

Borough Council of  
**King's Lynn &  
West Norfolk**



# **LICENSING COMMITTEE - SUB-COMMITTEE HEARING**

## *Agenda*

Café by the Tree  
58 London Road  
King's Lynn  
PE30 5QH

Tuesday 10 February 2015  
1.00pm

VENUE:  
Committee Suite  
King's Court  
Chapel Street  
King's Lynn  
Norfolk,  
PE30 1EX



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Borough Council of  
**King's Lynn &  
West Norfolk**



King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX.  
Telephone: 01553 616275  
Fax: 01553 691663

My Ref: LC  
Please ask for: Rebecca Parker  
Direct Dial: (01553) 616632  
Email: rebecca.parker@west-norfolk.gov.uk

22 January 2015

Dear Member

**Licensing Sub-Committee Hearing – 10<sup>th</sup> February 2015**

You are invited to attend a meeting of a Licensing Sub-Committee to commence at **1.00pm on Tuesday 10<sup>th</sup> February 2015** in the **Committee Suite, King's Court, Chapel Street, King's Lynn** to consider the business shown below.

Yours sincerely,  
Chief Executive

**AGENDA**

**1. APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

**2. ITEMS OF URGENT BUSINESS**

To determine any other items of business which the Chairman decides should be considered as a matter of urgency pursuant to Section 100B(4)(b) of the Local Government Act 1972.

**3. DECLARATION OF INTERESTS**

Please indicate if there are any interests which should be declared. A declaration of an interest should indicate the nature of the interest (if not already declared on the Register of Interests) and the agenda item to which it relates. If a disclosable pecuniary interest is declared, the member should withdraw from the room whilst the matter is discussed.

These declarations apply to all Members present, whether the Member is part of the meeting, attending to speak as a local Member on an item or simply observing the meeting from the public seating area.

**4. TO CONSIDER A REVIEW APPLICATION IN RESPECT OF CAFÉ BY THE TREE, 59 LONDON ROAD, KING'S LYNN, PE30 5QH**

(a) Procedure that will be followed at the hearing (pages 1 – 4).

(b) Report of the Licensing Manager (pages 5 to 13).

(c) Appendix One – Copy of Current Premises Licence (pages 14 to 16)

(d) Appendix Two – Copy of Review Application dated 16 December 2014 (pages 17 to 43)

(e) Appendix Three – Location Plan (page 44)

(f) Appendix Four – Premises Plan (page 45)

**Copies to:**

**Panel Members:**                    **Councillor C Crofts (Chairman)**  
   **Councillor D Tyler**  
   **Councillor A White**

**Officers:**                            **Kathy Wagg (Democratic Services Officer)**  
   **John Gilbraith (Licensing Manager)**

**Legal Advisor:**                    **Jo Furner**

**All relevant parties**

# Procedure for Determining Licensing Act 2003 Cases

*The hearings will be held in public. The hearing is not adversarial but an examination of the facts by the Members of the Committee. All participants must be courteous at all times. All parties will be given equal maximum time i.e. normally 15 minutes each, in total. Any person may apply for longer time if they immediately notify the licensing authority upon receipt of the Notice of the Hearing and in exceptional circumstances, the licensing authority may extend the maximum time allowed to all parties if the complexity of the application demands. In the event that there are a large number of objections to a particular application, the licensing authority may ask an appropriate number of representatives or a single representative to put forward their views.*

## Introductions

1. The **Chairman** of the Committee should read out a statement declaring under which capacity the Committee is sitting.

**This Committee is sitting to consider a matter under the Licensing Act 2003.**

2. The **Chairman** will introduce himself and the Members of the Committee.
3. The **Chairman** will then introduce and explain the respective roles of
  - (i) the Democratic Services Officer
  - (ii) the Officer representing the Licensing Authority (i.e. Licensing Manager)
  - (iii) the Legal Advisor to the Committee
4. The **Chairman** should invite all those present to introduce themselves and ask them to indicate if they wish to speak during the hearing.
5. Each party will be asked by the **Chairman** whether 15 minutes is sufficient for the presentation of his/her/body's case. (Agreement on the length of time given for each speaker is at the discretion on the Chairman).

## The Application for Review of a Premises License

6. The **Legal Advisor** explains the procedure that will be followed at the hearing.
7. The **Officer representing the Licensing Authority** outlines the review application to the Committee by presenting the report referring to any relevant extracts from the Borough Council's Licensing Policy and any relevant Statutory Guidance.
8. The **Chairman** will invite questions from all parties to clarify the content of the Licensing Officer's report.

## The Applicant's Case

9. The **Chairman** then invites the Applicant or their representative to make their case. Witnesses may be called but each will be subject to separate questioning (see below).

## Questions

10. Once the Applicant has presented their case, the Chairman invites questions to the Applicant or his representative from
  - (i) The Officer representing the Licensing Authority
  - (ii) The respondent (or their representative)
  - (iii) Responsible Authorities (or their representative)
  - (iv) Other persons (or their representatives)
  - (v) Members of the Committee.

11. The Chairman will invite questions to the witnesses from the

- (i) The Officer representing the Licensing Authority
- (ii) The respondent (or their representative)
- (iii) Responsible Authorities (or their representative)
- (ii) Other persons (or their representatives)
- (iii) Members of the Committee.

Questions should be relevant to the application and repetition will be discouraged.

### **The Respondent's Case**

12. The **Chairman** then invites the respondent or their representative to make their case. Witnesses may be called but each will be subject to separate questioning (see below).

### **Questions**

13. Once the respondent has presented their case, the **Chairman** invites questions to the respondent or their representative from the

- (i) The Officer representing the Licensing Authority
- (ii) The applicant (or their representative)
- (iii) Responsible Authorities (or their representative)
- (iii) Other persons (or their representatives)
- (iv) Members of the Committee.

14. The **Chairman** will invite questions to the witnesses from the

- (i) The Officer representing the Licensing Authority
- (ii) The applicant (or their representative)
- (iii) Responsible Authorities (or their representatives)
- (iii) Other persons (or their representatives)
- (iv) Members of the Committee.

### **Responsible Authorities**

15. The **Chairman** then invites Responsible Authorities or their representative to make their case. Witnesses may be called but each will be subject to separate questioning (see below).

### **Questions**

16. Once the Responsible Authorities have presented their case, the **Chairman** invites questions to the them or their representative from

- (i) The Officer representing the Licensing Authority
- (ii) The applicant (or their representative)
- (iii) The respondent (or their representative)
- (iv) Any other Responsible Authorities (or their representative)
- (v) Other persons (or their representative)
- (vi) Members of the Committee.

17. The **Chairman** will invite questions to the witnesses from the

- (i) The Officer representing the Licensing Authority
- (ii) The applicant (or their representative)
- (iii) The respondent (or their representative)
- (iv) Any other Responsible Authorities (or their representative)
- (ii) Other persons (or their representatives)
- (iii) Members of the Committee.

Questions should be relevant to the application and repetition will be discouraged.

## Other Persons

18. Each of the other persons or their representatives wishing to address the Committee may do so in an order determined by the **Chairman**. They too must be willing to be questioned by other parties in the same order. Other persons may not however question each other. Questions should be relevant to the application and repetition will be discouraged.

This will operate as follows:

- each party will present his/her/body's case
  - each party's witnesses (if any) will give evidence in support of the party's case
  - firstly, each party and, secondly, their witnesses may be questioned by other parties, prior to questioning by Members of the Committee.
19. The Officer representing the Licensing Authority, the applicant (or their representative), the respondent (or their representative) and Responsible Authorities (or their representatives) will be invited to ask relevant questions of those parties (or the parties' representatives).

## Summing Up

20. The **Chairman** then invites the Officer representing the Licensing Authority to sum up their case. They may comment upon what has been said but no new evidence should be introduced. Each party will be allowed 5 minutes to sum up.
21. The **Chairman** then invites the respondent (or their representative) to sum up their case. They may comment upon what has been said but no new evidence should be introduced. Each party will be allowed 5 minutes to sum up.
22. The **Chairman** then invites the Responsible Authorities (or their representatives) to sum up their case. They may comment upon what has been said but no new evidence should be introduced. Each party will be allowed 5 minutes to sum up.
23. The **Chairman** then invites the other persons (or their representatives) to sum up their case. They may comment upon what has been said but no evidence should be introduced. Each party will be allowed 5 minutes to sum up.
24. The **Chairman** then invites the applicant (or their representative) to sum up their case. They may comment upon what has been said but no new evidence should be introduced. They also will be allowed 5 minutes to sum up.

