

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 8 September 2014

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 9.30 am

Present: Councillors: Richard Gell
Glenvil Greenwood-Smith
Barbara Jenney

Also present:

Julia Smith
(Health Protection Manager)
Rita Groves
(Licensing Enforcement Officer)
Chloe Mappedoram
(Environmental Protection Officer)
Caroline Broad
Tracey Inger
Matthew Seward

Mark Graham
Rachel Dunn
Julie Dunn
Mebs Kassam
Barbara Wiggins
Paul Smith

Representing

East Northamptonshire Council
East Northamptonshire Council
East Northamptonshire Council
Applicant
Applicant
Designated Premises Supervisor
(DPS)(objecting to review)
Objecting to the Licence review
Objecting to the Licence review
Objecting to the Licence review
Legal Advisor to the Panel
Democratic Services Officer
Senior Democratic Services Officer

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Richard Gell be appointed Chairman of the Panel for this hearing.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTEREST

Councillor	Nature of Interest	DPI	Other Interest
Glenvil Greenwood-Smith	Knew one of the representatives, David Scott, who was not at the Hearing, because he was previously a Member of East Northamptonshire Council		Yes

Richard Gell	As above.		Yes
Barbara Jenney	As above.		Yes

4. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE AT THE ROSE & CROWN, 1 HIGH STREET, ISLIP, NN14 3JS

The Health Protection Manager reported on an application for a review of the premises licence for the Rose & Crown, 1 High Street, Islip, NN14 3JS under the Licensing Act 2003.

The matters for which a review to the premises licence was sought related to the prevention of public nuisance. The main reasons being noise problems experienced by neighbours, failure to comply with licence conditions and the impact it had on the enjoyment of their properties.

Members noted that an application to review the licence at the premises had been received on 14 July 2014 from the owners of two neighbouring properties. The appropriate Blue Notice had been displayed during the required consultation period and as a result of the consultation, representations had been received from:

- East Northamptonshire Council's Licensing Enforcement Officer,
- East Northamptonshire council's Environmental Protection Officer
- The Planning Authority for East Northamptonshire, and
- Members of the public

The representation received from Environmental Protection detailed on-going issues with respect to noise nuisance, including the service of a noise abatement notice and subsequent non-compliance with that notice.

The representation received from Development Control supported the review application and detailed the service of enforcement notices and issues with the public house undertaking activities without applying for the relevant consent or permissions.

The representations received from the public supported the public house in its efforts to create a thriving business, provide a community function, the value of music at the venue and the efforts the business made to limit noise from the premises.

Evidence from the applicant Mrs Caroline Broad

Mrs Caroline Broad advised the Panel that she had requested the licence review as a last resort. She had been living at the property for 15 months and issues had arisen in the last 6 months, which she had tried to resolve informally. These were noise issues largely associated with live music, mainly bass and rhythm, and there were also issues with pre-recorded music.

Mr Seward had at first made an attempt to resolve matters but it had become worse of late.

Before she had bought the property next door, Longyard Cottage, she had made sure that there had been no problems with the previous owners. They confirmed that they had not contacted the Police or anyone else regarding noise issues associated with the Public House. In fact Mrs Broad said that she had visited the Pub and there was nothing to concern her. The previous owners of Longyard Cottage had advised Mrs Broad that they were aware

that Mrs Inger had had recording equipment in the house. Mrs Broad confirmed that she had attempted to get in touch with the Ingers, but had not been successful.

Evidence from the applicant Mrs Tracey Inger

Mrs Tracey Inger confirmed that she had lived in the village for 12 years. Lately there had been noise issues with the Pub which were related to DJs and live music. She had been the victim of anti-social and intimidating behaviour which she considered was linked to the Public House. She advised that bottles had been thrown into her garden. Following issues with social media she had called the Police and informal investigations had resulted in an apology from Mr Seward. The Panel assumed that, as no Police representation had been received, that they had no comments to make.

Evidence from representative

Excerpts from sound recordings were provided at the Hearing Panel.

