

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

**Minutes from the Meeting of the Licensing Committee held on Tuesday, 5th February, 2019 at 10.00 am in the Council Chamber - Town Hall, Saturday Market Place, King's Lynn PE30 5DQ**

**PRESENT:** Councillors Miss S Sandell (Chairman), C Sampson and D Tyler

**OFFICERS:**

Marie Malt – Senior Licensing Officer

Rebecca Parker – Democratic Services Officer

Ajay Patel – Legal Advisor

Jo Reed – Community Safety and Neighbourhood Nuisance Officer

1 **APOLOGIES FOR ABSENCE**

It was reported that the applicant, Mr Groves, was unable to attend the Hearing.

2 **ITEMS OF URGENT BUSINESS**

There was no urgent business.

3 **DECLARATIONS OF INTERESTS**

There were no declarations of interest.

4 **TO CONSIDER AN APPLICATION FOR A PREMISES LICENCE FOR THE VAULT, 18 GAULTREE SQUARE, EMNETH**

The Chairman welcomed everyone to the Hearing and declared that the Sub-Committee was sitting to consider an application for a premises licence in respect of The Vault, 18 Gaultree Square, Emneth. She introduced the Sub-Committee, the Borough Council officers and the Legal Advisor and explained their roles.

Jo Reed from the Community Safety and Neighbourhood Nuisance Team introduced herself.

Mrs Boxall from 16 Gaultree Square introduced herself and explained that she would also be representing Mr Bellamy from 20 Gaultree Square, who was unable to attend the Hearing. Mrs Boxall was accompanied by Mr Griggs.

## 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 SENIOR LICENSING OFFICER**

At the request of the Chairman, the Senior Licensing Officer presented her report to the Sub-Committee. The Senior Licensing Officer explained that the applicant had made an application under Section 17 of the Act for the licensable activities of 'sale of alcohol by retail', 'playing of recorded music' and 'late night refreshment'. She reminded the Sub-Committee of the four licensing objectives which needed to be considered in determining the application.

The Senior Licensing Officer informed the Sub-Committee of the following:

- The operating hours applied for.
- Christmas and New Years' Eve extension hours.
- Mandatory Conditions.
- Conditions consistent with the operating schedule.
- Notice of the application had been displayed on the premises and in a local newspaper.
- Relevant extracts from the Councils Licensing Policy.
- Relevant extracts from the Section 182 Guidance.
- The premises were previously operating as a butcher's shop which was currently closed.

The Sub-Committee was informed that representations had been received from the Community Safety and Neighbourhood Nuisance Team and these had been included in the Senior Licensing Officers report. No representations had been received from any of the other Responsible Authorities.

Representations had also been received from two other persons, which had been included in the Senior Licensing Officers Report.

The Senior Licensing Officer requested that the Sub-Committee have regard to the written material contained in the Agenda and the representations put forward at the Hearing and dispose of the matter by using one of the methods as outlined in her report. She reminded the Sub-Committee that reasons for their decision should be given as all parties had a right to appeal to the Magistrates Court.

The Chairman invited questions to the Senior Licensing Officer from all parties.

Jo Reed asked if the planning application for the premises had been determined because government guidance stated that the two regimes should be married up. The Senior Licensing Officer explained that planning permission was recommended for refusal.

Councillor Tyler referred to the premises plan, which was included in the agenda. He asked what toilet facilities would be made available. The Senior Licensing Officer explained that, from the plans, it looked like one toilet would be provided.

## 7 **THE APPLICANT'S CASE**

The Applicant was not present at the Hearing.

## 8 **RESPONSIBLE AUTHORITIES CASE**

Jo Reed, from Community Safety and Neighbourhood Nuisance presented her report. She explained that the main concern was that the applicant had not demonstrated how they could control noise and nuisance from the premises. She explained that some aspects could be controlled by imposed conditions, but there were no conditions which could be put in place to address car parking issues, noise and nuisance which happened outside the premises.

Jo Reed explained that any complaints of nuisance arising from the premises would likely be an issue for the Community Safety and Neighbourhood Nuisance Team as they would potentially not fall under the severity of statutory legislation even though problems would have an adverse impact on those living in the locality.

The Community Safety and Neighbourhood Nuisance Team objected to the application as it was felt that the site could not be adequately controlled. It was explained that there were concerns about where vehicles using the premises would park. There was no off road parking available and it was anticipated that vehicles would park on the road, in front of other residential houses. Cars would be parked very close to house frontages and there would be no way to control noise from this.

Jo Reed commented that, should the licence be granted, the Community Safety and Neighbourhood Nuisance Team would ask for a condition to be imposed that the rear area should not be used at all. Consideration also needed to be given to waste storage, which she assumed would be to the rear as there was no room at the front of the premises and noise from this would need to be contained. Jo Reed stated that use of the rear garden areas would have an adverse effect if it was to be used

Internally, consideration would need to be given to how noise nuisance would be mitigated, for example sound insulation, because at the moment, if the application was granted, music could be played without

appropriate sound insulation. Jo Reed explained that it would be difficult to control the levels and a detailed scheme to control noise and detail of the type of sound insulation would be required.

