

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

**LICENSING COMMITTEE**

**Minutes from the Meeting of the Licensing Committee held on Wednesday,  
21st September, 2016 at 10.45 am in the Committee Suite, King's Court,  
Chapel Street, King's Lynn, Norfolk**

**PRESENT:** Councillor  
Councillors C J Crofts, M Hopkins and Mrs S Squire

An apology for absence was received from Councillor

**1 APOLOGIES FOR ABSENCE**

There was none.

**2 ITEMS OF URGENT BUSINESS**

There was none.

**3 DECLARATIONS OF INTERESTS**

There was none.

**4 TO CONSIDER A REVIEW APPLICATION FOR THE RATHSKELLER,  
HANSE HOUSE, SOUTH QUAY, KING'S LYNN, PE30 5GN**

The Chairman welcomed everyone to the meeting and declared that the Sub-Committee was sitting to consider a review application for the Rathskeller, Hanse House, South Quay, King's Lynn, PE30 5GN.

All parties present at the Hearing were present at the Hearing which had been held immediately prior. All parties agreed that it was not necessary to go through introductions again

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

The Legal Advisor outlined the procedure which would be followed at the Hearing.

All parties were advised that following the Hearing, the Sub-Committee would retire to make their decision. The decision from the Hearing would be sent to all interested parties by post.

**6 REPORT OF THE LICENSING MANAGER**

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

- The Review Application, which had been included within the Licensing Manager's Report.
- The original licence for the Rathskeller.
- The current operating times of the premises and the licensable activity permitted.
- Since the original licence had been granted there had been a change in the Law which meant that no licence was required for recorded or live music between the hours of 8am and 11pm if the premises had a licence for the sale of alcohol. Any existing licensing conditions were suspended between 8am and 11pm.
- The Review Application was made under the 'prevention of public nuisance' licensing objective.
- There had been representations from the Community Safety and Neighbourhood Nuisance Team
- There had been six representations made by Other Persons in support of the Review Application.
- The Borough Council's Statement of Licensing Policy and Section 182 Guidance.

The Chairman thanked the Licensing Manager for his report and there were no questions.

## 7 **THE APPLICANTS CASE**

Ms Watling presented her case. She confirmed that she understood that this was a separate licence to Hanse House, but some of her points may be a repeat of what she had presented at the Hanse House Hearing.

She explained that she had requested a review of the licence as no decibel levels for monitoring purposes had been set, despite the Sub-Committee requesting this when the original application was approved.

She felt that the Noise Management Plan needed to be improved in order to protect residents.

Ms Watling felt that there had been a change in the nature of the events since the original application. Now openly promoted events were held and she thought that the initial intention of the Licence Holder was to make the venue an 'upmarket wine bar'.

She referred to page 36 and 37 of the Licensing Managers report which provided evidence of the change in operation of music events.

Ms Watling explained that the Premises Managers did not always manage noise levels and often doors and windows were left open and music was played too loudly.

She informed those present that the Community Safety and Neighbourhood Nuisance Team had made informal agreements with the Licence Holder, but she did not feel that these were being followed.

Ms Watling referred to the noise log which had been included within the Licensing Manager's report and explained that this was a summary of the emails she had sent to the Community Safety and Neighbourhood Nuisance Team. She stated that when she had said that no one from the team was unable to attend, this was not a criticism of the Team, it just meant that no one was available at the time.

Ms Watling concluded that she would welcome and supported the Community Safety and Neighbourhood Nuisance recommendations with regards to the Rathskeller.

The Chairman thanked the Applicant for presenting her case and invited questions from all parties.

The Licensing Manager referred to the Applicant's noise log and asked if she could determine if any particular incidents were linked to the Rathskeller. The Applicant stated that if she had not mentioned that the activity was linked to the South Function Room it was to do with the Rathskeller. She commented that some incidents had also been witnessed by the Community Safety and Neighbourhood Nuisance Team.

The Licensing Manager asked if the noise was more of an issue after 11.00pm. Ms Watling explained that she could hear music often as soon as it started but it was more of an inconvenience after 11.00pm.

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### **THE RESPONDENTS CASE**

Mr Lee, the Licence Holder, presented his case. He apologised if he repeated himself from detail provided at the previous Hearing relating to Hanse House. He noted that the complainant had indicated that there was music at the Rathskeller on most weekends, but this was not the case. He commented that only eighteen entries on the complainant's noise log related to the Rathskeller and he felt that there may be some mistakes in her observations.

