

BOROUGH COUNCIL OF KING'S LYNN & WEST NORFOLK

LICENSING COMMITTEE

**Minutes from the Meeting of the Licensing Committee Hearing held on
Tuesday, 1st March, 2016 at 10.00 am in the Committee Suite, King's Court,
Chapel Street, King's Lynn**

PRESENT: Councillors C Crofts (Chairman), D Tyler and A White

Officers:

Alison Demonty – Community Safety and Neighbourhood Nuisance Officer

John Gilbraith – Licensing Manager

Cara Jordan – Legal Advisor

Rebecca Parker – Democratic Services Officer

1 APOLOGIES FOR ABSENCE

There was none.

2 ITEMS OF URGENT BUSINESS

There was none.

3 DECLARATIONS OF INTERESTS

There was none.

**4 TO CONSIDER AN APPLICATION FOR N-JOY BAR, 120 NORFOLK
STREET, KING'S LYNN**

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee was sitting to consider an application for a premises licence in respect of N-Joy Bar, 120 Norfolk Street, King's Lynn. He introduced the Sub-Committee, the Borough Council officers and the Legal Advisor and explained their roles.

The Applicant's Representative and the Applicant's Business Partners who were present at the Hearing introduced themselves.

It was confirmed that the Applicant, who was not present at the Hearing had provided confirmation, in writing, that he would be represented at the Hearing.

The other person present introduced themselves.

The representative from the Community Safety and Neighbourhood Nuisance Team introduced herself.

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

5 **PROCEDURE WHICH WILL BE FOLLOWED AT THE HEARING**

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

6 **REPORT OF THE LICENSING MANAGER**

The Licensing Manager presented his report and provided an overview of the application. In presenting his report, the Licensing Manager referred to the following:

- The application, which had been included within the Licensing Managers Report.
- The mandatory conditions, conditions consistent with the operating schedule and conditions which could be imposed by the Sub-Committee.
- The four objectives of the Licensing Act.
- There had been one representation from the Community Safety and Neighbourhood Nuisance Team.
- The Police would have objected to the application, had the applicant not agreed to the conditions proposed by the Police. If granted, the conditions would be attached to the Licence.
- There had been representations from two other persons, one of which was present at the Hearing.
- The Borough Council's Statement of Licensing Policy and Section 182 Guidance.
- The premises were currently licensed and the licence was still valid, however a condition on the current licence meant that alcohol could only be served with food.

The Chairman thanked the Licensing Manager for his report and invited questions from all parties.

Councillor White referred to the plan of the premises and commented that it only showed ladies toilets. The Licensing Manager confirmed that the men's toilet was on the first floor.

7 **THE APPLICANT'S CASE**

The Applicant's Representative presented the case on behalf of the applicant. He explained that the bar was situated on a busy part of Norfolk Street and was opposite Dr Thirsty. There was capacity for sixty people in the bar. He explained that the premises were to be used as a bar and serve cocktails. It was not intended to operate as a nightclub. The Applicant's Representative stated that the level of music would be controlled so that people could still hold a conversation.

The Applicant's Representative commented that there was regularly lots of people queuing outside of Dr Thirsty and felt that NJoy bar would have very little impact on the noise levels already apparent in the area.

The Chairman thanked the Applicant's Representative and invited questions from all parties.

The Licensing Manager referred to page 34, section d of the agenda which had been provided by the Applicant and set out how the prevention of public nuisance licensing objective would be promoted. The Licensing Manager asked what measures would be put in place to protect local residents. The Applicant's Representative explained that an additional door had been put in the front of the premises, meaning that two sets of doors had to be used to enter and exit the premises and the windows had been insulated.

The Licensing Manager, whilst acknowledging that it was a separate process to the Licensing regime, referred to the planning application which would be required for a change of use. The Applicant's Representative confirmed that the Planning Application had been submitted within the last couple of weeks.

The Community Safety and Neighbourhood Nuisance Officer asked what work had been carried out to abate noise and the Applicant's Representative explained that work had been carried out to the front of the premises to stop noise leakage. Cavity wall insulation had also been installed.

In response to a further question from the Community Safety and Neighbourhood Nuisance Officer, the Applicant's Representative explained that neighbouring the premises was residential to one side and to the other side was a commercial premises with a residential flat above.

The Chairman asked if work had already been carried out to the premises and the Applicant's Representative confirmed that it had and the Planning Application submitted was retrospective.

In response to a question from the Chairman, the Licensing Manager confirmed that the premises were not currently open. He explained that the Applicant had wanted to change operation, which required a new premises licence. Temporary Event Notices had been used so that the premises could open over several weekends and the Christmas period. The amount of Temporary Event Notices permitted had now been exhausted and the premises were currently closed at the moment. The representations put forward from the Community Safety and Neighbourhood Nuisance Team and the other persons included comments about the operation of the premises when it was operating under a Temporary Event Notice.

