

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Thursday 30th June 2011 at 9.30am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor R Groom (Chairman) Councillor G Sandell Councillor Mrs S Smeaton
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Cara Jordan
Applicant:	LT Management Services Ltd – Jason French
In support of Applicant:	Russell Bowyer – Business Development Manager Scottish & Newcastle Pub Company
Applicant's Representative:	Sarah Le Fevre - Three Raymond Buildings
Premises:	The Wildfowler, Gayton Road, King's Lynn.
Interested Parties: in attendance	Mrs J Mayes Mr & Mrs McNaught Mr & Mrs Neal

1. INTRODUCTIONS

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a variation application for a premises licence in respect of The Wildfowler, Gayton Road, King's Lynn.

The Chairman introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Cara Jordan. The applicant's representative, Sarah Le Fevre introduced herself, Russell Bowyer and Jason French. She explained she would not be formally calling them as witnesses but they were available to answer any questions that may arise. At the request of the Chairman, the interested parties introduced themselves. All parties confirmed that fifteen minutes was sufficient to put their case to the Sub-Committee.

2. THE PROCEDURE

At the request of the Chairman, the Licensing Manager outlined the procedure that would be followed at the hearing and took over the proceedings.

3. THE APPLICATION

The Licensing Manager presented the report and explained that a premises licence was required under the Licensing Act 2003 for the sale of alcohol, regulated entertainment or the supply of hot food and drink between 11pm and 5am. The four licensing objectives that had to be considered when determining the application, and relevant representations, were:

- a) the prevention of crime & disorder,
- b) public safety,
- c) the prevention of public nuisance, and
- d) the protection of children from harm

He explained that LT Management Services Limited had made an application to vary the premises licence in respect of the Wildfowler to vary the times, remove certain conditions and change the layout of the licensed area. A copy of the current licence had been attached at Appendix 1 and a copy of the variation application had been attached at Appendix 2. The variation, if granted, would allow the premises to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Regulated Entertainment: Live music (Indoors only)	Monday to Thursday: Friday & Saturday: Sunday: Bank Holiday Weekends etc:	4pm – 11pm 4pm – Midnight 12 noon – 10:30pm Until 1am
Regulated Entertainment: Facilities for making music (Indoors only)	Sunday to Thursday: Friday & Saturday: Bank Holiday Weekends etc:	10am – 11pm 10am – Midnight 10am to 1am
Regulated Entertainment: Recorded music (Indoors & Outdoors) Facilities for dancing (Indoors only)	Sunday to Thursday: Friday & Saturday: Bank Holiday Weekends etc:	10am to 11pm 10am to Midnight 10am to 2am
Sale of Alcohol: (For consumption both ‘on’ and ‘off’ the premises)	Monday to Thursday: Friday & Saturday: Sunday: Bank Holiday Weekends etc:	9am to 11pm 9am to Midnight 9am to 11pm 9am to 2am

Late Night Refreshment: (only licensable between 11pm & 5am) (Both Indoors & outdoors)	Monday to Thursday:	11pm to 11:30pm
	Friday & Saturday:	11pm to 12:30am
	Sunday:	11pm to Midnight
	Bank Holiday Weekends etc:	11pm to 2:30am
Hours Premises Open to the Public:	Monday to Thursday:	9am to 11:30pm
	Friday & Saturday:	9am to 12:30am
	Sunday:	9am to 11:30pm
	Bank Holiday Weekends etc:	9am to 2:30am

Conditions

The premises licence would be subject to the following mandatory conditions:

- a) Under Section 19(2) of the Licensing Act 2003, no supply of alcohol may be made under this premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- b) Under Section 19(3) of the Licensing Act 2003 every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- c) In relation to the sale of alcohol, the responsible person shall take all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. An irresponsible promotion means an activity carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children.
- d) The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
- e) The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
- f) The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

- g) The responsible person shall ensure that-
- (1) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures:-
 - (i) beer or cider; ½ pint;
 - (ii) gin, rum, vodka or whisky; 25 ml or 35 ml; and
 - (iii) still wine in a glass; 125 ml;

And that
 - (2) customers are made aware of the availability of these measures.

