

Licensing Sub-committee
25 November 2020

WELWYN HATFIELD COUNCIL

RECORD OF PROCEEDINGS of a hearing by the LICENSING SUB-COMMITTEE of an application for REVIEW OF PREMISES LICENCE FOR COLESDALE FARM NORTHAW ROAD WEST, NORTHAW HERTFORDSHIRE, held on Wednesday 25 November 2020 at 2.00 pm via a Zoom meeting.

PRESENT: Councillors B. Fitzsimon (Chairman)

H. Bower and G. Hayes

ALSO Applicant (B. Knichel)

PRESENT: License Holder's Consultant & Representative (A. Newman)
PJB Productions Ltd (J. Silver)
Sound and Acoustics Consultant (M. Lauezzari)
Resident (B. Shah)

OFFICIALS Licencing Team Leader (K. Payne)

PRESENT: Senior Litigation Officer (R. Simpson)
Environmental Health Officer (C. Brown)
Environmental Health Officer (L. Jakeman)
Governance Services Officer (Clerk to the Hearing) (G. Paddan)

16. APPOINTMENT OF CHAIRMAN

Councillor B. Fitzsimon had been appointed Chairman for this meeting.

17. APPLICATION FOR REVIEW OF PREMISES LICENCE FOR COLESDALE FARM NORTHAW ROAD WEST, NORTHAW HERTFORDSHIRE

Introduction and Procedures

The purpose of the meeting was to consider an application for a review of the premises licence currently in place at Colesdale Farm, Northaw Road West, Northaw. This licence had been in place since January 2020 and being held by BJP Productions Ltd. The Designated Premises Supervisor and the Director of BJP Productions being Mr Joshua Silver.

The review has been formally requested by Lisa Chaplin Clerk of Northaw and Cuffley Parish Council (the applicant). The Applicant has requested the review under the Licensing Act 2003 on the statutory grounds of Prevention of public nuisance.

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Documentary Evidence

A copy of the Licensing Officer's report, the premises licence, application for review of the licence and a site location map had previously been circulated.

Report of the Licensing Officer

The Licensing Officer presented her report on an application which had been received from the Applicant under the Licensing Act 2003 for a review of Colesdale Farm premises licence on the grounds of prevention of public nuisance.

The review related solely to preventing nuisance to the public primarily by noise. Other matters relating to Covid-19 restrictions and the input of the Safety Advisory Team could not be taken into consideration as these do not fall under the licensing objectives subject of this review.

The Applicant had requested a review due to residents of Northaw and Cuffley experiencing noise nuisance between August and September 2020 due to a series of events that took place at Colesdale Farm every weekend. The Sub-Committee was advised that these events had been consolidated into a short period due to lockdown earlier in the year. The licence allowed 12 music events to take place between April and November but these all took place between August and September.

A number of complaints were received by Environmental Health following these events and the actions taken were reported in the Environmental Health representation within the report at Appendix E.

There were a number of representations received from people who both support and those against the events at Colesdale Farm. There were five representations in support of the review who all live in Northaw and Cuffley, as shown within the report at Appendix C and twenty two representations against the review as detailed within the report as appendix D. A small proportion of these live in Northaw and Cuffley.

Members noted that three of the representations made against the review were not known at the address supplied when the notice of hearing was delivered. These three persons lived outside of Northaw and Cuffley. There were nine people who made representations against the review but did not provide an address and/or signature so these were not included as being relevant.

The Environmental Health Officers present were Cheryl Brown and Liz Jakeman. Environmental Health made representation to the application for the licence and BJP Productions agreed to the three noise conditions they requested so the licence was granted.

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Applicant

The Applicant advised that majority of the people residing Cuffley were not opposed to the events but the issue was one of noise and disturbance to residents. Finding a way forward which would allow the events to proceed without causing noise pollution was something that had to be resolved. It was a challenging task to provide a good customer satisfaction and control the noise, as there is no natural screening in the location. The location has properties close by and some residents had raised concern in respect of noise levels. It did not help matters as the events were held very close together over a short period. He added that the organisers tried to do their best to help the situation and find a solution to curb the noise. If a solution could be found whereby residents would not be blighted by such noise then there would be less criticisms. It was noted that issues relating to anti-social behaviour had been adequately dealt with by the organisers. There were days when appropriate action had been taken by the organisers and it helped to constrain the noise but on other occasions there had been issues with noise frequency levels.

