

Minutes of a Meeting of the Licensing Act 2003 Sub Committee held in the Hub, Mareham Road, Horncastle, Lincolnshire LN9 6PH on Friday, 5th January, 2024 at 10.30 am.

PRESENT

Councillors Sandra Campbell-Wardman, Darren Hobson and Terry Taylor.

Councillor Neil Jones attended the Meeting as a Substitute.

Officers in Attendance:

Adrian Twiddy	- Principal Licensing Officer
Kim Robertson	- Legal Advisor
David Dodds	- Environmental Health Service Manager- East Lindsey
John Dixon	- Environmental Protection Officer
Lynda Eastwood	- Democratic Services Officer
Laura Allen	- Democratic Services Officer

Also in Attendance:

Mr Michael Kheng	- Kurnia Licensing Consultants Limited
Mr Shane Harris	- Plaice on the Park Limited
Mr Robert Blyde	- DPS, Little Nan's Café

19. ELECTION OF CHAIRMAN:

Councillor Sandra Campbell-Wardman was duly nominated and upon being put to the vote, it was

RESOLVED

That Councillor Sandra Campbell-Wardman be elected Chairman of the Licensing Sub-Committee for this Meeting only.

COUNCILLOR SANDRA CAMPBELL-WARDMAN IN THE CHAIR

20. DISCLOSURE OF INTERESTS (IF ANY):

At this point in the meeting, Members were invited to declare any relevant interests. None were received.

21. APOLOGIES FOR ABSENCE:

No apologies were received.

22. APPLICATION FOR REVIEW OF A PREMISES LICENCE:

The Sub-Committee was presented with a report by the Group Manager, Public Protection which enabled Members to consider an application by the Council's Environmental Health Department for a review of the premises licence held in respect of Little Nan's Cafe, Unit 3, Cherry Park, South Road, Chapel St Leonards, PE24 5TS.

The review application was submitted by the Environmental Health Team under the provisions of Section 51 of the Licensing Act 2003.

The Environmental Health Team was seeking the removal of the live music licensing exemption from the premises (specifically the outdoor areas in the vicinity of Little Nan's) and the addition of licence conditions controlling the provision of outdoor music at the site. The Team was asking that the outdoor provision of amplified regulated entertainment be limited to a maximum of 3 days per calendar year.

The application for review had not attracted representations from the other Responsible Authorities (e.g. Lincolnshire Police, Lincolnshire Fire & Rescue, however two representations had been received from other parties in support of the licence review submitted by the Environmental Health Team.

The Principal Licensing Officer outlined the recommendations available to the Sub-Committee, page 2 of the report refers.

Mr Jon Dixon, Environmental Protection Officer, was invited to make his representation to the Sub-Committee.

The Environmental Protection Officer informed Members that the licence review was taking place following numerous complaints relating to noise coming from Little Nan's Café between May and September 2023. Details of the complaints were included in the evidence pack, pages 7 to 8 refer, submitted by the Environmental Health Team.

The Environmental Protection Officer relayed the supporting information set out in the application for the review to Members, which was included in the Agenda pack. Reference was made to the grounds for review, which included:

- The outdoor music and amplified voices provided in the immediate vicinity of the licensed area of the premises being completely unacceptable.
- Outdoor entertainment taking place during the spring, summer and autumn, weather permitting, as well as occasionally during the week and school holidays.
- A planning issue with the site as Planning Enforcement had deemed that planning permission was required to change the use from a café to a predominantly drinking establishment where entertainment was provided outside.

- No specific music provisions within the licence. The entertainment was provided within the live music exemption and Environmental Health was requesting that the Committee removed the exemption that allowed music (live music, karaoke and recorded music).
- A restriction on outdoor music activity to three event days per year.
- Guidance on Music Noise Levels.

