

**MINUTES**

of the

**LICENSING COMMITTEE HEARING**

held on 27 June 2023 at 10am

Present:

Councillor R. Lee (Chair of Hearing)

Councillors D. Clark and P. Wilson

1. **Apologies for Absence**

No apologies for absence were received.

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.

3. **Minutes**

The minutes of the meeting on 31 March 2023 were confirmed as a correct record.

4. **Licensing Act 2003 – Application to review a Premises Licence – The Garrison, 3 High Street, Chelmsford, Essex, CM1 1BE**

The Committee considered an application for a summary review of the premises licence relating to The Garrison, 3 High 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 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 21<sup>st</sup> 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

Committee were reminded of the interim steps that had been imposed and the decision made after representations were made against them, these were detailed in the report. Members were also directed to the representations made by a member of public and the Licensing Authority, also detailed in the report, along with further evidence that had been submitted by Essex Police.

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

**Applicants**

Mr Ronan McManus and Mrs Rachel Savill (Essex Police)

**Licence Holder**

Mr Dadds – Legal Representative

**One member of the public who had made a representation**

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

The Chair invited Essex Police as the applicant to introduce their case. The Committee heard that Essex Police felt this was a straightforward case and reminded members of the CCTV footage that had been previously viewed. They detailed that it showed the use of violent restraint in what they felt was a physical attack by door staff. They informed the Committee that two off duty police officers were at home nearby and came to the scene to be informed by door staff that the patron had committed GBH inside the venue. It was noted that no allegation of GBH had since been made, but one of common assault had, but with the victim not willing to proceed with an investigation.

Essex Police highlighted their continued view of the serious nature of the event that had led to them bringing a summary review. They informed the Committee that, without intervention, the matter could have been very serious, and that the manager present did not attempt to take any part in controlling the three members of door staff. Essex Police felt compelled to submit a summary review after viewing the CCTV footage. They updated the Committee on progress with their investigation and noted that they would be speaking with the relevant door staff. They also informed the Committee that they had contacted SIA who had suspended the door staff pending investigations.

Essex Police informed the Committee that they had been in discussions with the premise's legal representative. They had reached agreement on a number of conditions to be applied to the licence, which they felt were proportionate to support the licensing objectives. It was noted however that there were two areas upon which they had not reached agreement. These related to a reduction in licensable hours on Sundays before a bank holiday and a condition on a specific element of SIA training for door staff.

At this point of the hearing, the Licence Holder's legal representative Mr Dadds was invited to address the Committee. They stated they would be conscious of the open investigation into the incident, but that they did not feel it was up to the Committee to determine what was reasonable force. The Committee were informed of serious concerns with the application made by police, which was felt to be overreaching,

inaccurate, included no primary evidence from any witnesses and highlighted serious failings by Essex Police. The Committee heard that agreement had been reached between the licence holder and the Police on a number of conditions but as indicated by the Police, there were two outstanding issues, relating to some SIA training and a reduction in hours on Sundays before bank holidays.

The Committee were taken through a wide number of concerns, held by the Licence Holder and their legal representative, relating to the initial application made and matters with the Police since the application had been made which included;

- Issues with application documents and relevant certificate
- The police investigation was still ongoing
- The role of the off-duty police officers arriving 14 minutes into the incident
- Emotive language used by Essex Police when describing the CCTV footage
- No medical evidence provided by Essex Police
- There being no history of similar issues or complaints at the premises
- The door staff were provided by an SIA approved external contractor
- No evidence had been provided of injuries, serious crime, arrests, charges, or police reference numbers

The Committee were informed that as previously detailed an agreement had been reached on conditions excluding two of them. The licence holder's legal representative stated that they were not happy with the reduction of hours on Sundays before bank holidays and saw no proportionate justification for the request. They highlighted that this had been a one-off incident and was not related to the act it was a bank holiday. They also did not see a feasible route to comply with the proposed condition 7 from the Police, relating to specific SIA training.