The licence would also be subject to the following conditions which were consistent with the operating schedule:

- a) No customers carrying open or sealed bottles shall be admitted to the premises at any time the premises are open to the public.
- b) Any part of the variation application that changes the plan/layout at the premises shall not have effect until the work has been completed.
- c) An incident book and refusals register shall be maintained and kept at the premises. These shall be available upon reasonable request by a police officer or authorised officer of the Borough Council.
- d) Signs shall be displayed asking customers to leave premises quietly and to respect the neighbours.
- e) Doors and windows shall be kept closed during regulated entertainment except for access to and egress from the premises.

Representation from Responsible Authorities

Section 13(4) of the Licensing Act 2003 defined 'Responsible Authorities' as the statutory bodies that must be sent copies of an application. Representations made must relate to the licensing objectives.

The Licensing Manager explained that prior to the end of consultation, the following comments had been received from the Responsible Authorities:

- a) Norfolk Constabulary had objected to the application under the 'Prevention of Crime & Disorder' licensing objective. A copy of their letter dated the 13th June 2011 had been attached to the report at Appendix 3. However, the applicant had agreed to conditions proposed

by the Police and therefore they had subsequently withdrawn their objection.

- b) The Borough Council's Community Safety & Neighbourhood Nuisance (CS&NN) Team had objected to the application under the 'Prevention of Public Nuisance' licensing objective. A copy of their letter dated the 16th June 2011 had been attached to the report at Appendix 4. The applicant had signed up to submitting a noise management plan, keeping windows and doors closed during regulated entertainment (although this was already on the Operating Schedule) and fitting self closers to all entrance and exit doors used by the public. The CS&NN had therefore withdrawn their objection. The Licensing Manager advised the Sub-Committee that they may wish to consider stipulating a timescale in which the noise management plan should be submitted. The condition, as it stood at the moment, would not be breached if the plan had not been submitted some 2 years down the line.
- c) Comments from the other responsible authorities were as follows:

Responsible Authority	Comments Received
Norfolk Fire Service	None
Norfolk Trading Standards	None
Norfolk Children's Safeguarding Board	None
Planning (BCKLWN)	None
Health & Safety (BCKLWN)	None

Representations from Interested Parties

Section 13(2) of the Licensing Act 2003 described interested parties as local residents/business (or their representatives) who lived/were involved in a business in the vicinity of the premises. Representations made must relate to the licensing objectives. Elected members of the licensing authority were also interested parties in their own right.

There had been four letters of objection from 'interested parties' to consider. Copies of these letters had been attached to the report at Appendix 5.

Notices

The applicant was responsible for advertising the application by way of a notice in the specified form at the premises for not less than 28 consecutive days and in a local newspaper. The Public Notice appeared in the Lynn News on Friday 20th May 2011 and should have been displayed on the premises until the 15th June 2011.

Plans

A location plan showing the general location of the premises and objectors was attached at Appendix 6. A plan of the premises was attached at Appendix 7.

Borough Council of King's Lynn & West Norfolk's Licensing Policy

The current Statement of Licensing Policy was approved by full Council on the 25th November 2010 and the following extracts may be relevant to the application:

3.0 Fundamental principles

3.1 The 2003 Act requires that the Council carries out its various licensing functions so as to promote the following four licensing objectives:

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

3.2 Nothing in this 'Statement of Policy' will:

- (a) undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its own merits;
- (b) override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act.

3.3 Every application will be dealt with impartially and on its individual merits. The Borough Council will not refuse to grant or vary an application unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation.

8.0 Crime Prevention

8.1 Licensed premises, especially those open late night/early morning can be a source of crime and disorder problems. The Borough Council expect operating schedules to satisfactorily address these issues, as appropriate from the design of the premises to the daily operation of the business.

8.2 Where relevant representations are received the Borough Council will consider attaching conditions to deter and prevent crime and disorder both inside and immediately outside the premises. These may include conditions drawn from the Model Pool of Conditions relating to Crime & Disorder (see Annex D to the Guidance issued under Section 182 of the Licensing Act 2003).

10.0 Prevention of Public Nuisance

10.1 Licensed premises, especially those operating late at night and early in the morning can cause a range of nuisances which impact on people or businesses in the vicinity. The concerns will mainly relate to noise but could also include light pollution and noxious smells. The Borough Council expect operating schedules to satisfactorily address these issues, as appropriate.

