

MINUTES

of the

LICENSING COMMITTEE HEARING

held on 25 August 2020 at 11am

Present:

Councillor L.A. Mascot (Chair of Hearing)

Councillors, D.G. Jones, S. Rajesh 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 3 July 2020 were agreed as a correct record and signed by the Chair.

4. Licensing Act 2003 – Application for a New Premises Licence – The White Hart, The Tye, Margaretting, Ingatestone, Essex, CM4 9JX

The Committee considered an application for a new premises licence relating to The White Hart, The Tye, Margaretting, Ingatestone, Essex, CM4 9JX, pursuant to section 17 of the Licensing Act 2003. The application was for the following licensable activities;

- *Provision of films: Monday to Sunday 08:00-00:00*
- *Provision of Live Music: Monday to Sunday 08:00-00:00*
- *Provision of Recorded Music: Monday to Sunday 08:00-01:00*
- *Provision for performances of dance: Monday to Sunday 08:00-01:00*
- *Late night refreshment: Monday to Sunday 23:00-01:00*
- *The sale of alcohol: Monday to Sunday 08:00-01:00*

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

1. Grant the application, on the terms and conditions applied for
2. Grant the application, on the terms and conditions applied for, modified to such extent as considered appropriate to promote the Licensing Objectives,
3. Refuse the application in whole or in part.

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

Applicant

- Mr Dadds – Solicitor

Objectors

- Five Local residents

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 the applicant to introduce their application.

The solicitor for the applicant introduced their case and outlined why a new licence was being applied for. He firstly clarified that the current licence had not lapsed and was still in force. He stated that it was the intention of the owner for the business to continue as normal, predominantly as a restaurant/pub. It was highlighted that the business had been trading for a significant number of years without any concerns and no representations had been received against the application from the responsible authorities. The Committee heard that this demonstrated that none of the licensing objectives had been undermined in the past. It was noted that the new application almost mirrored the existing licence but would start at 8am rather than 10am to allow for possibly serving breakfasts. It was noted that the extension to the premises had created more space for covers alongside additional parking. The Committee heard that it was a food led business, which was family orientated and very quiet. The applicant's solicitor stated that everything had been in place pre Covid-19 and the premises had not been trading since March and that this was a significant investment in a local premises. The Committee heard that the applicant did recognise it as a rural location, but that sufficient parking was on site and there was no primary evidence available of any complaints being made to the Council about the premises in the past. He also highlighted that it was important to recognise that by living near a pub it should be expected that a balance needed to be struck. In summary, it was stated that the premises is well managed, and there was no evidence of any issues being caused in the past as a result of the licensable activities.

The local residents who had made objections and attended the remote hearing highlighted the following points:

- There had been significant parking issues since the last change of ownership at the premises.
- The current owner had been impolite and had not listened to concerns raised by residents.
- Grass verges had been damaged due to inconsiderate parking.
- If the licensable hours were to increase then the existing problems would be exacerbated.

- The live music part of the application was of significant concern, due to the close proximity of houses. It was noted that especially live or recorded music from a tent or marquee which was classed as being indoors was of particular concern.
- There was no proposed condition on the number of special events to be held in tents or marquees.
- The current curtilage of the application was just the main building, yet the new application covered the whole site.
- Live and recorded music had caused issues for residents in the past as on hot evenings windows have had to remain closed and the noise has continued on till the early hours.
- There had not been any problems with the previous owner of the premises, but recently it had felt that the premises was not part of the community and parking and noise issues were a greater concern.

In response to the points raised by local residents, the applicant's solicitor stated that:

- Responsible parking had been and would continue to be encouraged by the premises.
- Twenty new parking spaces would be added and when required for special events permission could be sought from the farm owner nearby for additional spaces.
- Barriers had been put in place at the premises whilst it was closed to prevent any illegal encampments.
- The premises normally closes at 00:00 and music was not played after this time.
- A tent or marquee was classed as indoors under the Licensing act but in any event was only used a few times a year and the music had always stopped by 23:00. It was clarified that this would continue to be the case.
- The current licence allowed a set number of events and there was no intention to suddenly have weekly or more regular events outside.
- Noise levels had clearly been managed sufficiently in the past, as there was no record of any complaint being made to the Council.
- The future of the premises could not be second guessed, but it was the applicant's intention to continue to invest in the premises as it was his livelihood and to run a successful business.
- It was believed that the premises had been and would continue to be a community asset.
- The operational hours were only being extended in the morning, not later into the night and planning permission for the extension had already been received.

In response to a question from the Committee, the applicant's solicitor stated that they would be happy for a condition on the use of the marquee for no regulated entertainment after 23:00. It was noted that before 23:00 this was deregulated anyway, but it had been applied for to cover any future legislative changes. In response to a further question it was noted that the late-night refreshment aspect of the application was to provide hot drinks for example.

