

**Licensing (Liquor and Gambling) Panel**

**26<sup>th</sup> August 2020**

**IN THE MATTER OF:**

**An application for the review of Premise Licence under section 51 of the  
Licensing Act 2003**

**East Northamptonshire Council**

**Applicant**

**V**

**Green Dragon Hotel  
(15/01020/LAPNEW)**

**Respondent**

**WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT**

1. This is an application for a review of the Premises Licence pursuant to Section 51 of the Licensing Act 2003 made on the 15<sup>th</sup> July 2020
2. An application for a review of the premise licence was made by Adam French, Senior Environmental Health Officer of East Northamptonshire Council following a visit to the premise on the 4<sup>th</sup> July 2020 following the COVID 19 lockdown. This visit was accompanied by Mrs Rita Groves, Licensing Enforcement. The purpose of the review is to attach additional conditions to the licence with the aim to promote the Licensing Objectives.
3. The grounds stated for the review are based on the following Licensing objectives:
  - Public safety and
  - The prevention of public nuisance
4. Without seeking to undermine the application the information provided in support are detailed by the applicant within the application itself and will not be repeated in detail in this document.
5. However, in an effort to aid this remote hearing a summary of what the officers witnessed are below:
  - a) lack of COVID- related controls which include
    - large gathering inside and outside (on tables and in the garden) (approx. 150 in the garden)
    - No social distancing
    - Queues in the garden 7 to 8 people deep
    - Loud music in the garden
    - Little done to minimise the risk of transmission
  - b) wider public safety concerns which include:
    - Inadequate control of customers entering and exiting the premise byb College Street at the front and Midland Road at the rear
    - Fighting by males on Markey square
    - Intoxicated customers leaving the premise and
  - c) General public nuisance which include:
    - Customers leaving at the rear of the premise with open containers of alcohol then congregating in groups on Midland Road to continue drinking
    - Intoxicated customers leaving the premise
    - Inadequate control of customers entering and exiting the premise byb College Street at the front and Midland Road at the rear
    - Loud amplified music being played in the garden making it hard to talk in a normal volume
    - Customers using nitrous oxide as cannisters and littering in car park

6. As a result of the lack of COVID control two Improvement Notices were served under the Health and Safety at Work Act 1974, dated the 08<sup>th</sup> July 2020 requiring that the pub to remedy the contraventions by the 8<sup>th</sup> August 2020.
7. In addition, a Community Protection Notice (CPN) Formal Written Warning was served as a result of the general anti-social behaviour and nuisance which included:
  - Customers leaving the rear of the premise with open containers of alcohol and then congregating in groups on Midland Road to continue drinking;
  - Intoxicated customers leaving premises
  - Inadequate control of customers entering and exiting by College Street at the front and Midland Road at the rear
  - Loud amplified music in the garden that made it hard to talk at a normal volume
  - Used nitrous oxide cannisters littering the car park.
- All exhibited at pages 25-35 of the supporting documents<sup>1</sup>.
8. A further visit took place 1 week later, on the 11<sup>th</sup> July 2020 by Mr French, Mrs Groves and the police and the premise was much better managed.

The following was observed:

- Better control of customers entering at the front on College Street and at the rear on Midland Road
  - A one-way system was in place preventing entrance from Midland road
  - Door staff patrolling the inside of the pub and the garden advising
  - Customers spoken to before leaving and prevented from taking open containers off site
  - Reduced number of only 80 customers on the premise
  - Outside bar open but no queues
  - No music playing in outside areas.
9. Following an official visit on the 7<sup>th</sup> August 2020 it was confirmed both Improvement Notices have been satisfactorily remedied, and no further action to be taken regarding those. See attached COVID 19 Risk Assessment and Sentinel Security document (Appendixes GDH/1 and GDH/2)

### **Licensing Objectives and East Northamptonshire Council's Licensing Policy Statement**

10. In determining this application the Licensing Authority has a duty to carry out its functions with a view to promoting the four licensing objectives, which are as follows:-
  - the prevention of crime and disorder;
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm

