

**MINUTES**

of the

**LICENSING COMMITTEE HEARING**

held on 25 September 2020 at 11am

Present:

Councillor L.A. Mascot (Chair of Hearing)

Councillors, D.G. Jones and R.J. Lee

1. Apologies for Absence and Substitutions

Apologies for absence were received from Cllr Rajesh.

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 7 September 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 De Beauvoir Arms, Downham Road, Downham, Billericay, CM11 1QH

The Committee considered an application for a summary review of the premises licence relating to The De Beauvoir Arms, Downham Road, Downham, Billericay, CM11 1QH pursuant to section 53C of the Licensing Act 2003 made by Essex Police. The application was made on the following licensing objectives, the prevention of crime and disorder, public safety and the prevention of public nuisance 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 so as to add, amend or remove any of them
2. To exclude a licensable activity from the scope of the licence
3. Remove the Designated Premises Supervisor
4. To suspend the licence for up to three months
5. Revoke the licence

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

**Applicant** – Mr Ronan McManus (Essex Police)

**Licence holder**– Mr Ali Mumin

**Environmental Health 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 Committee heard that on Sunday 2<sup>nd</sup> of August, 16 calls were received from local residents regarding an event at the premises in question. The Committee was informed that on arrival, a marquee had been erected with an event expecting 600 people, that had been advertised as a yellow and white soiree. Tickets for the event by Pure life entertainment had been available online and it was scheduled between 1 and 10pm. Essex Police informed the Committee that the premises manager was expecting 200 people, but there were unconfirmed reports of 2000-3000 persons attending, with many avoiding security at an event of which the DPS had no control. The Committee heard that environmental health officers joined the police and agreed with the organisers that the event would end at 9pm, this had been ignored however and continued to 10pm. Essex Police informed the Committee that they were seeking the imposition of further conditions onto the licence to prevent a similar event occurring in the future. The Conditions were detailed in their application and included measures such as no events by external promoters and no sales for off premises consumption between 9pm and 1am. The Committee also heard that there had been widespread use of cannabis at the event with no effort to prevent this from the staff present. In conclusion Essex Police felt that the location had been taken over, leading to a very difficult situation for local residents.

The Committee heard from Mr Brookes who was speaking on behalf of Environmental Health, who as a responsible authority had supported the application made by Essex Police. Mr Brookes informed them that an out of hours noise arrived at 7.15pm and it was clear that a noise nuisance was being caused, with loud bass throughout the area and no sound insulation from the marquee. The Committee heard that after discussions with the owner, noise levels were reduced but then increased again straight away. Mr Brookes also informed the Committee they were happy to sit in line with the proposal from Essex police on the outdoors aspect of the licence.

At this point in the hearing the Committee heard from the Licence holder. They informed the Committee that someone had asked to use the outside space at the premises for a small family party with no alcohol involved. The Committee heard that the event quickly got out of hand and then the police arrived to assist. The Committee was informed that they had run the premises for over 17 years without any problems and they had no prior notice that the event would be on such a large scale. It was noted that this was the first time the space had been hired and due to Covid-19 they had been seeking different streams of revenue. The Committee heard that they had stressed covid guidelines to the hirer of the outside space but this had then been disregarded by the event organiser. It was noted that they had been totally unaware of what had actually been planned and that the same promoter had since tried the same at other local venues. The Licence holder stated that they were very sorry for what had happened and that they had worked closely with the police and the Council to help end the event. The licence holder informed the Committee that they had been duped by the promoter and had not wanted to cause issues in the local community.

They also stated that it was normally a quiet premises where the majority of customers were elderly and would just have one drink during a family meal.

In response to questions from the Committee, the Licence holder stated that;

- A covid-19 risk assessment had been carried out prior to the event, but on the basis that the event had been described to them, rather than what actually happened.
- The event had been a one-off and would not happen again.
- They had been informed by the promoter that no alcohol would be involved, but customers and the promoters had just supplied their own.
- They had only supplied food and none of their alcohol had been provided or purchased from them.
- As soon as it was clear the event was getting out of hand, they spoke to the promoter who informed them nobody else would arrive, however people continued to arrive, leading to the police and environmental health attending.
- They tried to slowly and gradually stop the event, to avoid huge numbers of people all leaving at once, potentially then leading to a larger problem.

Essex Police also stated that no temporary event notice had been received for the event and the proposed conditions would prevent a similar event taking place in the future.

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 has given careful consideration to the relevant representations both written and made in the course of the remote hearing (including the suggested revised conditions put forward by Essex Police at Appendix B to the Agenda pack at pp. 45 – 48).

