

LICENSING (LIQUOR AND GAMBLING) PANEL

Date: 5 December 2016

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00 am

Present: Councillors: Helen Howell
Andy Mercer
Peter Wathen

Also Present

Jenny Walker
(Environmental Protection Manager)

Frank Harrison
(Health Protection Manager)

Rita Groves
(Licensing Enforcement Officer)

Mandy Dennis
(Senior Environmental Protection Officer)

Brian Gretton

Graham Holding

James Goldney

Lucy Hunt

Alex Kinash

Mebbs Kassam

Representing

East Northamptonshire Council

East Northamptonshire Council

East Northamptonshire Council

East Northamptonshire Council

Applicant – Deene and Deenethorpe Parish Council

Applicant – Deene and Deenethorpe Parish Council

Licence Holder

Illusive Festival

Noise Consultant to the Illusive Festival

Legal Advisor to the Panel

Councillors Glenvil Greenwood-Smith and Roger Glithero, together with 2 members of the public, attended the Hearing as observers.

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Peter Wathen be appointed Chairman of the Panel for this hearing.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTEREST

No declarations of interest were made.

4. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE FOR THE ILLUSIVE FESTIVAL, DEENE PARK, DEENE, NORTHAMPTONSHIRE. NN17 3EW

The Health Protection Manager reported on an application to review the premises licence for the above Festival which had been received on 14th October 2016 from Deene and Deenthorpe Parish Council.

The review of the premises licence had been sought in relation to the prevention of a public nuisance licensing objective. The main reason for the review request related to the licence holder allegedly failing to ensure that the conditions on the premises licence relating to the level of noise emitted from the Festival failed to meet the conditions of the Licence, and that as such, the licence holder was failing to protect the public from nuisance.

The Health Protection Manager outlined the representations received following publication of the "blue notice", together with the complaints made to ENC, Deene and Deenthorpe Parish Council and the Deene Estate relating to the Festival held earlier in the year and the previous event held in 2015.

Evidence from the Applicant

Councillor Graham Holding on behalf of Deene and Deenthorpe Parish Council addressed the Panel in support of the application for review. Cllr. Holding referred to the concerns expressed by local residents about the low frequency noise emitted from the Festival which penetrated into homes, even when windows were closed. This had resulted in many complaints about the 2015 and 2016 Festivals being made and an Extraordinary Parish Council meeting had been convened which had resulted in a resolution to seek a review of the premises licence.

Cllr Holding stated that residents were not against the holding of the event and were not seeking to stop it taking place, but wished to see the permitted hours amended to provide a closing time of midnight on Friday and Saturday and 11.00pm on Sunday.

While acknowledging that the Council's Environmental Services team had carried out good work with the Festival organisers to alleviate problems, the Parish Council had concerns about the Festival organisers being permitted to monitor sound levels themselves and no reports of sound levels being exceeded being made. Accordingly, the monitoring should be carried out by an independent party.

The noise attenuation measures implemented (use of straw bales) were ineffective at mitigating bass frequency sound and Cllr Holding reiterated that the issue was with bass sound, not the overall sound level.

Questions to the Applicant

In response to questions asked by the Panel and other parties to the Hearing, Cllr Holding confirmed the following points:

- An e-mail sent to Cllr Brian Gretton of Deene and Deenthorpe Parish Council contained details of an agreement between the licence holder and the Parish Council on measures to alleviate disturbance from the Festival and which Cllr Holding stated had not been adhered to by the licence holder. A copy of the e-mail had been included in the document pack circulated with the Agenda for the Hearing.
- There had been 29 complaints made to the Parish Council regarding the Festival. Cllr Brian Gretton confirmed that these had been received from 29 separate e-mail addresses. The SEPO believed this to be incorrect. Although 29 emails had been received, some of these were forwarding of e-mails already received.
- All of the members of the public attending the Extraordinary Parish Council meeting were residents of the Parish. Not all of those attending had supported the proposition to seek a review of the licence, but a resolution had been adopted by a majority vote.

Evidence from Mandy Dennis, Senior Environmental Protection Officer.

The Senior Environmental Protection Officer (SEPO) informed the Panel that she had worked with the Festival organisers to agree a Noise Management Plan (NMP) before the events had taken place. The NMP had evolved to mitigate the impact of the events, for example, additional noise monitoring locations being included in the NMP as a result of concerns raised.