He explained that on the 18<sup>th</sup> April 2015 a noise nuisance had been logged on the Applicant's noise log which stated that the music could be heard until 10.30pm, which was well within the licensed hours.

He also referred to the log entry for 11<sup>th</sup> July 2015 which stated that the Applicant had left her property at 9.30pm to sleep elsewhere as she

had been kept up the night before due to noise nuisance from another venue. Mr Lee said that this did not have any relevance to the Rathskeller.

Mr Lee referred to the entry for the 31<sup>st</sup> July 2015 in which Ms Watling said she had listened to her own music via headphones due to noise from drumming from a live band. Mr Lee said that there were no drums that evening, it was an open mic night and on that occasion it was a poet.

Mr Lee referred to the log entry for 19<sup>th</sup> December 2015 in which Ms Watling reported that Bass from a live band was audible. Mr Lee stated that the Band playing was called Hush and used Bongos and acoustic Guitar.

Mr Lee referred to New Year's Eve 2015 in which Ms Watling had indicated that music had been played until 12.30am, and she had questioned if this was a breach of the Licence. Mr Lee confirmed that it was New Year's Eve and extended hours were permitted, so there was no breach of the Licence.

The Chairman thanked Mr Lee for presenting his case and invited questions from all parties.

Ms Watling asked Mr Lee if she felt it was appropriate to play loud music even during licensed hours. Mr Lee responded that he did not think the music was too loud and no other complaints had been received. He stated that the Police had commended him on how the Business had been operating within its Licence. He stated that Ms Watling had complained at 9.00pm on New Year's Eve and had been seen at the Premises taking decibel readings. Ms Watling stated that she had entered the premises on one occasion to take photos of the open windows and was asked to leave.

Lucy Lee, the Licence Holders Daughter, stated that she had seen Ms Watling looking in through the windows and taking photos, so she had asked her to leave. She felt that Mrs Lee was not polite and could still have photos of customers, which she should not have kept. Mr Lee stated that it was unacceptable to take photos of customers.

The Community Safety and Neighbourhood Nuisance Officer asked what outdoor monitoring was carried out and how often. Mr Lee stated that monitoring was done every thirty minutes when music was being played, and was carried out by a member of staff. If any problems were observed, they would be rectified. Mr Lee confirmed that no formal written record of the observations was kept.

In response to a question from Dr Litten, the Licence Holder confirmed that many of the events at the Rathskeller involved amplified music, but not all of them.

9      **THE RESPONSIBLE AUTHORITIES CASE - COMMUNITY SAFETY AND NEIGHBOURHOOD NUISANCE**

Alison Demonty from the Community Safety and Neighbourhood Nuisance Team presented her case. She referred to the representations made by the team, which had been included in the agenda and supported the review application. She explained that complaints about the premises had been received over a long period of time, however there was no evidence of a statutory nuisance, which meant that the team could not intervene. The Community Safety and Neighbourhood Nuisance Team had witnessed noise at the venue and had tried to work informally with the Licence Holder, but it was felt that their suggestions and recommendations had not been followed. She provided an example of suggesting that air conditioning units were installed so that windows and doors could remain closed.

The Community Safety and Neighbourhood Nuisance Officer explained that if a detailed Noise Management Plan was in place, and followed, it could limit the requirement for Community Safety and Neighbourhood Nuisance intervention.

The Community Safety and Neighbourhood Nuisance Officer did not feel that the recommendations made by the team were burdensome or unreasonable and referred to the recommendations which had been included in the agenda at page 49. She confirmed that they included asking for an 11pm finish, the windows and doors to remain closed and for the Noise Management Plan to be updated.

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

The Licensing Manager referred to the recording of decibel levels and the Community Safety and Neighbourhood Nuisance Officer explained that the recording of decibel levels was not considered to be of great benefit for determining statutory nuisances as it was often not the only factor. Other issues such as frequency, duration, type of music and the surrounding environment also needed to be taken into consideration. This was why it had not been included in the Noise Management plan.

10      **OTHER PERSONS CASE**

**Mrs Russell-Johnson**

Mrs Russell-Johnson presented her case. She explained that she supported the review of the Licence and felt that no amplified music should be played after 11.00pm as it was very disruptive. She reminded those present that the venue was in the middle of a residential area.

The Chairman thanked Mrs Russell-Johnson for presenting her case. There were no questions.

### **Dr Litten**

Dr Litten introduced himself and stated that he was Chairman of St Margaret's and St Nicholas Residents Forum. He referred to a Council document which had been produced relating to the control of noise and prevention of public nuisance. He felt that consideration needed to be given to the nature of the building and the location of nearby residential properties.