The Environmental Protection Officer made further reference to the following, all of which were outlined in the evidence pack:

- A letter sent to the Premises Licence Holder and the Designated Premises Supervisor (DPS) on 15 May 2023, with regards to the frequency of the music that was being provided and the level of noise (Exhibit 2 in pack).
- A telephone call with Mr Harris of Plaice on the Park Limited on 16 May 2023.
- A monitoring exercise carried out in mid-June 2023 by Officers from the Environmental Health Team.
- A letter sent to the Premises Licence Holder and the Designated Premises Supervisor on 5 July 2023 (Exhibit 4 in pack).

The Environmental Protection Officer referred to a period of monitoring in July to September 2023, where he deployed noise equipment in one of the properties close to Little Nan's Café. He advised Members that there was music but not as many outdoor activities due to wet weather, however, concert level noise was happening on a frequent basis.

During a monitoring session on 9 September 2023, the music levels were extreme at mid to high 50 decibels and the outdoor level would have been higher.

Details relating to Mr Kheng's request for a noise limiter, alternative speakers, the occurrence of outdoor music days and a terminal hour of 21:00 hours were addressed in the email from the Environmental Protection Officer to Mr Kheng, dated 13 December 2023.

The Environmental Protection Officer outlined some conditions, as referred to in the email dated 13 December 2023, for the Sub-Committee's consideration, in relation to allowing music/entertainment on more than three days per year. He also reiterated that the favoured outcome was to remove the live music exemption from the outdoor areas and for occasional outdoor music provision to be restricted to three days per year and then no additional conditions would need to be applied. If, however, Members considered that was too restrictive in terms of the amount of activity and decided to remove the live music on the coast any differently to other parts of East Lindsey. The Principal Licensing Officer responded that they did recognise the difference between the coast and the rest of the East Lindsey district.

Mr Kheng advised Members that he had heard the sound recordings and was happy that they were not being played as evidence at the hearing. He requested some clarity on the noise recording equipment and queried whether, once installed into a premise, someone could stop the recording. In response, the Environmental Protection Officer advised that the equipment was set to record for a certain length of time.

Several questions were directed to the Environmental Protection Officer with regards to the ability to move the equipment and he advised that once in place, the cable wasn't long enough for it to be moved and a disturbance or interruption to the power would be evident. He was confident that the equipment had not been removed.

Mr Kheng was invited to make his representation to the Sub-Committee.

Mr Kheng informed Members that there was a minimum of 4000 caravans based in Chapel St Leonards and out of all of those caravans, only four or five complaints had been received.

Mr Kheng highlighted that Mr Toyne, operator of JT's, across the road from Little Nan's Café and the location of the noise recording equipment had submitted a complaint and supported the licence review, however was not present at the hearing.

Members were informed that Little Nan's was a café, not a bar and had under-performed over the years. It was taken over in 2022 by Mr Harris who had a good relationship with Mr Toyne but the relationship became strained when Little Nan's Café started to do well.

Members were referred to a letter from Mr Toyne, page 41 of the report pack refers, the content of which related to Mr Toyne receiving a complaint for having one speaker playing music outside, which he was subsequently asked to remove.

Reference was made to an aerial photograph, page 1 of the Premises Licence Holders Documentary Evidence Bundle refers, showing the location of several establishments that provided entertainment and music in the vicinity of Little Nan's Café, with some competing against each other. It was highlighted to Members that it was a holiday resort, not a sleepy village, with in excess of 15,000 to 20,000 people there during the summer season.

Members were referred to a map showing where the complaints had come from, page 8 of the evidence bundle refers, and were asked to note the distance from those locations to Little Nan's Café. It was pointed out that there were also a large number of caravans in between those locations that hadn't made a complaint.

Mr Kheng referred to the map on page 1 of the evidence bundle, along with a letter of complaint from Mr Broadhurst, page 39 of the report pack refers, and questioned why this was the only letter of complaint to have been received

when there were many caravans located between Mr Broadhurst in The Beeches and Little Nan's Café.

Members were further referred to the remaining aerial photos, pages 3 to 7 in the evidence bundle refer and the submissions of support, pages 9 to 10 refer.