The SEPO stated that noise monitoring was carried out by an independent noise consultant who was not part of the Illusive Festival. The SEPO had been the Duty Officer on the weekend of the event and had attended on 4 occasions at different times/locations to observe the noise levels emitted from the Festival. On each occasion, the SEPO considered the bass sound to be acceptable or, indeed, barely audible.

The SEPO informed the Panel that she had no reason to disbelieve the noise data provided by the noise consultant and the noise reductions required by the NMP at specified hours had been implemented. The SEPO considered the NMP to be the most effective means of controlling noise from the Festival.

Questions to Mandy Dennis

In response to questions from the Panel, the SEPO stated the following:

- There had been no objections to the original licence application or the hours applied for and all of the sound levels set out in the NMP had been complied with.
- There had been two complaints made during the Festival via the Council's out of hours service and two people had spoken to her on the Saturday evening of the event to make complaints while she was attending as the Duty Officer.
- Work could be progressed with the event organisers to mitigate the impact of bass frequency noise, but it was acknowledged that bass level noise was difficult to control. The weather conditions during the 2016 Festival had contributed to the disturbance caused by the noise emitted.

The Licence Holder had no questions to put to the SEPO.

In response to questions from the Applicant, the SEPO confirmed the following:

- The noise consultant monitoring the Festival was paid by the Illusive Festival.
- She had not entered properties during the event to observe noise levels. She had offered to do this for one resident, but the offer had been declined.
- The SEPO confirmed the location of the two roving noise monitoring locations located in Deenethorpe to monitor the event.

Evidence from Rita Groves, Licensing Enforcement Officer.

The Licensing Enforcement Officer (LEO) informed the Panel that Northamptonshire Police had liaised with Bedfordshire Police regarding the original licence application and the Police had made no representations on it.

In response to the Parish Council's assertion that it had not had an opportunity to comment on the original licence application, the LEO confirmed that the original application had been processed in accordance with the relevant legislation, including publication of the "blue notice" providing an opportunity for objections to be made to the application. The Parish Council could have raised objections during this period.

There had been no issues concerning the previous Festivals brought to the attention of the Safety Advisory Group meeting by the Police, Fire Service or the Highways Authority. The LEO had visited the 2016 event together with the Police and no concerns had been identified.

In response to a question from the Panel, the Environmental Protection Manager confirmed that in accordance with best practice, conditions had not been included in the licence which could not be changed without a variation application. A number of documents had been attached to the licence, including the NMP, which could be amended without a formal variation application to implement identified improvements to the impact of the Festival. The noise monitoring data was accessible by ENC officers, but was the property of the noise consultant and his consent would be required to put it into the public domain.

The Panel's Legal Advisor confirmed that there was no issue in making the NMP publically available with the Licence Holder's consent.

The Licence Holder had no questions to put to the LEO.

Evidence from James Goldney, Licence Holder

The Licence Holder provided the following evidence to the Panel in support of his view that the licence for the Festival should remain unchanged:

- The conditions attached to the licence had never been breached.
- Noise attenuation measures had been implemented to significantly reduce the impact of the Festival.
- Additional noise monitoring equipment had been provided.
- The Licensing Authorities with whom the Festival organisers had worked with had given nothing but positive feedback on the running of the events and had raised no concerns.

- Any further restrictions on the licence would be unfair.
- No commitment had been given by the event organisers to the Parish Council that the Festival would end at 11.00pm other than on the Sunday. On Friday and Saturday, the noise levels would be reduced at 11.00pm.
- With regard to reported incidents involving those attending the Festival taking place off-site which had been raised by the Parish Council in its submission, the Festival organisers had no control of the behaviour of people once they had left the site and this was irrelevant to the review.

Questions to the Licence Holder and Representative from the Panel

In response to questions from the Panel, the Licence Holder confirmed that reduced noise levels were implemented at 11.00pm as required by the NMP until 4.00am when a “silent disco” was held. There would then be no sound emitted from the site.