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

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

**1)** The imposition of a condition prohibiting the sale or supply of alcohol between 21:00 hours and 01:00 hours for consumption in any external area located outside the licensed building.

**2)** The imposition of -

**(i)** a condition prohibiting the playing of recorded music in any external area located outside the licensed building after 21:00 hours; and

**(ii)** a condition pursuant to section 177 A (4) of the Licensing Act 2003 to the effect that section 177A (2) of the 2003 Act is to have no effect in relation to the playing of recorded music (other than incidental background music) in any external area located outside the

licensed building - that is to say, the playing of recorded music shall be treated as "regulated entertainment".

**3)** a condition prohibiting the taking of glass bottles or other glass drinking vessels from the licensed building or otherwise into the outside seating area after 21:00 hours. Conspicuous signage (minimum size 200 mm x 148 mm) to be displayed at each ingress / egress point notifying patrons of this rule.

**4)** The imposition of Essex Police's suggested revised conditions no. 5 (keeping of incident log); no. 7 (keeping of refusals record); no. 8 (staff training) – but subject to substitution of "every 12 months" for "every six months"; no. 9 (display of notices); no. 10 display of notices in any smoking area); no. 17 ("Challenge 25 scheme" to be operated); and no. 18 (display of signs re "Challenge 25").

#### Reasons for Decision

**1.** The Committee considered the incident on 02 August 2020 which gave rise to the application by Essex Police for a review of the premises licence to be appalling and completely unacceptable. Three of the licensing objectives (crime and disorder/public nuisance/public safety) had been engaged and seriously undermined. There had been a large-scale outbreak of disorder requiring a redeployment of police resources in order to respond. Several local residents had been subjected to verbal abuse - and, in one instance, physical assault - when they sought to challenge inconsiderate parking and anti-social behaviour by patrons. There had been cannabis use throughout the event. There had also been a woeful failure to implement / enforce social distancing measures, thereby increasing the risk of Covid 19 transmission. Local residents had suffered noise nuisance (e.g. loud music) in addition to other incidents of anti-social behaviour. They had, as the police aptly put it at the hearing, had a "horrible time". The Council's Public Health and Protection Services (Environment Protection) had also attended the incident and, in their capacity as a statutory Responsible Authority, had supported the Police in their review application.

**2.** The Committee took account of fact that prior to the incident on Sunday 02 August 2020 the premises had operated under the licence without incident. The Committee accepted the licence holder's representation that they had neither intended nor envisaged that the event would take place in the way that it did - and in particular that so many people would attend and there would be cannabis use and large scale disorder. The written representation from a longstanding local resident (Appendix D to the Agenda pack at p.50) stated that the premises had operated under the present ownership for the last 8 – 10 years as a fine dining restaurant with bar and had been enjoyed by both the local community and people from surrounding areas and further afield. The Committee was inclined to agree with the local resident's conclusion that the incident on the 02 August had

been a “one-off” - but that *“the proprietors of the De Beauvoir Arms made a big mistake allowing this event”* and *“may have been duped by the event organisers”*. It was evident to the Committee that the licence holder / management did not have full, if any, control of the events of that day - which had been organised by an external promoter, Purelife Entertainment. However, a licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder. Furthermore, whilst the issue was not explored in detail at the hearing, the Committee was concerned that in the Police evidence (Appendix B to the Agenda pack at p.31 para 3.4) there was reference to staff being perceived to be “obstructive” when the community police and licensing teams attended the premises in the aftermath of the incident i.e. on Tuesday 04 August. The Committee’s expectation was that licence-holders and management would seek to co-operate fully with police / licensing officers in circumstances such as these.

3. The Committee gave considerable weight to the representations made by the two Responsible Authorities in this case, namely (i) Essex Police and (ii) the Council’s Public Health and Protection Services (Environmental Protection). The Committee also had due regard to the statutory licensing Guidance issued by the Secretary of State 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. The Committee had to determine the steps (if any) that it was appropriate to take for the promotion of the licensing objectives and in particular to ensure so far as possible the prevention of further incidents of crime and disorder, public nuisance, and actions undermining public safety.

4. Whilst this had been a one-off incident and (in the Committee’s view) unintended and un-envisaged by the licence holder/management, the Committee considered that because of the large scale disorder that had taken place the issue of whether it was appropriate for the promotion of the licensing objectives to revoke the licence was a finely balanced one. Having regard to all the circumstances, however, the Committee took the view that with the steps set out at 1) – 4) above, together with the licence-holder’s assurances, a recurrence of the incidents which had triggered the review was unlikely.

5. 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.