10.2 Where relevant representations are received the Borough Council will consider attaching conditions to deter and prevent crime and disorder both inside and immediately outside the premises. These may include conditions drawn from the Model Pool of Conditions relating to Public Nuisance (see Annex D to the Guidance issued under Section 182 of the Licensing Act 2003).

18.0 Conditions

18.1 The Borough Council will not impose conditions unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business, which is a relevant representation, or is offered in the applicant's Operating Schedule. Any conditions will be proportional and necessary to achieve the Licensing Objectives.

18.2 The Borough Council cannot impose 'blanket' standard conditions on premises licences or club premises certificates. The Borough Council will, however draw on the pool of conditions (published at Annex D to the Guidance issued under Section 182 of the Act) when it is considered appropriate to suit the specific needs of an individual operation.

Guidance Issued Under Section 182 of the Licensing Act 2003

The current Guidance was issued by the Home Office in October 2010 and offered advice to licensing authorities on the discharge of their functions under the Licensing Act 2003.

The following extracts may be relevant to the application and assist the Panel:

Each application on its own merits

1.15 Each application must be considered on its own merits and any conditions attached to licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.

Avoiding duplication of other legal requirements

1.16 The licensing authority should only impose conditions on a premises licence which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.

Public Nuisance

2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.33 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.

2.34 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music.

2.35 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of

the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.

2.36 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.

2.38 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.

2.39 Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

Determining Applications Where Representations Are Made

9.3 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives. Representations can be made in opposition to, or in support of, an application.

9.4 It is for the licensing authority to decide in the first instance whether or not representations are relevant. This may involve determining whether they have been made by an interested party and whether or not, for example, an individual making a representation resides or is involved in business "in the vicinity" of the premises concerned. However, licensing authorities should be aware that their initial decision on this issue could be subject to legal challenge in the courts.

9.5 In making their initial decision on the question of vicinity, licensing authorities should consider whether the individual's residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises. In other words, it is the impact of issues relating to the four licensing objectives that is the key consideration.

Relevant, Vexatious and Frivolous Representations

9.8 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.

9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review

9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

9.24 As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.

9.25 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are necessary to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- Guidance issued under Section 182 of the Licensing Act 2003;
- Its own statement of licensing policy.

9.26 The licensing authority should give its decision at once, unless the Act itself states otherwise and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be necessary for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition which is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.

9.27 Alternatively, the licensing authority may refuse the application on the grounds that this is necessary for the promotion of the licensing objectives.

Conditions Attached to Premises Licences

10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions the holder of the premises licence or the club premises certificate will be required to take or refrain from taking at all times when licensable activities are taking place at the premises in question.

10.3 All interests – licensing authorities, licence and certificate holders, authorised persons, the police, other responsible authorities and local residents and businesses – should be working together in partnership to ensure collectively that the licensing objectives are promoted.

10.4 Under former licensing regimes, the courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided. Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both.

10.5 Annex D provides pools of conditions (although not an exhaustive list) which relate to the four licensing objectives and could be used where necessary and appropriate to the particular circumstances of an individual licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances.

Proposed Conditions

10.7 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants and clubs should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out the proposed hours of opening.

10.8 In order to minimise problems and the necessity for hearings, it would be sensible for applicants and clubs to consult with responsible authorities when

schedules are being prepared. This would allow for proper liaison before representations prove necessary.

Imposed Conditions

10.11 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

10.12 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

Annex D Pool of Conditions

Part 4: Conditions Relating To the Prevention of Public Nuisance

It should be noted that provisions of the Environmental Protection Act 1990, the Noise Act 1996 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which may result from arbitrarily fixed closing times. However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times.

Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public as such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue. Or the playing of recorded music might only be permitted after a certain time where conditions have been attached to the licence or certificate to ensure that any potential nuisance is satisfactorily prevented.

Restrictions might also be necessary on the parts of premises that might be used for certain licensable activities at certain times. For example, while the provision of regulated entertainment might be permitted while the premises is open to the public or members and their guests, regulated entertainment might not be permitted in garden areas of the premises after a certain time. In

premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to the following conditions.