## Reaching and Making a Decision

25. **The Chairman** will ask the Council's Legal Advisor to address the Committee on any outstanding matters.
26. The **Chairman** will then thank all those who have spoken and invite the Committee to retire to consider the application, accompanied by the Legal Advisor and Democratic Services Officer (who will take no part in the decision).
27. The Committee will then debate the case presented to them at the hearing and will seek to reach a decision and reasons for their decision.
28. Once a decision has been made, **the Chairman** will invite the **Legal Advisor** to announce in public any legal advice he/she has given in private.
29. **The Chairman** will read out the decision and the reasons for the decision (unless the Committee is unable to reach a determination at the conclusion of the hearing).
30. **The Chairman** will explain that all parties will be notified of the outcome of the decision and reasons for the decision in writing.

31. If the Committee is unable to reach a decision, the **Chairman** will explain that all parties will be notified as soon as possible (but within 5 working days) of the decision and the reasons for such.

#### **NOTE**

A decision may be deferred to:-

1. Receive further documentation referred to in the meeting
  2. Enable a site visit to take place
  3. Invite the Applicant or his representative to appear if they had not done so at the meeting (only once)
- No further debate may be heard on further documentation or at a site visit
  - Adjournments should generally be granted if to refuse would deny applicant a fair hearing.



# Borough Council of King's Lynn & West Norfolk

## Report to Licensing Sub-Committee under the Licensing Act 2003

Date of Hearing: 10<sup>th</sup> February 2015

### Application for Review of a Premises Licence

- Café by the Tree, 58 London Road, King's Lynn, PE30 5QH
- Licence Holder: Ms Lolita Dambrauskiene
- Premises Licence Number WNPL009488

### Introduction

1. 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. These four licensing objectives are:

- the prevention of crime & disorder,
- public safety,
- the prevention of public nuisance, and
- the protection of children from harm

### Current Premises Licence

2. The current premises licence held by Café by the Tree was granted on the 31<sup>st</sup> January 2013 and allows the premises to operate as follows:

<u>Licensable Activity</u>	<u>Days</u>	<u>Times</u>
Sale of Alcohol (for Consumption 'on' the premises only)	Monday to Thursday Friday Saturday Sunday	5pm – 9pm 5pm – 11pm 12 noon – 11pm 12 noon – 9pm
Opening Hours	Sunday to Thursday Friday & Saturday	12 noon – 9:30pm 12 noon – 11:30pm

3. A copy of the current premise licence is attached at Appendix 1 and is subject to a number of conditions (as shown on the licence). In addition, the premises is also subject to the following new mandatory condition which was introduced in 2014 and bans the sale of alcohol below the permitted price.

- (a) A relevant person shall ensure that no alcohol is sold or supplied for consumption off the premises for a price which is less than the permitted price. For the purposes of this condition 'duty' is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; 'permitted price' is the price found by applying the formula -  $P = D + (D \times V)$  where; P is the permitted price; D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol; and V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol. A 'relevant person' means the holder of the premises licence, the

designated premises supervisor (if any) in respect of such a licence, or the personal licence holder who makes or authorises a supply of alcohol under such a licence. 'Valued added tax' means value added tax charged in accordance with the Value Added Tax Act 1994.

The permitted price must be rounded up to the nearest penny.

A change to the permitted price which would apply as a result of a change to the rate of duty or VAT charged in relation to alcohol would not apply until the expiry of the period of 14 days beginning on the day on which the change in the rate of duty or VAT takes effect.

## The Application

4. The Borough Council's Community Safety & Neighbourhood Nuisance (CS&NN) team, as a responsible authority has made an application to review the premises licence for the Café by the Tree under 'the prevention of public nuisance' licensing objective. A copy of the review application and supporting evidence is attached at Appendix 2.

## Representation from Responsible Authorities

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

5. CS&NN, as a responsible authority has made the review application. Comments from the other responsible authorities are as follows:

<b>Responsible Authority</b>	<b>Comments Received</b>
Norfolk Constabulary	None
Norfolk Fire Service	None
Norfolk Trading Standards	None
Norfolk Safeguarding Children's Board	None
Public Health	None
Planning (BCKLWN)	None
Health & Safety (BCKLWN)	None
Licensing Authority (BCKLWN)	None

## Representations from 'Other Persons'

*As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business that are entitled to make representations to applications. Representations made must relate to the licensing objectives.*

6. There are no representations from 'other persons' to consider.

## Notices

7. The Borough Council is responsible for advertising the application by way of a notice in the specified form at the premises which should be displayed for not less than 28 consecutive days. The Public Notice should have been displayed on the

premises between the 18<sup>th</sup> December 2014 and the 15<sup>th</sup> January 2015 and a copy of the notice was also displayed on the Borough Councils website for the same period.

## **Plans**

8. A location map is attached at Appendix 3 showing the general location of the Café by the Tree and a premises plan is attached at Appendix 4.

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

9. The current Statement of Licensing Policy was approved by full Council on the 25<sup>th</sup> November 2010 and the following extracts may be relevant to this 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 or to seek a review of a licence.

### **7.0 Review Process**

7.1 The review process represents a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence. At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

7.3 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.

7.4 The Borough Council recognises that the promotion of the licensing objectives relies heavily on a partnership between licence holders,

authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.

### **Guidance Issued Under Section 182 of the Licensing Act 2003**

*Under Section 4 of the Act, Licensing Authorities must have regard to guidance issued under Section 182. The current Guidance was issued by the Home Office in October 2014 and offers advice to Licensing authorities on the discharge of their functions under the Act.*

10. The following extracts may be relevant to this application and assist the Licensing Sub-Committee:

#### **Licence Conditions – General Principles**

- 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
  - must be precise and enforceable;
  - must be unambiguous and clear in what they intend to achieve;
  - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
  - must be tailored to the individual type, location and characteristics of the premises and events concerned;
  - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
  - should not replicate offences set out in the 2003 Act or other legislation;
  - should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
  - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
  - should be written in a prescriptive format.

#### **Public Nuisance**

- 2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of

the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 2.19 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 other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.20 Conditions relating to noise nuisance will usually concern steps appropriate 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, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter 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.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area 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 appropriate.
- 2.22 Where applications have given rise to representations, any 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 immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.
- 2.24 Beyond the immediate area surrounding the premises, these are matters for the 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.

### **Hearings**

- 9.32 Regulations made under the 2003 Act require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed and the representations may be withdrawn orally at that hearing. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.36 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person 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.
- 9.38 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) 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 appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.
- 9.36 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.
- Powers of a Licensing Authority on the Determination of a Review**
- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
  - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
  - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
  - suspend the licence for a period not exceeding three months;
  - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

#### **Live music and the effect of the Live Music Act 2012**

15.20 The amendments made to the 2003 Act by the Live Music Act 2012 affect conditions relating to live music in licensed premises. Any existing licence conditions on relevant licensed premises (or conditions added on a determination of an application for a premises licence or club premises certificate) which relate to live music remain in place, but are suspended between the hours of 08:00 and 23:00 on the same day where the following conditions are met:

- at the time of the live music, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the live music is amplified, the performance takes place before an audience of no more than 200 people; and
- the live music takes place between 08.00 and 23.00 on the same day.

15.23 However, even where the 2003 Act (as amended by the 2012 Act) has deregulated aspects of the performance of live music, it remains possible to apply for a review of a premises licence or club premises certificate if there are appropriate grounds to do so. On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to live music. Similarly, under section 177A(4), a licensing authority may add a condition relating to live music as if live music were regulated entertainment, and as if that premises licence or club premises certificate licensed the live music.

### **Determination**

11. Having regard to the review application, the Licensing Sub-Committee are requested to consider the application, this report and any submissions submitted by the licence holder and take such steps as it considers appropriate for the promotion of the licensing objectives. These steps are:



- (a) To do nothing;
- (b) To modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- (c) To exclude a licensable activity from the scope of the licence, for example, to exclude the sale of alcohol or provision of late night refreshment;
- (d) To remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- (e) To suspend the licence for a period not exceeding three months;
- (f) To revoke the licence.

Under Section 52(6) of the Licensing Act 2003 if the Sub-Committee takes a step mentioned in paragraph 11(b) or 11(c) above it may provide that the modification or exclusion is to have effect for only such a period (not exceeding three months) as it may specify.

