

**BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK**

**Minutes of the Licensing Sub Committee Hearing  
held on Tuesday 10 February 2015 at 1.00 pm  
in the Committee Suite, King's Court, King's Lynn**

**PRESENT:**

Sub-Committee Members:	Councillor C J Crofts (Chairman) Councillor D Tyler Councillor A White
Borough Council Officers:	Vicki Hopps – Environmental Health Manager (Commercial) Rebecca Parker – Democratic Services Officer
Legal Advisor:	Jo Furner
Applicant:	Community Safety and Neighbourhood Nuisance, Borough Council of King's Lynn and West Norfolk.
Applicant's Representatives:	Hannah Marsters – Community Safety and Neighbourhood Nuisance Officer Mark Whitmore – Environmental Health Officer
Respondent:	Ms Lolita Dambrauskiene.
Respondent's Support:	Julie Chaplin
Translator:	Vaida Kazonaite

**1. WELCOME AND INTRODUCTIONS**

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee was sitting to consider an application to review the premises licence in respect of the Café by the Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH. He introduced the Sub-Committee, the Borough Council officers and the Legal Advisor and explained their roles.

The respondent, Ms Lolita Dambrauskiene introduced herself and Julie Chaplin.

Hannah Marsters, Community Safety and Neighbourhood Nuisance Officer and Mark Whitmore, Environmental Health Officer introduced themselves.

All parties confirmed that fifteen minutes would be sufficient to present their case.

**2. THE PROCEDURE**

At the request of the Chairman, the Legal Advisor outlined the procedure which would be followed at the hearing.

### 3. THE APPLICATION

The Environmental Health Manager presented her report and provided an overview of the review application.

She explained that at any stage, following the grant of a premises licence, a 'responsible authority' or 'other person' may apply to the licensing authority to review the premises licence because of matters arising at the premises in connection with any of the four licensing objectives. The four licensing objectives were:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance, and
- The protection of children from harm.

The Sub-Committee was informed that the Borough Council's Community Safety and Neighbourhood Nuisance Team, as a responsible authority had made an application to review the premises licence under the 'prevention of public nuisance' licensing objective. A copy of the review application and supporting evidence was attached to the report at appendix 2.

The Sub-Committee was informed that there had been no representations from the other responsible authorities or 'other persons' to consider.

The Environmental Health Manager referred to the Borough Council's Statement of Licensing Policy and the extracts which were relevant to the application being considered. She also referred to extracts from the guidance issued under Section 182 of the Licensing Act 2003 which may be relevant to the application.

The Environmental Health Manager requested that the Licensing Sub-Committee consider the application, the report and any submissions submitted at the Hearing and take such steps as it considered appropriate for the promotion of the licensing objectives. The steps were:

- a) To do nothing
- b) To modify the conditions of the premise licence (which included adding new conditions or any alteration or omission of an existing condition).
- c) To exclude a licensable activity from the scope of the licence.
- d) To remove the designated premises supervisor.
- e) To suspend the licence for a period not exceeding three months.
- f) To revoke the licence.

The Environmental Health Manager reminded the Sub-Committee that full reasons for its decision must be given as there was a right of appeal against the decision to the Magistrates' Court.

There were no questions to the Environmental Health Manager from the Applicant.

The respondent explained that she had not breached the condition regarding the provision of alcohol on site only and only when purchased with food.

There were no questions from the Sub-Committee to the Environmental Health Manager.

#### **4. THE APPLICANT'S CASE – COMMUNITY SAFETY AND NEIGHBOURHOOD NUISANCE**

The Community Safety and Neighbourhood Nuisance Officer explained that she had applied for a review of the premise licence following numerous attempts to resolve issues informally.

She referred to her application which set out details of the actions which had already been exhausted.

The Community Safety and Neighbourhood Nuisance Officer explained that following complaints about noise from music an investigation was carried out and a Statutory Nuisance had been witnessed. On 20 June 2014 a noise abatement notice had been served under section 80 of the Environmental Protection Act. Attempts had been made to work with the Licensee to ensure that the notice was not breached, however a breach was witnessed on 8 November 2014 and a further incident on 22 November 2014 was close to breaching the notice.

The Sub-Committee was informed that it had taken a lot of time and resources to carry out the investigation and in December 2014 an application had been submitted for a review of the premises licence.

The Community Safety and Neighbourhood Nuisance Officer explained that a further meeting with the owner had been carried out and informal suggestions had been put forward, which the Community Safety and Neighbourhood Nuisance Officer hoped to formalise through the hearing process. The Community Safety and Neighbourhood Nuisance Officer suggested that the following conditions be added to the licence:

1. No performance of live music, amplified or acoustic, to be provided at the premises.
2. No recorded music, other than that which was incidental to the use of the Café, be provided.
3. Within 28 days a Noise Management Plan be submitted by the Licence Holder and approved by the Council. Once implemented, the plan should be reviewed on an annual basis, when any noise equipment was changed at the venue, or if a further complaint was received. The Community Safety and Neighbourhood Nuisance Officer explained that she would provide assistance in creation of the Plan.

The Community Safety and Neighbourhood Nuisance Officer called a witness. The witness explained that he lived next door to the premises and explained that the volume of the music had a detrimental effect on his wellbeing. The witness

explained that he had spoken to the Licence Holder but there had not been any improvement so he had contacted the Borough Council.

The witness explained that at a recent party at the venue the music volume had been set at a level advised by the Community Safety and Neighbourhood Nuisance Officer and had been acceptable. The witness explained that the bass level had been what had been causing issues previously.

The Environmental Health Manager had no questions to the witness or the Community Safety and Neighbourhood Nuisance Officer.