Jo Reed referred to the Live Music Act which allowed live music to be played in outdoor areas in licensed premises until midnight to less than 250 people. She explained that the applicant had expressed that he would be holding events, and that he would inform neighbours when he intended to do so.

With regard to the front of the premises, Jo Reed explained that there was no way to control parking and noise and if there was a smoking bin outside the front of the premises this would be where people could congregate.

Jo Reed informed the Sub-Committee that the Community Safety and Neighbourhood Nuisance Team had carefully considered if they could impose conditions on the application to mitigate the concerns highlighted, but in this instance they could not. She explained that the applicant had not demonstrated how he would control the issues.

Jo Reed also reminded the Sub-Committee that they needed to take into consideration the latest guidance which stated that the licensing regime should tie in with the planning regime and that planning permission for the site had been recommended for refusal.

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

Councillor Sampson referred to access to the premises and it was explained that the plans did not show a second door to the front of the premises, as was in place now and provided access to the flat upstairs. Reference was also made to the side fire exit and it was stated that it was unsure where this would lead to as the premises was in a terrace.

Councillor Sampson also referred to the premises plan and that it looked like there was only one toilet to be provided. Jo Reed explained that this would likely be sufficient in terms of the Law, but reminded the Sub-Committee that the premises would accommodate up to 50 people.

Councillor Sampson referred to waste removal as he was unsure how it would be transferred to the front of the premises. Councillor Sampson commented that he did not feel that the plans provided were adequate.

Councillor Sandell referred to car parking issues and Jo Reed explained that there was no allocated car parking associated with the premises that she was aware of. She explained that the road outside was wide and she thought that cars would park on the road outside of residents properties. The Senior Licensing Officer commented that the applicant expected people to park at the Village Hall.

Councillor Sandell referred to the rear area and Jo Reed explained that she had not seen the rear area, but thought it was intended that this would be used as a smoking area.

Mrs Boxall explained that she had photos of the rear area and these were passed to the Sub-Committee Members to view.

## 9 **THE OTHER PERSONS CASE**

Mrs Boxall presented her case. She explained that she lived next door to the premises with her 82 year old Aunt. Mr Bellamy, who lived the other side of the premises had also objected to the application, but was elderly and too poorly to attend the Hearing.

Mrs Boxall explained that there was only one exit proposed, which led directly onto the street. She felt that this would be dangerous as people could exit the premises onto oncoming vehicles, or do damage to parked vehicles. She explained that there was no parking associated with the premises and there was no public car park in the vicinity. The increase in cars would make it difficult for residents to park their vehicles close to their houses.

Mrs Boxall also raised concerns relating to people outside the front of the premises smoking, congregating and causing noise nuisance. She also referred to noise caused by collecting bottles and glasses outside, when disposing of waste and alarms and noxious cooking smells.

Mrs Boxall also commented that the premises shared drains with residents and the additional use of the drains could cause problems.

Mrs Boxall raised concerns relating to litter, broken bottles on the street, how damage could be caused to neighbouring homes and gardens, light pollution and potential anti-social behaviour all of which would have an adverse effect on the neighbours. People leaving the premises could be noisy and this would be increased when events were held.

Mrs Boxall stated that residents should not have to close their windows. She was worried that noise and crime would be increased and this would result in stress to the residents, many of which were elderly. She was concerned that residents would not be able to enjoy their gardens. She stated that the premises was not designed to contain modern noise and the application had not been thought through.

She stated that people's homes were a safe place and their sanctuary and the proposals would be an invasion into their lives and the quiet area they lived in.

The Chairman thanked Mrs Boxall for her presentation and invited questions from all parties.

In response to a question from the Senior Licensing Officer, Mrs Boxall explained that an email from the applicant had indicated that background music would be played from a laptop, but this did not provide detail of music levels.

The Senior Licensing Officer referred to a nearby shop which was licensed to sell alcohol for consumption off the premises until 11pm and she asked Mrs Boxall if there was any disturbance from this premises. Mrs Boxall explained that she could hear shutters closing, there was sometimes noise and damage had been caused to vehicles from users of the Village Hall.

Jo Reed asked where the neighbour's bedrooms were in relation to the premises. Mrs Boxall explained that her bedroom was to the front and her Aunts bedroom was to the rear. She believed that Mr Bellamy's bedroom was to the rear and he had said it was only three feet away from the rear proposed smoking area.

Jo Reed asked if there was a residents parking permit scheme in place. Mrs Boxall stated that there was not and parking was already difficult in the area. She explained that sometimes she was unable to park outside her property.

In response to a further question from Jo Reed, Mrs Boxall commented that the street was very quiet at night; sometimes she could hear people leaving the Village Hall. There had also been some problems with anti-social behaviour and some cars had been damaged, but generally late at night the area was very quiet. Mrs Boxall explained that when the Butchers Shop had been open there was some noise associated with deliveries and customers. She explained that deliveries had sometimes meant that her vehicle had been blocked in, but vehicles had moved when she needed to get out. She commented that business at the Butchers had decreased, so had not had too much of an impact.