Mr Kheng referred Members to page 13 of the report which showed the licensed area at Little Nan's Café and advised that the premises licence did not cover the outside area. Reference was also made to paragraphs 16.42, 16.43 and 16.44 from the Section 182 Guidance, page 11 of the evidence bundle refers. Mr Kheng commented that they were of the opinion that the area in front of Little Nan's Café was not a beer garden as anyone could access it and the area in front of the café was not included on the lease.

He also informed Members that there would be nothing to prevent the chip shop having live music in that area and that there were a number of tables outside the premises with no segregation between the areas, page 3 of the evidence bundle refers. It was an open area and therefore they would consider it a workplace, not a beer garden.

Mr Kheng further advised the Sub-Committee that they could remove the right for deregulation on the licence, however the deregulation licence wasn't being used outside as this area was being used as a workspace. Mr Kheng also stated that the Licensing Act hearing was not the appropriate place to be discussing this matter as it wasn't a licensed activity taking place under the Licensing Act 2003.

Mr Kheng commented that he couldn't see how the Sub-Committee would be able to condition the licence as the fish shop would be able to provide live music in the outside area. Mr Harris operated the fish shop, as well as Little Nan's Café.

Members were then invited to put questions to Mr Kheng.

Following which, a discussion ensued with regards to what constituted a beer garden further to a request from the Principal Licensing Officer, with Members being referred back to the Section 182 Guidance.

The Principal Licensing Officer referred to note 67 within paragraph 16.43 of the Section 182 Guidance, page 11 of the evidence bundle refers, and stated that he interpreted that note to looking at each case on its own merits.

The Legal Advisor queried who owned the benches outside Little Nan's Café and was advised that Cherry Park owned them and they also owned the bins although Mr Harris' team emptied them.

The Legal Advisor had a query with regards to a child in the photo of the outside area and asked whether the child was working. Mr Kheng responded

that the child was not working and that entertainment was taking place which made the area a work place.

A Member queried how Little Nan's Café would be affected if the licence was removed. Mr Kheng advised that the chip shop would provide entertainment.

A Member queried who paid for the entertainment. Mr Kheng confirmed it was currently paid by Little Nan's Café, however Cherry Park or the chip shop could pay for it. It was also confirmed that Mr Harris ran the convenience store.

Following a query from the Principal Licensing Officer with regards to Mr Kheng not providing a copy of the premises lease to back-up his comments, Mr Kheng responded that there was no underhand reason why it hadn't been provided and was happy to provide the documentation if required.

Following which, both parties summed up their case.

N.B the Committee retired for their deliberation at 12:51pm

N.B the Committee re-convened at 1:24pm

The Licensing Sub-Committee read and heard all of the information before them. In particular, the Sub-Committee noted the Section 182 Guidance to Licensing Authorities, specifically paragraphs 16.42 to 16.44.

Having listened to the representations, the Sub-Committee were of the opinion that the area (adjacent to the Little Nans premises) was a workplace, in this case operating as a beer garden. However, they noted that the area was under the control and management of the Cherry Park site and not Little Nan's Café on its own, acknowledging that entertainment was currently booked through Little Nan's Café but could be arranged by others. With this in mind, the Sub-Committee did not feel that it was appropriate to impose conditions on Little Nans Premises licence.

For the avoidance of doubt, the Sub-Committee accepted that there was a noise problem in that area which was causing a nuisance and needed to be addressed. It also noted that the premises licence holder's representative acknowledged the same and indicated that the premises was prepared to work with the Environmental Health Team on the issue.

Following which, it was

RESOLVED

That the licence remained in the form it was granted.

Mr Dixon was advised of his Right to Appeal to the Magistrates Court against the above decision.

Any appeal must be made to the Lincoln Magistrates Court, The Court House, 358 High Street, Lincoln, LN5 7QA, (Tel: 01522 528218) within 21 days of the date of the decision notice.

The Meeting closed at 1.26 pm.