

MINUTES

of the

LICENSING COMMITTEE HEARING

held on 7 September 2020 at 5pm

Present:

Councillor D.G. Jones (Chair of Hearing)

Councillors, A.E Davidson and I.C. Roberts

1. Apologies for Absence and Substitutions

There were no apologies for absence.

2. Declaration of Interests

All Members were reminded to declare any Disclosable Pecuniary interests or other registerable interests where appropriate in any items of business on the meeting's agenda. None were made.

3. Minutes

The minutes of the meeting held on 25 August 2020 were agreed as a correct record and signed by the Chair.

4. Licensing Act 2003 – Application for a Summary Review of a Premises Licence – The Bay Horse, 189 Moulsham Street, Chelmsford, Essex, CM2 0LG

The Committee considered an application for a summary review of the premises licence relating to The Bay Horse, 189 Moulsham Street, Chelmsford, Essex pursuant to section 53C of the Licensing Act 2003 made by Essex Police. The application was made on the grounds of serious crime and disorder and the failure to promote all four licensing objectives and was accompanied by the required certificate of a senior police officer.

It was noted by the Committee that there were five options namely;

1. To Modify the conditions of the licence either permanently or for a period not exceeding three months.
2. To exclude a licensable activity from the scope of the licence, either permanently or for a period not exceeding three months.
3. Remove the Designated Premises Supervisor
4. To suspend the licence for up to three months
5. Revoke the licence

It was also noted by the Committee that any decision taken would not take effect until the end of the 21st day following receipt of the decision. Therefore, the Committee noted that

under Section 53D of the Licensing Act 2003 they were also required to formally review the previously imposed interims steps and consider whether, it was appropriate and proportionate for them to stay in place.

The following parties attended the hearing and took part in it:

Applicant – Mr Gordon Ashford and Mrs Rachel Savill (Essex Police)

Licence holder legal representative – Mr Piers Warne

Leaseholder legal representative – Mr David Hook

Licensing Authority Representative – Mr Paul Brookes

The Chair advised that the written representations had been read and considered by the members of the Committee in advance of the meeting.

The Chair invited Essex Police as the applicant to introduce their case. The officers from Essex Police referred the Committee to the serious incidents that took place on and around the 9th of August. It was noted that these led to the summary review and then the interim steps imposed by the Committee in August. It was noted that Greene King were essentially the landlords and licence holder but this created confusion as the actual operation of the premises was by Moulsham Properties who had passed this onto the Mannion group. They informed the Committee that this had led to a sorry state of affairs and if the licence was not revoked then Moulsham Properties could again devolve the business to another party. Essex Police felt that revocation was the most appropriate step but if not then hours should be reduced along with the conditions proposed in page 42 of their document. Essex Police also asked that the interim steps should mirror the overall decision. Essex Police provided the Committee with expanded detail from the events on 9th August. It was noted that four people were taken to hospital after a large-scale fight with glasses being used as weapons. Footage of this had been made available to the Committee which also showed underage drinking, with fingerprint evidence of this on glasses. Essex Police also reminded the Committee that their application had been supported by other responsible authorities and at the very least would request new hours and their proposed conditions for the premises.

Mr Warne who was representing the Licence holder then addressed the Committee. He stated that it was fairly common practice for the Licence holder to essentially be involved at arm's length as Greene King were in this situation. He stated that they had not opposed the interim steps and had agreed that they were proportionate at the time. The steps had allowed all parties to take a step back and assess what had happened. It was noted that Greene King have thousands of both managed and leased premises across the country. The Committee heard that the premises in question had been operated by Mr Webb since 2011 and Greene King always hold the premises licence before leasing to a tenant, in this case Mr Webb. Mr Warne highlighted to the Committee that Moulsham Properties allowed a separate party, the Mannion group to operate the premises and the problems had happened during this time. Mr Warne stated that Mr Webb acted swiftly once aware of the problems and closed the premises after removing the Mannion group. It was noted that this demonstrated the problems had been taken seriously and he had no concerns with the conditions being proposed by Essex Police.

At this point of the meeting, the Chair invited Mr Hook, the legal representative of the leaseholder, Mr Webb to introduce their case. Mr Hook informed the Committee that the

Webb Family had operated the premises since 2011, but had entered into a management agreement, not a lease, with the Mannion group in late 2019. This had been due to ill health that had left Mr Webb unable to operate the premises, it was noted that he had been a licence holder generally since 1982. The Committee heard that there had been no issues at the premises until June this year, when it was being operated by the Mannion group. The Committee heard that the management and operation of the premises went rapidly downhill, leading to the unacceptable events around the 9th of August. The Committee heard that the current review from the police asking for full revocation was not a fair appraisal and was a kneejerk reaction to the incidents that had taken place. Mr Hook stated that they could not apologise for the events as they were not operating the premises at the time but agreed that they were exceptional and unacceptable. Mr Hook highlighted that the DPS, Mr Webb's daughter, was not contacted at any point regarding the issues and had therefore not been able to act upon them. He stated that she had been working shifts there whilst the premises was operated by the Mannion group but was excluded by him from the premises and removed as the DPS. Mr Hook informed the Committee that from October 2019 up until the lockdown in March 2020, there had been no issues but after lockdown Mr Mannion had appeared to go rouge and this led to the closure of the premises.

