

# LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 11 September 2012

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 9:30am

Present: Councillors: -

Brian Northall (Chairman)  
Richard Gell

Barbara Jenney

## 1. APPOINTMENT OF CHAIRMAN

### RESOLVED:

That Councillor Brian Northall be appointed chairman for this hearing.

## 2. DECLARATIONS OF INTEREST

There were no declarations of interest received.

## 3. APPLICATION FOR A VARIATION TO THE PREMISES LICENCE FOR WHEATSHEAF, BENEFIELD

The Licensing Officer reported on an application for a variation to the premises licence for The Benefield Wheatsheaf, Upper Main Street, Upper Benefield under the Licensing Act 2003.

The application requested the following conditions (current timings and conditions are detailed in italics) :-

### **Live Music**

12:00 to 02:00 Indoors – (*same as existing*)

### **Recorded Music**

12:00 to 02:00 indoors and outdoors – recorded music outdoors to be restricted to the soundproofed dance floor area in the marquee. – (*currently indoors only*)

### **Provision of facilities for dancing**

12:00 to 02:00 indoors and outdoors – (*same as existing*)

### **Late night refreshment**

23:00 – 05:00 outdoor late night refreshment to cease at 23:30 – (*currently indoors and outdoors*)

### **Supply of alcohol**

06:00 – 06:00 indoors and outdoors – (*same as existing*)

### **Variation of conditions**

Condition 1 to be varied to allow amplified recorded music to be played outdoors within the confines of the marquee soundproofed dance floor area.  
*(The playing of live music, karaoke or amplified music shall be restricted to the main building only.)*

Condition 2 to be varied to remove the requirement for the double door lobby system  
*(A double door lobby system shall be installed at all access points to the marquee. Self closing mechanisms shall be installed on all the doors. All doors to the marquee shall remain closed at all times except to allow access.)*

Condition 5 to be removed  
*(The noise climate at the surrounding residential properties shall be protected such that when measured one metre from the façade of any residential property the A weighted equivalent continuous noise level (LAeq) emanating from amplified music from the Benefield Wheatsheaf shall not exceed background levels when measured over any 5 minute period (LAeq, 5min). No third octave band when measured at one metre from the façade of any residential property shall be more than 5dB greater than its immediate neighbour.)*

Condition 10 to be varied to allow 40 events per year.  
*(That no more than 20 outdoor events take place each year between 23:00 and 02:00.)*

#### **(a) Evidence from the applicant**

The applicant's representative, Mr Colin Fitzpatrick, was provided with the opportunity to speak in support of the application.

Mr Fitzpatrick detailed the reasons for the application and indicated that the applicant wished to vary the licence conditions to allow activities not permissible under previous conditions imposed by the committee at a meeting in March 2010. The variations requested were to allow the playing of recorded music in an outdoor location, namely the soundproofed area of the marquee and that this would not include karaoke or live bands.

Clarification was provided to confirm that all events taking place at the premises were pre-booked and pre-paid and that the variations were being requested solely to ensure the financial viability of the business. It was noted that a noise management plan would be put in place to prevent noise disturbances for local residents, and details were provided to outline how the conditions, if granted, would be enforced and monitored by the applicants.

Mr Fitzpatrick confirmed to the panel that a new temporary manager had been installed with effect from 10 September 2011. Members heard that no variation for the change in Designated Premises Supervisor (DPS) had been received, which would leave the new manager operating illegally. Mr Fitzpatrick confirmed he had the relevant paperwork for the change of DPS with him.

The panel and the objectors were provided with the opportunity to ask questions of the applicant.

Members of the panel noted their disappointment that the applicants had not attended the meeting in person as they felt that they may have been able to better respond to questions they wished to ask.

## **(b) Evidence from East Northamptonshire Council Officers**

Mandy Dennis, the Council's Environmental Protection Officer addressed the panel and provided a history of the site with regards to noise disturbances. The panel heard that in 2005 a number of noise complaints regarding music noise emanating from the premises had been received with the end result being the issuing of a Noise Abatement Notice. This notice was witnessed as being breached in 2009 and enforcement action was taken. Since 2009 ENC had not received any further complaints for music noise although one had been received regarding fireworks. In 2012, ENC had started to receive a number of noise complaints. ENC had not established statutory nuisance at this time, and investigations were still ongoing, and it was noted that ENC had worked hard with the operator of the premises regarding conditions attached to the licence. A Noise Management Plan had been submitted which, if carried out in its entirety, would leave no objections from ENC as to the applicants request.

Rhys Bradshaw, the Council's Principal Development Control Officer also attended to address the panel, confirming the Planning Department's objections to Conditions 1 and 2 of the variation application. It was noted that the associated planning application which had been refused at the Development Control meeting of 5 September 2012 was due to be appealed by the applicants.

## **(b) Evidence from the objectors**

Dr Carol Lancaster, a local resident, was provided with the opportunity to speak against the application in which she confirmed her concerns.

Dr Lancaster detailed events that had followed the meeting of a licensing panel in March 2010 when the current set of licensing conditions had been imposed. The panel heard that the professional premises manager had left the position after roughly 18 months and that since that point a series of temporary managers had been in place. Negotiations had taken place with both the manager and deputy manager of Benefield W heatsheaf regarding noise issues, as advised by ENC. These negotiations had ended in 2011, once residents established that the sound system had been placed, and used, outside of the premises in contravention of the licensing conditions, and that an application had been submitted to alter various licensing conditions.

