

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

**Minutes of the Licensing Sub Committee Meeting
held on Wednesday 25th April 2012 at 10.30am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Sub-Committee Members:	Councillor R Groom (Chairman) Councillor A Lovett Councillor D Tyler
Borough Council Officers:	Rachael Edwards - Senior Democratic Services Officer John Gilbraith - Licensing Manager
Legal Advisor:	Emma Duncan
Premises:	The Willow Tree, 15 – 19 Tower Street, King's Lynn
Applicant:	Create & Style Ltd – Linda Howe
Responsible Authorities:	Jo Garrod – Community Safety & Neighbourhood Nuisance Tony Grover – Norfolk Constabulary

1. WELCOME AND INTRODUCTIONS

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee were sitting to consider a premises application in respect of The Willow Tree, 15 – 19 Tower Street, King's Lynn.

He adjourned the hearing in order for a site visit to be carried out at the premises.

On reconvening the hearing, the Chairman introduced the Sub-Committee Members and the Borough Council Officers and explained their roles. He also introduced the Legal Advisor, Emma Duncan. The applicant and Responsible Authorities introduced themselves.

2. THE PROCEDURE

On reconvening the hearing, 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 for the provision of late night refreshment (i.e. the

supply of hot food and drink between 11pm and 5am). The four licensing objectives 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

The Application

Create & Style Limited had made an application for a premises licence for the licensable activities of 'regulated entertainment', 'sale of alcohol' and the 'provision of late night refreshment'. A copy of the application was attached at Appendix 1 and, if granted, would allow the premises to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Regulated Entertainment: Films / Facilities for Dancing (Indoors only)	Monday to Sunday:	7am – 1am
Regulated Entertainment: Live Music / Recorded Music / Facilities for making music (both Indoors and outdoors)	Monday to Sunday: Outdoors: Indoors:	7am – 9pm 7am – 1am
Late Night Refreshment (indoors only)	Monday to Sunday:	11pm – 1am
Sale of Alcohol: (For consumption both 'on' and 'off' the premises)	Sunday to Monday:	7am - 1am

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.
- (h) Under Section 20 of the Licensing Act 2003, the admission of children to film exhibitions is to be restricted in accordance with film classification recommendations.

The licence would also be subject to the following condition which was consistent with the operating schedule:

- a) No children shall be permitted on the premises after 8pm unless

accompanied by an adult.

Representation from Responsible Authorities

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

The following comments had been received from the Responsible Authorities:

- a) The Borough Council's Community Safety & Neighbourhood Nuisance (CS&NN) Team were objecting to the application under the 'Prevention of Public Nuisance' licensing objective. A copy of their letters dated the 15th March 2012 and 3rd April 2012 had been attached to the report at Appendixes 2 and 3 respectively.
- b) Comments from the other responsible authorities were as follows:

<u>Responsible Authority</u>	<u>Comments Received</u>
Norfolk Constabulary	Not objecting
Norfolk Fire Service	None
Norfolk Trading Standards	None
Norfolk Children's Safeguarding Board	None
Planning (BCKLWN)	Not objecting
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 were no letters of objection from 'interested parties' to consider.

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 Tuesday 6th March 2012 and should have been displayed on the premises until the 28th March 2012.

Plans

A location plan showing the general location of the premises had been attached at Appendix 4 and a plan of the premises had been attached at Appendix 5.

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.

3.4 Licensing is about regulating licensable activities on licensed premises and any conditions that are attached to premises licences or club premises certificates will be focused on matters which are within the control of the individual licensee or club, i.e. the premises and its vicinity.

5.0 Licensing Hours

5.1 With regard to licensing hours, due consideration which will be given to the individual merits of an application. The Borough Council recognises that, in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. This can help to reduce the

friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance.

- 5.2 The Borough Council wants to ensure that licensing hours do not inhibit the development of thriving and safe night-time local economies. This is important for investment, local employment and attractive to domestic and international tourists. Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.

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 offers advice to Licensing authorities on the discharge of their functions under the Licensing Act 2003.

The following extracts may be relevant to this 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.

9.24 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 measures to ensure that music will not be audible above background level at the nearest noise sensitive location;
 - require the 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).
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- 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.