At this point of the hearing, the Committee resolved to go into private session, pursuant to Regulation 14 (2), of the 2005 Hearing Regulations to allow the licence holder to play a small section of the CCTV footage.

After resuming in open session, the Committee heard from the member of the public who had made representations in support of the application. They stated that their concerns related to the noise when walking past the premises, rather than the incident that brought the review, but would answer any questions from the Committee if required.

The Committee heard further points from both the applicant, Essex Police, and the Licence Holder's legal representative. These related to specific elements of the incident itself that had been previously detailed via CCTV footage to the Committee. The Committee also heard various disagreements between the two parties, who held differing views as to the reaction and actions of the premises door staff. The Committee were also informed that other premises in the City Centre had longer hours on Sundays prior to bank holidays.

The Committee also heard brief closing statements from the Police and the Licence Holder's legal representative. The Committee noted that these just reemphasised the views already expressed earlier in the hearing by both parties. Essex Police continued to feel that the CCTV footage spoke for itself and that the conditions sought at Appendix A of their further information would support the licensing objectives. The licence holder's legal representative, continued to feel that a

reduction in the Sunday before bank holiday hours was not necessary. They did not feel the CCTV presented the full picture and stated that they should not be penalised for employing an approved SIA contractor. They also felt the review had been brought prematurely for what was a safe city centre venue.

In response to a clarification sought by the Committee's legal advisor, it was noted that the concerns held by the Licence holder with the proposed condition 7, related to the difficulty of effectively imposing conditions on an external company. The Committee were also informed by Essex Police and the licence holder, that they would be content with the interim steps being modified to reflect the main decision made by the Committee.

At this point of the meeting, the Committee retired to deliberate. It was noted that due to the remote nature of the meeting, the decision would be circulated to all parties within a few working days via email.

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

**RESOLVED that;**

**LICENSING ACT 2003 sections 53A – 53D**

**SUMMARY REVIEW DECISION NOTICE**

Decision of the Licensing Committee ('the Committee') of Chelmsford City Council following the holding of a hearing on 27 June 2023 to determine an application by the Chief Officer of Essex Police pursuant to section 53A (1) of the Licensing Act 2003 ('the 2003 Act') for a summary review of the premises licence relating to 'The Garrison' 3 High Street, Chelmsford, Essex CM1 1BE.

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**Decision to exclude the public (including press) from part of the hearing**

In the course of the hearing the Committee resolved pursuant to regulation 14 (2) of the Licensing Act 2005 (Hearings) Regulations 2005 that the public (including press) be excluded from that part of the hearing where it fell to the Committee to view a short clip of CCTV footage of the incident. Other than for this short period of time the hearing took place in public, pursuant to regulation 14 (1) of the said 2015 Regulations.

**A. SECTION 53C DECISION (outcome of Summary Review)**

Pursuant to section 53C of the 2003 Act the Committee has determined as that -

**'The premises licence in respect of The Garrison', 3 High Street, Chelmsford, Essex CM1 1BE be modified so that (i) the opening hours are reduced and (ii) additional conditions are added to the licence; as set out in the First Schedule below.'**

## B. REASONS FOR DECISION

1. In reaching its decision the Committee had due regard to the certificate that accompanied the application by Essex Police on 01 June 2023 and the matters that had led it to take the interim step of suspending the premises licence on 02 June 2023 and modifying the interim steps on 08 June 2023.

The Committee also had regard to the additional material contained within the agenda report bundle and to the oral representations made by both Mr Dadds (representing the licence-holder) and Mr McManus (representing Essex Police) at the hearing.

In addition, the Committee had due regard to the relevant guidance issued by the Secretary of State pursuant to section 182 of the Licensing Act 2003.