Mr Hook informed the Committee that the track record of the Webb's as operators had no issues and as soon as they were aware of the issues at the premises they acted in removing Mr Mannion and securing the premises. Mr Hook also highlighted one of the conditions they had offered which would prevent Mr Mannion from any future involvement with the premises. The Committee also heard that if they were allowed to reopen they would need a few weeks to prepare the premises and therefore would have no objection to the interim steps staying in place for the meantime.

Mr Brookes who had made a representation on behalf of the Licensing Authority in support of the application from Essex Police then addressed the Committee. He stated that the DPS had not been contacted as the Council had been in contact with Mr Mannion who was running the premises and the DPS had been working under him. Mr Brookes stated there had been a blatant disregard for any regulatory advice by the premises, including Covid guidance and noise nuisances. The Committee heard that on one occasion, after agreeing to turn down volume levels, they were simply increased again afterwards. Mr Brookes also highlighted the request from his colleague in Environmental Health that there should be a reduction in opening times and no amplified music in external areas.

The Chair informed those present that the Committee would now retire to deliberate on the matter. It was noted that unlike previous meetings where everyone was present, this would be held remotely and a decision would be provided to the relevant parties via email within in a few days. The decision made is detailed below and was circulated to the relevant parties.

The Committee gave careful consideration to the relevant representations both written and made in the course of the remote hearing.

RESOLVED that the Director of Public Places be authorised to permanently modify the conditions of the licence as detailed below:

A. The Premises Licence

The Committee has decided not to revoke the licence but instead considers it appropriate for the promotion of the four licensing objectives that the following steps be taken:-

- 1) The imposition of the conditions proposed by Essex Police in their application for the summary review (Appendix C to the report before Committee) as set out at pages 43 – 48* of the application except for proposed conditions nos. 4; 10; 18; 25 and 26.

(These conditions are to replace the existing licence conditions which are set out in Annex 2 to the Premises Licence – “Conditions from Operating Schedule”.)

* pages 65 of 77 to 70 of 77 if using the Council’s Agenda pagination.

- 2) The imposition of a condition precluding the playing (at any time) of amplified music in external (i.e. outdoor) areas of the licensed premises.
- 3) The imposition of a condition to the effect that neither Mr Gary Mannion whether by himself, his servants agents or The Mannion Group Ltd nor any person associated with them shall be permitted to occupy manage direct or control or otherwise participate in any way in the running of the licenced premises.
- 4) The removal of the Designated Premises Supervisor (Mr Gary Mannion) from the licence.

B. Review of the Interim Steps

The Committee considers that it is appropriate for the promotion of the licensing objectives that the interim steps previously imposed be modified as follows: -

- 1) The suspension of the licence be lifted.
- 2) Removal of the Designated Premises Supervisor (Mr Gary Mannion) to remain in place.
- 3) The imposition of the conditions proposed by Essex Police in their application for the summary review (Appendix C to the report before Committee) as are set out at pages 43 – 48* of the application except for proposed conditions nos. 4; 10; 18; 25 and 26.

(These conditions to take the place of the existing licence conditions which are set out in Annex 2 to the Premises Licence – “Conditions from Operating Schedule”.)

* pages 65 of 77 to 70 of 77 if using the Council's Agenda pagination.

- 4) The imposition of a condition precluding the playing (at any time) of amplified music in external (i.e. outdoor) areas of the licensed premises.
- 5) The imposition of a condition to the effect that neither Mr Gary Mannion whether by himself his servants or agents or The Mannion Group Ltd nor any person associated with them shall permitted to occupy manage direct or control or otherwise participate in any way in the running of the licenced premises.