12. The Sub-Committee are reminded that full reasons for its decision must be given as both the police and licence holder have a right of appeal against that decision to the Magistrates' Court. Such an appeal must be made within 21-days beginning with the day on which the appellant was notified by the Borough Council of the decision which is being appealed.

**John Gilbraith**

Licensing Manager

Environmental Health - Licensing

22<sup>nd</sup> January 2015

Appendixes:

- 1. Copy of Current Premises Licence.
- 2. Copy of Review Application dated 16 December 2014.
- 3. Location Plan.
- 4. Premises Plan

Background Papers:

- 1. The Licensing Act 2003
- 2. Borough Council's Statement of Licensing Policy (25 November 2010)
- 3. Guidance issued under Section 182 of the Licensing Act 2003 (October 2014)

Licensing Act 2003  
**Premises Licence**

**WNPL009488**

**LOCAL AUTHORITY**

Borough Council of  
**King's Lynn &  
 West Norfolk**



Borough Council of King's Lynn &  
 West Norfolk  
 Licensing Department  
 King's Court  
 Chapel Street  
 King's Lynn  
 Norfolk  
 PE30 1EX  
 Tel: 01553 616200  
 Fax: 01553 691663

Part 1 - Premises Details

**POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION**

**Cafe by the Tree**  
 58 London Road, Kings Lynn, Norfolk, PE30 5QH.

**WHERE THE LICENCE IS TIME LIMITED THE DATES**

Not applicable

**LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE**

- the supply of alcohol

**THE TIMES THE LICENCE AUTHORIZES THE CARRYING OUT OF LICENSABLE ACTIVITIES**

Activity (and Area if applicable)	Description	Time From	Time To
J. Supply of alcohol for consumption ON the premises only	Monday to Thursday	5:00pm	9:00pm
	Friday	5:00pm	11:00pm
	Saturday	Noon	11:00pm
	Sunday	Noon	9:00pm

**THE OPENING HOURS OF THE PREMISES**

Description	Time From	Time To
Sunday to Thursday	Noon	9:30pm
Friday and Saturday	Noon	11:30pm

**WHERE THE LICENCE AUTHORIZES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES**

- J. Supply of alcohol for consumption ON the premises only

Part 2

**NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE**

Lolita Dambrauskiene  
 [REDACTED]



WNPL009488/21806

Licensing Act 2003

# Premises Licence

# WNPL009488

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

NAME, ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORIZES THE SUPPLY OF ALCOHOL

Lolita DAMBRAUSKIENE

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORIZES FOR THE SUPPLY OF ALCOHOL

Licence No. WNPA010115

Issued by Borough Council of King's Lynn and West Norfolk

DATE ORIGINALLY ISSUED:

DATE OF LAST CHANGE:

31/01/2013

31/01/2013



WNPL009488/21806

**ANNEXES**

**ANNEX 1 - MANDATORY CONDITIONS**

1. Under Section 19(2) of the Licensing Act 2003, no supply of alcohol shall 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.
2. 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.
3. 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.
4. 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).
5. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
6. 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.
7. The responsible person shall ensure that 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 customers are made aware of the availability of these measures.

**ANNEX 2 - CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE**

8. The sale of alcohol shall only take place when sold as ancillary to the provision of a main meal and that meal shall be for consumption on the premises. Notices to that effect will be displayed within the premises.
9. No sale of alcohol shall take place unless there is at least one personal licence holder present on the premises at the time of sale.
10. There must be clear and legible polite notices displayed at exits and other circulatory areas requesting patrons to leave the premises having regard to the needs of local residents.

**ANNEX 3 - CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY**

Hearing held on 29th January 2013 but no additional conditions attached.

**ANNEX 4 - AUTHORISED PLANS**

Attached



Licensing  
 Environmental Health & Housing  
 Borough Council of King's Lynn & West Norfolk  
 King's Court  
 Chapel Street  
 King's Lynn, PE30 1EX  
 Tel: 01553 616600  
 Email: [ehlicensing@west-norfolk.gov.uk](mailto:ehlicensing@west-norfolk.gov.uk)  
[www.west-norfolk.gov.uk](http://www.west-norfolk.gov.uk)



Borough Council of  
**King's Lynn &  
 West Norfolk**



## Licensing Act 2003

### Application for the review of a premises licence or club premises certificate

#### PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

Once completed, send your **original** application to:

- **The Licensing Team**, Environmental Health & Housing , Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX.

and **copies** to the following:-

- **Norfolk Constabulary Licensing Team**, 4<sup>th</sup> Floor Vantage House, Fishers Lane, Norwich, Norfolk, NR2 1ET.
- **Fire Safety Office**, Norfolk Fire Service Western Area, Kilhams Way, King's Lynn, PE30 2HY
- **Norfolk Children's Safeguarding Board**, Room 60, Lower Ground, County Hall, Martineau Lane, Norwich NR1 2DH
- **Consumer Operations Manager, Norfolk County Council Trading Standards**, County Hall, Martineau Lane, Norwich, Norfolk, NR1 2UD
- **Development Services**, Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
- **Health & Safety**, Environmental Health & Housing , Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
- **Community Safety & Neighbourhood Nuisance**, Environmental Health & Housing , Borough Council of King's Lynn and West Norfolk, King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
- **Public Health Director**, Norfolk County Council, County Hall, Martineau Lane, Norwich, NR1 2DH
- The premises at the premises to which the application relates

**The Community Safety and Neighbourhood Nuisance Team of the Borough Council of King's Lynn and West Norfolk apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (*delete as applicable*)**

#### Part 1 – Premises or club premises details

Postal address of premises or club premise, or if none, ordnance survey map reference or description

Café By The Tree  
 58 London Road

Post town King's Lynn

Postcode PE30 5QH

Name of premises licence holder or club holding club premises certificate (if known)  
Ms Lolita Dambrauskiene

Number of premises or club premises certificate (if known)  
WNPL009488

**Part 2 – Applicants Details**

- I am please tick ✓ yes
- 1) An individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
  - 2) A responsible authority (please complete (c) below)
  - 3) A member of the club to which this application relates (please complete (A) below)

**(A) Details of Individual Applicant (fill in as applicable)**

**Title** (Mr/Mrs/Miss/Ms/Other ..... ) Please circle the title which applies or if **Other** applies please add in title.

**Surname**

**First names**

I am 18 years old or over

please tick ✓ yes

**Current address:**

**Post Town:**

**Postcode:**

**Daytime contact telephone number:**

**E-mail address (optional):**

**(B) Details of other applicants**

Name and address
Telephone number (if any)
E-mail (optional)

**(C) Details of Responsible Authority Applicant**

Name and address Hannah Marsters Community Safety and Neighbourhood Nuisance Team Borough Council of King's Lynn and West Norfolk King's Court Chapel Street King's Court King's Lynn PE30 1EX
Telephone number (if any) 01553 616274
E-mail address (optional) hannah.marsters@west-norfolk.gov.uk

**This application to review relates to the following licensing objective(s)**

**Please tick one or more boxes ✓**

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please state the ground(s) for review (please read guidance note 2)

It is the opinion of the Community Safety and Neighbourhood Nuisance (CSNN) Team at the Borough Council that the Management of The Café By The Tree is failing to achieve the 'prevention of public nuisance' licensing objective.

Primarily this relates to the performance of live music and amplified music at the venue. Following complaints from neighbours about noise from music an investigation was undertaken and a Statutory Nuisance witnessed. On the 20 June 2014 a noise abatement notice was served under section 80 of the Environmental Protection Act 1990.

Attempts have been made to work informally with the Licensee to ensure that the notice could be complied with and to prevent a breach. However, they were advised when the notice was served that it the opinion of the CSNN Team that the building is not suitable for the performance of live or amplified music.

The advice given was not adhered to and a breach was witnessed on 8 November 2014. There was a further incident on 22 November 2014 which was close to being a breach.

The Live Music Act 2012 makes allowances for certain elements of the performance of live music to be deregulated. However, section 177A(4) of the Licensing Act 2003 allows that, following a review of the Licence, a Licensing Authority may add a condition relating to live music as if live music were regulated entertainment, and as if that licence or certificate licensed the live music.

The purpose of applying for this review is to enable a condition to be attached to the Premises Licence preventing the performance of any live music or singing (amplified or not).