He felt that often noise built up during the course of an event, often later on in the evening when background and residential noise levels dropped off, which meant that complaints could be justified later on in the evening.

Dr Litten commented that the St Margaret's and St Nicholas Residents Forum supported the recommendations put forward by the Community Safety and Neighbourhood Nuisance Team.

Dr Litten explained that where licenses were being considered for Listed Buildings, a Site Visit should take place and no premises should hold events until an examination had been conducted by a Noise Abatement Officer.

Dr Litten concluded that the St Margaret's and St Nicholas Residents Forum supported Ms Watling in her review of the Licence.

The Chairman thanked Dr Litten for presenting his case. There were no questions.

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### **SUMMING UP - THE LICENSING MANAGER**

The Licensing Manager summed up his case. He asked the Panel to consider the representations contained within his report and put forward at the Hearing.

He reminded the Sub-Committee that they heard that the problem was mainly occurring from 11pm onwards and he reminded those present that the change of law meant that regulated entertainment was not a licensable activity prior to 11pm in premises which had a sale of alcohol licence.

The Licensing Manager referred to the Borough Council's Statement of Licensing Policy and the Section 182 Guidance and he explained that the Sub-Committee must have regard to the guidance, or valid reasons why they would deviate from it.

The Licensing Manager outlined the options available to the Sub-Committee as set out in his report. He reminded them that they needed to focus on the prevention of public nuisance licensing objective.

He reminded the Sub-Committee that full reasons for their decision must be given as there was a right of appeal to the Magistrates Court.

## 12 **SUMMING UP - THE APPLICANT**

Ms Watling summed up her case. She felt that the use of the undercroft had changed from the original application and its original intention was that of an 'upmarket wine bar'. She now felt that the venue was an open event venue which advertised live music.

She reiterated that she was disturbed by the live bands and referred back to her log of evidence which had been included in the Licensing Manager's report. She explained that she had logged music of when she first started hearing the bands, irrelevant of if it was outside of the licensed hours or not.

Ms Watling explained that when she was at the premises taking photos, she had left when she was asked to do so and had not been back. She stated that she had only taken photos of the open windows.

She supported the recommendations put forward by the Community Safety and Neighbourhood Nuisance Team.

## 13 **SUMMING UP - THE RESPONDENT**

Mr Lee summed up his case. He felt that he had worked to promote the licensing objectives and took exception to the fact that the Applicant did not consider his venue as an upmarket wine bar. He explained that live music was infrequent at the venue and referred to a list of signatures which had been received in support of the current operation of the venue.

He stated that the Police had also not objected to the way the premises were operating. Mr Lee felt that some of the evidence provided by Ms Watling was factually incorrect.

He felt that he did not deliberately cause problems and there were signs on the exits asking customers to leave the premises quietly and respect residents.

Mr Lee asked the Sub-Committee to leave his licence intact.

## 14 **SUMMING UP - RESPONSIBLE AUTHORITY - COMMUNITY SAFETY AND NEIGHBOURHOOD NUISANCE**

The Community Safety and Neighbourhood Nuisance Officer summed up her case. She confirmed that the Community Safety and Neighbourhood Nuisance Team supported the review application as they had received a number of complaints and had witnessed non-statutory nuisance.

She referred to the recommendations put forward by the Community Safety and Neighbourhood Nuisance Team and she felt that these should be incorporated into the licence as conditions. She did not feel that they would be burdensome.

## 15 **SUMMING UP - OTHER PERSONS**

### **Mrs Russell-Johnson**

Mrs Russell-Johnson summed up her case. She stated that noise was unacceptable late at night and despite informal agreements between the Community Safety and Neighbourhood Nuisance Team and the Licence Holder, there had been no improvement.

She supported the recommendations put forward by the Community Safety and Neighbourhood Nuisance Team.

### **Dr Litten**

Dr Litten summed up his case. He explained that the quiet enjoyment of residence was important and peace was no longer guaranteed around the Hampton Court area. He stated that an 11pm close and the introduction of decibel monitoring would allow residents to enjoy their property and help mitigate the situation.

## 16 **OUTSTANDING MATTERS**

The Legal Advisor reminded the Sub-Committee that other representations had been made and were contained within the Licensing Managers report. She confirmed that they still needed to be taken into consideration, even though they were not present at the Hearing.