Chloe Mappedoram, Environmental Protection Officer, advised that noise complaints associated with the Rose & Crown at Islip had been received since August 2012.

Since the original complaint was made various sound recordings had taken place, a statutory nuisance had occurred on two occasions and went on at an excessive level beyond licensing hours. Various sound recordings had taken place during 2012 and a statutory nuisance had occurred on two occasions and went on at an excessive level beyond licensing hours. Ms Mappedoram had served a "minded to" letter and gave the landlord 7 days to abate the nuisance. Discussions had taken place with the landlord as to how he could mitigate the noise coming from the pub. It was reiterated that a statutory nuisance had been established and if noise was again witnessed at such a high level to disturb neighbours, then there would be no hesitation in serving a noise abatement notice. Following this there had been one night when it was reported that noise was excessive. On listening to the recording it had not constituted a statutory nuisance, however it had been audible beyond licensing hours, therefore the Licensing Enforcement Officer had been advised.

A licence review had been held on 4 December 2012. The conditions included "that doors and windows remain closed at all times whilst regulated entertainment is carried out". Discussions had taken place with Mr Seward and he had been reminded of the licensing hours and conditions on his licence.

During August 2013 there had been more noise complaints from neighbours and during the ensuing months more recordings had been made. Eventually a Noise Abatement Notice had been served on 21 October 2013. During November and December, Mr Seward visited the Council offices to discuss the situation with officers and had been provided with advice on how to manage the noise situation. Site meetings were offered and Mr Seward eventually allowed two visits in December. .

On 5 March 2014 Ms Mappedoram had contacted Mr Seward to try to ascertain what measures had been carried out to mitigate noise on the premises since the discussions in December. A response from Mr Seward was received at the end of March advising due to financial constraints he had not completed the discussed measures.

A further noise complaint had been received out of hours on 22 March 2014 however, the music had reduced by the time the officer arrived at the complainant's property. A further two complaints had been received on 12 April. Following this Ms Mappedoram had written

to Mr Seward advising that she was re-opening an investigation into a breach of the abatement notice. Further noise complaints had been received over the ensuing weeks and other breaches to the notice had been proved.

It appeared that conditions were not being adhered to which had led to the service of a Noise Abatement Notice, investigations into breaches of that Notice and the submission of a prosecution file.

Following questions Ms Mappedoram confirmed that she was still receiving noise complaints from Mrs Broad and Mrs Inger. The last time a nuisance had been established was overnight on 24/25 April 2014.

Evidence from representative

Rita Groves, Licensing Enforcement Officer, noted that Mr Seward had visited the Council offices in August 2013 because he had received noise complaints from neighbours and wanted to know how to deal with the issues.

A live music event had taken place on 2 September 2013. A complaint had been received by a neighbour. Mrs Groves therefore visited the Rose & Crown and discussed the issues. A Temporary Event Notice had been issued for the event.

In October 2013 Mrs Groves noted that she had visited the premises and had witnessed evidence of smoking in the outside shelter at the rear of the premises. The shelter should be a smoke free area as it did not comply with the Health Act 2006 regulations. It was also noted that music had been played in the shelter, which was a breach of licencing conditions.

Mrs Groves also noted various other noise complaints during the latter part of 2013 and the early part of 2014. There had also been breaches of licensing conditions during that time.

Evidence from Licence Holder

Matthew Seward confirmed that he had been the Licence Holder since June 2012; he was responsible for the business as well as being financially tied to the venture. He had built up the pub since he took over and had a good clientele.

There was competition in the village, in the form of a Working Men's Club and another pub, which meant that he had to think of other ways to bring in business. Music seemed to be the way forward and it was a popular venue for live bands. Recorded music was also played on the premises. Mr Seward usually tried to keep events at a small level bearing in mind the size of the pub. However, some events had been held outside. Unfortunately there had been complaints from neighbours and he had been found to be in breach of the licence, which was not his intention. Mr Seward had suggested to Mrs Broad that she contact the Council to see if the situation could be remedied. This had resulted in sound recordings being taken.