#### The Committee’s approach towards the conditions suggested by Essex Police

6. The Committee did not consider it appropriate for the promotion of the licensing objectives to affix to the premises licence conditions nos. 2; 3; 4; 11; 12; 13; 14; and 15

which had been suggested by Essex Police. The Committee's rationale for imposing conditions had to be evidenced based and proportionate to what was intended to be achieved. In the Committee's view these suggested conditions were unnecessary or disproportionate either wholly or in part.

Specifically -

Suggested condition no. 2 (*Individual may not supply alcohol unless that individual has written consent of the Designated Premises Supervisor etc*): The Committee noted the existence of mandatory condition no. 1 which was applicable to the current premises licence and which, to a large extent, mirrored in substance the content of suggested condition no. 2. The Committee considered that this mandatory condition was sufficient.

Suggested condition no. 3 (*No events at the premises that are organised, promoted or advertised by an external promoter etc*): The Committee considered that this condition, if imposed, would have a disproportionate impact on the viability of the business.

Suggested condition no. 4 (*In addition to water, other non-alcoholic beverages shall be available at all times whilst alcohol sale or supply takes place*): The Committee noted the existence of mandatory condition no. 5 which provided for the supply of free potable water, where such was reasonably available. The Committee took the view that it would be neither appropriate nor proportionate for it to compel the licence-holder to stock and make available a range of non-alcoholic beverages. In any event, in practice it would normally be the business's own interests to stock / have available for purchase a range of non alcoholic beverages.

Suggested condition no. 11 (*Outside tables and chairs shall be rendered unusable and immovable by 21:00 hours each day*): The Committee took the view a condition of this kind would have a disproportionate impact on both patrons and the business. It would mean that patrons could not finish their drink (alcoholic or non-alcoholic) or meal after 21:00 (unless they did so standing up).

Suggested condition no. 12 (*After 21:00 no persons permitted to take bottles, glasses or drinking vessels from the premises / into the outside seating area*): The Committee considered a ban on the taking out glasses and bottles (if made of glass) to be appropriate. However, a ban which covered non glass bottles or "drinking vessels" went too far and was disproportionate. Such a ban would, for instance, prevent the supply of coca-cola sold in a plastic bottle, or the provision of orange juice in plastic drinking vessel. The Committee had, therefore, revised this suggested condition (**see 3**) above) to permit non glass containers.

Suggested condition no. 13 (*No music nor late night refreshment shall be provided to*

*external areas at any time after 21:00 hours*): The Committee considered that a ban on the playing of recorded music (other than incidental background music) was appropriate – hence the imposition by it of the new condition set out at **2) (i)** above. However, the Committee took the view that a ban on the provision of late night refreshment was unnecessary and disproportionate in terms of impact it could have on the viability of the business – at least in Summer months. Such a ban would, for example, preclude patrons enjoying a quiet tea or coffee after their meal or at the end of a birthday or wedding event.

Suggested condition no. 14 (*Substantial food and non-intoxicating beverages shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises at all times up to 01:00 hours*): This condition, if implemented, would confine the licensed premises to operating as a restaurant only. Furthermore, it would require the business to have a chef and/or other kitchen staff on duty /available until up to 01:00 hours. The Committee's view was that a condition of this nature was disproportionate.

Suggested condition no. 15 (*Section 177A (2) of the Licensing Act 2003 is to have no effect and both live and recorded music are to be treated as regulated entertainment*): The Committee saw no justification for removing the deregulation provisions in relation to the performance of live music. The Committee accepted, however, that it was appropriate for the promotion of the licensing objectives to remove the deregulation provisions insofar as they permitted the playing of recorded music during 08:00 – 23:00 hours. Otherwise, notwithstanding the imposition of the new condition at **2) (i)** above, it might be argued that it would be legal for recorded music to take place in external outside areas up to 23:00 each day. The Committee had, therefore, revised this suggested condition (see **2) (ii) above**) accordingly and also to make it clear that the removal of the deregulation provisions is applicable to external areas (i.e. outside the licensed building) only.

### **INFORMATIVE**

By law, every premises licence that authorises the sale of alcohol must specify a “designated premises supervisor” (DPS) for the premises. The purpose of the DPS is to ensure that, in the case of premises selling alcohol to the public, there is someone with overall responsibility for the sale of alcohol on the premises who can be readily identified by enforcement officers. In the light of the comments made by Essex Police at Appendix B to the Agenda pack at p.32, paragraph 3.4 the licence-holder should immediately review the current position and submit an application for variation of the DPS if appropriate.

The meeting closed at 11.32am.

Chair