In accordance with s15.12 of the Amended Guidance Issued Under Section 182 of the Licensing Act 2003 the recordings of music played in the absence of a singer (such as the event on 22 November 2014) would be classed as Regulated Entertainment which is not something that is covered by the current Premises Licence and the CSNN Team would object, as statutory consultees, to any application made to include Regulated Entertainment on the Premises Licence.

In addition to the above there have also been occasional complaints about noise from people using the garden of the venue and entering and leaving the premises. During a visit relating to noise on 16 August 2014 a CSNN Officer noticed that, contrary to Condition 10 of the Premises Licence (WNPL009488) there were no signs advising patrons leaving the premises to have regard to the needs of local residents.

To conclude the grounds for review are that the premises has not complied with the licensing objective of prevention of public nuisance and that informal and formal interventions have failed to achieve compliance.



Please provide as much information as possible to support the application (please read guidance note 3)

The following information outlines key dates for complaints, visits, letters, and witnessing of music from the Café By The Tree. Copies of relevant correspondence have also been enclosed.

25/11/12 – Initial noise complaint received by CSNN about noise from the venue. Officers stood outside the venue and witnessed music emanating from inside the venue. On this occasion they did not go to the complainant's house to witness it in their property.

26/11/12 – CSNN contacted the Manager/Proprietor of the café to explain that there had been a noise complaint (see attachment 1). This letter has, for some reason, got the type of noise stated as 'people drinking outside'. However, a noise prevention advice leaflet was enclosed which covered music as well.

28/11/12 – A male from the café contacted CSNN to say that he would try and stop people, causing a nuisance.

07/02/14 – A further complaint about loud music was received by CSNN. It was alleged that there had been problems at weekends since Christmas with music and DJs.

10/02/14 – CSNN wrote to the Manager(s) to inform them that there had been a complaint about noise from parties, music, and people (see attachment 2). It included an advisory leaflet about noise. There is no response to this recorded on the CSNN computer system.

14/06/14 – CSNN received complaints from two different addresses during an Out of Hours shift about loud music and singing coming from the café. Noise witnessed during an assessment made in one of the complainants properties was deemed to be a Statutory Nuisance.

The Manager (now known to be the Licensee Ms Lolita Dambrauskiene) and the singer (name unknown) were approached and advised that the music was too loud. They agreed to turn it down. However the level at which they said was the minimum they needed it at in order for the singer to sing properly was still unacceptable in the resident's house. At this point there was about an hour left of a 30<sup>th</sup> birthday party, it was agreed to let the party continue. However the Manager was informed that we would be visiting again in the week to discuss the matter.

20/06/14 – A noise abatement notice was served (see attachment 3). A CSNN officer delivered it in person and explained the content and implications to the Licensee. An advisory letter (see attachment 4) was also given to her which stated that in the opinion of the CSNN Team the building is unsuitable for amplified music or singing and that only background level music should be played. Lithuanian translations of these documents were sent a few days later.

The owners of the property were also informed about the noise abatement notice so that they were aware of the situation in case the licensee wanted to discuss soundproofing measures with them (see attachment 5).

21/07/14 – A meeting was held at the café with the Licensee, a Police Officer, a translator and a CSNN Officer. This was to discuss some issues involving the neighbours and the music. It was agreed that the CSNN Officer would work with the Licensee and the nearest neighbour to try and set acceptable noise levels. It was made clear that in the opinion of the CSNN Officer that this was unlikely to be achievable and that in order to comply with the noise abatement notice they should consider no longer having amplified music at the venue.

16/08/14 – A CSNN Officer made an afternoon visit to the café to meet the singer and the Licensee to try and set acceptable noise levels. The singer was not particularly co-operative and did not appear to appreciate the seriousness of the situation.

He did not feel that he could sing at the level which the CSNN Officer felt was acceptable. He set it to the minimum level at which he said he could sing. The resident agreed to try it at that level for the evening. The CSNN Officer still felt that it was unacceptable and that it demonstrated that the complainant was more tolerant of noise than most people would be.

The event was monitored during the evening and it appeared that the Licensee was not adhering to the noise levels set during the afternoon and that noise levels continued to increase through the performance.

At 21.35 Council Officers went to the venue to speak to the singer and advise that the noise levels were too loud. The singer, the Licensee and her partner came into the resident's lounge to listen to the music (without the vocals). The purpose of this was to demonstrate how loud it was in the person's home and to explain that they could not have it this loud at future events.

They appeared to be dismissive of the seriousness of the matter and during the conversation the Licensee became verbally animated and aggressive.

It was clear that attempting to work with the Licensee was no longer going to be appropriate in this case.

19/08/14 – CSNN received a letter from the Licensee complaining that she felt that she is being singled out and that her rights as a small business owner have not been considered (see attachment 6).

05/09/14 – A CSNN Officer sent a letter to the Licensee (see attachment 7) clarifying various issues in relation to her noise case and the points raised in her previous letter. Again it was made clear that, in the opinion of the CSNN Team, the building is not suitable for amplified music and singing and music should only be played through a domestic sized stereo at a level which is considered to be background music.

08/11/14 – A breach of the abatement notice was witnessed by CSNN Officers. Music and singing was clearly audible and intrusive at the neighbouring residential property.

12/11/14 – A letter was sent to the Licensee from a CSNN Officer advising that a breach has been witnessed and that prosecution action is being considered (see attachment 8). The letter also stated that equipment could be seized if the notice was breached again. A request was made to obtain the contact details of the regularly-used singer to make him aware that by performing at the venue he could risk losing his equipment. There was no response to the letter.

22/11/14 – There was a further complaint received about noise and Officers attended. On this occasion the noise levels were not considered to be a breach of the notice but were described as 'borderline'. It appeared that there was no singer at this event demonstrating that amplified music without the presence of a singer was still causing problems resulting in CSNN Officers being called out and resources being needed to monitor the situation.

26/11/14 – A CSNN Officer wrote to the Licensee again (see attachment 9) expressing concern about noise levels and informing them that we would be requesting a view of the Licence and that prosecution and seizure action were still being considered.

Please tick ✓ yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

...../...../.....

If you have made representations before relating to this premises please state what they were and when you made them

**Checklist**

please tick ✓ yes


- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate.
- I understand that if I do not comply with the above requirements my application will be rejected

**It is an offence, liable on conviction to a fine up to level 5 on the standard scale, under section 158 of the Licensing Act 2003 to make a false statement in or in connection with this application.**

**The council is registered under the Data Protection Act 1998 for the purpose of processing personal data in the performance of its legitimate business. Any information held by the council will be processed in compliance with the eight principles of the Act. Information you have provided may be shared with other public sector organisations for the prevention of crime and detection of fraud. Further information relating to your rights under the Data Protection Act can be sent to you on request.**

**Part 3 – Signatures** (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 4). If signing on behalf of the applicant please state in what capacity

Signature: .....  ..... Date: ..... 16/12/14 .....

Capacity: Community Safety and Neighbourhood Nuisance Officer, Community Safety and Neighbourhood Nuisance Team, Borough Council of King's Lynn and West Norfolk

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 6)

Post town	Postcode
Telephone number (if any)	
E-mail address (optional)	

**Guidance Notes**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.



Your ref:  
Our ref: S/R 176756/AYP  
Please ask for: Andy Poucher  
Direct dial: (01553) 616453  
Surgery Hours: Mon to Thurs 10:00-12:00 & Fri 10:00-11:00  
Direct fax: (01553) 773026  
E-mail: andy.poucher@west-norfolk.gov.uk

**Andy Piper**  
Executive Director

**Environmental Health and Housing**

The Manager/Proprietor  
By the tree  
58 London Road  
King's Lynn  
Norfolk  
PE30 5QH

26 November 2012

Dear Sir/Madam

**Environmental Protection Act 1990**  
**Alleged Noise Nuisance from: Noise-People drinking outside**  
**Address: By the tree, 58 London Road, King's Lynn,**

I write to inform you that I have received a complaint alleging noise nuisance arising from the above property. I should make it clear that this nuisance has not been substantiated and that the purpose of this letter is to attempt a quick informal resolution to any problems that may exist.

The first step of this Department's policy on receipt of this type of complaint is to seek the co-operation of all parties in reaching an informal solution.

If the complainant supplies the Community Safety and Neighbourhood Nuisance team with a detailed written record that indicates a statutory nuisance may exist, further investigations will be carried out. These investigations may involve visits by officers with the aim of witnessing the alleged nuisance and /or the use of sound recording equipment in the complainant's home in order to record the noise in question.