Reasons for Decision

A. The Premises Licence

1. The Committee considered the incidents which gave rise to the application by Essex Police for a summary review to be appalling and disturbing in nature. All four of the licensing objectives had been engaged and undermined. There had been an outbreak in violence necessitating a major police response with, among other things, people sustaining serious injuries and needing to be hospitalised. There was also evidence of underage drinking. In addition, noise nuisance had been experienced by local residents and there had been a failure to implement Covid-19 social distancing measures.
2. It was clear to the Committee that the outbreak of violence and disorder was, in part, attributable to the poor and deteriorating management of the premises. The management (including door staff) had lost control. There had also been a disregard by the management in relation to requests by the Council's Out of Hours Noise Officer to reduce the volume of music emanating from the premises which was causing a statutory nuisance to a nearby local resident. In addition, there had been a failure to engage with the Council's Public Health and Protection Service in relation to the carrying out and implementation of a covid-19 secure plan. Public Health and Protection had been compelled to issue an Improvement Notice. Furthermore, it had been necessary to serve a noise abatement notice.
3. The Committee had given careful consideration and weight to to Essex Police's submission that the appropriate step for the Committee to take in this review was to revoke the licence and that if the premises were allowed to continue to operate with a licence they (Essex Police) believed that further incidents would occur. The Committee was mindful of and had due regard to the statutory licensing Guidance issued pursuant to section 182 of the Licensing Act 2003 - and in particular to paragraphs 2.1; 2.5; 2.23; 2.29; 9.43;

11.22; 11.23; 11.26; and 2.27 of such guidance. Furthermore, the Committee took into account the case law to which Essex Police had made reference at paragraph 4.6 of their application.

4. The Committee also had regard to the fact that the outbreak of violence and disorder and other issues giving rise to the request for the review had taken place in the period from late June to early August 2020 while the premises were being managed by The Mannion Group Limited / Mr Gary Mannion – pursuant to a management agreement entered into in October 2019 between the leaseholder of the licensed premises Moulsham Properties Limited (owned / controlled by the Webb family) and the Mannion Group Limited. The Committee took into account the fact that Mr Mannion had managed the premises without complaint from October 2019 and that it was only after the re-opening of premises (after lifting of lockdown) that (for whatever reason) the management had deteriorated and things started to “go off the rails”. There was evidence that Mr Mannion had excluded the Designated Premises Supervisor from the premises and that both she and the other members of the Webb family had been unaware of the serious deterioration in the management of the premises and the problems that were building up until things came to a sudden head on the weekend of the 8th /9th August 2020 (the incident of the outbreak of violence and serious disorder etc). The Committee was bound to note and have due regard to the fact that upon becoming aware of the incident the Webb family immediately sought to take action by terminating the management agreement and removing Mr Mannion from the premises. Furthermore, they had sought to liaise and co-operate with the police and the Council’s Licensing Section. The Committee was also bound to have regard to the Webb family’s’ track record of managing the premises without complaint or issues during the 9 years or so preceding the bringing in The Mannion Group Ltd/ Mr Mannion to manage the premises. It was not disputed that the Webb family had unblemished records when it came to managing licensed premises themselves.
5. The decision whether it was appropriate for the promotion of the licensing objective to revoke the licence was a very finely balanced one in this particular case. Having regard to all the circumstances, however, the Committee was of the view that with (i) the imposition of the conditions set out above, (ii) the removal of Mr Mannion as the Designated Premises Supervisor, and (iii) the Webb family’s assurance that they would take back the direct management of the premises, a recurrence of the incidents which had triggered the review was unlikely. Due weight had to be given to the concerns expressed by Essex Police that a recurrence of the kind of appalling and completely unacceptable incidents that had triggered the review was

likely if the licence remained in place. However, Essex Police's concerns were, at least to some extent, based on the assumption that The Mannion Group Ltd/Mr Mannion would once again operate the premises. However, The Mannion Group Ltd / Mr Mannion would not be able to do this.

6. The Committee did not consider that it would be appropriate for the promotion of the licensing objectives to affix to the licence conditions nos. 4; 10; 18; 25 and 26 which had been proposed by Essex Police. The Committee's rationale for imposing conditions had to be evidence-based and proportionate to what was intended to be achieved. In the Committee's view, proposed conditions nos. 4; 10; 18; 25 and 26 would be disproportionate in their effect. (Insofar as these five proposed conditions were concerned, the Committee agreed with the submissions put forward in the "Details of Representation on behalf of Moulsham Properties Limited" document which it had before it at the hearing.)

Nor did the Committee consider that it would be appropriate to cut back on the opening hours.

7. If there were any further incidents of concern emanating from the operation of the premises, then the licence could be brought back to Committee for review.

B. The review / modification of Interim Steps

1. The Committee considers that it is appropriate to lift the suspension of the premises licence, given that it has decided on the final review not to revoke the licence.
2. The Committee considers that it is appropriate to mirror the imposition of the conditions imposed by it as part of the final review decision and to ensure removal of the Designated Premises Supervisor remains in place. This is because the Committee wishes to ensure that there are appropriate and proportionate safeguards in place at all times until the end of the 21 day period given for appealing the decision, or until the disposal of any appeal that is lodged.

5. Application to vary the Designated Premises Supervisor

Essex Police withdrew their objection to this application and the item was therefore not considered.

The meeting closed at 6.18pm.

Chair