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. The Committee agreed that the application was acceptable when taking into account the condition offered, to not have regulated entertainment in any marquee style buildings after 23:00.

RESOLVED that the Director of Public Places be authorised to grant the application as applied for with the proposed conditions by the applicant and with the following additional condition,

- No regulated entertainment after 23:00 in marquee style buildings.

Reasons for Decision

1. *In reaching its decision, the Committee took account of all representations made and was satisfied with the steps that the applicant proposed to promote the licensing objectives.*
2. *The Committee had carefully considered the objections to the application, received from local residents. However, it was established law that any decision to refuse the grant of a premises licence had to be evidenced based. Having regard to all the material before it, the Committee did not consider there to be evidence that if the licence were granted (in accordance with the application and the imposition of the condition referred to in 3 below) the likely affect would be that one or more of the licensing objectives would be undermined. In particular, the Committee was required to (and did) give weight to the following matters:-*

(i) The application almost mirrored the existing (current) premises licence, save that the applicant wanted the hours to start at 8.00 am rather than (as was the case with current licence) 10.00 am. With the exception of late night refreshment and supply of alcohol the licensable activities would all take place indoors, although "indoors" would also encompass a marquee style building or structure outside. The premises had operated under the current licence for some period of time and there was no record of the Council having previously received complaints from local residents about noise nuisance, disorder etc. emanating from the premises.

(ii) None of the responsible authorities (e.g. Essex Police, Essex County Fire and Rescue, Environmental Protection) had raised concerns about the application.

(iii) Although the local residents had raised concerns relating to adequacy of parking for patrons and the suitability of Swan Lane to accommodate traffic volumes generated by the premises, by law (the Licensing Act 2003 regime) the Committee was limited in its remit to consider these. It could only have legitimate regard to these issues in the context of the immediate vicinity of the premises and the relevant licensing objectives – namely, public safety and the prevention of public nuisance. Furthermore, the Committee had to proceed on the assumption that patrons of the premises would drive responsibly in accordance with road traffic legislation and only park on the road where it was lawful to do so. Any failure on the part of patrons to adhere to these requirements fell to be dealt with by Essex

police or other appropriate enforcement authority under road traffic / highway / parking legislation. The premises had in any event on-site parking provision and 20 new parking spaces would become available as a result of the expansion / improvement works carried out to the premises. Furthermore, the applicant had indicated that if additional off street parking were required to accommodate occasional large scale special events then this could be provided by arrangement with the farm owner nearby. Neither Essex Police nor Essex Fire and Rescue had raised concerns regarding access arrangements and public safety.

3. *The Committee did, however, consider that it was appropriate for the promotion of the relevant licensing objective – namely, the prevention of public nuisance to impose a condition precluding regulated entertainment taking place in marquee style buildings or structures after 23:00 hours.* The applicant had accepted at the hearing that it was likely that, depending on the circumstances, noise from the marquee could be audible from the road and by local residents closest to the marquee. The Committee considered that such restriction on hours was necessary to prevent the likelihood of public nuisance in the form of noise.*

** The applicant (through its solicitor, Mr Dadds) had volunteered this condition in the course of the hearing after listening to objectors' concerns.*

4. *If subsequently, there was evidence of noise nuisance, anti-social behaviour, public safety issues etc. arising from the use of the premises for the licensable activities then it was open to any person (including responsible authorities) to request a review of the licence under the provisions of the Licensing Act 2003 and the matter would come back to the Committee.*

Informative

If a local resident considers that they are experiencing noise nuisance or other issues relating to carrying on of licensable activities at the premises then they are encouraged to raise their concerns with the premise's management in the first instance. This allows the premises management the opportunity to consider and, if appropriate or called for, to take steps to address the issues with a view to avoiding a recurrence. If the local resident concerned is unhappy with the response / outcome then they should consider making formal complaint to the Council so that the matter can be investigated, if appropriate (e.g. by Environmental Protection in cases of alleged noise nuisance.) A local resident or any other person (including a responsible authority) can apply to the Council (as the licensing authority) for a review of the premises licence. A formal hearing (at which the licence holder and the local resident(s) concerned have the opportunity to attend and make representations) will then be held to consider what, if any action is appropriate to take. Such action may involve cutting back or otherwise limiting the licensable hours or the type of licensable activities that can be carried on at the premises and/or the imposition of new conditions. In serious cases, the licence may be revoked.

Local residents should note, however, that when conducting a review of a licence the Licensing Committee can only consider concerns which relate to one or more of the statutory four licensing objectives and which are evidenced based.

The meeting closed at 11.50 am.

Chair