8 **RESPONSIBLE AUTHORITY'S CASE**

The Community Safety and Neighbourhood Nuisance Officer explained that her role was to look at the application from a public nuisance aspect. She explained that effort had been made with the applicant to manage noise levels and operation of the premises during the Temporary Event Notices had been monitored.

The Community Safety and Neighbourhood Nuisance Officer commented that the monitoring undertaken suggested that a public nuisance was likely. She explained that the surrounding area was a mix of residential and commercial and consideration needed to be given to local residents. She felt that the application as it stood at the moment could not operate, even with conditions, without causing a public nuisance.

The Community Safety and Neighbourhood Nuisance Officer explained that her team had suggested installing two sets of doors to reduce noise leakage, but she felt that the further internal work was required before the application could be considered.

The Sub Committee was informed whilst the premises was operating under a Temporary Event Notice monitoring had been undertaken. One of the other persons who had made representations on the application had been visited by the Community Safety and Neighbourhood Nuisance Team in February. The Community Safety and Neighbourhood Nuisance Officer informed the Committee that a Member of the Team had visited a neighbour who lived opposite the premises at 11.30pm on a Friday evening.

She explained that the property visited had five double glazed windows facing Norfolk Street and the visiting officer had reported that loud music could be heard in the flat, even with all of the windows closed. It was explained that noise levels doubled each time the door was opened at NJoy and noise levels were recorded from several areas in the property. Noise levels were consistent all across the flat. The Community Safety and Neighbourhood Nuisance Officer explained that the resident had lived in the flat for four years.

The Community Safety and Neighbourhood Nuisance Officer stated that the Applicant needed to implement measures to reduce noise breakout and if operation continued in the same way as when the premises was operating under a Temporary Event Notice it was likely that a statutory nuisance would occur.

The Community Safety and Neighbourhood Nuisance Officer also stated that opening times were unreasonable for residents.

The Sub Committee was informed that usually the Community Safety and Neighbourhood Nuisance team could work with premises to add conditions to the licence to address noise nuisance, but at this stage it was not felt that conditions would be sufficient to prevent a public nuisance. The Community Safety and Neighbourhood Nuisance Team therefore objected to the application.

The Chairman thanked the Community Safety and Neighbourhood Nuisance Officer and invited questions from all parties.

In response to a question from the Applicant's Representative, the Community Safety and Neighbourhood Nuisance Officer confirmed that monitoring had been carried out at the residential property opposite the premises on Friday 5th February, which she thought was the last time that the premises had operated under a Temporary Event Notice. The Applicant's Representative stated that operation had finished by 1am on this day and was surprised that drum, bass and techno music had been heard as the intention was to play 80s and 90s music. The Community Safety and Neighbourhood Nuisance Officer explained that it was heavy bass and high tempo music which often caused a problem. The Applicant's Representative confirmed that on the night in question a guest DJ was playing.

The Licensing Manager referred to page 47 of his report and explained that in his objection the other person referred to risen levels, which indicated that the problem was ongoing and not just apparent on the evening the Community Safety and Neighbourhood Nuisance Team had visited.

In response to a question from Councillor White, the Community Safety and Neighbourhood Nuisance Team explained that when investigating a complaint the officer put themselves in the position of the resident.

In response to a further question from Councillor White it was confirmed that the resident lived closer to Dr Thirsty than NJoy and the Applicant's Representative commented that it was likely that some noise nuisance would be from Dr Thirsty.

9

OTHER PERSONS CASE

The other person presented his case. He confirmed that he lived next door to the premises. He explained that he had previously installed double glazing to reduce noise from Dr Thirsty and this had been effective. He explained that since N Joy had been operating he could hear noise through the walls. He explained that the noise was even louder when the doors to the premises were open. The other person present acknowledged that he lived in a mixed use area and it was inevitable that some disturbance would happen and he did not mind living above a busy street with lots of people, however he did not feel

that residents should be disturbed until late, especially on a Thursday evening when people often had work the next day.

The Chairman thanked the other person present for addressing the Committee and invited questions and comments from all parties.

In response to a question from the Community Safety and Neighbourhood Nuisance Officer the other person provided details of the noise being experienced. He compared it to a hammer being banged against the wall. He could not focus on tasks when the music was playing. He commented that sometimes it went on until 2am or 3am.

The Applicant's Representative stated that the venue had not been open past 1am on a Thursday with the exception of New Year's Eve.

In response to a question from the Licensing Manager, the other person present explained that he went to bed in between 11pm and 2am depending on the day of the week and he worked on a Friday.

10 **SUMMING UP - THE LICENSING MANAGER**

The Licensing Manager summed up his case. He referred to the Section 182 Guidance as contained in his report. He reminded the Committee of the conditions proposed by the Police which had been accepted by the applicant and he explained that any conditions imposed by the Sub-Committee must be relevant to the promotion of the Licensing Objectives.

He reminded the Committee that the Community Safety and Neighbourhood Nuisance Team had objected to the application and two representations had been made by other persons, one of which was present at the Hearing.

He reminded the Sub-Committee that each application should be considered on its own merit.