Questions to the Licensing Manager

There were no questions from either Members of the Sub-Committee, the applicant or Responsible Authorities to the Licensing Manager.

4. THE APPLICANT'S CASE

The applicant, Linda Howe presented her case, details of which are outlined below:

“Good morning, my name is Linda Howe. I own The Willow Tree, Willow Tree Gifts and Pastimes in Tower Street. I and family members have lived above Pastimes for the last 27 years. I tell you this as a way of letting you know I am committed to Kings Lynn. I am a responsible person who has invested heavily in my businesses in 17 - 19 Tower Street. I also received an award at the Opportunity Awards last evening in relation to my business and my staff's standard of service. The business also has a 5 star Food Standards Agency rating. Over the last two or three years I have carried out a large and costly refurbishment of my properties, including installing disabled access, ramps and disabled toilets. This has resulted in The Willow Tree becoming a very spacious, comfortable and popular eatery. I am here today to apply for a licence for The Willow Tree, which I feel would enhance the business. This is confirmed by customer requests. The licence to serve alcohol would be the finishing touch, and with that, hopefully, ensure an increase in my customer base.

My original intention was to do exactly that, serve an odd glass of wine or beer with a lunch time meal. The more I thought about it, and looked into the process involved in applying for a premises licence, I realised there could be an opportunity for another dimension to my business. I now employ a very experienced Chef/Front of House Manager who is keen to do early evening/night time meals, theme nights, buffets, receptions etc. I have already

had a number of enquiries for events e.g. wedding reception, golden wedding party, 85th birthday, 40th birthday, and although at the moment these are daytime and evening events I feel encouraged by the response and the number of enquiries. With the addition of a function room there is the extra option of a private daytime event, for example a small reception after a registry office wedding. I have held discussions with the new shop opposite which sells decorations and hires equipment and I believe we could work well together. Because of the type of establishment, and that our customers are generally of the more mature age group, I feel this could be an opportunity for a different type of evening venue and giving more vibrancy in this area of the town. The idea being, at a later date, I could also provide music nights, possibly accompanied by a meal. This type of facility seems to have disappeared over the years, and the more mature person has been left with very little choice of nice places to go. The Regis Rooms and The Park View/The Mildenhall, are just a couple of examples where a good time could be guaranteed. Obviously any events would be pre-planned with at least 14 days notice and extra staff would be needed, thus providing extra employment. All events would be private functions, with nobody allowed to walk in off the street. Functions that are not private parties would be ticketed, and I would even be prepared to have a cut off for ticket sales if you, the Panel, feel this would help in the prevention of public nuisance.

With these plans for the future in mind, I do not feel that 1am is unreasonable as even the oldies like a late pass sometimes. Alcohol would not be served to any non-ticket holding people entering the building after 11 pm. I feel the problem of noise nuisance is not really applicable to this application. The size and layout of the building would not accommodate vast numbers of people or loud entertainment. The main exit door is at the back of the building facing the multi storey car park. The gardens/smoking areas are also at the back, just along the road from the same type of area at The Royal British Legion. I have carried out a survey of the properties along Tower Street and find that there are 34 businesses (off which 4 or possibly 5 are licensed premises) and approx 7 of these, have flats above that are being lived in. I have not included Cafe Rosta, as they are opposite Heights Nightclub and have also applied for their own licence. Not one of the local residents or any other professional body has seen fit to raise an objection to this application. I would also like to add, that I, or my family have ever had reason or desire in 27 years to complain about night time noise in Tower Street. This includes the bottles being emptied into the skips at Heights night club about 3.30am. The reason for not complaining, apart from the fact that it does not cause nuisance worthy of doing so, is because it makes allowances for people living and enjoying life.

With reference to Jo Garrod's letter dated 3rd April 2012, I will be seeking clarification on what is meant by "significant structural modifications" that would be required if the CSNN team were to consider recommending that the premise be permitted to provide regulated entertainment until 1am.

I now refer to page 11(10.4) in the Agenda papers, I am having difficulty with the wording of the conditions, and will be seeking clarification, in that, as I have said, I will not be holding a late night function in the first 28 days, or for the

foreseeable future, so I cannot possibly comply with this condition. I will have to take advice as to how noise levels are measured, recorded and attached to a licence, as I do not understand what LAeq 5mins means. If the Panel are minded to agree to the condition regarding sound testing, I would be seeking advice as to, whether this is normal practice.

