

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 4 December 2012

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10:00am

Present: Councillors: -

Andy Mercer (Chairman)
Bob Nightingale

Pauline Bradberry JP

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Andy Mercer be appointed as Chairman for this hearing.

2. DECLARATIONS OF INTEREST

There were no declarations of interest received.

3. APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR THE ROSE AND CROWN, ISLIP

The Commercial Health Manager reported on an application for a review of the premises licence for the Rose and Crown, Islip under the Licensing Act 2003.

Members heard that an application to review the premises licence at the Rose and Crown, Islip was received on 10 October 2012 and that the appropriate Blue Notice was displayed during the consultation period. The grounds for the review were detailed as being the Prevention of Crime and Disorder and Prevention of Public Nuisance.

The application consisted of a diary detailing a series of issues associated with the premises and a copy of this was included as an appendix to the officer report. The key areas for concern were summarised as being :-

- Loud recorded music affecting the sleep of residents
- Loud Karaoke affecting the property of concern and residents not being able to hear the television
- Noise from the street, drunkenness, screaming, shouting and racing of vehicles affecting sleep of residents
- Loud live music affecting the sleep and ability to hear television
- Patrons of the Rose and Crown in the residents' garden

Members noted that one representation had been received from a member of the public and neighbour of the premises. A representation had also been received from Islip Parish Council alongside one from East Northamptonshire Council's Environmental Protection team in respect of public nuisance. Seven representations had been received from members of the public in support of the premises, however only three of these were from Islip residents.

Members further noted that recorded sound evidence obtained by Environmental Protection from the complainant's home would not be admissible as details of the recording had not been circulated to all the parties concerned, and the legal representative of the licence holder was not prepared to accept the submission at that stage of the meeting. Commercial Health Manager reminded members of the changes to Live Music legislation.

The Chairman of the panel asked the Senior Environmental Health Protection Officer for the date that the initial complaint had been received by ENC with regard to noise issues at the premises. He was advised that the first complaint from a member of the public had been received on 2 August 2012.

(a) Evidence from the Complainant

The member of public, Tracey Inger, who had requested the licence review was provided with the opportunity to make a statement in support of her request.

She advised the panel that noise issues had been ongoing on for some years. She stated that every time a tenant left the premises, a replacement would arrive and the noise issues would continue. Members were advised that living directly opposite the premises made her aware of the day to day goings on at the premises. It was noted that the current tenant and licensee, Mr Matthew Seward, had been very good in his willingness to assist, and the two had attempted to work together in order to keep music volume levels down, but it remained an issue for the complainant. Another issue for the complainant was the number of patrons loitering around pub after closing time.

The latest incident had taken place on 16 November 2012, where a patron of the Rose and Crown had accessed the karaoke machine and turned the volume up to such a level that it caused the complainant's bedroom windows to rattle. The complainant stated that during this incident Mr Seward was absent from the premises. The complainant concluded by stating that she did not wish for this sort of nuisance to continue and that all the trouble she had witnessed had taken place after 9pm, when the playing of music commenced.

The Chairman of the panel asked the complainant about an incident where the police had been called regarding a noise complaint. The complainant confirmed that this incident had been on 3 October 2012, when she called police at 1am regarding the noise caused by karaoke. The Commercial Health Manager confirmed that police did not visit the premises as a result of this call and had not made a representation as part of this application, although the date in question was listed as part of the nuisance diary kept by the complainant.

The Senior Environmental Health Protection Officer was given the opportunity to ask questions of the complainant.

The complainant stated that noise incidents had started approximately six weeks after the licence holder, Mr Seward, took over the running of the premises. The initial contact with Mr Seward regarding the issues had taken place at midnight on a Wednesday at the beginning of August, when the complainant's husband had spoken to him regarding loud music, which was duly turned down. She had hoped there would be no further problems with the premises but when the noise issues continued unabated, she turned to ENC for assistance. Further informal contact had taken place with Mr Seward, who had advised that he would move music amplification to a rear room of the property and make alterations to windows to try and dampen sound emitted from the premises. Following that informal contact, the number of disturbances had been reduced significantly until the issue on 16 November 2012.

