

Minutes

Licensing Sub-Committee Friday, 15th November, 2019

Attendance

Cllr Keeble
Cllr Kerlake

Cllr Ms Sanders

Also Present

Cllr Chilvers
Cllr Lewis
Matt Lewin – Cornerstone Legal

Officers Present

Paul Adams	-	Principal Licensing Officer
Caroline Harrison	-	Licensing Officer
John Fairweather	-	Environmental Health Officer
Dave Leonard	-	Licensing Officer
Jean Sharp	-	Governance and Member Support Officer

262. Appointment of Chair

Members RESOLVED that Cllr Miss Sanders should chair the meeting.

Legal Adviser to the sub-committee, Matt Lewin, advised all present that there had been a suggestion from the Applicant that Cllr Chilvers should excuse herself from being a member of the sub-committee to avoid any perception of bias and she had done so. Cllr Kerlake replaced her as a member of the sub-committee.

263. Administrative Function

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

264. Licensing Act 2003 - Application for a New Premises Licence - Sugar Hut, 93 High Street, Brentwood. CM14 4RR

An application had been received for a new premises licence for the provision of regulated entertainment, supply of alcohol and late-night refreshment in respect of **93 High St, Brentwood CM14 4RR**. There had been 3 representations received from the Responsible Authorities and 220 relevant representations received from other persons, including a ward councillor. Members were requested to determine the application having regard to the operating schedule, the representations received, the Council's Statement of Licensing Policy and the four Licensing objectives.

The sub-committee was asked by counsel for Essex Police (Ms Parekh) to refuse to take into account material which had been submitted on behalf of the Applicant at just after 5pm the night before the hearing and had decided to refuse to take into account that material.

The sub-committee was also asked by counsel for the Applicant (Mr Dadds) to adjourn the hearing on the basis that it would be unfair to proceed. Members decided to refuse the request for an adjournment and to proceed with the hearing.

The sub-committee's reasons for both decisions were as follows:

The decision to refuse to take into account the Applicant's material

Solicitors for the Applicant had sent four emails to the Council and responsible authorities beginning at just after 5pm the night before the hearing, attaching a 112-page bundle. Additionally, an email sent by the Applicant's solicitors at 1.16pm had included a link to a YouTube video. Members did not receive any of that material until shortly before the hearing began when hard copies were provided by the Applicant's solicitors. While the Responsible Authorities had been sent the material directly, none of the residents in attendance to support their own relevant representations had seen the material.

Essex Police objected to the admission of this material on the basis that it had not been provided before the hearing, as it was not received until after close of business. They also said that they had not had time to properly consider the material in the time available. Ms Laura Smith, a resident, also objected on the basis that it was unfair to admit material which she had not seen.

Mr Dadds submitted that no party would be prejudiced by the admission of this written material. He said that it had been submitted to assist the sub-committee but that he could deal with the matters set out in that material orally and by calling his witnesses. He explained that the material had been submitted in response to late evidence received from Essex Police on 31 October 2019.

Legal Adviser to the sub-committee, Matt Lewin, advised Members of Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, which provided:

“In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.”

Members decided that – technically – the material was produced before the hearing and therefore, in principle, it could be taken into account: all that Regulation 18 required was that the material was produced “*before the hearing*” and no further time limit was set.

However, Members decided to exercise their discretion not to take the material into account for the following reasons.

(1) There was no good reason for it having been provided so late. At the very latest, the Applicant had received Essex Police’s supplementary evidence by 31 October 2019 – two weeks before the hearing. It was considered that there was sufficient time for the Applicant – a well- resourced business represented by experienced licensing solicitors and consultants – to respond earlier than they had done. In any case, Members considered that the material was general evidence which responded to all relevant representations made during the public consultation (which had concluded on 24 October 2019) and not just the Essex Police material. Given that the two expert reports were dated within 72 hours of the hearing, it seemed to Members that this evidence had simply been left to the last minute.

(2) It would not be unfair on the Applicant. Mr Dadds had advised the sub-committee that he was able to deal with the matters addressed in the written evidence orally and by calling his witnesses.

(3) It would be unfair on the other parties. Essex Police advised that they would not be able to respond properly to the material without an adjournment. The residents – who were also parties to the hearing but not professionally represented – also objected that it would be unfair to admit evidence which they had not seen in advance.

The decision to refuse an adjournment

Mr Dadds on behalf of the Applicant asked for the hearing to be adjourned on the basis that it would be unfair to proceed. The sub-committee decided to proceed with the hearing for the following reasons.

(1) Given that Mr Dadds had advised that he could present his case without admission of the written material, Members did not consider it

would be unfair to proceed. Additionally they rejected Mr Dadds' suggestion that it was unfair of the Chair to ask that he address her as "Chair" or "Councillor" rather than "Madam".

(2) The request for the adjournment arose because the Applicant had served a substantial amount of evidence very late in the day. Members considered that there was no good reason for the delay in serving that evidence.

(3) All parties had prepared for the hearing and had attended. It would cause serious inconvenience and would waste public time and resources to adjourn and arrange a new hearing date.

(4) Members did not attach much weight to the fact that the business had invested a substantial amount of money in the premises. Their priority was to ensure that the hearing was fair to all parties and that their decision would promote the licensing objectives.

When Mr Dadds' request for the hearing to be adjourned was refused he advised that the Applicant had decided to withdraw his application and the hearing ended.