Work had been carried out in relation to sound proofing but Mr Seward realised that further work was needed. If music was removed from the licence it would have a detrimental impact on the business.

Discussion was held on volume controls and mitigation measures that were required.

After 2 years at the pub Mr Seward had decided to employ managers: Mark Graham and Rachel Dunn. He confirmed that managers were needed because of his other work commitments However, on a day to day basis he would be more involved in the pub.

After discussions about a timescale for noise improvement works, Mr Seward confirmed that everything could be completed by the end of January 2015 depending on any listed building consent or planning permissions. Mr Seward confirmed that should listed building consents not be granted, he did not have other options prepared to mitigate the noise problems at the premises.

Evidence from representatives

Mark Graham confirmed that he and Rachel Dunn had been brought in by Mr Seward to manage the Rose and Crown in Islip. They had previously worked at the Rose & Crown in Oundle. He confirmed that sound boards had been put in place whenever there was a music event. He knew there was an audibility problem and therefore policed events carefully.

Rachel Dunn confirmed the information given by Mark Graham. The situation was difficult in as much as Mrs Broad's house joined the pub building. She hoped that they could continue to have live music. The volume of recorded music was controlled from behind the bar.

Evidence from representative

Julie Dunn confirmed that she had attended the hearing in support of the Rose & Crown in Islip. She had attended a few events on the premises and knew that they made every effort to keep the noise down. They were trying hard to make the venue a success and at the same time endeavour to keep the neighbours satisfied.

At 11.40am the Panel adjourned to make their decision.

The Panel returned at 1.20pm to announce their decision

RESOLVED:

The Licensing Panel has considered this application for a Review of Premises Licence for The Rose and Crown, 1 High Street, Islip and has taken into account the Licensing Officers report, Environmental Protection Officer's report, representations from the respondents and the interested parties, and also considered written statements in support of the above premises, and all relevant representations evidence and documents submitted at the hearing.

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

1. Evidence from local resident. The Panel heard direct evidence from local resident Caroline Broad at the hearing. This was confirmed by evidence presented by ENC's staff.
2. 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.
3. Evidence from the Licence Holder and Representative The Panel heard direct evidence from Mr Matthew Seward the Designated Premises Supervisor,
4. Evidence from Mark Graham
5. Evidence from Rachel Dunn
6. Evidence from Julie Dunn
7. Evidence from Rita Groves - ENC's Licensing Enforcement Officer
8. Chloe Mappedoram – ENC's Environmental Protection Officer

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

Therefore it is considered by the panel that the following is appropriate and proportionate:

Firstly the operation of the Live Music Act be dis-applied:

The activity of live music on Friday & Saturday's be removed from the licence for 2 months and thereafter be re-instated on condition of satisfactory acoustic dampening works at the premises, provided always to the satisfaction of Environmental Protection Officers that no statutory nuisance or public nuisance will arise from the Rose & Crown.

The condition on the licence of "The noise from the playing of live music, amplified recorded music or PA shall not be audible at the nearest dwelling" be modified to as follows:

"the noise from the recorded music or PA and specifically the speakers be located and directed away from the walls of the neighbouring property

The licence holder do take measures to ensure that music will not be audible above background level at the nearest noise sensitive location

The licence holder do undertake routine monitoring to ensure external levels of music are not excessive and take immediate action where appropriate

The panel received legal advice in terms of:

- 1) The Legal Test to be applied
- 2) The Four Licensing Objectives
- 3) The options available to the panel
- 4) Section 182 Guidance

The reasons for the decision are as follows:

- 1) Little or no notice of the previous review relating to the premises by the premises licence holder
- 2) The complainants representations that they do not want to close the premises but to ensure that there is no public nuisance from music
- 3) At least four separate occasions of statutory nuisance as advocated by the Environmental Protection Officer

The Decision Notice will be sent out in writing. If any Party, Applicant or Objector who has made a representation, is 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

Chairman