

DETERMINATION NOTICE

Date of Hearing	21st September 2016, following the 10.00am Hearing
Sub-Committee Members	Councillors C J Crofts, M Hopkins and S Squire
Legal Adviser	Jo Furner
Licensing Manager	John Gilbraith
Democratic Services Officer	Rebecca Parker
Applicant for Review	Ms Karen Watling
Licence Holder	Mr J K Lee
Premises Address	The Rathskeller Hanse House South Quay King's Lynn PE30 5gn
Responsible Authorities	Alison Demonty – Community Safety and Neighbourhood Nuisance
Objectors in attendance	Dr J Litten Mrs H Russell-Johnston
Application	Review of a Premises Licence

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 21st 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 ones 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 the 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.

Signed.....
Chairman (Councillor C J Crofts)

Date: 22nd September 2016