The respondent explained that the volume of the music at the recent party, which the witness had stated was acceptable, was set at level sixteen. However, Respondent explained that the Community Safety and Neighbourhood Nuisance Officer had stated that level nineteen was acceptable. The respondent explained that she had removed the bass from the music.

The Community Safety and Neighbourhood Nuisance Officer explained that she felt that the acceptable level was nineteen, on the pop setting. She hoped that these arrangements could be formalised through the creation of a Noise Management Plan, should the suggested condition that one be produced be added to the licence.

The respondent explained that she considered level nineteen to be background music, which would not be sufficient for dancing and parties. The Community Safety and Neighbourhood Nuisance Officer stated that level nineteen could still be heard in the neighbour's property but he had explained that it could be tolerated.

In response to a question from the Chairman, the witness explained that music did not go on later than 11.00pm. There was then some subsequent disturbance from people leaving the venue, but that people soon dispersed from the area.

The witness left the hearing.

## **5. THE RESPONDENT'S CASE**

The Respondent explained that she opened the Café to integrate the Lithuanian Community into society and offer Lithuanian cuisine to the public. She explained that the venue had hosted parties and events for children.

She explained that her neighbour had been insulting and rude to her clients. The Respondent felt that she had been patient with her neighbour, but two years ago an incident had occurred which had been reported to the Police. Following the incident the neighbour had complained to the Council regarding noise nuisance.

The Respondent stated that there had never been any fighting or criminal activity at the venue and no other complaints had been received.

The Sub-Committee was informed that the Respondent had worked with the Council to look at ways of resolving issues prior to another party which had been

planned. Music levels had been agreed with all parties prior to a planned party, but a complaint was made to the Council.

The Respondent explained that following the complaints she had decided that no more live music would be played at the venue.

The Respondent informed the Sub-Committee that she had received a letter from the Borough Council explaining that her music equipment could be seized. She explained that she contacted the Council on this issue as she felt singled out and rejected. The Respondent explained that she had asked for equipment to monitor music levels so she knew what was acceptable.

The Respondent stated that she was very worried about the whole situation and felt very tense. She was under pressure as she was confused as to what was acceptable. She stated that she had been living here for twelve years and had always been honest and law abiding. The Respondent explained that she felt she was being singled out because her neighbour did not like her and wanted her to lose her licence. She explained that it had been her dream to open her premise and she did not make much profit. She explained that if her licence was revoked she would have to shut down the premises and would be forced to claim benefits.

There were no questions from the Environmental Health Manager, the Community Safety and Neighbourhood Nuisance Officer or the Sub-Committee to the Respondent.

The Legal Adviser suggested that the Respondent be asked for her opinion on the conditions which had been suggested by the Community Safety and Neighbourhood Nuisance Officer.

The Respondent explained that she would not be providing any more live music at the venue so was acceptable to the first suggested condition. With regards to a Noise Management Plan, the Respondent explained that when Council Officers attended her venue they disturbed the parties, which could result in people deciding to not book her venue in the future. The Environmental Health Officer explained that it was not the Council's intention to visit the venue, unless a complaint had been received.

The Community Safety and Neighbourhood Nuisance explained that the Noise Management Plan would provide details of the acceptable noise levels, details of the equipment to be used etc.

The Respondent explained that she was acceptable to the second suggested condition in that only music which was incidental to the operation of the Café be provided.

In response to a question from Councillor White, the Community Safety and Neighbourhood Nuisance Officer explained that a noise limiter or handheld decibel metre could be used. However, the Community Safety and Neighbourhood Nuisance Officer hoped that simpler measures such as agreeing a stereo volume could be implemented which would be easier to enforce.

## **6. SUMMING UP – ENVIRONMENTAL HEALTH MANAGER**

The Environmental Health Manager summed up her case and requested that the Licensing Sub-Committee consider all the submissions put forward at the hearing and take steps appropriate to achieve the licensing objective.

## **7. SUMMING UP – RESPONDENT**

The Respondent summed up her case and explained that she played a wide variety of music at the venue, all of which sounded different at the same level. She could not understand how one volume would be suitable for different types of music.

The Respondent explained that she would be willing to work with the Council to resolve issues.

## **8. SUMMING UP – APPLICANT**

The Community Safety and Neighbourhood Nuisance Officer explained that although there had been problems in the past, the situation had improved and she hoped that a way forward could be agreed. She requested that the Panel support her suggested conditions.

## **9. OUTSTANDING MATTERS**

The Legal Advisor advised that there was no outstanding matters.

## **10. REACHING A DECISION**

The Sub-Committee retired to consider its decision in private, accompanied and advised 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 explained that she had assisted the Sub-Committee with the wording of their additional conditions to ensure that they were enforceable and ensure that if agreement could not be reached there was a breach and the matter could be brought back to the Sub-Committee.

## **11. DECISION**

The Chairman read out the decision as follows:

The conditions which have been suggested by the applicant and agreed by the respondent be added to the licence:

1. There will be no performance of live music, amplified or acoustic, at the premises.
2. There will be no recorded music, other than that which is incidental to the use of the café.
3. Within 28 days, the Licence Holder shall produce in conjunction with and with the agreement of the Community Safety and Neighbourhood Nuisance Team, and then implement, a noise management plan. The plan will be reviewed on an

annual basis, when any music equipment changes at the premises or if further complaints are received.

There was a right of appeal against this decision to the Magistrates' Court. An appeal must be commenced within 21 days beginning with the day on which you receive notification of the decision. You may wish to seek independent legal advice from a solicitor or the Citizens Advice Bureau regarding this.

The Chairman thanked everyone for their attendance and contributions and declared the meeting closed.

**The meeting closed at 2.27pm**