



LICENSING ACT 2003

REPORT TO LICENSING SUB-COMMITTEE FOLLOWING RECEIPT OF AN APPLICATION FOR A VARIATION OF A PREMISES LICENCE

**Aqua Showbar & Carousel and Owners Exclusive Lounge
Thorpe Park
St Anthony's Bank
Humberston
Cleethorpes
North East Lincolnshire
DN35 0PW**

NORTH EAST LINCOLNSHIRE COUNCIL
LICENSING AUTHORITY

LICENSING ACT 2003

Report to Licensing Sub-Committee
following receipt of an Application for a Variation of a Premises Licence

1. Premises Licence Details -

1.1 Premises:

Aqua Showbar & Carousel and Owners Exclusive Lounge, Thorpe Park, St Anthony's Bank, Humberston, Cleethorpes, North East Lincolnshire, DN35 0PW

1.2 Premises licence holder: Haven Leisure Limited

1.3 Date Application Received: 17th November 2022

1.3 Existing Premises Licence Permissions:

See attached Premises Licence at **Appendix 1**

1.4 Proposed Premises Licence Permissions:

1. To amend name of 'Owners Lounge' to be 'Food Outlet.
2. To amend name of 'Showbar' to be 'Marina Showbar'.
3. Alterations to the layout of the Marina Showbar. Plan at **Appendix 2**

Full details can be found in the variation application form at **Appendix 3**

2. Representations –

2.1 7 representations were received in relation to this premises, all from local residents.

2.2 There were no representations from responsible authorities however the following licence condition was agreed with the Environmental Protection Officer:

- *The external speakers located within the terrace area for the Marina Showbar shall operate via a sound level regulatory device (noise limiter) and the limiter threshold shall be submitted to and agreed in writing by the Environmental Protection Officer of North East Lincolnshire Council. The noise limiter device shall be regularly maintained and calibrated in accordance with the manufacturer's instructions.*

2.3 Summary of Representations – (Full details are set out on the representation form and supporting information)

2.4 Representation 1:

Person making representation:

Robin Taylor

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- That the premises in question has adequate noise insulation.
- Refuse the application

2.5 Representation 2:

Person making representation:

Hannah Todner

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- Acoustic work should be undertaken to prevent the travel of noise from Thorpe Park to Humberston Fitties
- The rear doors should remain closed when the kitchens and bars are in use
- The sound system should be appropriate to the size of space.

2.6 Representation 3:

Person making representation:

Miranda Holmes

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- No recommendations

2.7 Representation 4:

Person making representation:

Paul Bright

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- Carry out an assessment of the noise impact from this change and also look at the existing complaints

2.8 Representation 5:

Person making representation:

Paul Smith

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- The measurement of sound levels should be strictly applied so as not to increase the current ambient sound levels and therefore not change the current sound environment, with the terrace doors opened or closed.
- Current levels recorded at 42 dB in resident's gardens within 50 mtrs of applicants proposed site. The applicant should ensure sound proofing, good design and sound systems together do not allow a noise level of greater than 42 dB to be emitted externally to their buildings and premises.
- Location and design play a critical role in reducing sound levels and sound travel this should take account of residential areas their proximity and the type of construction of receptor properties.
- The properties on Humberston Fitties conservation area are single glazed and poorly insulated, the responsibility and management of sound levels therefore lies with the applicant to ensure a public or statutory nuisance is not created and amenity value lost whether in gardens or inside their properties.

2.9 Representation 6:

Person making representation:

Sarah Wood

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- Installation of noise barrier

- Relocation of Show bar

2.9.1 Representation 7:

Person making representation:

Victoria Chapman

Licensing objective affected:

Prevention of Public Nuisance

Summary of Recommendations:

- The number and specification of the sound system should be appropriate to the size of space, and I believe the levels are being limited.
- The rear doors should remain closed when the kitchens and bars are in use
- Acoustic work should be undertaken to prevent the travel of noise from Thorpe Park to the conservation area and tranquil holiday setting of Humberston Fitties

2.9.2 Representations not accepted

Two further representations were received objecting to this application but they were submitted after the consultation period had finished so were not accepted.