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<sup>1</sup> Agenda bundle

## 11. Power of Licensing Authority on the determination of a Review

In determining the application, the sub-committee can take such of the steps as it considers appropriate for the promotion of the licensing objectives, which are:

1. take no further action
2. to issue formal warnings to the premises supervisor and/or premises licence holder
3. modify the conditions of the licence (including, but not limited to hours of operation of licensable activities)
4. exclude a licensable activity from the scope of the licence
5. remove the designated premises licence supervisor
6. suspend the licence for a period not exceeding three months
7. revoke the licence.

12. Consultations have been undertaken and representations from the following have been received supporting the review:

- Police
- Higham Ferrers Town Council
- Environmental Protection
- Licensing Office
- Member of the Public (x 13 persons)

13. In determining this application, the Licensing Authority must also have regard to the representations received, the Licensing Authority's statement of licensing policy and any relevant section of the statutory guidance to licensing authorities. (in this case sections 11.16 to 11.23 of the section 182 guidance considerations are particularly relevant to this application)

14. The COVID-19 pandemic presents 'unprecedented challenges' with disruption to society likely to last for some time. It is not '*business as usual*' for the licensed trade but with pro-active resilience and co-operation it is hoped it will aid in getting back to normal once the pandemic has passed.

15. It is conceded that the Green Dragon Hotel on the first day of re-opening post lockdown failed in their efforts to properly prepare themselves for what was inevitably going to be a very busy and chaotic day. In those circumstances despite whatever provisions they had in place these were insufficient to properly promote the safety of its staff and customers. That being said they were served with the relevant notices and have since complied with them and have also met the conditions of the CPN formal warning such that there is to be no further action on any of these. This has been confirmed by Mr French.

16. The East Northamptonshire Statement of Licensing Policy (The Policy) (Appendix GDH/3) details how the Authority will carry out its functions under the Act with a view of promoting the above 4 Licensing Objectives; however it is fair to say that

not just this Authority but indeed no Authority had cause to consider circumstances concerning a Global Pandemic when drafting their policies.

17. Indeed, the Licensing objective of “promoting public safety” is specifically not meant to be the same thing as “promoting public health” which is why alternative more appropriate Legislation such as the Health and Safety at Work etc Act 1974 extends the authority powers to the Officers in this way.

18. However, it is essential that caution is applied to avoid duplication of Legislation use to achieve/ meet any shortfall.

19. Within the Council’s own Policy at paragraph 3.2 Duplication it states

*“Conditions will only be attached to premises licences ... necessary for the promotion of the licensing objectives detailed in the introduction to this policy, be they mandatory conditions, conditions made against the operating schedule and/or following relevant representations. Under normal circumstances **where matters are already provided for in other legislation they cannot be considered necessary in the context of licensing law.**”*

20. Our representation is that the Council has failed to apply the above approach as per their policy in making this application for a review of the Green Dragon Hotel’s premise licence. In that the application seeks to attach conditions to the Licence which have already been appropriately remedied following service of the two Improvement Notices and the Community Protection Notice formal warning.

21. This is demonstrated from the application for the review itself. At pages 14-15 of the agenda bundle Mr French cites the concerns he has for the premise under the two Licensing Objectives ie the wider public health and prevention of public nuisance. These concerns are repeated in the combination of the notices and again repeated CPN warning letter- which deal particularly with the lack of COVID controls and Anti-Social Behaviour. (see Appendix 1 Schedule 1 (Improvement notice 1<sup>2</sup>) and Appendix 3 (CPN Formal Warning Letter<sup>3</sup>)

22. At paragraph 17 of the Policy: (Conditions) states

*“17.1 A key concept underscoring the Licensing Act 2003 is for conditions to be attached to licences and certificates that are tailored to the individual style and characteristics of the premises and events concerned... **This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.**”*

