

WEST NORTHAMPTONSHIRE COUNCIL
ALCOHOL AND GAMBLING LICENSING SUB-COMMITTEE

21st September 2022

NOTIFICATION OF DETERMINATION

Application for the review of a premises licence made by Northamptonshire Police (“the review application”) in respect of Elysium of 63 Horseshoe Street, Northampton, NN1 1TB (“the Premises”), in accordance with section 51 of the Licensing Act 2003 (“the Act”).

Applicant: Northamptonshire Police (“the Applicant”).

Premises Licence Holder: Mr Simon Thomson and Ms Cheryl Stanford-Forbes (“the Licence Holders”).

Hearing date: Wednesday 21st September 2022 at 10am – Jeffrey Room, The Guildhall, Northampton.

The Alcohol and Gambling Licensing Sub-Committee (“the Sub-Committee”) carefully considered the following:

- The written report (“the Report”) prepared by Martin O’Connell, Senior Licensing Enforcement Officer for West Northamptonshire Council (“the Council”),
- A copy of the Application appended to the Report and all further material submitted in support by the Applicant at Appendix D,
- All oral submissions made by Mr Luke Elford, solicitor, during the hearing on behalf of the Applicant.
- All material submitted by the License Holders on 16th and 20th September 2022 in support of their response to the Application.
- All oral submissions made by Mr Jon Payne, solicitor, during the hearing on behalf of the Licence Holders.
- The statutory guidance issued under section 182 of the Act.

The Hearing

The Sub-Committee Members (“the Members”) decided to exclude members of the public, including any members of the press present, from all of the hearing, on the basis that the public interest in doing so outweighed the public interest in the hearing taking place in public and following earlier representations made by the Applicant.

The Sub-Committee received the following legal advice;

1. As per the oral representation of the Applicant's solicitor, the Members were not required to make findings of fact with regard to culpability for any criminal offences allegedly committed outside or in the vicinity of the Premises. They were required to consider the evidence and representations made by the parties and decide whether the licensing objectives of the prevention of crime and disorder and public safety had been promoted by the Premises and License Holders and, if not, whether appropriate and proportionate remedial action should be taken with regard to the Premises License.
2. Relevant parts of the section 182 Licensing Act 2003 statutory guidance (April 2018 edition) relating to the powers of a licensing authority on determination of a premises license review, specifically paragraphs 11.16 to 11.23. There was no evidence to indicate that the Application concerned crime at the Premises which was not directly connected with licensable activities.
3. The options legally available to the Members were set out in the Report.
4. Relevant case law was Carmarthenshire CC v Llanelli Magistrates [2009] EWHC 3016 (Admin) and R. (on the application of Bassetlaw DC) v Worksop Magistrates' Court [2008] EWHC 3530 (Admin), both regarding the correct test to be applied when deciding whether to take action in respect of a premises license upon review.

Decision and Reasons

The Hearing Members unanimously decided that it was appropriate and proportionate to amend the licensable hours set out in the License as follows:

- A. Premises Open Hours Granted - Monday to Sunday - From 10:00 hours to **04:00** hours.
Activities – Times Granted
 - E. Performance of live music (indoors)" – Monday to Sunday – From 10:00 hours to **03:30** hours.
 - F. Playing of recorded music (indoors & outdoors) – Monday to Sunday - From 10:00 hours to **03:30** hours.
 - G. Performance of dance (indoors) - Monday to Sunday - From 10:00 hours to **03:30** hours.
 - H. Entertainment of a similar description to that falling within E, F or G (indoors - Monday to Sunday - From 10:00 hours to **03:30** hours.
 - I. Provision of facilities for making music (indoors) - Monday to Sunday - From 10:00 hours to **03:30** hours – Sunday – 12:00 hours to 02:00 hours.
 - J. Provision of facilities for dancing (indoors) - Monday to Sunday - From 10:00 hours to **03:30** hours – Sunday – 12:00 hours to 02:00 hours.
 - L. Late night refreshment (indoors) - Monday to Sunday - From 10:00 hours to **03:30** hours

- M. The sale by retail of alcohol for consumption ON and OFF the premises - Monday to Sunday - From 10:00 hours to **03:30** hours
- B. The following condition as per minor variation of 24/11/21 shall be amended as to read;
 - The conditions as per minor variation of 24/11/21 **and following the review of 21/09/2022**

While the premises are open to the public, there shall be a minimum of **8** SIA licensed door supervisors wearing fully working and maintained Body Worn Video **equipment, which** shall be activated during any verbal altercation **between customers and** staff where possible. **All SIA door supervisors situated at the front entrance of the premises whilst the premises are open to the public shall wear Body Worn Video Equipment.**

- C. The condition as per minor variation of 24/11/21 **and following the review of 21/09/2022** stating that “The last entry time for these premises will be 1 hour before closing” shall be replaced by the following condition;
 - **No new customers or members of the public shall be admitted to the premises later than 03:00 hours, Monday to Sunday.**

Their reasons for this decision were;

1. The Members carefully considered all of the evidence submitted by both parties and the oral representations made by their legal representatives at the hearing. They made the decision that only amending or replacing certain conditions of the premises license as set out at A, B and C above was appropriate and proportionate in relation to the Premises in order to promote the licensing objectives of preventing crime and disorder and public safety.
2. They took account of the fact that the majority of the incidents which gave rise to the Application, particularly the three incidents shown in the CCTV footage viewed by Members, took place after 04:00 hours. In their opinion, it was not appropriate merely for the Premises to voluntarily stop admitting new customers from 3.30am, as this had not satisfactorily prevented significant violent incidents occurring outside the Premises after 04:00 hours.
3. The promotion of the licensing objectives of the prevention of crime and disorder and public safety required further action to be taken. The evidence showed that even the voluntary steps taken as agreed between the Applicant and License Holders in May 2022 had not been sufficient to prevent the aforementioned significant violent incidents occurring outside of the Premises.
4. The Members concluded that the only appropriate and proportionate action to take in light of that was to amend the licensable hours of the Premises (as set out at A above), to amend the existing condition with regard to the number of SIA licensed door supervisors that must wear Body Worn Video equipment whilst the Premises is open to the public (as set out at C above) and to replace an existing condition regarding the last entry time to the premises with a condition prohibiting admission to the Premises by new customers or members of the public after 03:00 hours, Monday to Sunday, (as set out at B above).

5. The Members took account of the representations by both parties that recent email communication between the License Holders and the Applicant has led to an improvement in the joint working relationship between the two. As a result, the Members did not believe that it was appropriate to amend or replace any further License conditions, especially those suggested by the legal representative for the License Holders, but instead urge both parties to maintain the current joint working arrangements.

Either of the parties may appeal this decision to a Magistrates' Court within 21 days of receipt of a written copy of this decision.

Councillor Mike Warren

Chair of the West Northamptonshire Council Alcohol and Gambling Licensing Sub-Committee held on 21st September 2022

Dated: 26th September 2022