3. Statement of Licensing Policy -

The following sections of North East Lincolnshire Council's Statement of Licensing Policy are considered relevant to this review application:

Licensing Objectives: 2.1 – 2.4, 9.1 – 9.1.9

Conditions: 6.1.1 - 6.1.4

Duplication of other Legislation: 6.3.1 – 6.3.3

Licensing Decisions and Delegated Functions: 7.1 – 7.9

Premises Licence: 8.2.1 – 8.2.9

Representations: 8.7.1

Prevention of Public Nuisance: 9.4.1 – 9.4.7

4. Guidance issued under Section 182 of the Licensing Act 2003 –

This guidance is provided for Licensing Authorities carrying out their functions. It is regarded by the Government as a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. It does not however replace any statutory

provisions of the 2003 Act and it is for the Licensing Authority to take their own professional and legal advice about its implementation.

The following sections of the Guidance are considered to be relevant to this review application:

- Public Nuisance 2.15 - 2.21
- Licensable Activities 3.1 to 3.2
- Representations 9.3 – 9.12
- Right of Appeal 12.32 – 12.33
- Regulated Entertainment 16.1 – 16.4

5. General Advice on Determination of the Application –

- 5.1** The sub-committee are advised that findings on any issues of fact should be on the balance of probability.
- 5.2** The sub-committee are advised that in arriving at any decision, it must have regard to relevant provisions of national guidance and North East Lincolnshire Council's Statement of Licensing Policy. Reasons must be given for any departure.
- 5.3** The sub-committee are advised that the final decision should be based on the individual merits of the application and the factual findings made at the hearing.
- 5.4** Section 35 of the Licensing Act 2003 states that where relevant representations have been made in relation to a variation application and a hearing is held to consider them, the sub-committee can take such of the steps set out below as it considers **appropriate** for the promotion of the licensing objectives – in this case the interested parties consider the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance or the Protection of Children from Harm are likely to be affected.
- Grant the licence with modified conditions. This means the conditions could be altered or omitted or new conditions added. When modifying conditions, the sub-committee can vary the licence so that different conditions apply to different parts of the premises and different licensable activities.
 - Reject the whole or part of the application

If none of these steps are considered appropriate the application should be granted in the form it was made.

- 5.5** Conditions should be proportionate to the size, style and characteristics of the premises and the activities proposed or taking place and must be **appropriate**.
- 5.6** The sub-committee are advised that they must take into account the following Human Rights provisions:

- Everyone affected by a decision has a right to a fair hearing.
- Everyone has the right to his private and family life, his home and his correspondence.

6. Observations –

- 7.1** Due to the representations being submitted in the last few days of the consultation any mediation was not able to be completed.
- 7.2** The 7 representations that have been accepted are relevant to this application. However, it should be noted that they are only relevant in parts. Suggestions such as amendments to bottle waste collections and deliveries and complaints about outside noise nuisance are not relevant to this application.
- 7.3** The representation from Mr P Smith mentions 250 written complaints regarding noise, nuisance in relation to Thorpe Park. To date NELC have received 19 complaints since 2015 via the proper noise nuisance reporting system and noise diary forms issued to the complainants. See breakdown of complaints received at **Appendix 4**. All but one were closed after 30 days when the noise diary form failed to be returned. The outcome for the one complaint where the diary form was returned was that a new noise level for the noise limiter attached to the sound equipment on the outdoor stage was agreed.
- 7.4** The representation from Mr Smith also claims the has been a statutory nuisance identified coming from Thorpe Park. A statutory nuisance has not been identified by NELC's Environmental Protection Officers.
- 7.5** Mr Smith also mentions the Fitties residents taking Thorpe Park to court themselves using the Environmental Protection Act 1990. The residents are perfectly entitled to do this. However, at the writing of this report the evidence the residents are intending to use for these proceedings have not been disclosed to NELC.
- 7.6** The representation from M Holmes expresses concerns around the new terrace area outside the new show bar building potentially causing a noise nuisance with music from the terrace and doors being left open and noise escaping from the show bar. The Environmental Protection Officer also shared these concerns hence why the condition in 2.2 was agreed with the applicant. There is also this existing condition on the premises licence:
- *Doors and windows must be kept closed where necessary.*
- 7.7** The Representation from P Bright mentions doors and windows being left open and causing a nuisance. As already explained there is an existing

condition on the premises licence regarding doors and windows to be closed as necessary. As far as this officer is aware no complaints have ever been received by NELC Licensing team regarding this issue.

- 7.8** Parties are reminded that the power of review exists for any licensed premises that does not operate in a way that promotes the licensing objectives. This can ultimately result in revocation of the licence.

**Report prepared by: Iain Peck – Senior Licensing Enforcement Officer
23 January 2023**