Equally, I am having difficulty and will be seeking clarification on the meaning of "a member of staff" to monitor entry and exit.

With reference to "Statement of Licensing Policy", I feel disappointed with the way this application has been dealt with by Jo Garrod.

3.2 (3.2.1). This states that each application is to be considered on its own merits. I did not receive a visit to view the property, the area, or discuss any of my intentions or plans. The first I knew there was a problem was a phone call stating, that unless I agreed to an 11pm finish there would be an objection raised on timing and noise.

3.2 (3.3). This states that "every application will be dealt with impartially and on its own merits". This was not the case, as too many wrong assumptions, in my opinion, were made prior to any visit, about the property, its layout, and the type of entertainment & functions I may well hold in the future. My application was then compared to Ciao's in Broad Street and other local properties. Also, Page 37 of the report, in the paragraph "suggestions of good practice" states "notices may be displayed at all entrances and exits asking customers to leave quietly and respectfully", this was actually something I has already stated on my application.

Questions to the applicant

In response to a question from Jo Garrod on what experience the applicant had in running a venue providing regulated entertainment and the sale of alcohol, she explained that she had many years of retail experience serving the public and she employed a very experienced Front of House Manager who also had many years experience. In response to a further question in relation to the Front of House Manager's role, the applicant explained that she would look after the customers and that she was confident in that if appropriate, he could deal with any noise nuisance issues inside or when people were exiting the premises but obviously was not responsible for problems in the surrounding area.

Jo Garrod questioned the applicant as to what she considered constituted "a reasonable noise level" in someone's home. Following clarification on the question, the applicant explained that she was a very responsible person and she herself, living in the area, experienced minor noise issues but had not felt sufficiently upset to complain. The size and shape of her premises would help minimise any noise issues but she confirmed that she was willing to undertake regular checks at the boundary of local residents to ensure that any noise was not at an un-reasonable level.

The Licensing Manager explained that the applicant lived above her business, Pastimes, and questioned whether she had experienced any noise issues from Heights nightclub. In response, the applicant explained that occasionally she had but not to the extent that "it was worth worrying about". In the main, the noise was from people in the street after leaving the nightclub which she understood was not the responsibility of the door staff at the nightclub.

In response to a question from Councillor Lovett as to how the applicant would control entry into the premises in the evenings because apart from the British Legion and Heights nightclub, her premises would be the only one in that area selling alcohol, the applicant explained that the events would either be private or would be ticketed. She confirmed that it would be "someone of a responsible nature" who would determine who would gain entry and obviously if the event was ticketed, someone would have to ensure that tickets were handed in etc. Councillor Lovett queried who this might be, as the Front of House Manager was also the chef and therefore would likely be busy in the kitchen. The applicant explained that she did have a query in relation to this issue and questioned whether it could be a member of her staff or whether it had to be a Security Industry Authority (SIA) registered member of staff but confirmed that she was willing to do whatever was necessary.

The Licensing Manager advised that if the Sub-Committee were minded to attach such a condition in relation to door staff, by the law they would be required to be SIA registered.

5. RESPONSIBLE AUTHORITIES

Jo Garrod, on behalf of the Community Safety & Neighbourhood Nuisance Team (CSNN) at the Borough Council presented her case and tabled a location map and a list detailing the number of residents properties situated in the vicinity of the premises.

She explained that the main role of the CSNN team was to prevent noise nuisance which was considered a statutory nuisance under the Environmental Protection Act 1990. Any noise nuisance experienced from a licensed premises was deemed to be at a lower level than what was considered a statutory nuisance and referred to annoyance and public nuisance. If controls were not put in place at the offset, it made it very difficult for the CSNN team to deal with any noise related issues from licensed premises. Jo Garrod also explained that the team worked out of hours shifts on a Friday and Saturday evening with a considerable amount of resources being put into monitoring similar venues.

When considering the application, she explained that she had to consider the potential of noise nuisance problems occurring and her main concern was with the potential of noise from customers exiting the premises. Because of the recession, many businesses were looking to diversify and regulated entertainment events were becoming more popular as they generated the most income.