The complainant responded to a question regarding timings of noise problems by stating that

disturbances normally occurred between 9pm and midnight, including weekday evenings. She further stated that patrons exiting the property were also a major concern to her with arguing, shouting, crying, damage to plants on her decking and racing of cars up and down Islip High Street. She stated that the last weekend had seen these disturbances ongoing until 2.30am. The noise was of such a level that the complainant could not sleep through it, could not hear her television and had felt forced to leave the house on at least two occasions as the music was so loud.

The complainant was asked to provide further details of the incident on 16 November 2012. She advised the panel that she had been awoken at 11.30pm by very loud music and waited for 20 minutes to see if it would stop. At midnight, with the music still playing, she phoned Mr Seward on his private mobile phone number but could not get an answer. As a result, she phoned the police at that point. Mr Seward then sent the complainant a text message to say he had now dropped the volume of the music. When asked if she had reported the incident to the council, the complainant responded that she had.

(b) Evidence from the Premises Licence Holder

The licence holder's legal representative, Mr Nick Walton, was then given an opportunity to respond to the complainant's comments. He advised the panel that the licence holder and Designated Premises Supervisor, Mr Matthew Seward, had been in post since 4 June 2012 and was a local resident and roofer by trade. It was noted that Mr Seward had previous experience in the operations of other licensed premises and was determined to take the current premises forward financially. Mr Seward became aware of potential for noise nuisance to a local resident, the complainant, at the beginning of August 2012 and as a resident of Islip wished to be able to get on with his neighbours. Mr Walton advised that Mr Seward was aware that there had been some issues in respect of live and recorded music and regretted significantly the issues that have brought him before the panel. The licence holder and his representatives had taken note of; and supported the comments of the Environmental Protection Officer. Mr Walton advised the panel that he had received an email sent by the Commercial Health Manager on 18 November 2012, identifying a number of conditions that would ameliorate the issues surrounding live and recorded music. Mr Walton noted that should the premises continue to play live music until 11pm, the conditions as suggested by Environmental Protection would protect the neighbourhood and the complainant. Mr Seward had accepted previous errors regarding use of music amplification equipment and he would be comfortable with a condition stating that no karaoke would be allowable on the premises.

Mr Seward wished to build bridges with local residents and it was regrettable that he had not been aware of the full gravity of situation regarding live music. He was prepared to maintain a log detailing external monitoring of music levels outside the premises to ensure the volume of music was not likely to create a nuisance. Mr Seward advised the panel that the complainant could continue to telephone him as often as she wished regarding noise nuisance. The licence holder had never intended to create an atmosphere of nuisance for neighbours, and he believed that with the conditions identified, the Rose and Crown could continue as an asset to the community without the risk of further noise nuisance. Regarding clientele leaving the premises, there were notices inside requiring the clientele to respect neighbours and the surroundings as they leave the premises. These notices would be increased and verbal communications would be made to ensure people left the locale as quickly and quietly as possible. Mr Walton concluded by asking the panel to consider conditions that could be applied to the premises licence as well as those conditions suggested by Environmental Protection, with a caveat that Section 171, part 3 of the Licensing Act did not engage.

The Chairman of the panel noted that there were two separate issues looking at the nuisance diary. The first was statutory nuisance regarding music taking place within licensed hours. The second related to the performance of live music, that was taking place at late as 2am, even though the premises was only licensed to 11pm.

Mr Walton replied that on several occasions, when music had been played after hours, it was a result of the licence holder having private parties, as he was entitled to do in his own premises and that members of the public did not have access to the premises at these times.

The Senior Environmental Health Protection Officer was given the opportunity to ask questions of the licence holder and his legal representative. Mr Seward confirmed his experience of operating licensed premises and his understanding of the conditions of the premises licence when he took over as DPS. He advised the panel he had not responded to an initial letter from Environmental Health regarding the initial noise complaint as he thought there would be further dialogue from the council and it was not for him to be in touch with ENC. He also felt that anyone who had an issue with the premises would approach him directly.

Mr Seward responded to a question regarding measures taken to reduce noise nuisance by stating he had cut speaker numbers by half, and relocated them to the rear of the premises. Karaoke had been reined back and he had attempted to ensure all doors and windows were sealed as well as they could be for a 16th-Century listed building.

Regarding private parties, Mr Seward stated that with regard for making noise outside licensing hours, he would have hoped for more open dialogue with neighbours, but it had been highlighted to him that such noise was not reasonable.