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### **SUMMING UP - THE SENIOR LICENSING OFFICER**

The Senior Licensing Officer summed up her case. She reminded the Panel that this was an application for a new premises licence and that the Sub-Committee needed to focus on the four licensing objectives when determining the application. She also confirmed that the Live Music Act would apply to this application.

She referred to the mandatory conditions for the licence, conditions consistent with the operating schedule and the Section 182 Guidance.

The Senior Licensing Officer requested that the Sub-Committee consider the written information and the information put forward at the Hearing today. She explained that the Sub-Committee also needed to consider if the same problems were likely to be prominent if the premises was used for something else and she informed the Sub-Committee that car parking was not a licensing issue.

She asked the Sub-Committee to determine the application by using one of the methods as set out in her report. She reminded the Panel that full reasons for their decision must be given as there was provision for all parties to appeal to the Magistrates Court against the decision.

#### 11 **SUMMING UP - RESPONSIBLE AUTHORITIES**

The Community Safety and Neighbourhood Nuisance Officer summed up her case. She explained that it was the opinion of the team that granting this application would be a huge cause for complaints. There was no way that conditions could be implemented to satisfy the licensing objectives.

She explained that statutory legislation could be unsuitable because disturbance from the premises would be considered low level annoyance, however this would have a significant impact on neighbouring residents.

Jo Reed commented that if the Sub-Committee were mindful to grant the application she asked for additional conditions to be imposed, including that the rear area should not be used and waste disposal areas should not be used between 8pm and 8am. She also asked that consideration be given to limiting the amount of planned events.

Jo Reed stated that even if the operating hours were reduced there would still be a negative impact on the neighbouring residents and there was no way that noise nuisance could be controlled.

#### 12 **SUMMING UP - THE OTHER PERSONS**

Mrs Boxall summed up her case. She explained that she worked hard, and potentially could not carry on working if her sleep was disturbed. She also stated that Mr and Mrs Bellamy had lived next door for all of their married life, and now as an elderly couple were contemplating moving should this application be granted.

#### 13 **SUMMING UP - THE APPLICANT**

The Applicant was not present at the Hearing.

#### 14 **OUTSTANDING MATTERS**

The Legal Advisor stated that there were no outstanding matters.

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 Decision of the Sub-Committee was read out:

**FINDINGS**

We have considered all of the evidence presented to us here today and are grateful for the oral submissions of those in attendance.

We have heard representations from Ms Jo Reed of the Community Safety and Neighbourhood Nuisance team of the Borough Council of King's Lynn & West Norfolk, who expressed concerns the granting of the license would have on the amenity of local residents. This was supported by the submissions of Ms Boxall, who is a local resident and advised of the impact a positive licensing decision would have upon her and other residents.

The concerns are primarily as follows:

Noise:

The applicant's premises are located on a terrace and situated between two residential houses. The license application is to allow recorded music between 08:00 and 12:00 midnight Monday to Saturday.

We have heard submissions that recorded music will be of constant nuisance to the direct neighbours of the proposed bistro and we accept that there is a strong likelihood that noise from both the music and the revellers using the bistro will cause sustained and disproportionate nuisance to members of the public and particularly to direct neighbours.

There is also the further issue of the proposed external smoking area which may allow individuals who are intoxicated to congregate in an area where loud conversation will cause disturbance to neighbours who are in the direct vicinity.

We understand that the applicant is not responsible for the anti-social or criminal behaviour of those who attend his premises and then leave; they are solely responsible for their own actions. However, given that

the premises is terraced with two residential houses, there is in our view, a strong possibility that noise nuisance from those on the premises could have a detrimental impact on the quality of life and amenity of those residing in the neighbouring properties, thereby causing a public nuisance.

We have considered restricting the operating hours for the playing of music but given the elderly population in the area, it is not likely that there is any time which the direct noise from the premises wouldn't cause a nuisance to its neighbours.

We have heard no submissions from the applicant as to the viability of any noise reduction technology and in our judgment we don't believe any such technology could alleviate the nuisance entirely, particularly given the open to air smoking area which could not be conditioned and is very close to the sleeping rooms of those who live in the neighbouring properties.

#### Design of Premises:

We have had the benefit of considering the plan submitted by the applicant. However, we are concerned that the side door and fire exit, is not in reality an exit and that there is no possibility of an exit to the side of the property in the event of a fire, because the premises is located on a terrace. With no rear exit being apparent, the only fire exit for potentially 50 customers is via the front door.

Again, we have been unable to put these concerns to the applicant for his response and as such we feel there is a risk, on the evidence before us, to public safety.

#### **DETERMINATION**

As such the decision of this panel is to reject the application in its entirety on the basis of observing the licensing objectives of the prevention of public nuisance and public safety.

#### **RIGHT OF APPEAL**

There is 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 meeting closed at 12.19 pm**