

Minutes

Licensing/Appeals Sub-Committee Tuesday, 8th December, 2015

Attendance

Cllr Murphy
Cllr Newberry

Cllr Pound

Officers Present

Gary O'Shea - Principal Licensing Officer
Jean Sharp - Governance and Member Support Officer
Chris Pickering - Principal Solicitor

259. Appointment of Chair

Members resolved that Cllr Newberry should chair this meeting of the Sub-committee.

260. Administrative Function

Members were respectfully reminded that, in determining the matters under consideration, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matters were determined on the facts before the Sub-Committee and the rules of natural justice applied.

261. Consideration of matters under the Street Trading and Market Policy

Brentwood Borough Council had adopted schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to designate Brentwood High Street from Wilsons Corner to its junction with Kings Road and Weald Road as a 'licence' Street for the purpose of Street Trading. This meant that no trading might take place otherwise than in accordance with an authorisation from the Council and the Council's Street Trading and Market Policy.

The report before Members sought clarification on a matter pertaining to the Council's Street Trading and Market Policy; in the first instance seeking clarification on a matter of policy pertaining to one particular product type and in the second instance to identify whether clothing might be sold by a trader and if so, whether this should be restricted or conditioned in any way.

Members were advised that Jacky's Boutique was a longstanding trader on

the High Street market, having operated on a Saturday for some approximately three years and on a Friday, since Friday trading commenced approximately one year ago.

Jacky's Boutique sold ladies and children's clothing and had been permitted to do so by adopting a broad interpretation of Schedule 4 of the Act and the Council's policy. This was because it had been the belief of Officers that a literal interpretation of these provisions would disallow clothing of any nature to be sold on the basis that there were already many outlets in and around the vicinity that stocked and sold clothes. Instead, a purposive view had been taken to permit clothing provided that it was not the same or distinctly similar to clothing sold elsewhere.

It should be noted that whilst Jacky's Boutique had been told that they could not duplicate stock, this had not to date been put in writing and only verbal guidance had been given.

The Sub-Committee considered in detail the submissions by all parties and had sympathy for the arguments presented on both sides. They restricted their consideration to the published policy and the stated intention of the market. In the Sub-Committee's view, this policy needed to be reconsidered by the Planning and Licensing Committee as it had not been amended since it was introduced.

The Sub-Committee considered issues submitted under the Competition Act, but did not accept them. Any specification in the policy of what could and could not be sold would necessarily restrict market stalls. Paragraph 5.4 of the policy restricted what could be sold and included excluding all cut flowers for example.

The stated intention of the market was to provide an alternative to the High Street with niche products on offer. There would always be some degree of duplication from market stalls to shops but it was reasonable for the Council to set out appropriate conditions that were fair to all, however.

The Sub-Committee recommended that the policy should be reviewed by the Planning and Licensing Committee as soon as possible so that a certain and fair policy was in place. In dealing with the issues before the Sub-committee, and in considering the policy and a fair interpretation of it in light of the stated purpose of the market and the wording of the policy, the Sub-Committee **RESOLVED**, with immediate effect, pursuant to para 2.1 (a)(ii) of the report, that while clothing may be sold by Jacky's Boutique, it should not be of a nature that is the same or distinctly similar to other stalls or shops. The implication of this decision should be with the assistance and cooperation of the Council's licensing department.