With regard to the events of 16 November, Mr Seward stated that he had been in the garden of the premises when the volume of music was turned up and that he had re-entered the premises on becoming aware of the noise and had turned sound levels down. He conceded that there was only himself and one other member of staff employed at the premises and that the other staff member had been absent at the time of the incident.

(b) Evidence from East Northamptonshire Council Officers

The Senior Environmental Health Protection Officer provided a submission on behalf of the Licensing Officer involved in the case. She stated that the complainant had first contacted ENC on 2 August 2012, using the out of hours service to make a complaint regarding noise from music, karaoke and people leaving the premises. The noise issue mostly stemmed from karaoke going on past 12.30am on all days of week. The complainant was advised that ENC had no power to control complaints of people in the street, this was a public order issue and was therefore a police matter. A nuisance diary was sent to the complainant to log noise issues and ENC advised how the complaints would be investigated. A letter was sent to Mr Seward at that point. Noise recording equipment had been installed at the complainant's property, and although the recordings could not be played to the panel, it was the opinion of the Senior Environmental Health Protection Officer that the recordings represented some of the loudest disturbance she had heard over the years. It was also her opinion that sleep would have been impossible given the volume of the disturbance. The complaint had been determined as a statutory nuisance and the licence holder had been served with a "minded to" letter.

Subsequent to that, Mr Seward had engaged with the Licensing Officer to mitigate these noise issues. Since the issuing of the "minded to" letter, that had been hand delivered on 9 October 2012, only the odd complaint had been received until the incident on 16 November 2012.

The panel retired to consider the evidence it had heard, before it was

RESOLVED:-

That the Licensing Panel had considered the application for a Review of Premises Licence for The Rose and Crown, 1 High Street, Islip and had taken into account the Licensing Officers report, Environmental Protection Officer's report, representations from the respondent's solicitor and the interested party and also considered written statements in support of the above premises.

The Panel carefully deliberated and considered the licensing objectives, ENC's Statement of Licensing Policy; Guidance issued under Section 182 of the Licensing Act 2003 and also considered the Live Music Act 2012. The main consideration was the licensing objectives relating to public nuisance.

Public Nuisance

- a. Evidence from local resident The Panel heard direct evidence from local resident Tracey Inger at the hearing. This was confirmed by evidence presented by ENC's staff.
- b. Evidence from the Licence Holder and Representative The Panel heard direct evidence from Mr Matt Seward the Designated Premises supervisor, and Nick Walton of Poppleston Allen Solicitors representing the Licencees of The Rose and Crown, Islip

The Licensing Panel having considered all the above were of the unanimous view that on a balance of probability the Rose and Crown, Islip was not promoting the licensing objective of preventing public nuisance.

As a consequence it was the Panel's view that the conditions be modified and are proportionate and appropriate in the circumstances

1. The noise from the playing of live music, amplified recorded music or PA should not be audible at the nearest dwelling.
Reason – the prevention of public nuisance
2. The doors and windows should remain closed at all times whilst regulated entertainment is carried out.
Reason – the prevention of public nuisance
3. Live music should only be permitted on a Friday and Saturday night. (Live Music be treated in accordance with S177A(4) Licensing Act 2003 as amended by Live Music Act 2012).
Reason – the prevention of public nuisance
4. Live music should end at 23:00.
Reason – the prevention of public nuisance
5. Performance of Karaoke is not permitted (as agreed by the DPS Mr Seward and the legal representative)
Reason – the prevention of public nuisance

6. A member of staff must be present in the licensed area at all times when licensable activities are taking place. (For the avoidance of doubt this includes when the DPS is taking a comfort break).

Reason – the prevention of public nuisance

7. Electrical equipment for the production of amplified music must be inaccessible to members of the public.

Reason – the prevention of public nuisance

These are in addition to all existing conditions.

The Decision Notice would be sent out in writing. If any Party, Applicant or Objector who had made a representation was aggrieved with the Panel's decision, they have the Right to Appeal to the Magistrates Court. That must be done within 21 days of the date given on the Decision Notice, and the modification of the licence conditions do not take affect until expiry of the 21 day period

The Panel took legal advice in respect of the correct legal test to apply for such hearings

The Panel stated that they had two further observations. The first was that they seriously considered the suspension of licence, such was the severity of breaches that occurred at the premises.

Secondly, it was felt by panel members that staffing numbers had been too low on occasion and that had been a contributory factor to the issues that had occurred.