2. The Committee wished to make it clear at the outset (and in order to avoid any misunderstanding) that its proper remit at this Summary Review hearing was to review the premises licence in accordance with the requirements of section 53C of the 2003 Act. After considering the application and all relevant representations it was required to take such steps mentioned in subsection (3) of section 53C (if any) as it considered appropriate for the promotion of the licensing objectives. In addition, it was required under section 53D of the same Act to review any interim steps that had been taken under section 53B that had effect at the date of the hearing. While decisions of the Committee had to be evidence based and proportionate, the Committee was not a criminal court or tribunal; it was not constrained or limited by the formal rules of evidence or procedure applicable to such forums. It was required to take into account all relevant evidential material before it, including CCTV footage and statements, irrespective of whether such statements were non-compliant with section 9 of the Criminal Justice Act 1967 etc or contained hearsay. The weight to give to any relevant material was a matter for the Committee to determine, subject only to judicial supervision (i.e. JR) on very narrow grounds, and the right of the parties to appeal any decision to the Magistrates' Court etc. It was not the role of the Committee to determine criminal guilt. The Committee, both at the interim steps stage and at the actual Summary Review hearing had to review the premises licence on the basis of the material then before it, irrespective of whether suspected serious crime or disorder had been fully investigated and charges brought or convictions obtained. This was implicit from the Licensing Act 2003 which required a Summary Review hearing to be carried out within 28 days after receipt of the chief officer's application.
3. The Committee had due regard to detailed critique by Mr Dadds of certain aspects of the Police evidence in support of their application for the Summary Review.  
The Committee accepted Mr Dadds' contention that two police officers (albeit off duty at the time) had arrived on the scene approximately 14 – 15 minutes after the first restraint by the door staff and had taken control. This

fact was inconsistent with paragraph 2.2 of the supplementary documentary information in support of summary review provided by the police, which made reference to a sustained assault by door staff on the patron which lasted approximately 30 minutes (page 38 of 65 of the agenda report bundle. The Committee also accepted that there were other factual inconsistencies or question marks contained within the police bundle. It was not, however, the role of the Committee to carry out a detailed forensic examination of the police evidence with a view to determining whether one or more criminal offences had been committed. This was a matter for the police, the CPS, and (if charges were brought) ultimately the criminal courts. The Committee was solely concerned with exercising its licensing functions. The Committee was satisfied, on a global view, that section 53A of the Licensing Act 2003 was engaged. Notwithstanding Mr Dadds' critique, the apparent conduct of the door staff both before the two off duty police officers arrived on the scene, and afterwards (in relation to an unidentified onlooker) compounded by the apparent failure of the premises management representative to take control / direct the door staff, gave cause for serious concern.

4. The Committee considered that the failure on the part of the management representative had now been addressed through compliance with the interim step requiring her to undertake refresher training on conflict management.
5. The Committee considered that it was appropriate for the promotion of the licensing objectives that it take the steps of (i) reducing the current opening hours and (ii) impose the conditions, as set out in the First Schedule. In reaching this decision the Committee gave weight to the fact that the door staff involved in the incident which had given rise to the Summary Review were supplied to the Garrison through a contractor; they were not employed in-house.
6. The Committee also took note of the fact that for the most part the licence holder and Essex Police had reached agreement on the proposed reduction of the opening hours and the imposition of the proposed conditions as set out by Essex Police at pages 58 – 60 of the agenda report bundle SAVE THAT the licence holder was opposed to -

(i) the proposed amendment of the current licensable activities so that on Sundays before May, Spring, and August Bank Holidays there is no extended hours of licensable activity – that is to say, on all Sundays licensable activity shall cease at 01:00 hour;

and

(ii) proposed condition 7 as further amended by Essex Police (email from Mr McManus dated 27 June 2023 sent 09:09) which reads -

*“All SIA registered door supervisors deployed at the premises must have been trained in accordance with the Security Industry Association (SIA) Conflict Management (knowledge and skills) specification that took effect from 1<sup>st</sup> April 2021 (or later requirement). In the event this condition cannot be immediately satisfied, all door supervisors deployed will meet this specification by 30<sup>th</sup> September 2023. Evidence of this qualification will be provided by the licence holder within 14 days of a written or electronic request by a police officer, police staff licensing officer or an authorised officer of the licensing authority”*

