

LICENSING ACT 2003

LICENSING

Report to Licensing Sub-Committee following receipt of Relevant Representations

***Kingsway Kiosk
Kingsway
Cleethorpes
DN35 0BY***

NORTH EAST LINCOLSHIRE COUNCIL
LICENSING AUTHORITY

LICENSING ACT 2003

Report to Licensing Sub-Committee
following receipt of Relevant Representations

- 1. Summary Of Application – extension of licensable hours for Live & recorded Music and Sale of Alcohol.**
 - 1.1 Premises: Kingsway Kiosk**
 - 1.2 Applicant: Andrew McCluskey**
 - 1.3 Date Application Received: 27th March 2023**
 - 1.4 The Existing Operation:** Licensable hours for Live & Recorded Music and Sale of Alcohol - Monday to Sunday 11:00 to 22:30 hours.
A copy of the full premises licence can be found attached to this report at, **annex 1.**
 - 1.5 The Proposed Operation:** To extend the licensable activity hours for Live & Recorded Music and Sale of Alcohol (on and off sales) by 1 hour - Monday to Sunday 11:00 to 23:30 hours.
A copy of the Application can be found attached to this report at **Annex 2.**

2. Summary of Representations :

1 representation has been received.

No representations were received from Responsible Authorities.
However, the following condition was agreed with the Environmental Protection Officer:

Live music will finish at 11.00pm.

Amplified entertainment will finish at 11.30pm.

All doors and windows will be kept closed from 9.00pm to 11.30pm.

2.1 Representation 1:

2.1.2 Person making representation:

Neil Robinson

2.1.3 Licensing objectives affected:

Prevention of Crime and Public Safety – comments not relevant.

Prevention of Public Nuisance.

2.1.4 Summary of Recommendations:

The venue has currently permission for drinking and music until 22:30 to prevent disturbance to the residential amenity this should remain and the extension refused.

2.10 Mediation

The representative has been made aware of the agreed conditions set by Environmental Protection. At time of writing this report no response has been received.

3. Statement of Licensing Policy

The following sections of North East Lincolnshire Council's Statement of Licensing Policy 2015 – 2020 are considered relevant to these representations:

2.1 - 2.4, 9.1.1 - 9.1.12 Licensing Objectives

6.2.1: Extent of Control

6.4.1: Need

6.6.1 - 6.6.2 Licensing Hours

8.2.5 - Amendments to a Licence

8.2.8 – Application to vary a Licence

8.3.1 - 8.3.6 Operating Schedules

8.7.2 – 8.7.4 Representations

9.4.1 – 9.4.3, 9.4.5 – 9.4.7 Prevention of Public Nuisance

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 relevant to these representations:

1.2 – 1.5 Licensing Objectives and Aims

2.15 – 2.21 Public Nuisance

8.41 - 8.49: Steps to Promote the Licensing Objectives

1.13, 3.1 – 3.2 Licensable Activities

3.11 – Regulated Entertainment

1.16 Licence Conditions – general principles

1.17 Each Application on its own merits

8.50 – Variations

8.66,8.68 – Licencing hours

9.3 – 9.10: Relevant Representations

9.31 – 9.40: Hearings

10.1 – 10.9 Conditions attached to premises licenses

10.10: Proportionality

16.0 – 16.4 Regulated Entertainment & Licensable Entertainment Activities

16.6 – Deregulated live and recorded music

16.26 – Live Music

16.33 – Recorded Music

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.
- 5.7** The sub-committee, in its decision making, must have due regard to its public sector equality duty under section 149 of the Equality Act 2010

6. Observations

- 6.1** This is an application to extend the sale of alcohol and live & recorded music by 1 hour from 22.30 to 23.30.
- 6.2** The applicant has agreed that live music will cease at 23.00 hours. Licence permission is not needed for live music performances between 08.00 and 23.00 hours.
- 6.3** Recorded music can be played without licence between 08.00 to 23.00. This leaves the period between 23.00 to 23.30 requiring a licence.
- 6.4** One representation has been received, and accepted, from a local resident with concerns of Public Nuisance disturbance, see representative's full report for details.
- 6.5** The applicant has agreed to conditions to prevent Public Nuisance and any negative impact on the licensable objectives.
- 6.5** All Responsible Authorities have been consulted regarding this application. Representations were made and conditions agreed from Environmental Protection NELC. No other representations were received.

Environmental Protection have no record of any complaints in relation to noise from indoor amplified entertainment at the premises.

- 6.6** The power of review exists for any licensed premises that do not operate in a way that promotes the licensing objectives. This can ultimately result in revocation of the licence.

Report prepared by Linda Milner – Licensing Enforcement Officer

21st June 2023