It was acknowledged that any problems experienced once customers had left the premises were not in the control of the applicant, however, if problems occurred it would be the responsibility of the police to deal with them.

Jo Garrod explained that her main concern was with the structure of the building which was predominantly glass some of which was single glazed such as the function room and the toilets. Windows provided low level of attenuation unless they were specifically designed for the purpose. The structure of the building would also make it difficult to have a successful event without noise breakout. People noise was the most difficult to control.

Jo Garrod referred to the map and details of the residential properties within the vicinity of the premises and explained that the residential properties were marked with an x on the map and the list of addresses were those listed on the Council's council tax records. She stated that she was aware that the applicant owned some of the premises but this may not be the case in future. Jo Garrod explained that she was concerned with the application for regulated entertainment until 1am and acknowledged that each case should be considered on its own merit, however massive problems had been experienced with other licensed premises. The Legal Advisor advised that this was not relevant to the case and was unfair to the applicant to draw any parallels with other premises and could be considered prejudicial. No objections had been raised by local residents and therefore she advised the Panel to disregard the comments.

Jo Garrod referred again to the structure of the premises and reiterated that glass provided very little attenuation. She explained that she had an initial telephone conversation with the applicant who had initially indicated that she was agreeable to an earlier closing time of 11pm but had changed her mind and was not willing to negotiate. Jo Garrod explained she had visited the premises and acknowledged that she had been wrong in stating that there were no double doors at the premises. British night time was deemed to start from 11pm onwards hence why she had initially proposed a finishing time of 11pm. However, it was the team's intention to work with business owners but the main intention was to ensure a happy medium. She stated that the applicant had had a number of meetings with the Licensing Manager. A further compromise had been offered to the applicant of a terminal hour of 12 midnight for regulated entertainment with closing time of 12.30am, however the applicant had refused to negotiate.

Jo Garrod confirmed that she was more than happy to explain in more detail about noise levels which could be simply measured by a hand held machine which was not costly to purchase. She acknowledged that the applicant would not be holding a late night function in the first 28 days, or the foreseeable future but suggested that there ways around this.

She proposed that there was no entry/exit from the doors at the front of the premises but the doors at the rear that faced the multi storey car park were used and that the entry/exit to the premises was monitored which the applicant had kindly agreed to do. Jo Garrod acknowledged that the applicant was

probably not intending to hold events every evening, but she would have the potential to if the licence was granted as applied for.

In conclusion, she stated that she felt her representation was fair and was aimed at preventing public nuisance.

Questions to the Responsible Authorities

The applicant, Linda Howe asked the following questions:

“At our meeting 29th March, did you not agree that you had made some wrong assumptions about this application? Could this in turn possibly have affected the manner in which you dealt with this particular application? At the outset you were adamant that you would not be agreeing to any time later than 11pm as this was the night time cut off point and the objection would be on the grounds of timing and noise. You have now agreed 12 midnight to be the recognised finishing time, so what real difference does the extra hour until 1am make on the timing and noise issue”?

In response, Jo Garrod apologised for her error in her “assumption” that there were no double doors at the premises but stated she had said that the building was not double glazed but had said “some” of the building was not double glazed. The applicant begged to differ. The applicant also stated that there was a long corridor exit, with an internal door, which would not let noise escape. Jo Garrod disagreed with this statement. The applicant suggested that Jo Garrod had made a number of assumptions about the premises prior to visiting it and based on these assumptions had proposed in a telephone call, that regulated entertainment ceased at 11pm. She also suggested that the application had been treated in a “lapsy dazical” way and the proposals had been put forward prior to any visit being undertaken. Jo Garrod stated that she had viewed the premises externally previously several times.

In response to the reference whether this had affected the manner in which the application had been dealt with, Jo Garrod confirmed it had not. In relation to why 11pm had been proposed initially and then later, 12 midnight, Jo Garrod explained that 11pm was considered to be the cut off time for the night time economy and when people were either going to bed or doing quiet activities. A compromise of 12 midnight had been offered, however it was still considered that there may be noise issues within this additional hour. The applicant referred to Antonio’s which had a licence until 11.30pm and the potential for people from that premises to be intoxicated. Jo Garrod acknowledged that this could happen but Antonio’s did not have a licence for regulated entertainment.