The Sub-Committee was informed that they should have regard to the representations received and dispose of the application by one of the following methods:

- a) Grant the application under the terms and conditions applied.
- b) Grant the application with conditions that the Sub-Committee considers appropriate for the promotion of the licensing objectives.
- c) Reject all or part of the application.

The Sub-Committee was reminded that full reasons for their decision must be given as both the applicant and other persons making representations had a right of appeal against that decision to the Magistrates' Court.

11 SUMMING UP - THE APPLICANT

The Applicant's Representative summed up the case and felt that the premises would not add additional noise to what was already a busy street. He felt that if there was a problem more residents would have complained and made representations on the application.

12 SUMMING UP - RESPONSIBLE AUTHORITY

The Community Safety and Neighbourhood Nuisance Officer summed up her case and reminded the Committee that her role was to prevent public nuisance. Investigation and monitoring had been carried out and she felt that more work was required from the applicant before the Community Safety and Neighbourhood Nuisance Team would withdraw their objections.

13 SUMMING UP - OTHER PERSONS

The Other Person present summed up his case and explained that the main problem was when he was trying to go to bed, or relax in the evening by reading a book etc. He explained that he could not put up with noise all of the time and needed some respite.

14 OUTSTANDING MATTERS

The Legal Advisor advised addressed the Committee on outstanding matters. She explained that the Committee should consider the application with a view to promoting the four licensing objectives. She explained that consideration should be given to the representations put forward at the Hearing and contained in the Licensing Managers Report.

The Legal Advisor reminded the Committee that they should have due regard to the Borough Council's Statement of Licensing Policy, the Licensing Act and the Section 182 Guidance.

15 REACHING A DECISION

The Sub-Committee retired to consider its decision in private, accompanied by the Democratic Services Officer and the Legal Advisor on specific points of law and procedure.

16 DECISION

The Chairman read out the Decision as follows:

FINDINGS

The Sub-Committee had due regard to the report of the Licensing Manager, representations put forward in the agenda and the representations put forward at the Hearing.

Norfolk Street is an area of King's Lynn with a night-time economy. This is positive. However, it is also an area where people live and the Sub-Committee balance the needs of both the business and the residents. The Sub-Committee has a responsibility to promote the licensing objective of the prevention of a public nuisance and, having considered the information from the Community Safety and Neighbourhood Nuisance ("CSNN") officer of the council and the resident who attended today, the Sub-Committee is of the view that the noise from music affects those nearby residents especially their ability to go to sleep and to stay asleep. Whilst the premises has been trading under a Temporary Event Notice, there has been an opportunity to monitor the situation by the CSNN team which considered that the level of noise was such to significantly affect the quality of life of the person who lived opposite the premises. Mr Polichnowski explained that the noise was especially problematic for him when it occurred on a Thursday night as he was a person who worked and had to work on Fridays. These are important issues that the Sub-Committee has focussed upon.

The Sub-Committee considers that it cannot grant the application as submitted but that it is possible to impose conditions to address the concerns raised.

The Sub-Committee requires the mandatory conditions and those consistent with the operating schedule to be attached to the licence.

The Sub-Committee impose the conditions suggested by the police to address the prevention of crime and disorder and agreed by the applicant as set out on page 43 of the report before the hearing today.

The Sub-Committee consider that the following conditions are appropriate to promote the licensing objective of public nuisance:

CONDITIONS

The Sub-Committee attach the following conditions to the Licence:

That the opening hours of the premises be as follows:

Sunday to Thursday – 8pm to 12.30am

Friday and Saturday – 8pm to 2.30am

The opening hours may be extended to 3am on New Year's Eve, Christmas Eve and on any Sunday immediately prior to a Bank Holiday

The supply of alcohol is permitted as follows

Sunday to Thursday – 8pm to Midnight

Friday and Saturday – 8pm to 2.00am

The hours of supply of alcohol may be extended to 2am on New Year's Eve, Christmas Eve and on any Sunday immediately prior to a Bank Holiday

Regulated entertainment (performance of live music and the playing of recorded music) is permitted as follows

Sunday to Thursday – 8pm to Midnight

Friday and Saturday – 8pm to 2.00am

The hours of regulated entertainment may be extended to 2am on New Year's Eve, Christmas Eve and on any Sunday immediately prior to a Bank Holiday

The Sub-Committee also impose the following conditions to promote the prevention of public nuisance

- The licensee shall take appropriate steps to ensure that the customers entering and leaving the premises, and any customers queuing prior to admissions, do so in a quiet and orderly manner.
- All external windows and doors must be closed during the playing of any music other than background music, with the exception of normal access and egress.

The Sub-Committee has noted the concerns of the CSNN team and the risk of future nuisance. Whilst not a condition, the licence holder is advised to prepare and implement a noise management plan and to liaise with the CSNN team.

DETERMINATION

The Sub-Committee grant the application, subject to the addition of the above mentioned conditions.

RIGHT OF APPEAL

It was noted that both the applicant and persons making representations had a right of appeal against that 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 meeting closed at 12.35 pm