## 17 **REACHING A DECISION**

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

## 18 **DECISION**



**APPLICATION**

The Borough Council of King's Lynn and West Norfolk (the Council), being the relevant licensing authority, received an application to review the premises licence for Rathskeller under 'the prevention of public nuisance' Licensing Objective.

Representations:

- Community Safety and Neighbourhood Nuisance had made a representation in support of the review application.
- There were no representations from the remaining responsible authorities.
- There were six representations from other persons in support of the review application to consider.
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**HEARING**

On 21<sup>st</sup> September 2016, a Hearing was held to consider the review application. The Sub-Committee determined the application with a view to promoting the four licensing objectives. It considered the application on its own merits. In reaching its determination, the Sub-Committee had regard to the following matters:

- The relevant parts of the written and oral evidence before them;
- The Borough Council of King's Lynn and West Norfolk Licensing Policy;
- Statutory Guidance issued under the Licensing Act 2003;

The Sub-Committee listened to all the evidence and submissions. It heard from:

- The Licensing Manager
- The Applicant for Review
- The Licence Holder
- The Responsible Authorities
- The other persons present who had made representations in support of the review.

**SUMMARY OF EVIDENCE**

The Licensing Manager presented his report to the Sub-Committee and identified relevant extracts from the Council's Licensing Policy and the statutory guidance issued under the Licensing Act 2003. He particularly drew every one's attention to the change in law which meant that live music and amplified live music and recorded music played to audience of less than 500 does not require to be licensed between 8am and 11pm. He explained, therefore, any existing conditions specifically relating to this were suspended between those hours, and the committee could not impose conditions

specifically relating to these activities during those times unless it was satisfied that there were grounds to do so, i.e. in this case they would need to be satisfied that there was sufficient public nuisance occurring prior to 11pm. He also reminded the sub-committee that since the review was only relating to regulated entertainment they should not be concerned with the other licensable activities, such as the provision of alcohol or late night refreshments, and accordingly a suspension or revocation of the entire licence would not be appropriate.

The Applicant for Review presented her case and responded to questions from all parties. She summarised her written representations, explaining in the main that she was disturbed by noise coming from events at this Premises and had been so since March 2014. After having no success liaising with the Licence Holder directly, she contacted and involved the Community Safety and Neighbourhood Nuisance (CSNN) Team at the Borough Council of King's Lynn and West Norfolk. She stated that from inside her flat it was often difficult to discern where the music was coming from, and so would open her windows or go outside to do so. However, she had been frequently disturbed by music, and bass beats from the bar during this time, and confirmed that unless she had specified otherwise, the incidents on the log sheets were in relation to the bar. She did explain that the nature of her job meant she worked away a lot, particularly during the week. She indicated her support for the recommendations by the CSNN team. During questioning, she confirmed that the music caused a nuisance and disturbance but generally after 11pm, it sounding louder at this time and this being the time she is naturally inclined to go to sleep. She stated that she did not consider that bands etc. being played on a weekend fitted into the description of an up market wine bar, which was what referred in the original licence application as being the purpose of this premises.

The Licence Holder presented his case and responded to questions from all parties. He stated that of the 2008 nights he had been permitted to use the Premises for live or amplified music he had done so on 18 occasions. He stated that he did not consider the Applicant for the most part was making valid complaints as the noise she was hearing was during his licensed hours, and therefore he was doing nothing wrong. He referred to a petition which indicated that people were happy with the way his premises were being run. He stated that at the risk of being repetitive, many of the same submissions he had made in relation to Hanse House applied equally to this Premises. He stated that he had operated for three years with no other complaints, save for from the Applicant. He took the view that he had acted for the most part, in accordance with the conditions of the licence and acted reasonably. He stated he tried to act responsibly, and that he doesn't play or allow music to be played which is excessively noisy. He referred to the Applicant entering his premises to take photographs and her having to be asked to leave, stating she wasn't polite in her approach and moaned and muttered when leaving. He confirmed he undertook monitoring every 30 minutes outside already, or indeed a member of staff did when she went outside for a cigarette break,

but accepts there are no records of this. He further confirmed that in the Rathskeller, the most of the music played was amplified.

