to the issues raised around Wireless 2017 which have brought about improvements in 2018. These include an increase in off-site security personnel from 14 – 93 supervisors; the improvement of noise monitoring procedures including through the use of real time communication; and an expansion in the Toilet City (on the egress route) from 120 to 224 toilets [870 – 871]. Specifically, the greater engagement with officers and residents of LB Hackney have led to notable improvements, as in part acknowledged by Councillors Potter and Selman (from LB Hackney) in their representations to the LSC [650, 657].

35 For the above reasons, the LSC considers that when considered in its proper context, the licensing objective of the prevention of crime & disorder has not been undermined.

- 36 The LSC considers that the licensing objective of the prevention of public nuisance has been undermined, but the above reasons temper the extent to which it can be said that the circumstances here lead to a significant reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.
- 37 The LSC considers that the licensing objective of the protection of children from harm has been undermined but only to the limited extent that children of residents may have been exposed to expletives used by artists.

The cause or causes of any concerns

- 38 The s.182 Guidance provides that Licensing Authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify (11.20).
- 39 The LSC does not consider that the cause or causes of concerns is any lack of proper and effective management of the event by LiveNation or Festival Republic who run Wireless on its behalf. The LSC accepts that LiveNation is one of the leading live music promoters in the UK with considerable experience of putting on large scale festivals in a safe and well-managed manner in partnership with local authorities. The LSC also note that LiveNation as licence holder have always worked in partnership with the responsible authorities under the Act, a fact which is underpinned by the absence of any negative relevant representation by any responsible authority in response to this review.
- 40 The LSC is also aware of the fact that LiveNation is permitted to occupy the Park pursuant to a contract for hire with the Council, which sets some key parameters for its use and is separate from Licensing. The premises licence itself includes conditions which require the consent of the Licensing Authority to be given for any proposed event to take place (Condition 30), for an Event Management Plan to be finalised to the satisfaction of the Licensing Safety Advisory Group before any event takes place (Annex 3 [335]), and that no changes can be made to the EMP after 1 month before the proposed event (Condition 35). This method of regulation effectively means that there is a formal process of scrutiny and review of the event each year with the involvement of all relevant regulatory bodies. The terms of the premises licence properly allow for some flexibility in the way in which particular issues are managed with the

oversight of the LSAG, whilst the framework for the operation of the licence is set within the premises licence.

- 41 Notwithstanding the LSC's views on the appropriateness of LiveNation as premises licence holder and the mechanism through which Wireless operates under the premises licence, the LSC considers that the cause or causes of the concerns are the lack of clarity and transparency in certain conditions on the licence, and the absence of certain parameters on the licence to ensure that the appropriate balance is met with a view to promoting the licensing objective of the prevention of public nuisance and the protection of children from harm. A tightening up of the conditions in certain areas, and the imposition of new conditions, should enable all parties to work together to ensure the event is properly regulated.

Appropriate and proportionate steps to be taken

- 42 Having regard to the application and the representations, the LSC must take such steps as it considers appropriate for the promotion of the licensing objectives (s.52(3)). Any such steps must also be proportionate (s.182 Guidance, para. 10.10).
- 43 In the light of the LSC's decision that the licensing objectives have been undermined, taking no action would not be appropriate.
- 44 LiveNation have agreed a list of conditions with LB Islington, on the basis of which LB Islington have withdrawn their representation. These comprise amendments to 16 existing conditions and 4 new conditions. Having considered those conditions at the hearing and during deliberations, the LSC agree that they are appropriate and proportionate, subject to an amendment to the proposed amended wording of Condition 16 to require that the sufficient barriers to be provided is a matter which must be agreed with the LSAG. This is to ensure that specific concerns raised by Councillor Selman (from LB Hackney) as to the number of barriers is appropriately met. LB Hackney's involvement with the LSAG would ensure their input on this issue.
- 45 LiveNation has also put forward a list of conditions which have been reviewed by Officers at the Council without prejudice to the LSC's decision (no representation is withdrawn on the basis of these conditions). These comprise 32 new conditions. Having considered these

conditions at the hearing and during deliberations, the LSC agree that, apart from the Low Frequency Conditions (which are considered below), they are all appropriate and proportionate subject to the following minor amendments:

- Condition 22 on the provision of a plentiful supply of clean drinking water .. ; this should be provided with an adequate supply of plastic-free paper cups (remove 'or plastic cups').
- Condition 27 on consideration of the use of private security dogs at the entrances .. ; any implementation of the use of private security dogs should be agreed with the LSAG.

46 With regard to the use of expletives by artists, which might be heard by the children of nearby residents (e.g. in the playground), and the limited extent to which this could be said to undermine the licensing objective of the protection of children from harm, the LSC considers that Condition 51 could be worded more clearly so as to encourage artists not to use expletives. It is not considered it would be proportionate to go further than requiring LiveNation to make reasonable requests for artists not to use expletives; to go further and apply penalties as FOFP suggest is somewhat unrealistic given this is a live music festival. Condition 51 will be amended as follows (new wording underlined):

'The Licensee shall reasonably request that performers do not sing or play any vulgar, obscene or banned songs or carry out indecent acts or make any vulgar gestures, actions or remarks during the performance, or at any point whilst using an amplification device, including the use of expletives. He shall also ensure that the attire of the performers do not offend the general public, e.g. attire which exposes the groin, private parts, buttock or female breast(s).'