Noise and vibration

In determining which conditions are necessary and appropriate, licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter the holding of events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues. The following conditions may be considered:

- Noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by one or more of the following conditions:
 - a simple requirement to keep doors and windows at the premises closed;
 - limiting live music to a particular area of the building;
 - moving the location and direction of speakers away from external walls or walls that abut private premises;
 - installation of acoustic curtains;
 - fitting of rubber seals to doorways;
 - installation of rubber speaker mounts;
 - requiring the licensee to take measure to ensure that music will not be audible above background level at the nearest noise sensitive location;
 - require licensee to undertake routine monitoring to ensure external levels of music are not excessive and take appropriate action where necessary;
 - noise limiters on amplification equipment used at the premises (if other measures have been unsuccessful).
- Prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
- The use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted.
- The placing of refuse – such as bottles – into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

Determination

The Licensing Manager requested that the Sub-Committee consider the application, representations, and dispose of the application by either:

- a) Granting the variation application;
- b) Granting the variation application with conditions relevant to the promotion of the licensing objectives;

c) Rejecting the whole or part of the variation application.

Reasons for the Panel's decision must be given as both the applicant and objectors had a right of appeal against that decision to the Magistrates' Court.

4. THE APPLICANT'S CASE

Sarah Le Fevre, on behalf of the applicant presented their case and explained that Rick Weston, the proposed new lessee of the Wildfowler was unfortunately recently hospitalised and therefore was not in a position to attend the hearing. Consideration had been given to request a for an adjournment, but in the light of arrangements having already been put in place, it was considered that it was in the best interest to proceed with the hearing. She explained that Mr Bowyer had interviewed Mr Weston who had over 10 years experience in the licensing trade and had been associated with Scottish & Newcastle for a considerable time.

Sarah Le Fevre explained that the intention was, if the application was granted, to transfer the existing licence to Mr Weston. The variation application centred on three proposals, to change the design and layout of the premises, to remove some of the existing conditions on the premises licence and to alter the existing licensing hours. She referred to the plans set out on page 57 of the report and explained that a significant investment was being proposed to reposition the premises as a family friendly food led public house. Improvements were being proposed to the signage and entrance to the public house, together with a total refurbishment of the toilets. There would be a raised sitting area and the restaurant area would be much more clearly defined. The pool table would no longer be part of the operation. Sarah Le Fevre referred to the left hand side of the building and explained that there would be a lobby exit to the gardens with double doors which would act as a sound barrier. Mr Neal sought clarification as to whether Sarah Le Fevre was actually referring to the left hand side of the building or to the actual front entrance of the building. She explained that she was referring to the plans as they appeared on the page and was trying to emphasis the complete refurbishment of the premises. In response to clarification sought by the Chairman, Mr Neal explained that the main Gayton Road ran along the front of the property. The Licensing Manager, with aid of a map, clarified it was the actual front of the building that was being referred to.

Sarah Le Fevre referred to page 19 of the report which was a copy of the current premises licence, and in particular to the historical conditions listed under Annex 2 (Conditions 8, 9 and 10) which the application sought to remove as they had remained on the licence following the conversion of the Magistrates Justice's Licence and were no longer relevant under the new Licensing Act 2003.

The applicant was willing to offer new conditions to promote the licensing act objectives as set out in their variation application at box P. The Police had proposed some additional conditions which the applicant had accepted and

were simply rewording of the original conditions proposed on the operating schedule. The applicant had also accepted those conditions proposed by the CS&NN Team, although it was highlighted that the closing of windows and doors at all times during regulated entertainment events already formed part of the operating schedule.

Further correspondence had been made with a member of the CS&NN Team and a suggested timescale for the noise management plan to be in place was 30 days. The applicant was happy to accept this proposal.

Sarah Le Fevre explained that the applicant had withdrawn the variation application to have regulated entertainment (live music – indoors only) on a Monday to Thursday from 4pm to 11pm and that entertainment would cease on Friday and Saturdays at 8pm as opposed to midnight as applied for. Regulated entertainment would also cease at 4pm on Sunday as opposed to 10.30pm as originally applied for. The application had also been withdrawn so that there would be no regulated entertainment (live music – indoors only) on Bank Holiday weekends. Sarah Le Fevre outlined that the application was also seeking to permit the following:

- Commence recorded music from 10:00am on a Sunday rather than midday.
- Commence the sale of alcohol from 09:00am Monday to Sunday.
- Permit the provision of facilities for making music from 10:00am until 23:00pm Monday to Wednesday and from 10:00am until 23:00pm on a Sunday.
- Permit the provision of facilities for dancing Sunday to Thursday 10:00am until 23:00pm
- Enable late night refreshment to take place until 00:30pm Friday and Saturday.
- To open the premises from 09:00am Monday to Sunday.
- Additional hours were also being sought on 5 Bank Holiday weekends.