If we consider that the noise in question is causing a Statutory Nuisance then we have a legal duty to take action to require that the noise is stopped or reduced. This would mean that a legal notice (Abatement Notice) would be served on the person responsible, or the owner or occupier of the premises.

If the noise continues after the service of the notice the responsible person may be prosecuted under the Environmental Protection Act 1990.

If no further complaints are received over this matter and/or the Community Safety and Neighbourhood Nuisance team decide that the complaint cannot be justified then the matter will be closed.

You should also be aware that the complainant can independently take action in the Magistrates Court for Statutory Nuisance without any involvement by the Council.

Please find enclosed a leaflet on 'How to Prevent Noise Nuisance'. If you have any questions or queries I would ask that you contact me during the Surgery Hours detailed at the top of this letter.

Yours faithfully

Andy Poucher  
Administrative Assistant  
Community Safety & Neighbourhood Nuisance

**THIS LETTER CAN BE MADE AVAILABLE IN LARGE PRINT AND  
OTHER LANGUAGES UPON REQUEST**



Your ref:  
Our ref: S/R 180253/SNG  
Please ask for: CSNN Admin Team  
Direct dial: (01553) 616455  
Direct fax: (01553) 773026  
E-mail: csnn@west-norfolk.gov.uk

**Debbie Gates**  
Executive Director

The Manager(s)  
Cafe By The Tree  
58 London Road  
King's Lynn  
Norfolk  
PE30 5QH

**Central and Community Services**

10<sup>th</sup> February 2014

Dear Sir/Madam

**Environmental Protection Act 1990**

**Alleged Noise Nuisance from: Parties, Music + People**

**Address: Cafe By The Tree, 58 London Road, King's Lynn, Norfolk**

I write to inform you that I have received a complaint alleging noise nuisance arising from the above property. I should make it clear that this nuisance has not been substantiated and that the purpose of this letter is to attempt a quick informal resolution to any problems that may exist.

The first step of this Department's policy on receipt of this type of complaint is to seek the co-operation of all parties in reaching an informal solution.

If the complainant supplies the Community Safety and Neighbourhood Nuisance team with a detailed written record that indicates a statutory nuisance may exist, further investigations will be carried out. These investigations may involve visits by officers with the aim of witnessing the alleged nuisance and /or the use of sound recording equipment in the complainant's home in order to record the noise in question.

If we consider that the noise in question is causing a Statutory Nuisance then we have a legal duty to take action to require that the noise is stopped or reduced. This would mean that a legal notice (Abatement Notice) would be served on the person responsible, or the owner or occupier of the premises.

King's Court, Chapel Street, King's Lynn, Norfolk PE30 1EX  
Tel: (01553) 616200; fax: (01553) 691663  
DX 57825 KING'S LYNN

Chief Executive – Ray Harding Deputy Chief Executive – David Thomason

If the noise continues after the service of the notice the responsible person may be prosecuted under the Environmental Protection Act 1990. Other action that may be considered includes the seizure of noise making equipment. These actions we would normally hope to avoid.

If no further complaints are received over this matter and/or the Community Safety and Neighbourhood Nuisance team decide that the complaint cannot be justified then the matter will be closed.

You should also be aware that the complainant can independently take action in the Magistrates Court for Statutory Nuisance without any involvement by the Council.

Please find enclosed a leaflet on 'How to Prevent Noise Nuisance'. If you have any questions or queries I would ask that you contact me during the Surgery Hours detailed at the top of this letter.

Yours faithfully

Steven Girdlestone  
Administrative Assistant  
Community Safety & Neighbourhood Nuisance

**THIS LETTER CAN BE MADE AVAILABLE IN LARGE PRINT AND  
OTHER LANGUAGES UPON REQUEST**



N00 1412

Borough Council of  
**King's Lynn &  
West Norfolk**



[www.west-norfolk.gov.uk](http://www.west-norfolk.gov.uk)

**Community Safety & Neighbourhood Nuisance**

**Borough Council of King's Lynn & West Norfolk**  
King's Court, Chapel Street, King's Lynn, Norfolk PE30 1EX  
Tel: (01553) 616200  
Fax: (01553) 773026 DX 57825 KING'S LYNN

---

**Certificate of Service**

(Criminal Procedure Rules 2005, Regulation 4 Local Government Act 1972, Section 233)

I, **Hannah Marsters**, of the Borough Council of King's Lynn and West Norfolk certify that I served

**Name: Ms Lolita Dambrauskiene**

**Address: The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH**

with a Statutory Notice Ref No 181392 dated **20 June 2014**, served under the provision of the **Environmental Protection Act 1990 section 80** in relation to **The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH** of which this is a true copy by:

Delivering the Notice to him/her personally at **The Café By The Tree** at **13.45** hours on **20 June 2014**).

Officer Name: Hannah Marsters

Job Title: Community Safety and Neighbourhood Nuisance Officer

Signed: 

Dated: 20 June 2014

Your ref:  
Our ref:  
Please ask for: Hannah Marsters  
Direct dial: (01553) 616274  
Direct fax: (01553) 773026  
E-mail: hannah.marsters@west-norfolk.gov.uk

Borough Council of  
**King's Lynn &  
West Norfolk**

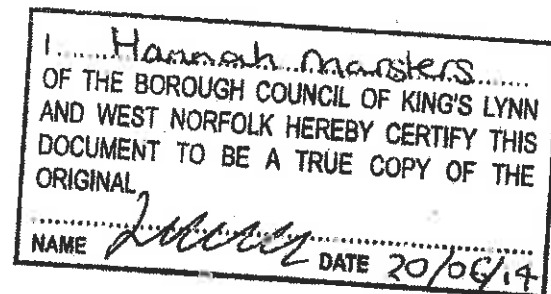


**Debbie Gates**  
Executive Director

**Central and Community Services**

Ms Lolita Dambrauskiene  
The Café By The Tree  
58 London Road  
King's Lynn  
Norfolk PE30 5QH

20 June 2014



Dear Ms Dambrauskiene

**Environmental Protection Act 1990: Noise from amplified music and singing at The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH**

Following my visit to The Café By The Tree on Saturday 14 June 2014 please find enclosed a noise abatement notice under section 80 of the Environmental Protection Act 1990.

The noise from music and singing caused a Statutory Nuisance at nearby residential properties and the enclosed notice requires the nuisance is stopped and that such a situation should not occur again.

You have the right to appeal this notice. Section 4 of the notice and the notes on the reverse of the notice provide more details about the appeals process.

Please contact me if you wish to discuss the notice.

Yours sincerely

Hannah Marsters  
Community Safety and Neighbourhood Nuisance Officer  
Community Safety and Neighbourhood Nuisance Team

c.c. Nazhat Chaudhry and Mohammed Asad Chaudhry (owners)

King's Court, Chapel Street, King's Lynn, Norfolk PE30 1EX  
Tel: (01553) 616200; fax: (01553) 691663  
DX 57825 KING'S LYNN

Chief Executive – Ray Harding Deputy Chief Executive – David Thomason

NOU 1412

Borough Council of  
**King's Lynn &  
West Norfolk**



**Central and Community Services**

Borough Council of King's Lynn & West Norfolk  
King's Court, Chapel Street, King's Lynn, Norfolk PE30 1EX  
Tel: (01553) 616200 Minicom: (01553) 616705  
Fax: (01553) 775142 DX 57825 KING'S LYNN

www.west-norfolk.gov.uk

ENVIRONMENTAL PROTECTION ACT 1990

section 80

**Abatement Notice in respect of Statutory Nuisance**

To Lolita Dambrauskiene  
of The Café By The Tree, 58 London Road, King's Lynn, PE30 5QH

Ref: SR181392

**1) NOTICE**

THIS IS A FORMAL NOTICE issued by the Borough Council of King's Lynn and West Norfolk ('the Council') because it is satisfied that a statutory nuisance under section 79(1)(g) of the act exists within its district, in that noise from amplified music and singing is emanating from The Café By The Tree, 58 London Road, King's Lynn, PE30 5QH and is affecting nearby residents.

**2) WHAT YOU ARE REQUIRED TO DO**

You are required to abate the nuisance with immediate effect from the date upon which this notice is served and the Council also prohibits the recurrence of the said nuisance.