Noise Conditions

47 The LSC's view is that loud music from the event, including bass level noise, has caused nuisance to local residents such that a public nuisance has been caused undermining the public nuisance licensing objective.

48 The LSC considered detailed reports from Mr. Vivian (FOFP), Mr. Griffiths (LiveNation), and a detailed representation from Mr. Charles (LB Haringey) on noise issues. There was also considerable discussion about noise and appropriate noise conditions at the hearing, with FOFP tabling new noise conditions on maximum Music Noise Levels and maximum Low Frequency Noise Levels at the hearing, and LiveNation proposing new conditions 31 and 32 on Low Frequency noise.

49 The LSC has considered Conditions 98 – 109 of the Premises Licence which seek to address the Prevention of Public Nuisance. These include Condition 102 under which LiveNation’s appointed noise consultant must be aware of the guidance contained in the Code of Practice on Environmental Noise Control at Concerts (or any subsequent equivalent Guidance) and make use of its recommendations where appropriate to the circumstances of the application.

Sound levels generally

50 As to sound levels generally, a table of approved locations representative of noise sensitive premises is included at Condition 106 including Background Noise Levels. Condition 107 provides that sound levels should not exceed the background levels by more than 15dB when measured as a 15 minute LAeq. Condition 108 acts as an ‘override’ condition to Condition 107 requiring that any reasonable request of the Licensing Officer representative must be complied with by LiveNation with regard to sound levels.

51 The LSC is aware that Condition 108 has been effective in keeping sound levels to an acceptable level but that there are only two Council Noise Officers who are available to monitor noise levels at the event and respond to noise complaints.

52 The COP Guidance provides guideline Music Noise Levels for concerts of 1 to 3 days per calendar year, for Urban Stadia or Arenas, under which the MNL should not exceed 75dB(A) over a 15 minute period, which would seem appropriate for the Wireless event. It can be noted that of the 6 representative noise locations here, only the limit set at 364 Seven Sisters Road exceeds that level (78dB(A)[762]). The noise monitoring undertaken by Mr. Charles did record an exceedance of the guideline level at 14.36hrs on 7 July 2018 (albeit marginally) [765]. Further, Mr. Vivian’s monitoring at a different location on the balcony of a flat on Seven

Sisters Road recorded two periods of high noise on 7 July 2017 which appear to have been above the 75 or 78dB(A) 15 minute levels [128, para. 6.2 and Figure 3].

- 53 In those circumstances, the LSC considers it to be both appropriate and proportionate to include the COP Guidance level into Condition 107 in order to provide a transparent and fixed upper level against which the representative noise locations can be assessed. Condition 107 will therefore be amended as follows (new / amended text underlined):

'Sound levels at any location contained within the Table of Approved locations in Condition 106 shall not exceed the above background by more than 15dB when measured as a 15 minute LAeq, and in any event the sound levels at those locations shall not exceed 75dB(A) at any time when measured as a 15 minute LAeq.'

- 54 It is not considered proportionate for the sound level to apply at any noise sensitive premises as there are already a number of representative locations and such a condition would be unworkable due to the coverage of potential complaints. Condition 108 will remain as an 'override' condition to provide a discretion for Council Noise Officers to take action where they witness sound levels which they subjectively consider to be unacceptable.

- 55 There was agreement by Mr. Griffiths that it would be prudent to update the background noise levels in the Table of Approved locations in Condition 106 and there was also agreement by LiveNation to include a further representative location within LB Islington. A new condition will be imposed as follows:

'The background noise levels contained in the Table of Approved locations in Condition 106 shall be updated annually. The locations shall include at least one location within the London Borough of Islington, in addition to the 6 locations already included in the Table.'

- 56 As to Condition 105 on monitoring of the locations by LiveNation's appointed noise consultant, in the light of the availability to LiveNation of software for monitoring sound levels continuously, the wording of the condition should be made more precise. The LSC considers it appropriate to do so given the evidence of loud music which has caused a public nuisance. Further, having reviewed the noise control measures sought by LB Hackney [8], it is appropriate and proportionate to require all monitored data to be made available on the

request of any authorised Council Officer from each of the three London Boroughs whose residents may be affected by noise. Condition 105 will be amended as follows (new text underlined):

'Monitoring of the locations representative of the noise sensitive premises (indicated below) must be undertaken by the appointed noise consultant on behalf of the Premises Licence holder continuously throughout the times where there is regulated entertainment of any kind and readings / noise levels must be stored for subsequent reporting or disclosure to appointed Licensing Authority representatives or appointed representatives from LB Islington or LB Hackney as they are obtained and upon request at any time. A minimum of two persons must be available outside the park to monitor noise levels and to provide a response to complainants.'