Sarah Le Fevre explained that the application did not seek to extend the opening hours during the evening, the only extension being sought was an additional 30 minutes on Friday and Saturdays for the provision of late night refreshment. She reiterated that the aim was to reposition the premises as a family friendly food led public house and to hold coffee mornings and offer breakfasts. The two responsible authorities who had originally objected to the application had subsequently withdrawn their objections and all conditions proposed by both the Police and the CS&NN Team had been agreed to by the applicant. A letter had been sent to all interested parties outlining the conditions that had been agreed to and that the applicant had withdrawn the proposals for live music. Sarah Le Fevre referred to the four letters of objections that had been received stating that the concerns focused on noise and dispersal issues late in evening, however, the application was not seeking to extend the hours in the evening. With an experienced manager in place,

dispersal issues could be managed, and Scottish & Newcastle were offering the manager and all staff an intensive 3/4 days training course.

The intention was to close the pub for some 5/6 weeks to allow for refurbishment work to be carried out. LT Management Services Ltd were aware of the concerns and had acted rapidly to remove the existing manager. They were keen to work with interested parties and not against them.

QUESTIONS TO THE APPLICANT

The Licensing Manager sought clarification as to extension being applied for in relation to Bank Holidays. Sarah Le Fevre confirmed that a terminal hour of 2am was being sought on Bank Holiday weekends to offer flexibility.

Mr Neal stated that that it was confusing as to what the applicant was applying for on each individual day of the week and asked if the exact hours and activities for each day could be outlined. The Licensing Manager confirmed that there would be no live entertainment outdoors and clarified that a premises licence was required for the sale of alcohol, regulated entertainment or the supply of hot food and drink between 11pm and 5am. He also outlined the hours and activities that would be permitted each day if the application was granted. The Chairman sought clarification from the interested parties, who confirmed that they understood what was being applied for. The Licensing Manager also reiterated that it was important that the interested parties were aware of what the variation application was seeking to permit.

Cara Jordon also sought clarification in relation to the letter dated 22nd June 2011 from Barry Richards, which referred to the removal of live music and questioned whether as per the existing licence, live music would still be an option on Friday and Saturday evenings from 8pm until midnight. Sarah Le Fevre referred to page 4 of the Agenda, regulated entertainment and explained that no variation was being sought and live music could be played on Friday & Saturday from 4pm until 8pm and from 12 noon until 4pm on a Sunday.

Mrs Mayes questioned why the applicant was seeking to remove the 3 conditions on the existing premises licence. The Licensing Manager explained that the conditions were out of date and no longer relevant and had merely transferred under the previous justice regime.

Mr McNaught questioned whether the speakers mounted on the outside of the building could be removed. Mr Bowyer stated that the pub would be closed on Monday (4th July) to allow refurbishment work to be undertaken and a caretaker would be on site. Mr McNaught explained that he went to bed at around 10.30pm each evening and loud music could be heard until 1am in the morning. Mr Bowyer explained that the pub would be family oriented and food led and offer Wfi and coffee mornings. He acknowledged that they had been previous issues with the last tenant. Mr McNaught stated that the pub some 15 years ago used to be very nice. He also questioned whether raised decking would be put up outside. He also stated that an 8ft hedge which helped act as a sound barrier had been removed. Mr Bowyer explained that raised seating would only

be situated inside. The hours being applied for would offer Mr Weston the flexibility to open as and when he choose. He also confirmed that Scottish & Newcastle owned the premises and acknowledged that the police had been called on-site in relation to a previous tenant, who had been removed in August of last year.