**3) WHAT HAPPENS IF YOU FAIL TO COMPLY**

If without reasonable excuse you contravene or fail to comply with any requirement or prohibition imposed by this notice:

3.1 you will be guilty of a criminal offence and will be liable on summary conviction to a fine not exceeding level 5 on the standard scale\*, together with an additional fine for each day\*\* on which the offence continues after conviction; or

3.2 if the offence is committed on industrial, trade or business premises, you will be liable on summary conviction to a fine not exceeding £20,000

3.3 in order to secure the abatement, prohibition or restriction of the nuisance, the Council may bring proceedings to the High Court and

3.4 the Council reserves the right to execute any works specified in the notice and recover from you any expenditure incurred.

**4) YOUR RIGHT TO APPEAL**

You may appeal to a magistrates' court against the notice within 21 days beginning with the date on which this notice is served upon you. See notes on reverse of this form.

Dated 20/6/14

Signed [Signature]  
Officer Name Hannah Marsters  
Position Community Safety and Neighbourhood Nuisance Officer

Please address any communications to:  
Hannah Marsters  
Borough Council of King's Lynn & West Norfolk  
King's Court, Chapel Street King's Lynn, Norfolk, PE30 1EX

\*Currently £5000, subject to alteration by Order. \*\*Equal to one tenth of that level

I, Hannah Marsters  
OF THE BOROUGH COUNCIL OF KING'S LYNN  
AND WEST NORFOLK HEREBY CERTIFY THIS  
DOCUMENT TO BE A TRUE COPY OF THE  
ORIGINAL  
NAME [Signature] DATE 20/06/14



The Statutory Nuisance (Appeals) Regulations 1995 provide as follows:

**APPEALS UNDER SECTION 80 (3) OF THE ENVIRONMENTAL PROTECTION ACT 1990 ("the 1990 Act")**

2. (1) The provisions of this regulation apply in relation to an appeal brought by any person under section 80(3) of the 1990 Act (appeals to magistrates) against an abatement notice served upon him by a local authority.
- (2) The grounds on which a person served with such a notice may appeal under section 80(3) are any one or more of the following grounds that are appropriate in the circumstances of the particular case
- (a) that the abatement notice is not justified by section 80 of the 1990 Act (summary proceedings for statutory nuisances);
- (b) that there has been some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the abatement notice served under section 80A(3) (certain notices in respect of vehicles, machinery or equipment);
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonably in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the nuisance to which the notice relates -
- (i) is a nuisance falling within section 79(1)(a), (d), (e), (f), (fa) or (g) of the 1990 Act and arises on industrial, trade or business premises, or (ii) is a nuisance falling within section 79(1)(b), of the 1990 Act and the smoke is emitted from a chimney, or (iii) is a nuisance falling within section 79(1)(ga) of the 1990 Act and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes, or
- (iv) is a nuisance falling within section 79(1)(fb) of the 1990 Act and -
- (aa) the artificial light is emitted from industrial, trade or business premises, or
- (bb) the artificial light (not being light to which sub-paragraph (aa) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by section 80(8A) of the 1990 Act),
- that the best practicable means were used to prevent, or to counteract the effects of, the nuisance;
- (f) that, in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act (noise emitted from premises), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of -
- (i) any notice served under section 60 or 66 of the Control of Pollution Act 1974 ("the 1974 Act") (control of noise on construction sites and from certain premises), or
- (ii) any consent given under section 61 or 65 of the 1974 Act (consent for work on construction sites and consent for noise to exceed registered level in a noise abatement zone), or
- (iii) any determination made under section 67 of the 1974 Act (noise control of new buildings);
- (g) that, in the case of a nuisance under section 79(1)(ga) of the 1990 Act (noise emitted from or caused by vehicles, machinery or equipment), the requirements imposed by the abatement notice by virtue of section 80(1)(a) of the Act are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given under paragraph 1 of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (loudspeakers in streets or roads)
- (h) that the abatement notice should have been served on some person instead of the appellant, being -
- (i) the person responsible for the nuisance, or
- (ii) the person responsible for the vehicle, machinery or equipment, or
- (iii) in the case of a nuisance arising from any defect of a structural character, the owner of the premises, or
- (iv) in the case where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises; (i) that the abatement notice might lawfully have been served on some person instead of the appellant being -
- (i) in the case where the appellant is the owner of the premises, the occupier of the premises; or
- (ii) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served;
- (i) that the abatement notice might lawfully have been served on some person in addition to the appellant, being - (i) a person also responsible for the nuisance, or
- (ii) a person who is also owner of the premises, or
- (iii) a person who is also an occupier of the premises, or
- (iv) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served.
- (3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the abatement notice, or in, or in connection with, any copy of the notice served under section 80A(3), the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.
- (4) Where the grounds upon which an appeal is brought include a ground specified in paragraph 2(i) or (j) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which these regulations apply he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment in question.
- (5) On the hearing of the appeal the court may:
- (a) quash the abatement notice to which the appeal relates, or
- (b) vary the abatement notice in favour of the appellant, in such manner as it thinks fit, or
- (c) dismiss the appeal,
- and an abatement notice that is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the authority.
- (6) Subject to paragraph (7) below, on the hearing of an appeal the court may make such order as it thinks fit -
- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the 1990 Act are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6) above, the court -
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
- (b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

**SUSPENSION OF NOTICE**

3. (1) Where:

- (a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and -
- (b) either - (i) compliance with the abatement notice would involve any person in expenditure on the carrying out of the works before the hearing of the appeal, or (ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
- (c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met, the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.
- (2) This paragraph applies where -
- (a) the nuisance to which the abatement notice relates -
- (i) is injurious to health, or
- (ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.
- (3) Where paragraph (2) applies the abatement notice -
- (a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court and
- (b) shall include a statement as to which of the grounds set out in paragraph (2) apply

Your ref:  
 Our ref:  
 Please ask for: Hannah Marsters  
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 E-mail: hannah.marsters@west-norfolk.gov.uk

Borough Council of  
**King's Lynn &  
 West Norfolk**



**Debbie Gates**  
 Executive Director

**Central and Community Services**

Ms Lolita Dambrauskiene  
 The Café By The Tree  
 58 London Road  
 King's Lynn  
 Norfolk PE30 5QH

20 June 2014

Dear Ms Dambrauskiene

**Environmental Protection Act 1990: Noise from amplified music and singing at The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH**

This letter is to explain, in more detail, about the noise problems at The Café By The Tree which resulted in a noise abatement notice being served on 20 June 2014. This letter does not form part of the notice.

When I visited during the 30<sup>th</sup> birthday party on Saturday 14 June 2014 it was difficult to speak to you because there were people there who wanted to continue enjoying the party.

The singer/DJ tried to turn down the music and his microphone but it was proving difficult to achieve a balance between finding a level which would be quiet enough not to cause a Statutory Nuisance at nearby properties and also make the music loud enough for him to sing along with.

On that occasion I allowed the music to continue until 23.00hrs as there was only just over an hour left until that time and because it was somebody's birthday party.

I explained that I would need to speak to you at a later date about the noise.

At nearby properties it was clearly audible and intrusive. The bass was particularly loud but also the music and the voice of the singer/DJ could clearly be heard. It was at such an unacceptably loud level that it constituted a Statutory Nuisance and as a result I had a legal duty to serve you with an abatement notice.

I am able to give you advice about noise issues but cannot directly tell you how to comply with the notice.

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Chief Executive – Ray Harding Deputy Chief Executive – David Thomason

In my opinion the size of the venue and its proximity to neighbouring properties means that it is unlikely that live singing, the playing of amplified recorded music (with or without vocal accompaniment), or live music can take place in the building without it causing a Statutory Nuisance.

It is possible that background music from a small stereo would be suitable.

If you are planning to continue providing music (other than in the background) it is likely that soundproofing would be required and the equipment used i.e. speakers, microphones, mixing desk etc would need to be carefully set at appropriate levels.

I cannot advise you about the technical side of soundproofing i.e. what materials/techniques to use and how much to spend etc. You would need to seek professional advice about this issue and need to be aware that it may not solve the problem.

I may however, be able to assist with setting appropriate noise levels by working with you and the person who is most affected by the noise. This would rely on that person co-operating with us by allowing us into his home to hear how loud the music is.

If we did try to resolve the matter by setting levels you would need to demonstrate that you can ensure that the music does not go above these levels. This would involve you monitoring them very closely each time someone performs music or singing at the venue.