The Festival’s Noise Consultant, Alex Kinash, provided the following information:

- The positioning of stages had been changed to mitigate sound emissions.
- The bass frequency levels set out in the Code of Practice had not been breached.
- There had been a reduction in complaints made as a result of the measures taken.
- The sound levels at the Illusive Festival were comparable to other events monitored by Mr Kinash.
- Where outdoor stages were turned off at 11.00pm and the event continued within tents, more reinforced tents could be used to restrict the travel of sound waves and thereby mitigating noise disturbance.

Questions to the Licence Holder and Representative from the Applicant

In response to questions from the Applicant, the Licence Holder stated that although he believed that the complaints received were from a relatively small number of people, the Festival did not wish to cause disturbance to any residents. What constituted disturbance would vary from person to person and the NMP provided a pragmatic approach to controlling overall noise levels.

Alex Kinash confirmed that he provided the Festival organisers with a recommendations report after each event. The report on the 2016 event had recommended a review of the site layout and ensuring that the fixed noise monitoring sites were suitable. The report had been written before the application for review of the licence had been made.

Final Statement by the Applicant

Cllr Brian Gretton reiterated that the Parish Council was not seeking to stop the Festival taking place, but there was an issue with bass noise after midnight which had led to complaints being made and the Parish Council seeking a reduction in the permitted hours.

Cllr Graham Holding stated that the “hotline” telephone number provided by the organisers had not been widely circulated and it was therefore not surprising that only two complaints had been made using this facility.

Final Statement by the Senior Environmental Protection Officer

The SEPO confirmed that work would continue with the Festival organisers to reduce the noise impact and reiterated that the weather conditions had contributed to the noise disturbances experienced by residents during the 2016 event.

Final Statement by the Licensing Enforcement Officer

The LEO confirmed that there had been no issues of concern with the organisers of the Festival

Final Statement by the Licence Holder

The Licence Holder again stated his view that the imposition of further restrictions on the licence would be unfair as no breaches of the licence conditions had occurred and the organisers would continue to work with ENC officers to minimise noise disturbances. There were only a small number of complainants and the Festival took place on only three days of the year.

At 12.07pm the Panel adjourned to make its decision.

The Panel reconvened at 1.36pm to announce its decision.

RESOLVED:

The Licensing Panel has considered the application for a Review of the Premises Licence for Illusive Festival, Deene Park, Deene and has taken into account the Health Protection Manager's report and also considered all relevant representations, evidence and documents submitted at the hearing.

The Panel carefully deliberated and considered:-

- The Licensing Policy
- S182 Guidance
- The legal test to be applied
- The options available to the Panel
- Licensing Act 2003

The reason for the review is in relation to the prevention of public nuisance which is a licensing objective.

Evidence from ENC's Health Protection Manager - the Panel heard direct evidence from Frank Harrison

Evidence from Deene & Deenethorpe Parish Council - the Panel heard direct evidence from Brian Gretton and Graham Holding

Evidence from the Licence Holder - the Panel heard direct evidence from James Goldney

Evidence from the Noise Consultant employed by the Illusive Festival - the Panel heard direct evidence from Alex Kinash.

Clarification from Mandy Dennis, Senior Environmental Protection Officer

Clarification from Rita Groves, Licensing Enforcement Officer

The Licensing Panel having considered all the above are of the unanimous view that on a balance of probability the Illusive Festival is not promoting the licensing objective of prevention of public nuisance.

The Panel have, therefore, decided to modify the conditions on the licence as follows:

1. Fixed noise monitoring locations to be established in consultation with Deene and Deenethorpe Parish Council and roving monitoring as appropriate.
2. Noise propagation tests shall be undertaken prior to the event at a range of times when music would be played, paying particular attention, but not exclusively to, low level bass so as not to cause a public nuisance.
3. A dedicated telephone complaint line shall be published or communicated via East Northamptonshire Council, Deene and Deenethorpe Parish Council and the Premises Licence holder's website.

The reasons for this decision are:-

1. It was central to this hearing that low level bass was causing a public nuisance and the modification of the licensing conditions were considered to be appropriate and proportionate.
2. The inclusion of the Parish Council in ascertaining the fixed noise monitoring locations would help prevent public nuisance.
3. The publication and communication of the dedicated telephone complaint line will further reduce the risk of public nuisance.

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 service of the Decision Notice and the modification of the licence conditions do not take effect until expiry of the 21 day period

Chairman