Mr Neal questioned what would change in the future and why residents should have faith in Mr Bowyer to manage the premises (tenant). Mr Bowyer stated that he could not speak on behalf of previous area managers but the management of the pub was now his responsibility. He offered to give the interested parties his telephone number and business card. Mr Neal reiterated his question as to why should local residents have confidence in Scottish & Newcastle who had failed in the past to manage the pub. Mr Bowyer explained that a significant investment was being made to refurbish the pub. Mrs Neal suggested the clientele of the Wildfowler would not be interested in attending coffee mornings. In response to further questions from Mr Neal, Mr Bowyer explained that the opening time of 9am would allow Mr Weston the flexibility to hold such events as weddings, it was not the intention to have discos in the mornings. Mr Neal stated that the variation application did not suggest that the pub was aiming to be a family orientated venue with all the proposed changes relating to alcohol or music. The existing premises licence was sufficient for a family oriented pub.

Sarah Le Fevre stated that no extension to the closing times was being sought and only limited hours in the morning. The applicant would not have gone to the trouble of submitting a variation application if it did not make good business sense. The application offered a degree of flexibility and a significant investment amounting to tens of thousands of pounds was being invested by Scottish & Newcastle and Mr Weston.

The Chairman stated that it was unfortunate that Mr Weston could not attend the hearing in order to satisfy the interested parties in relation to his previous experience and future plans for the premises. Sarah Le Fevre explained that Mr Weston had been hospitalised and therefore was not in a position to attend. Consideration had been given to request for an adjournment but as all parties had been notified and arrangements had been put in place, it was considered in the best interests to proceed with the hearing. Mr Bowyer knew Mr Weston well and he had gone through a detailed assessment as regards his suitability as a tenant for the pub. He also had previous connections with Scottish & Newcastle and wanted to change the Wildfowler into a good community pub. Sarah Le Fevre explained that the Sub-Committee did have the option to adjourn the hearing "part heard" but Mr Weston had not been in a position to attend. As soon as the applicant was aware of Mr Weston's position, they had informed John Gilbraith in an email of 23rd June 2011. He had informed them that any application, rightly so, for an adjournment, would need to be made orally at the hearing. She reiterated that all parties had been assembled and therefore a decision to proceed had been made.

Cara Jordan advised that it was important to deal with the application in a fair way. Mr Bowyer was in a position to provide some details and information of

the proposals for the new pub and details of Mr Weston's experience along with his own role in the future management of the pub. Mr Bowyer might wish to provide further information on his and Mr Weston's future roles. Mr Neal stated that he felt the hearing should proceed and a decision be made. In response to further questions, Mr Bowyer explained that Mr Weston had managed his current premises for approximately 4/5 years and had managed 2/3 pubs on behalf of Scottish & Newcastle. He also explained that he personally had taken the area of Norfolk/Suffolk some 2 years ago and that he had been associated with the licensing trade for some 12 years.

The Chairman confirmed that the Sub-committee had agreed to proceed with the hearing.

Mr Neal further questioned how the applicant would ensure that all windows and doors remained closed, particularly in the summer, with the warm weather. The Licensing Manager also questioned whether air conditioning would be installed at the premises. Mr Bowyer explained that currently there were no plans to install air conditioning. Sarah Le Fevre explained that the condition in relation to the closure of all windows and doors would be on the operating schedule and was enforceable and it was a criminal offence if the licensee did not comply with it. The CS&NN Team, who were the experts in relation to noise nuisance had withdrawn their objection and therefore were satisfied with the conditions proposed and subsequently agreed.

Mr Neal referred to plans for a 40 bedroom nursing home that had been granted planning permission in May 2011 which would be situated opposite the Wildfowler. The Licensing Manager advised that the planning and licence regimes were separated and therefore this was not relevant. He also explained that if the Sub-Committee were minded to grant the application and subsequently problems were experienced at the premises, interested parties did have the option to apply to have the licence reviewed. The review application would be advertised for a period of 28 days to give an opportunity for other parties to submit representations. The premises licence would then be subsequently reviewed by a Sub-committee. The Licensing Manager also explained that the Police had applied for a review of the premises as a result of a domestic dispute, which was subsequently advertised but the operators had removed the person in question from the premises and therefore the Police had withdrawn their application.

In response to questions from Members of the Panel, Mr Boywer explained that he was aware of the issues at the site and the previous licensee had been removed. Scottish & Newcastle had undergone a restructuring exercise and taken on the site. Mr Bowyer also explained that the area was relative new to him but he had known Mr Weston for a considerable amount of time. He had faith in Mr Weston to turn the pub around hence a significant investment was being put into refurbishing the premises. Mr Weston and his wife had considerable experience and high standards and a full business plan had been prepared. Mr Boywer confirmed that the current pub run by Mr Weston was in Whittlesey but was unable to recall the name of it.