Dr Lancaster acknowledged that sound levels were better when music was played in the soundproof area, but additional speakers had been placed within the marquee at the request of couples hiring the facilities, who were not prepared to restrict music to soundproofed area. She felt that every licensing condition had been breached since the meeting in March 2010 and that there was no longer any confidence that the management would adhere to conditions or carry out sound monitoring of the site.

Mr David Smyth, a local resident, was also provided with the opportunity to speak against the application.

Mr Smyth felt that the premises had a long and well documented history of noise nuisance and that management of the site believed that due to lack of enforcement they could get away with breaches of licensing conditions. He stated that ENC had only sent Environmental Health Officers out to the premises on two occasions despite numerous complaints being made. Video footage of noise disturbance emanating from the premises was shown to the panel. The footage had been taken by Mr Smyth outside the venue on 3 August 2012.

Sue Wimpeney, another resident, also spoke against the application.

She stated that it was difficult to understand why licensing conditions deemed unacceptable in 2010 would now be acceptable. She also felt that conditions had not been respected and had therefore been breached, and that a noise management plan was only as good as those that implemented it. The panel noted that both Sue Wimpenny and Dr Lancaster had been present at a sound test of the soundproof dance floor and that no noise could be heard from the pavement, however within a few weeks noise issues resurfaced due to the repositioning of speakers outside the soundproofed area. No confidence of future compliance, we are without any assurances that any monitoring will take place. We are left feeling very disappointed.

The applicant was afforded the opportunity to ask questions of the objectors but declined to do so, whilst the panel did seek clarification on where the objectors resided in relation to the premises and the nature of the sound system currently in place at the premises.

After considering the submitted report and the representations made at the hearing from the speakers, including advice from the solicitor, the panel retired to consider the application and evidence presented.

#### **RESOLVED:**

That the application for a variation of the Premises Licence at The Benefield Wheatsheaf, Upper Main Street, Upper Benefield be partially granted and partially refused.

"The Licensing Panel has considered the application to vary a Premises Licence for The Benefield Wheatsheaf, Upper Benefield and has taken into account the Licensing Officers report and relevant representations.

After careful deliberation and consideration of the four Licensing Objectives, ENC's Statement of Licensing Policy and Guidance issued under Section 182 of the Licensing Act 2003, the Panel has reached the following decision.

The Panel is partially granting the application and partially refusing it.

#### **Recorded Music**

Requested - 12:00 to 02:00 indoors and outdoors – recorded music outdoors to be restricted to the soundproofed dance floor area in the marquee

#### **The Panel is refusing the variation for the outside playing of recorded music.**

The Panel in making this decision heard evidence from 3 Objectors detailing problems of noise nuisance experienced from the playing of recorded music, and the Panel did not feel that the proposed condition to regulate such activity within the marquee would, having regard to the evidence heard, provide a satisfactory safeguard that the condition would mitigate any noise nuisance or that the Licence Holders would comply with such a condition.

#### **Reason - Prevention of Public Nuisance.**

#### **Late night refreshment - Granted**

23:00 – 23:30 outdoor late night refreshment.

## **Variation of conditions**

### **Condition 1**

Requested - to be varied to allow amplified recorded music to be played outdoors within the confines of the marquee soundproofed dance floor area.

The Panel declined this request due to noise nuisance and the likely recurrence of the same. The reason for this is as stated above re Recorded Music

**Reason - Prevention of Public Nuisance.**

### **Condition 2**

Requested - to be varied to remove the requirement for the double door lobby system.

The Panel was persuaded by the issues raised by the Environmental Protection to the removal of the double door lobby system and the Panel concluded that unacceptable noise would otherwise be emitted if the double door lobby system was not retained. Therefore, the decision of the Panel is that the original condition shall remain in existence without amendment.

**Reason – Prevention of Public Nuisance**

### **Condition 5**

Requested to be removed.

The Panel refuses the application to remove this condition. From the evidence heard from the various objectors the Panel believe that it is essential that a condition exists to limit the level of noise from regulated activities on the premises. The Panel had regard to the location of the licensed premises to the surrounding residential properties, which are in close proximity. The Panel noted the suggested revised condition from Environmental Protection, which reflects updated practice in not referring to specific noise levels and decided to substitute that condition for the existing condition. The new Condition 5 is No noise from regulated entertainment shall be audible past the premises boundary as outlined in red on the plan. (Attached)

**Reason – Prevention of Public Nuisance**

### **Condition 10**

The Panel refuse the application to vary condition 10 to allow 40 events per year, for the same reasons as noted previously in the decision notice.

**Reason – Prevention of Public Nuisance**

## **Panel Comments**

It concerns the Panel that there appears to be a distinct lack of interest by those running the business. In addition the representative appearing today was unable to answer many of the pertinent questions asked by Panel members and objectors. The representative appeared to be poorly briefed and upon questioning by the Chairman could not list the four licensing objectives. The recent history of the premises reveals a very disappointing failure by those responsible for the running of the premises to ensure proper regard is had to the prevention of public nuisance caused by noise.

Members of the public are at liberty to apply for a review of the licence if problems continue to arise.

The Decision Notice will be sent out in writing. If aggrieved with the Panel's decision, the Applicant and any Party that has made representation has the Right to Appeal to the Magistrates Court within 21 days of the Decision Notification letter."

**Chairman**