23. Additionally, it emphasises at 17.2

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<sup>2</sup> Pages 26- 27 Agenda bundle

<sup>3</sup> Pages 34-35 Agenda bundle

"This Licensing Authority agrees that any condition imposed must be:

- clear;
- enforceable;
- evidenced;
- **proportionate**;
- **relevant**; and be expressed in plain language capable of being understood

24. It is therefore argued that the imposition of these conditions are not only a duplicated process but **disproportionate and overly burdensome on the premises as there is no need for such conditions as a result of the efficient compliance by the Green Dragon Hotel** to meet the Improvement Notices as well as the CPN within and if not
25. In responding to this application, we have considered the concerns of the members of the public as well as the other responsible authorities which go to the core of the public nuisance and anti-social behaviour element of the application. Of course, the concerns raised are serious and the Green Dragon will continue to seek to address them with the assistance of the Authorities.
26. However it is not accepted that the Green Dragon has failed to act to resolve any previous issues. Or refuse to engage with the authorities or local residents in seeking to resolve them. Indeed we attach 40 responses from local residents and customers who object the application and support the efforts of the Green Dragon (Appendix GDH/4)
27. Such examples of steps taken to engage and limit any concerns include:
- Historically the Green Dragon Hotel has held x2 Beer Festivals a year. Mr Nolan has taken over the premise for nearing on 5 years and has together with Mrs Morgan sought to conduct the festivals in a safe and enjoyable manner, in line with the neighbours' request. Unlike his predecessors he has reduced the times that festivals are run outside - reducing them from 12:00 noon to 6pm on the Bank Holiday weekends (only on Saturday and Sunday). (prior to that they ran to 10:00pm)
  - Never placed a Marque at the festival as residents complained that the previous owners did that to abuse the opportunity to extend the time to run the festival outdoors playing music until 10:00pm.
  - Ensuring only 2 live sets are played by the live band and the DJ to be played outside only until 6 pm.
  - Whilst the festival continued inside after 6pm with the DJ playing at a reasonable level (the premise only)- this would end with the usual time the premise closed which would be 12:00 am (midnight).
  - After every festival Mrs Morgan and her staff would comb the local street clearing any litter and waste left over from the festival
  - After every festival she would check with the Licensing team at the Council to ensure there had been no complaints or concerns about the festival at the weekend (indeed the Council have been very supportive of her engagement and

- management of the festival that they had the premise licence extended to the Barn to prevent the need for a TENS for running the festivals.)
- The DPS ensures no music is played in the outside areas of the premise at any other times- to ensure the neighbours are not disturbed. Music is only ever played until 11pm in line with the current licence.
  - Recorded music is played Monday to Thursday, with live music Friday and a DJ Saturday only. (all music to stop at 11:00pm pre COVID- despite the licence allows recorded music to be played until 12:00 midnight. )
  - There are also clear signage throughout the premise as exhibited at Appendixes GDH/5 TO GDH/7 which continue to promote the safety of customers and local residents by encouraging customers to be considerate with noise levels when leaving, discourage littering, avoid causing problems and discourage drug use.
28. It is suggested in light co-operation from the premise in seeking to rectify the issue expeditiously, the history of co-operation from the company and DPS to date, despite the more recent frustrations (compliance was still made) coupled with the fact there has been no statutory nuisance lodged against the premise in the past, we would suggest the normal action for breaching a licensing objective, such as promoting public health or indeed public safety would be to write to premises to warn them about their actions, and then eventually, if justified, bring a review.
29. In submitting both Improvement notices and the CPN formal warning the Council has sort to take this approach however by also bringing a review within the same period of time for the same contraventions is onerous and disproportionate.
30. In these circumstances we would ask that the Sub Committee either:
1. take no further action (and find that the premise has efficiently addressed the concerns in the application) or
  2. to issue formal warnings to the premises supervisor and/or premises licence holder

**Melissa Toney**  
**Gregg Latchams Solicitors**  
**21<sup>ST</sup> August 2020**