5. THE INTERESTED PARTIES CASE

Mrs Mayes presented her case and explained her concerns were in relation to the overall extension in hours, whether they were at the beginning or end of the day. The pub was not well managed currently with drug taking and noise nuisance a regular occurrence. She explained that she would welcome a nice, well run pub in the village. Mrs Mayes stated that the Business Development Manager (Mr Bowyer) had not attempted to contact residents to outline the future plans for the premises. She referred to the application as being “faceless” with no name other than LT Management Services Ltd. The letter that had been sent to all interested parties was purely as a result of objections that had been submitted and was too late in the process. The process could have been much better managed if residents were approached individually rather than having to read a notice in the paper, a paper which some residents did not read. Noise nuisance, litter and glass in residents’ front gardens was also a problem. Drug dealing had taken place behind the hedge and therefore the hedge had been removed. A car washing facility had been set up with no consultation or discussions with local residents. A car boot had also been held in the car park again with no consultation or discussions. Mrs Mayes stated that she would love to have a well run family pub across the road which she could take her family too. She reiterated that in her opinion it was a “faceless” application and having done some research, she could find nothing about LT Management Services Ltd. No testimonials had been presented in relation to Mr Weston’s experience. The investment in the refurbishment was welcome but there was no requirement for an extension in opening hours or activities, the current licence was sufficient.

Questions to the Interested Parties

There were no questions from the applicant’s representative.

In response to questions from Members of the Panel, Mrs Mayes explained that she had complained a number of times about the premises. A diary had been issued by the CS&NN Team to monitor noise nuisance however over that particular period there had been less noise. She had called the Police on a number of occasions, sometimes they had responded but often had said that noise nuisance was not their business. The landlord had also been called and his reaction was to invite her over at 1am which she had found quite threatening. No offer to set up a meeting to discuss the issues at a reasonable time had been made. Mrs Mayes confirmed that the Police were aware of the problems with drug dealing at the premises.

The Licensing Manager clarified that the law only required the applicant to advertise in a local newspaper and display notices at the premises. The issue of car washing facilities and car boot sales fell outside the licensing regime.

Mr & Mrs McNaught confirmed that they experienced the same issues as Mrs Mayes.

Mr Neal referred to the licensing objectives which were relevant to the application being crime & disorder and public nuisance. There were a number of schools in the local area and it was not appropriate for children to have to walk past the premises which sold alcohol from 9am in the morning. Mr Neal suggested the application was a smoke screen and the intention was not to run it as family oriented premises. He stated that given the history at the premises, the new licensee should demonstrate he could turn the pub around and then in 12 months time apply for an extension.

There were no questions for Mr Neal.

The Licensing Manager drew the Sub-Committee's attention to the letter of objection received from L M Castledine who was not present at the hearing.

6. SUMMING UP

Interested Parties Summing Up

Mrs Mayes summed up her case and reiterated that her concerns were in relation to the extension in opening hours and referred to the application as "smoke and mirrors" and that opening to 2am on Bank Holidays was inappropriate. Over the years residents had suffered considerably and she was not convinced there would be any change.

Applicant Summing Up

Sarah Le Fevre summed up her case and reiterated a significant investment was being made to reinvent the premises by redesigning and putting in place new management. It was a limited variation with no change in closing hours except for Bank Holidays. There was no change in live music and the pub would not open no earlier than 9am on any day of the week. The applicant had liaised with the responsible authorities and had agreed to the conditions proposed by the CS&NN Team and rewording of the conditions proposed by the Police. Both had subsequently withdrawn their objections which should weigh heavily when the Sub-committee were considering their decision.

All interested parties had been written to outlining the extent of the application and additional conditions that had been agreed. Scottish & Newcastle were making a significant investment in the premises as was the new licensee. Mr Bowyer was willing to provide his contact details and the offer to give Mr Weston's details was also made. Bi-monthly residents meetings could also be held at a venue of their choice or at the premises itself. It was in the interest of the licensee to work with the local community.