The applicant asked the following question:

“Referring back to the conditions and a member of staff to monitor entry and exit does this mean my staff or SIA registered staff, (which obviously mine are not) are needed to monitor entry and exit at doors B & C? Is this for all functions including private ones, and what hours does this monitoring apply to?”

I think the actual back door, with the lobby, has possibly been overlooked as an exit”

In response, Jo Garrod explained that she was not requesting that door staff be SIA registered but that a responsible person was allocated to monitor entry and exit to the premises. She confirmed she proposed that this would be for the duration of all events but likely to most predominantly after 11pm. The applicant suggested any conditions should be crystal clear which was not the case with the previous statement. In response Jo Garrod confirmed she was proposing it should be for whole duration of events and also stated that she had not overlooked the back door. The applicant explained that many of the flats opposite her premises were used by the surrounding businesses for storage purposes and were not occupied by residents. Jo Garrod acknowledged that this may well be the case currently but there was potential, in the future, for them to be occupied by residents. In reference to Jo Garrod’s early statement about the potential for events to be held every day, the applicant explained that this would not be the case as the clientele would not be available and it would also have cost implications. She also stated that the meetings she had held with the Licensing Manager were to assist her in completing her application form as he was a professional and was being helpful.

There were no questions from Members of the Panel to the applicant.

In response to a question from the Licensing Manager, the applicant confirmed that no residents had raised any concerns directly with her.

The Legal Advisor explained that it was for the Sub-Committee to balance the right of an individual to build a successful business with any relevant representation. The Sub-Committee should avoid imposing any conditions on a licence that were sophisticated and onerous. Jo Garrod explained that her main concern was with the structure of the building which was mainly glass. In response a query from the Legal Advisor as why she had not requested a simple condition that all doors and windows be kept closed at the premises during a function, Jo Garrod stated she would expect this to happen. The Legal Advisor stated that in the summer months if the weather was hot it was likely that windows etc would be opened. Jo Garrod acknowledged that this would be suitable condition but stated that she did not believe it would solve the problem of noise nuisance.

There were no questions from Members of the Panel to Tony Grover

At the invitation of the Licensing Manager, Tony Grover explained that the police were more likely to be informed of disorder offences via a telephone call from a member of the public as opposed to police patrols. The circumstances of each offence were investigated and if it could be established that the problems were linked to particular licensed premises, the police would consider requesting a review and subsequently any appropriate conditions. Each incident was considered on its own merit.

6. SUMMING UP

Responsible Authorities Summing up

Jo Garrod summed up her case stating that she felt her letter of the 3rd April offering a compromise for regulated entertainment to cease at midnight (with a further ½ hour before closing) would allow the applicant to run her business and help minimise any potential for noise nuisance. She acknowledged that conditions should not be over sophisticated and that a simple requirement to keep doors and windows at the premises as a condition was a good suggestion. If the licence was granted as applied for to the later time of 1pm, it would have an impact on the out of hours team. In conclusion, she reiterated that statutory nuisance was determined at a much higher level than that deemed under the Licensing Act which referred to annoyance and public nuisance and if noise nuisance was experienced, due to the constraints of the Environmental Protection Act, it would make it difficult for the CSNN team to take action.

Applicant Summing Up

The applicant summed up her case as follows:

“I believe that I have put to the Panel a business plan that could prove an asset to the area and its people in the near future. I do not feel that a 1am finish is unreasonable, this is hardly a residential area and there have been no complaints from locals or professionals about this timing or noise anyway. It would also allow for a reasonable time span of enjoyment for the more mature person, which is sorely lacking in Kings Lynn.

I feel this application was not dealt with on its own merits and looked into properly. If it had been, better judgement would have made it clear that the exit points from the property are at the back, which faces the multi storey car park. There is also a long corridor exit, with an internal door, in keeping with noise nuisance regulations. There are a number of other properties in the street with a premises licence, some also have outdoor seating and smoking areas. I could arrange for the speakers for regulated entertainment to be directed towards the back of the building with notices be posted asking for quiet and respectful leaving of the premises, through the back doors. I am hopeful that the Panel will view this as an enhancement of the area and peoples enjoyment, and not regard it as a timing and noise issue”.