Low Frequency Condition

- 57 The LSC consider that there is sufficient evidence of low frequency music noise causing public nuisance to justify the imposition of conditions.
- 58 Both FOFP and LiveNation have proposed conditions and there was considerable discussion on which condition would be appropriate. The issues centred on whether the dB level in the condition should be C-weighted or set according to one-third octave frequency bands and what that level should be.
- 59 On balance, and as a matter of judgment, the LSC consider that setting the dB level according to one-third octave frequency bands would be both appropriate and proportionate. The LSC has no reason to doubt the evidence of Mr. Griffiths that conditions in this form are used in relation to Festivals held in other London Parks, and Mr. Griffiths confirmed that he was happy to give an expert declaration in relation to his Reports. New Condition 31 had been reviewed by Council officers who were content with its wording. It is also noteworthy that Mr. Vivian on behalf of FOFP measured low frequency music levels against octave bands for his Report as well (albeit the lowest band at 31.5Hz, which is lower than the 40Hz lowest band proposed) [128-129].

60 As to the dB level, however, the LSC considers that it is appropriate and proportionate to set this at 85 dB Leq 15 minutes in any of the one-third octave frequency bands from 40Hz – 125Hz outside the representative locations. This would bring the threshold of acceptability down to a level which would be more consistent with Mr. Vivian’s subjective observations on 8 July 2017 which the LSC considered to be credible, when he considered that the bass level of the earlier Travis Scott set was very intrusive whereas the late Skepta set was not. The dB levels noted at the octave band centred at 63Hz (albeit at a different location on Seven Sisters Road to the representative noise locations) would have exceeded 85 dB at times, and would likely have continuously exceeded that level at 40Hz [129, Fig. 5]. Finally, Condition 31 should properly require action to be taken if the sound engineer records levels above 85 dB Leq 15 minutes whether or not a substantiated complaint of public nuisance is made.

61 Condition 31 will therefore be amended so that it reads as follows (amendments / new text underlined):

‘The maximum low frequency Music Noise Level (LFMNL) shall not exceed 85 dB Leq 15 minutes in any of the one-third octave frequency bands from 40Hz – 125Hz outside the representative locations. The licensee shall require the sound engineer to take remedial action to reduce levels on receipt of substantiated complaints of public nuisance or on LFMNL levels in excess of the 85 dB Leq 15 minutes level referred to above.’

62 The LSC also considers it is appropriate and proportionate to impose new Condition 32 on Bass Music Noise Levels and monitoring.

FOFP Conditions

63 The conditions tabled by FOFP for the first time in their address to the LSC are, apart from with regard to Sunday hours, considered to be disproportionate. The LSC accept LiveNation’s contention that if imposed, any of Conditions (b) and (c) would have the effect of killing the event, given the hours of operation required to attract the big name acts on the main event days and the capacity required to draw in those same acts and to enable the event to be viable.

- 64 With regard to capacity, this should not be an issue if the event is managed properly. Transport links around the Park are excellent, and the Met Police have no objection on capacity and crime & disorder.
- 65 As to the duration of the event, this is limited via the LSAG and there is no suggestion that the event days are increasing so as to justify the imposition of such a condition.
- 66 The LSAG does include representatives of the other Councils and LiveNation continue to engage with them.
- 67 The power to impose conditions under the licensing regime does not extend to expanding the Stakeholder Group. Both this and all of the conditions referred to in Appendix 1 are not relevant to licensing.
- 68 However, with regard to the operating hours on Sundays, the LSC does consider it would be appropriate and proportionate to reduce the terminal hour by 30 minutes on Sunday. By that reduction, the last sale of alcohol would be made at 2100hrs, regulated entertainment would finish at 2130hrs, and the event would close at 2200hrs. The LSC considers that this would set an appropriate balance between the value of the event to the community, the fact that the event takes place in early July during school term, that Sunday is the day before the working week commences for many, and that the event takes place in relative proximity to residents. LiveNation are rightly aware of their social responsibility to children in not starting the event on the Friday until school finishes. The LSC considers that it would be appropriate for the prevention of public nuisance for the event to conclude by 2200hrs on the Sunday night for similar reasons.
- 69 Finally, the LSC is mindful of the concerns raised about the lengthy period during which the build up and take down for the event takes place. Although the LSC does not consider that this is directly relevant to the licensable activities and so is not a matter which it can properly condition further, it is a matter which could be addressed through the Parks management for the event or the EMP. As an informative, the LSC requests that LiveNation explores options to ensure that access to the Park is optimised throughout the period of Wireless including its build up and pull down, so that the Park can be accessed and enjoyed by all.

- 70 In deciding this review application, the LSC has had regard to its duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of its decision and the authority's responsibility to cooperate in the reduction of crime and disorder in the Borough.
- 71 The LSC has also considered the right to a fair hearing in the determination of civil rights and the protection of private and family life under Article 8 of the European Convention, as well as the protection of property under Article 1 of the First Protocol, which may include premises licences. It is not considered that any of these rights have been interfered with through the decision-making process or the decision itself.
- 72 This decision can be appealed to the magistrates' court within 21 days of the date of notification.

THE LICENSING SUB-COMMITTEE

22 October 2018