7. The Committee gave careful consideration to the request by Essex Police to cut back the May, Spring and August Bank Holiday Sunday extended hours, mindful of the requirement that any decision made by it had to be evidenced based and proportionate. On balance, the Committee was not satisfied that this could be made out. There was no demonstrable causal link between the incident that had given rise to this Summary Review and the Sunday Bank Holiday weekends in question. The Committee was not satisfied on the evidence that had been put before it that such reduction in hours would be proportionate.
8. The Committee noted that Mr Dadds in his list of proposed conditions (email from Louise Bailey dated 27 June 2023 sent 10:00) had put forward the following proposed condition -

*“On any Sunday preceding a Bank Holiday where the premises conducts licensable activities past 00:00 hours, at least 3 SIA licensed door supervisors must be on duty from 22:00 hours until at least 30 minutes after the premises closes.”*

Essex Police had put forward a proposed condition in wider terms, namely -

*“On any occasion where the premises conducts licensable activities past 00:00 hours, at least 3 SIA licensed door supervisors must be on duty from 22:00 hours until at least 30 minutes after the premises closes.”*

(Crucially, both of these proposed conditions had to be read in conjunction with existing condition 4 in Annex 5 to the Premises Licence.)

The Committee considered that it was appropriate for the promotion of the licensing objectives – in particular, the prevention of crime and disorder – that the requirement to have a minimum of three SIA licensed door supervisors on duty from 22:00 hours until 30 minutes after closing where licensable activities were to take place after 00:00 hours should be applicable on all days of the week, rather than just Bank Holiday Sundays. The Committee did not feel that it was possible to draw a significant distinction (in terms of the risk of crime or disorder occurring) between Bank Holiday Sundays and other days of the week (including ordinary weekends) when the premises were conducting licensable activities after 00:00.

The Committee also considered that in the interests of clarity it made sense to reword / modify condition 4 in Annex 5 to the existing Premises Licence so as to incorporate within the wording of that condition the minimum number requirement for SIA licensed door supervisors on duty after 00:00

hours.

9. The Committee also gave careful consideration to proposed condition 7. However, the Committee took on board Mr Dadds' submission that the imposition of such a condition would be problematic for the licence holder given their reliance on using an independent contractor to supply SIA door staff. They did not have control over the training of staff who were on the contractor's books. The Committee was not satisfied that this condition was necessary or proportionate.
10. The Committee also noted the written representations of a member of the public (at page 34 of 65 in the agenda report bundle) and his oral representation at the hearing, regarding the playing of music at the Garrison.

## First Schedule

### (Reduction of opening hours)

The opening hours of the premises (currently 24/7) be reduced to 10.00 hours until 30 minutes after the terminal hour of alcohol sales and regulated entertainment.

### (Additional conditions)

1.	After 00:00 hours every day there shall be a personal licence holder on duty on the premises when alcohol is offered for sale.
2.	<p>An incident log shall be kept at the premises and made immediately available to police or licensing authority staff upon reasonable request. The log must be completed as soon as possible and in any case within 4 hours of the occurrence and shall record the following:</p> <ul style="list-style-type: none"> <li>(a) all crimes reported to the venue</li> <li>(b) all ejections of patrons</li> <li>(c) any complaints received concerning crime and disorder</li> <li>(d) any incidents of disorder</li> <li>(e) all seizures of drugs or offensive weapons</li> <li>(f) any faults in a CCTV system, searching equipment or scanning equipment mandated as a condition of the licence.</li> </ul>
3.	Where SIA licensed door supervisors are used at the premises a record shall be maintained (on the premises) which is legible and details:



	<p>i. The day and date when door supervisors were deployed;</p> <p>ii. The name and SIA registration number of each door supervisor on duty at the premises; and</p> <p>iii. The start and finish time of each door supervisor's worked duty period.</p> <p>This record shall be retained on the premises for 31 days and be immediately provided to police or licensing authority staff upon reasonable request.</p>
4.	<p>(1) SIA licensed door supervisors shall be employed from 20:30 hours until 30 minutes after the end of trading on -</p> <p>(a) <b>Friday, Saturday, and Bank Holiday Sundays</b> if the premises intends to trade <i>after</i> 23:00 hours; and</p> <p>(b) <b>Sunday to Thursday</b> if the premises intends to trade <i>after</i> 00:00 hours or if any organised event is held on any one of these days after 23:00 hours.</p> <p>(2) Furthermore, (i.e. in addition and without prejudice to the general requirement to employ SIA licensed door supervisors during the times referred to in (1) above), it is a requirement that on any occasion where licensable activities are to take place on the premises <i>after</i> 00:00 hours <u>a minimum of three SIA licensed door supervisors</u> must be on duty from 22:00 hours until at least 30 minutes after the end of trading.</p> <p><b>Note:</b> This condition is to replace condition 4 in Annex 5 to the Premises Licence.</p>
5.	<p>The premises shall have in place and operate a zero-tolerance policy with regard to the use/possession of controlled drugs and psychoactive substances and advertise the same within the premises on posters and similar means. This policy shall specifically include but not be limited to:</p> <p>i. Searching practices upon entry;</p> <p>ii. Dealing with patrons suspected of using drugs on the premises;</p> <p>iii. Scrutiny of spaces including toilets or outside areas;</p> <p>iv. Clear expectations of staff roles (including the DPS, managers/supervisors and door supervisors);</p> <p>v. Staff training regarding identification of suspicious activity and what action to take;</p> <p>vi. The handling of items suspected to be illegal drugs or psychoactive substances</p> <p>vii. Steps taken to discourage and disrupt drug use on the premises</p> <p>viii. Steps to be taken to inform patrons of the premises drug policy/practices</p> <p>A copy of this policy document shall be lodged with the police {and licensing authority}.</p>

6.	A qualified first aider shall be on the premises after 23:00 hours each day when the premises is open for the sale of alcohol. The first aider must have a valid (non-expired) qualification in Emergency First Aid at Work or higher.
7.	All SIA licensed door supervisors engaged at the premises for the purpose of supervising or controlling queues or customers must wear high visibility jackets or vests.
8.	At least 2 door supervisors present at the premises will wear Body Worn Video Cameras (BWV). Recordings of BWV shall be retained for a minimum of 31 days and be made available to Essex Police or an authorised officer of the licensing authority upon reasonable request. Door supervisors will be required to activate the recording function of such devices under the following conditions:

### **C. SECTION 53D DECISION (interim steps pending the above-mentioned Decision coming into effect)**

Pursuant to section 53D of the 2003 Act, the Committee has determined that it is appropriate that the interim steps conditions which were imposed by it at the hearing on 08 June 2023 be modified as set out in the Second Schedule below and shall remain in place until (i) the end of the 21 days given for appealing the decision made under section 53C, or (ii) if an appeal is made, the time the appeal is disposed of.

#### **Reasons for decision**

The interim steps as modified mirror the steps which are imposed by the Committee as a modification to the premises licence under section 53C. The Committee considers that if one or more of the interim steps conditions was not in place pending the section 53C decision coming into effect then there is a risk that the prevention of crime and disorder licensing objective could be undermined.

Note: At the hearing, the licence holder and Essex Police signified that they were in agreement with this modification of the interim steps pending the Decision coming into force.

### **Second Schedule**

The modified interim steps shall mirror the steps (Reduction of Opening Hours & Imposition of Additional Conditions) which are set out in the First Schedule above.

### **D. RIGHT OF APPEAL**

All parties have a right of appeal to the Magistrates' Court, against this decision. An appeal must be commenced by giving notice of appeal to Essex Magistrates'

Court, Osprey House, Hedgegrows Business Park, Colchester Road, Springfield, Essex, CM2 5PF, within the period of 21 days beginning with the date of this decision notice.

The meeting closed at 12.50pm

Chair