Please consider your options with regard to the noise issues and contact me if you wish to discuss them.

In the meantime we will be monitoring the premises very closely in order to ensure that the notice is complied with and that residents do not continue to experience noise nuisance from the premises.

Yours sincerely

Hannah Marsters  
Community Safety and Neighbourhood Nuisance Officer  
Community Safety and Neighbourhood Nuisance Team

c.c. Nazhat Chaudhry and Mohammed Asad Chaudhry (owners)

Your ref:  
Our ref:  
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E-mail: hannah.marsters@west-norfolk.gov.uk

Borough Council of  
**King's Lynn &  
West Norfolk**



**Debbie Gates**  
Executive Director

**Central and Community Services**

[REDACTED]

20 June 2014

Dear [REDACTED]

**The Café By The Tree, 58 London Road, King's Lynn, PE30 5QH**

I am writing to you as owners of the above property to let you know that we have served a noise abatement notice on the café because of excessive noise from the venue.

I have enclosed a copy of the notice and an advice letter sent to Ms Dambrauskiene.

My opinion is that the building is not really suitable to be used for amplified music and singing events.

She is considering whether she wishes to have any more events. If she does decide to go ahead with more of these she has said she is keen to work with us to set suitable noise levels.

My feeling is that in order to continue with music at the premises it may be necessary to carry out some sound-proofing measures on the building and she may need to discuss these with you.

Despite serving the noise abatement notice we are hopeful that by working with all parties involved we may be able to come to a suitable solution. However, if problems persist and the notice was breached we may have to intervene further.

If you have any questions or would like to discuss the issues with me please contact me.

Yours sincerely

Hannah Marsters  
Community Safety and Neighbourhood Nuisance Officer

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Chief Executive – Ray Harding Deputy Chief Executive – David Thomason

Café By The Tree

58 London Road

King's Lynn

PE30 5QH

Tel: 01553 777351

Hannah Masters

Community Safety and Neighbourhood Nuisance Officer

Borough Council of King's Lynn & West Norfolk

19/08/14

Ref: 57 London Road

Dear Hannah Masters,

I'm writing to you in relation to the ongoing issue of noise at the Café by the Tree as raised by the neighbour of [redacted] London Road.

I have received a letter dated 20<sup>th</sup> of June 2014 in which it was noted that the music and the singing at the café on 14<sup>th</sup> of June 2014 were of unacceptable level for the next door neighbour- [redacted] London Road.

Following this, a discussion took place between you, Natalie Garrard, Diversity Liaison Officer and I. Normal opening hours of the café are 12-9pm, with occasional event on weekends where the café remains open till 11pm. This happens up to 4 times a year. These events are usually birthday parties or commemoration of Lithuanian national holidays. During this meeting it was agreed that the compromise would be to inform [redacted] of these upcoming events and that a level of music deemed acceptable by No [redacted] would be set.

I have therefore informed the neighbour that the next event to take place will be on the 16<sup>th</sup> of August. On the day in your presence the music levels were set and agreed by No [redacted] as acceptable. Throughout the evening I have walked around the building to check on noise levels. I have kept every window and every door closed so we do not disturb the neighbour. However at approximately



9:40pm the evening was cut short as instructed by you and your colleague. During that same evening we have visited No [redacted] and the neighbour was watching TV with no noticeable loud music from the café. But a comment was made by the neighbour, that if the music and singing was in English and not Lithuanian he would not mind it.

I had to return payment for this event to 6 of my customers and now feel that this ongoing issue is affecting me financially and emotionally.

I have undertaken the lease of these premises with a business licence, issued and approved by the Borough Council, which states that the opening hours are 11am to 11pm. I also have an alcohol licence and a music licence. Alcohol licence states that alcohol can be sold in these premises until 11.30pm and a notice of my intentions to get the licence was hanging outside for a month with no opposition from public.

My understanding is that the action against the café can only be taken if the music coming from the café is deemed as Statutory Noise Nuisance. I also believe that this would be an investigation and that I would be informed of the noise being monitored. This information is provided in Noise Act 1996.

I have tried to reach a compromise with the neighbour at No [redacted] but with the latest event I feel like I'm being singled out and my rights as a small business owner have not been considered.

Some of my customers and I have had a number of remarks from No [redacted] about being foreign and also the comment about the music being in Lithuanian, makes me feel like I'm being discriminated against.

I would like to come to an agreement with No [redacted] that would be adhered to.

Looking forward to hearing from you.

  
Yours Sincerely,

Lolita Dambrauskiene



Your ref:  
Our ref: S/R 181392/HEM  
Please ask for: Hannah Marsters  
Direct dial: (01553) 616274  
Direct fax: (01553) 773026  
E-mail: hannah.marsters@west-norfolk.gov.uk

**Debbie Gates**  
Executive Director

Lolita Dambrauskiene  
Cafe By The Tree  
58 London Road  
King's Lynn  
PE30 5QH

**Central and Community Services**

5 September 2014

Dear Ms Dambrauskiene

**Environmental Protection Act 1990: Noise from amplified music and singing at The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH**

I am writing following the event on 16 August 2014 and your letter to me dated 19 August 2014.

I have read your letter carefully and I believe that you may be confused about some of the issues.

A noise abatement notice was served on 20 June 2014 in relation to loud music which was deemed to be a Statutory Nuisance. At the same time I sent you an advice letter stating that:

In my opinion the size of the venue and its proximity to neighbouring properties means that it is unlikely that live singing, the playing of amplified recorded music (with or without vocal accompaniment), or live music can take place in the building without it causing a Statutory Nuisance.

Within this letter I also offered advice and said that we could attempt to agree a suitable level. However, I was not saying that this would definitely be a successful solution to the problem.

When we met with Natalie Garrard we arranged to attempt to set levels for the event on 16 August. During this meeting I expressed my concerns that the building really is not suitable for such music and I explained that setting levels may not be a solution.

We met to set levels on 16 August. When the music was at a level which I considered to be satisfactory the singer said that he could not perform at this level. I asked him to set it at the minimum level at which he felt able to sing.

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In my opinion this was not a suitable level for a resident to be expected to tolerate for a whole evening. However, the resident at number 57 said that it would be acceptable to try it at this level.

I explained that I would come back during the evening to check and also explained that as other noises got quieter later on (such as traffic) that you may find that you need to turn the volume down further.

I attended again later on in the evening and found that the levels were not acceptable. Therefore at approximately 9.40pm I entered the café and asked the singer to come outside.

I asked for the music to be turned down. I did not stop the event.

We had a discussion which included yourself for some of the time where I explained that the music was too loud.

Again we set a level, which I still felt was too high, but which the neighbour said he could tolerate.

The music continued until approximately 11pm and I remained at number 57 until the event finished. I noticed that the levels increased during the evening but did not come and speak to you again because during the earlier conversation I found you to be argumentative and the discussion had not been very productive.

What I witnessed during the event provided me with further evidence that the venue is not suitable for amplified music except for CDs/MP3 tracks etc being played on a domestic sized stereo at levels which would be considered to be background music.

I am advising that in future you limit your music to CDs/MP3 tracks rather than live entertainment. I understand that you had a party on 23 August where the music was just from CDs. We did not receive any complaints about that event.

We will continue to monitor for breaches of the noise abatement notice served on 20 June 2014 and are also considering whether to call for a review of your licence which could put your licence at risk.

If we witness breaches of the noise abatement notice we will consider whether prosecution action is relevant.

Yours sincerely

Hannah Marsters  
Community Safety & Neighbourhood Nuisance Officer  
Community Safety & Neighbourhood Nuisance

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Borough Council of  
**King's Lynn &  
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**Debbie Gates**  
 Executive Director

Lolita Dambrauskiene  
 Cafe By The Tree  
 58 London Road  
 King's Lynn  
 Norfolk  
 PE30 5QH

**Central and Community Services**

12 November 2014

Dear Ms Dambrauskiene

**Environmental Protection Act 1990 s79(1) (g) Noise from amplified music and singing and 80 Statutory Nuisance abatement notice:  
 The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH**

I am writing to you regarding ongoing noise problems at Café By The Tree.

I served you with an abatement notice on 20 June 2014 under the Environmental Protection Act 1990 in relation to amplified music and singing.

In my early correspondence to you I expressed the concern that the venue is not suitable for that type of entertainment. We attempted to work together to resolve the issue during the event on 16 August 2014.