In conclusion, Sarah Le Fevre invited the Sub-Committee to grant the application.

7. OUTSTANDING MATTERS

The Licensing Manager addressed the Sub-Committee stating that they had had the opportunity to listen to the submissions from both the applicant and interested parties.

He requested the Sub-Committee dispose of the application by either:

- a) Granting the application for a premises licence
- b) Granting the application with conditions relevant to the promotion of the licensing objectives.
- c) Rejecting the whole or part of the application

The Licensing Manager advised that if they were minded to grant the application, the conditions must be clear and must be enforceable. He reiterated that the application was a variation and therefore there was no powers to restrict the existing premises licence.

The Legal Advisor addressed the Sub-Committee and advised that in considering the variation application, they should have in mind the promotion of the four licensing objectives. Consideration should also be given to the Council's own licensing policy, Guidance issued under Section 182 of the Licensing Act 2003 and the Human Rights Act. The interested parties objections focused on concerns over noise nuisance. She advised the Sub-Committee that they had three options, to grant the variation, grant it with conditions or refuse the whole or part of the application. Any conditions should be necessary and proportionate. The variation application was seeking to increase the opening hours and remove 3 conditions under the previous licensing regime. The Legal Advisor referred the Sub-Committee to page 40 of the report which outlined a number of conditions which would be on the operating schedule. She also referred to the letter dated 22nd June 2011 which had been sent to interested parties. If the Sub-committee were minded to grant the licence they should endorse the conditions proposed by CS&NN and the Police. A timescale for submission of the noise management plan should also be stipulated. The Legal Advisor referred to page 4 of the report and the amendment to the times for regulated entertainment (indoors only), however this did not affect Bank Holidays.

8. REACHING A DECISION

The Sub-Committee retired to consider their decision in private, advised only by the Legal Advisor on specific points of law and procedure. On all parties returning to the room, at the request of the Chairman, the Legal Advisor stated she had assisted Members with the structure of their decision and a query in relation to the conditions on the operating schedule.

9. PRELIMINARY DECISION

The Chairman read out the preliminary decision.

Decision

That the application for a variation to a premises licence in respect of the Wildfowler situated in Gayton Road, King's Lynn, Norfolk, PE30 4EL be granted as set out in the documentation, including the operating schedule page as amended by the letter dated 22 June 2011.

Reasons for Decision

We have listened to the report and comments of the Licensing Officer.

We have listened to the submissions on behalf of the application and the assurances given that the new management will have regard to the concerns expressed by the interested parties and address past problems.

We have had regard to the representations made by the interested parties and confirm we regard them as living in the vicinity within the meaning of the Act.

We confirm that the following conditions suggested by the Norfolk Police Authority be added to the licence: Bullet Point 1 and 2, as set out on page 43 of the report.

We also confirm that the following conditions suggested by the Community Safety and Neighbourhood Team as set out at bullet point 1 will be submitted within a period of 30 days, will be added to the licence. Bullet points 2 and 3 are now contained in the amended operating schedule.

Concerns were raised by interested parties relating to noise, anti social behaviour and management issues.

We consider the conditions of the Police Authority and Safety Noise Management Team are necessary and proportionate to achieve the licensing objectives.

We also exclude conditions 8, 9 and 10 of the old premises licence as set out in Page 19 at annexe 2, be revoked.

The decision is always subject to review procedures.

Decision notice will be sent to all parties in due course.

Comments on the Decision

The Chairman requested comments on the preliminary decision from the Licensing Manager. The Licensing Manager confirmed that he had no additional comments to make.

The Chairman therefore confirmed the decision as follows:

10. CONFIRMED DECISION

Decision

That the application for a variation to a premises licence in respect of the Wildfowler situated in Gayton Road, King's Lynn, Norfolk, PE30 4EL be granted as set out in the documentation, including the operating schedule page as amended by the letter dated 22 June 2011.

Reasons for Decision

We have listened to the report and comments of the Licensing Officer.

We have listened to the submissions on behalf of the application and the assurances given that the new management will have regard to the concerns expressed by the interested parties and address past problems.

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We also exclude conditions 8, 9 and 10 of the old premises licence as set out in Page 19 at annexe 2, be revoked.

The decision is always subject to review procedures.

Decision notice will be sent to all parties in due course.

The Meeting closed at 12.35pm