It was further added that the Parish Council was not looking to curtail these events but to find a way in which the noise could be reduced to help neighbours in the vicinity. Unfortunately the Parish Council had not been able to resolve this issue. He advised that the organisers do have a very conscientious and professional approach to their events. They want to resolve this issue and at the same time provide a good experience for their customers. As those attending such events would not wish to just have some background music.

Representation by the Applicant's Agent

The Applicant's Agent, Mr Andy Newman presented the case on behalf BJP and the two directors. He addressed the Sub-Committee by looking at three main issues, evidence, communication and environment.

He referred to case - in Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin) in respect of evidence. He added that there has only been one allegation made regarding statutory nuisance, which was immediately rectified by his client.

No review had been brought by EH. No authority such as EH or Police have made representation against his client.

Lack of medical evidence in respect of mental health allegation.

He commended the Applicant for mentioning that his client was a responsible organiser.

In terms of communication, his client was willing to communicate and adapt to satisfy their customers and the residents. They work with WHBC safety Team and other authorities. It would have been helpful if a meeting was held between his client and the Parish Council before this review. His clients has been

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sensitive to the comments made by some and to improve matters. They have employed an acoustics company to help. The noise management plan to help minimise the concerns. Matt Lauezzari was present and would explain the plan later.

His clients has put on events to save the company and secure employment for his staff. He referred to the Licensing Act 2003. He also added that there should have been some form of mediation before the review being brought to the Sub-Committee.

He added that BJP were grateful that so many people had supported them. This included Residents, nearby, a Senior Lecturer in Criminology, Events organisers, people that get so much from the Events. Clearly this demonstrated how well run these Events were and the benefits to people attending the Events.

Representation by Resident

The resident, B. Shah stated that there was evidence that music had been very loud and that they could not hear their own music. The issue had been that due to Covid-19 restrictions, the EH Officers did not visit the homes and therefore there was lack of evidence. If they had entered the properties during the period in question they would have been able to witness the unacceptable noise and deal with the complaints. The Sub-Committee were further advised that she could not enjoy her garden with her family or relax because of the emanating music which has forced them on several occasions to leave their home with their young child to avoid enduring over nine hours of thumping music. It was not acceptable for nearby residents to have to listen to this music and not enjoy their weekends and bank holidays.

At the first event, some action was taken to reduce the base but the music was still audible. This provided some comfort but at other events; weekends and bank holidays it was just intolerable. Duration of the events was between 12noon to 11pm. She felt that it was just unfair to say that there was no evidence

Representation by Environmental Health

Two Environmental Health Officers were present. Members were informed that they had worked with Mr J Silver over the course of the summer to help with putting on the events during the Covid-19 period. A lot of work was undertaken to ensure that the events could operate in these unprecedented times. It was the first event in the County. The event was to start on 14 August but was delayed until 22 August due to achieving Covid-19 compliance.

The report noted that the licence allowed for a maximum of 12 music events between April and November. This year, due to the pandemic it was not possible for events to be held for several months which has resulted in the event

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organiser concentrating events into a shorter timeframe than one would have normally expected – though this was not outside the licence conditions.

Environmental Health worked with the event organiser, the Public Health team at Hertfordshire County Council, and Hertfordshire Police regarding the delivery of the events held this summer to ensure the events adhered to requirements imposed by Covid-19 related legislation that was introduced.

What had become evident through investigation was that the prevailing wind and weather conditions were very contributory to the experience residents had with regard to audible noise from the events.

EHOs worked with the organisers and the residents to resolve the issues that had been raised.

Committee Questions

Following questions from the Sub-Committee, it was confirmed that:

- That the EHO had taken action by placing two noise kits within the two properties and no evidence of noise nuisance was recorded. Street Wardens had also patrolled the area in question on event days. It was noted that noise was audible depending on where one was in the area. Unfortunately on the one day that B. Shah had the kit installed in her property there was no noise recorded. The Sub-Committee was advised that Mr J Silver has resolved issues as they were reported. The EHO drove round on the event day and called at various properties to investigate the complaints.
- It was noted the B Shah resides very close to the area in question.
- Matt Lauezzari was the Principal Acoustic Consultant of Sound Licensing Limited. He has over 22 years of experience in the field of noise and acoustics having worked as a Principal or Lead Environmental Protection Officer in various London Boroughs from 1998 until 2017. He explained the three main elements; a) noise to be directed away from the residential area b) recommendation to push back sound toward the audience c) build a barrier i.e. straw barrier to reduce noise.
- Everyone was working to help reduce the noise and to satisfy the neighbours. Mr J Silver explained the number and types of events there were held at the site.
- It was noted that it was not in BJP's interest to have complaints and they were continually seeking ways in which to improve the situation.
- The Chairman informed the Sub-Committee that they have a duty of care to their residents.