This was not successful and I wrote to you again on 5 September 2014 to confirm that in my opinion the venue is not suitable for amplified music and singing.

I also explained that we would monitor the situation and would consider prosecution action if the notice is breached.

On 8 November 2014 a breach of the notice was witnessed by two of our officers. Breaching the notice is a criminal offence and the person responsible shall be liable on summary conviction to a fine of up to £20,000.

The Council is currently considering prosecution action for this offence.

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*Chief Executive – Ray Harding Deputy Chief Executive – David Thomason*

In the meantime, if the notice is breached again, it is likely that we will attend with the Police during the event and seize any music/singing equipment. This could include speakers, microphones, mixing desks, laptops, CD players etc.

The Courts would then make a decision about whether or not the equipment could be returned.

I believe that you use a regular singer for your events. I met him once on 20 June 2014 and twice on 16 August 2014. It is important that he is aware of the seriousness of the situation. If he (or any other singer/band) performs at your venue and it is deemed to be a Statutory Nuisance (and therefore a further breach of the notice) there is a risk that they will lose their equipment as a result.

I want to contact your singer to ensure that he is aware of this. Therefore I would be grateful if you could pass me his contact details or provide him with my details so that he can contact me.

Yours sincerely

Hannah Marsters  
Community Safety & Neighbourhood Nuisance Officer  
Community Safety & Neighbourhood Nuisance

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**Debbie Gates**  
Executive Director

Lolita Dambrauskiene  
Cafe By The Tree  
58 London Road  
King's Lynn  
Norfolk  
PE30 5QH

**Central and Community Services**

26 November 2014

Dear Ms Dambrauskiene

**Environmental Protection Act 1990 s79(1) (g) Noise from amplified music and singing and 80 Statutory Nuisance abatement notice and Licensing Act 2003:**

**The Café By The Tree, 58 London Road, King's Lynn, Norfolk, PE30 5QH**

I write further to my letter of 12 November 2014 regarding a breach of the S80 Abatement Notice served on you in relation to statutory nuisance from amplified music at your premises.

I must inform you that on the 22 November 2014 officers were again called regarding loud music coming from the café.

I understand that this event did not include live music; however the level of noise emanating from the music being played at the premises was sufficient to cause annoyance and disturbance at a nearby residential property.

Whilst a further breach of your notice was not witnessed on this occasion the level of music does indicate that even in the absence of live music the venue is unsuitable for amplified music. It is my opinion that any music played at the venue should be through a domestic type stereo system and be at a reasonable level, incidental to the use of the cafe. You should also ensure that you have a PRS Licence, covering the playing of recorded music, more information on this can be found at [www.prsformusic.com](http://www.prsformusic.com).

I am concerned by the fact that I wrote to you recently about the ongoing problems at the venue and within a few days of this letter being sent a further complaint was received.

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In my letter of 12 November 2014 the actions currently being considered in relation to the breach were outlined, this included prosecution and seizing equipment to prevent further breaches.

As a result of the complaint received on the 22 November 2014 and in discussion with my line manager it has been decided to apply for a review of your Premises Licence. If the application is accepted there will be a 28 day consultation period after which the Licensing Sub-Committee will hold a hearing unless all parties involved reach agreement about the future operation of the premises and the Licensing Authority agrees a hearing is no longer necessary.

Should the hearing take place the Committee have the following options:

- Decide that no action is necessary to promote the licensing objectives.
- Modify or add conditions to the licence.
- Exclude a licensable activity from the licence.
- Remove the designated premises supervisor.
- Suspend the licence for a period (not exceeding 3 months).
- Revoke the licence.

If the request for a review is accepted the Licensing Team will be in contact with you to explain the procedure, you will also receive a copy of the review application.

Please be assured that this a very serious matter and once again I strongly recommend that you consider only playing low-level music at the venue to ensure that it does not continue to cause a nuisance at nearby properties.

Yours sincerely

Hannah Marsters  
Community Safety & Neighbourhood Nuisance Officer  
Community Safety & Neighbourhood Nuisance

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*Chief Executive – Ray Harding Deputy Chief Executive – David Thomason*

**Location Plan – Café by the Tree, 58 London Road, King's Lynn**

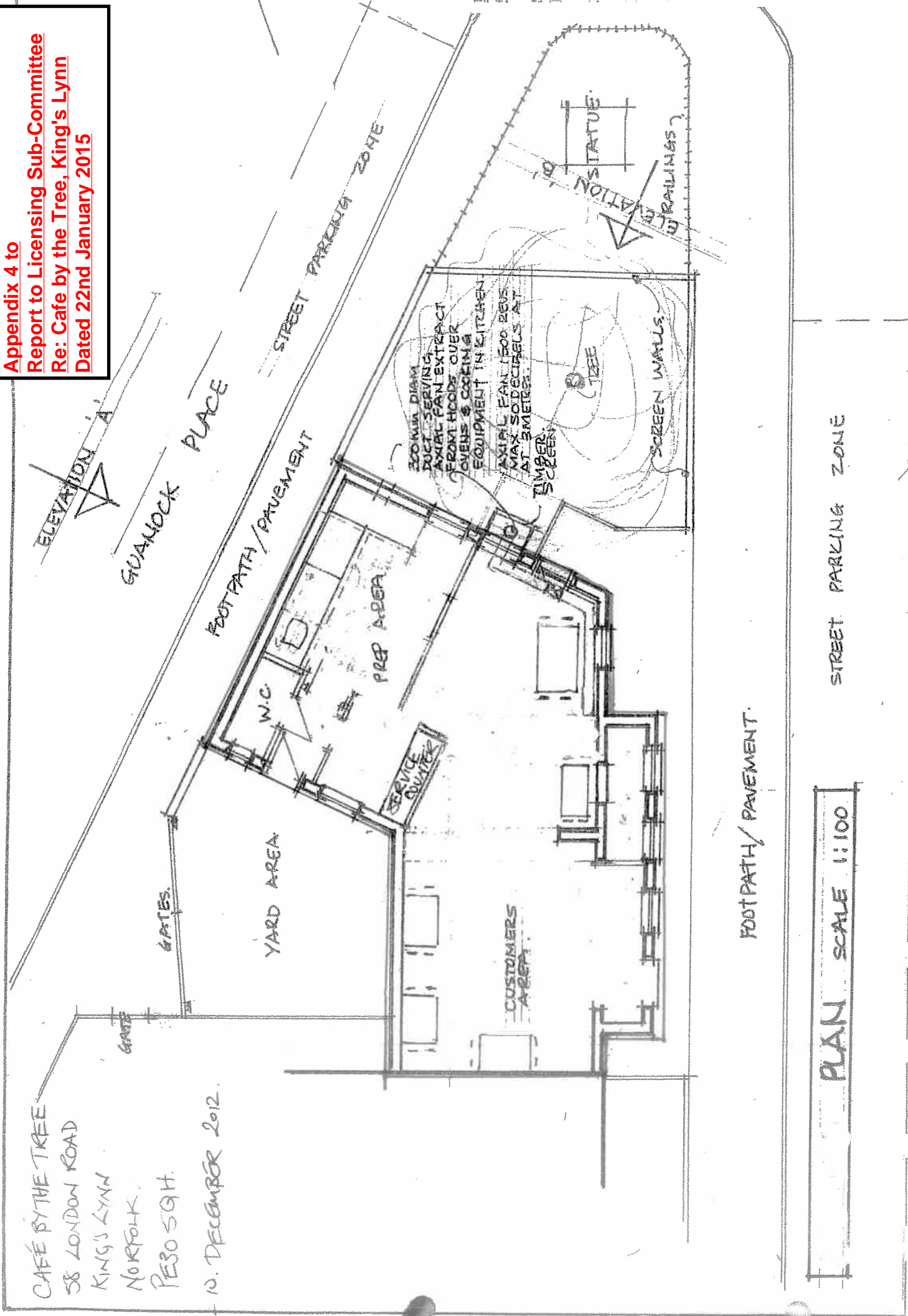


**Café by the Tree**

**Scale:** Approx 10m



**Appendix 4 to  
 Report to Licensing Sub-Committee  
 Re: Cafe by the Tree, King's Lynn  
 Dated 22nd January 2015**



CAFE BY THE TREE  
 58 LONDON ROAD  
 KING'S LYNN  
 NORFOLK  
 PE30 5QH.  
 12. DECEMBER 2012.

PLAN SCALE 1:100