7. OUTSTANDING MATTERS

The Licensing Manager addressed the Sub-Committee and stated that a licence of some description should be granted but it was for the Sub-Committee to determine, after listening to the representations, the details of the licence. The key licensing objective was in relation to the prevention of public nuisance. He reminded Members that if they were minded to grant the licence as applied for and subsequently there were problems experienced at the premises, there was the option of the review process which could be applied for by interested parties, residents, responsible authorities and from today, the Borough Council.

He referred to page 37 of the Agenda which outlined the conditions proposed by the CSNN team and also referred to the applicant's submission in relation to events being either private or ticketed. The Licensing Manager advised that if Members were to impose conditions they should be necessary and appropriate and licensing authorities should avoid unnecessary or disproportionate measures.

He requested that the Licensing Sub-Committee consider the application, the report and take such steps as it considers necessary for the promotion of the licensing objectives. The steps were:

- a) To grant the licence under the terms and conditions applied;
- b) To grant the licence with additional conditions that the Sub-Committee considers necessary for the promotion of the licensing objectives;
- c) To reject all or part of the application.

The Sub-Committee were reminded that reasons for its decision must be given as both the applicant and objector had a right of appeal against that decision to the Magistrates' Court.

The Legal Advisor addressed the Sub-Committee and reminded them that they had to balance the right of the applicant to run her business with the licensing objectives and any relevant representation. One representation had been received in relation to the prevention of public nuisance. Consideration should also be given to the location of the premises e.g. rural or town centre location. No objections had been received from either local residents or businesses. Any conditions imposed should be necessary and appropriate, easy to understand and relevant to the representation received. There was no evidence that there would be problems experienced at the premises but if problems were experienced, there was the option to review the licence. Consideration should also be given to the Council's own Statement of Licensing Policy and the Section 182 Guidance.

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 Members had made their decision and had sought confirmation that their reasons were legally sound.

9. PRELIMINARY DECISION

The Chairman read out the preliminary decision.

Decision

That a premises licence be granted to The Willow Tree with the conditions as applied for including the mandatory conditions.

Notices must be displayed at all entrances and exits asking customers to leave quietly and respectfully.

Local residents may be notified of any exceptional events listing the times that it will be in operation and contact numbers if there is a problem

Windows and doors must be kept closed where possible to prevent noise breakout from any building.

Regular checks at the boundary of local residents must be complete to ensure that the noise cannot be heard or is not at an un-reasonable level.

Control of entrance must be carried out during all evening functions

Reasons for Decision

We have listened to the applicant's submission.

We have also had regard to the Licensing Manager's report and comments.

We have had regard to the report and comments of the Community Safety & Neighbourhood Nuisance Team.

There were no objections from persons in the vicinity to be considered.

Comments on the Decision

The Chairman requested comments on the preliminary decision from the Licensing Manager. The Licensing Manager sought clarification on what the Sub-Committee considered to be an "evening function" when door staff would be required and whom they considered to be deemed as local residents. The Chairman confirmed that the Sub-Committee considered events after 9pm to be an evening function and local residents were those residing in Tower Street.

10. CONFIRMED DECISION

The Chairman therefore confirmed the decision, with the additional clarification of what was deemed to be an "evening function" as follows:

Decision

That a premises licence be granted to The Willow Tree with the conditions as applied for including the mandatory conditions.

Notices must be displayed at all entrances and exits asking customers to leave quietly and respectfully.

Local residents may be notified of any exceptional events listing the times that it will be in operation and contact numbers if there is a problem

Windows and doors must be kept closed where possible to prevent noise breakout from any building.

Regular checks at the boundary of local residents must be complete to ensure that the noise cannot be heard or is not at an un-reasonable level.

Control of entrance must be carried out during all evening functions i.e after 9pm.

Reasons for Decision

We have listened to the applicant's submission.

We have also had regard to the Licensing Manager's report and comments.

We have had regard to the report and comments of the Community Safety & Neighbourhood Nuisance Team.

There were no objections from persons in the vicinity to be considered.

The Meeting closed at 1pm