The Responsible Authority, Community Safety and Neighbourhood Nuisance team, presented their case and responded to questions from all parties. They confirmed that they supported the application for review. They had attempted to work with the Licence Holder for a period of time, and whilst there was some cooperation they were occasions where informally agreed requirements were not adhered to, such as keeping doors and windows closed when amplified music was being played. They also witnessed on occasions where the noise emanating from the Premises, although not a statutory nuisance, was capable of and did amount to public nuisance to residents in the area. It was reiterated that with the imposition of some minimal requirements, which were not considered to be unreasonable or over-burdensome to the Licence Holder, the issue of nuisance could be resolved. The recommendations included reducing the terminal hour for amplified music to 11pm, requiring they keep the doors and windows closed at all times when amplified music is playing and the provision of a revised noise management plan, to include noise monitoring every 30 minutes.

The other persons present presented their case and responded to questions from all parties. Mrs Russell-Johnston confirmed she was disturbed by the bass beats from the music at this Premises, that it was a residential area and it was a residential area first and foremost before the licenced Premises. Both She and Dr Litton endorsed the recommendations by the CSNN team.

## **FINDINGS**

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

They were persuaded that the events at the Rathskeller were causing a noise nuisance to residents in the area, although primarily after 11pm and this was contrary to the licensing objective of the prevention of public nuisance. They were persuaded, not only by the Applicant and other interested persons who had submitted letters in support of the review, but also by evidence from CSNN indicating that whilst they did not consider that disturbance was sufficient to be classed as a statutory nuisance within the meaning of the Environmental Protection Act 1990, there were occasions, witnessed by them, when the noise levels were such that they were causing an unreasonable disturbance to residents. The Sub-committee also took head of the fact that, despite the Licence Holder agreeing to cooperate with CSNN, they were not prepared to agree to some of their recommendations, and there were occasions where the ones they did agree to were not adhered to, for instance keeping the windows and doors to the bar closed. The Sub-Committee were concerned by the cavalier attitude of the Licence Holder, who appeared, throughout the hearing, to take the view that if any noise

occurred during his licencing hours, this could not amount to a nuisance and was not therefore a valid complaint. They did not consider that licence gave the Licence Holder carte blanche to make whatever noise he wished provided it was within the hours permitted by the licence. However, in defence of the Licence Holder, they noticed that the complaints had been less in recent months in relation to this Premises (the majority listed being in relation to the Hanse House) and noted on the last two complaints the CSNN team had attended and noted that the music was at a reasonable level. Accordingly, the only adjustment they considered to terminal hours is in relation to any live or amplified music was outside.

In light of all this, and in light of the fact that CSNN were considered the experts in relation to noise nuisance, they decided, to adopt in part the recommendations of CSNN set out in their letter of 30 August 2016 and submitted in support of the Review. Since they were not satisfied that there was a sufficient degree of noise nuisance prior to 11pm, and for the most part, the concerns were in relation to noise post 11pm, they did not feel they were able to exclude the provision of s177A of the Licencing Act 2003 and accordingly, any existing conditions relating to live or amplified music between 8am 11pm were suspended and they could not imposed any further ones. However, since the sub-committee were not minded to reduce the terminal hours for amplified music to 11pm, but noted that any conditions imposed would apply subsequently.

#### **DETERMINATION**

The following conditions/amendments shall apply to this Premises Licence.

- 1) Whenever there is amplified music in the Rathskeller, the windows and doors of the Premises shall be kept closed at all times save for egress and access.
- 2) A noise management plan shall be submitted to CSNN team of the Borough Council of King's Lynn and West Norfolk within 28 days of the start date of the decision notice, to be approved by the CSNN team. Once approved the noise management plan, and any subsequent changes to the same, shall be adhered to. It is recommended that the Licence Holder meet with the CSNN team within 7 days of the date of the decision notice. As part of the noise management plan, when amplified music is taking place, noise levels shall be monitored by the Licence Holder or another so designated person at intervals of 30 minutes, on St Margarets Lane, South Quay and Nelson street and recorded and made available to the CSNN or licensing team upon request. Details of how the monitoring shall take place, and what is to be recorded shall be specified with CSNN and shall form part of the noise management plan. Furthermore, the requirement that doors and windows are kept closed at all times when there is amplified music shall form part of the noise management plan.
- 3) The terminal hour for any live or amplified music outside shall be reduced to 11pm on a Friday and Saturday.

- 4) Conditions 10 on the existing premise licence shall be removed.

**RIGHT OF APPEAL**

There is a right of appeal against this decision to the Magistrates Court, available to both the Applicant and the persons making representations. An appeal must be commenced within 21 days beginning with the day on which notification of this decision is received. Independent legal advice may be sought from a solicitor or the Citizens Advice Bureau regarding this if consideration is being given to lodging an appeal.

**The meeting closed at 2.05 pm**