Premises License Holder Representative:

The representative of the premises license holder informed the Sub-Committee that the premises licence holder Mr J Silver had worked with his agent and tried to resolve the issues and took appropriate action to mitigate the noise situation.

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He has employed a sound and independent acoustic consultancy specialising in the field of sound, noise and acoustics. A noise management plan has been prepared by Sound Licensing for BJP Productions for all events, with amplified music, to be held at Colesdale Farm.

It was added by implementing the noise management plan there would be evidence, as noise levels would be recorded and data available. Any problems in the future would be resolved immediately.

Determination:

The Sub-Committee then withdrew from the Council Chamber to consider its decision.

At 3.30pm the **Licensing Sub-Committee had decided to take no action** in response to an application for review of the premises licence currently in place at Colesdale Farm, Northaw Road West, Northaw.

An application for a review of the licence was formally requested on 30th September 2020 by Lisa Chaplin Clerk of Northaw and Cuffley Parish Council ('the Applicant'). The Applicant requested the review under the Licensing Act 2003 on the statutory grounds of:

- Prevention of public nuisance

The licence for Colesdale Farm has been in place since January 2020 and is held by BJP Productions Ltd. The Designated Premises Supervisor ('DPS') and the Director of BJP Productions is Joshua Silver. Mr Silver was represented by his agent Andy Newman.

Kate Payne, licensing officer read her report to the sub-committee, prepared following receipt of the application for review of the licence

Members of the Sub-Committee chaired by Councillor Barbara Fitzsimon, considered carefully the written and oral evidence and representations made by both representatives for the Applicant and representatives on behalf of BJP Productions Ltd.

The Sub-Committee also heard from members of the Environmental Health department, namely Cheryll Brown and Liz Jakeman, who had put monitoring in place and carried out an investigation into the allegations of noise. The extent of the investigations and their outcome were set out in a report available to all attending the meeting.

The Sub-Committee took advice on points of law from the legal advisor before reaching a decision.

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The concern raised by the Applicant was that noise levels during the summer when music events were held at Colesdale Farm had been persistent, of a prolonged duration and had reached levels which caused a serious nuisance to a number of local residents. The levels of noise and the locations in which noise reached high levels was said to vary from week to week depending on a number of factors which included amongst other things the relocation of the stage to comply with COVID -19 secure arrangements, the type of music playing, and wind direction. Verbal and written evidence of local resident's views was heard and considered on these issues. Consistently reduced noise levels were sought by the Applicant.

On behalf of BJP Limited it was said that there was no evidence that noise levels during the music events had reached a statutory nuisance level despite the monitoring undertaken by Mr Silver and during a 3 week monitoring exercise undertaken by the Environmental Health department of WHBC. In response to concerns however, it was said that Mr Silver, on behalf of BJP Ltd, had engaged constructively with the Environmental Health department and with the Parish Council in looking for solutions and had engaged the services of a company 'Sound Licensing Limited' to produce a Noise Management Plan with the specific aim of addressing these concerns.

Having heard the representations for both the Applicant and the license holder the committee retired to consider the same and reach a decision.

In reaching a decision the committee noted the following facts as being of particular relevance:

It was noted that Environmental Health had not issued a warning or a noise abatement notice following their investigation.

It was considered that the representations made by the Applicant, whilst raising a valid concern, did not amount to evidence of a breach of the license.

It was noted that the Noise Management Plan provided a clear three point strategy with which to address the concerns raised.

It was noted that the conditions on the license relating to noise levels were already clear and that careful monitoring by BJP Limited with the assistance of Sound Licensing Limited should be able to ensure that the condition was met at all times. It was noted that Environmental Health would be pro-actively monitoring the situation going forward to ensure compliance.

It was noted that this year had in many ways been an extraordinary one which had posed challenges for local businesses and residents alike. One consequence of the unusual circumstances was that the 12 musical events permitted under the license which would normally have taken place over a period of 8 months, were concentrated in to a matter of a few weeks exacerbating the issue of noise. It was considered that this was an undesirable outcome but one which was unlikely to recur.

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Due regard was given to the Licensing Act 2003 and the Guidance to it.

In view of the lack of evidence of a breach of the existing license and in view of the proactive approach taken to address all concerns raised relating to noise and to take immediate, appropriate remedial action by the representatives of BJP Limited, the Sub-Committee have made the decision to take no further action in respect of the application before them.

Meeting ended at 3.30 pm
GP