

MINUTES

of the

LICENSING COMMITTEE HEARING

held on 3 December 2021 at 11am

Present:

Councillor L.A. Mascot (Chair of Hearing)

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

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. None were made.

3. [Licensing Act 2003 – Application for a Review of a Premises Licence – BJP Productions, Wheelers Farm, Wheelers Hill, Little Waltham, Chelmsford, CM3 3LZ](#)

The Committee considered an application for a review of the above premises licence made by Essex Police under Section 51 of the Licensing Act 2003 and had regard to the representations made during the consultation period. These related to the promotion of the below Licensing objectives.

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance.

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

- To Modify the conditions of the licence either permanently or for a period not exceeding three months
- To exclude a licensable activity from the scope of the licence, either permanently or for a period not exceeding three months
- Remove the Designated Premises Supervisor
- To suspend the licence for up to three months
- To revoke the licence

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

Applicant – Mrs Rachel Savill and Mr Ronan McManus – Essex Police

Licence Holder – Mr Josh Silver – Represented by Mr Andy Newman, Mr Rupert Burton and Mr Stephen Arundell

Interested Parties –

- Mr Sammour (Local Resident), represented by Mr Andy Grimsey and Mr Felix Faulkner
- Mr Paul Brookes, Licensing Authority
- Parish Cllr Edith Robertson, Little Waltham Parish Council

It was noted by the Committee that an updated version of Appendix C had been circulated to all relevant parties, this detailed a change to the initial representation made by Environmental Health. The Committee also noted the new documents provided by the Licence Holder, detailed in Appendix H.

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 present their case. Essex Police stated that their full submission was available in the agenda pack and as a result would just provide an overview. It was noted by the Committee that Essex Police had considerable concerns on three of the four licensing objectives and had requested the revocation of the licence as a result. The Committee heard the following points from Essex Police:-

- Numerous calls were received from the public reporting traffic concerns in the area including congestion, drivers going the wrong way roundabouts, amongst other issues.
- The road had to be closed as a result on safety grounds, using up valuable police resources.
- Pedestrians were seen walking along unlit roads, presenting a major public safety issue.
- Photographs of the safety concerns raised by traffic officers were available in the agenda pack.
- Various Safety Advisory Group meetings had been attended by Essex Police in the initial run up to the events and in-between them.
- Essex Police had initially objected to the original application, but this had been withdrawn after the event management plan had been upgraded.
- The site was simply not the correct location for this type of event.

Essex Police informed the Committee, that no conditions could be added to the licence which would satisfy their concerns. The Committee were informed that the only solution was revocation as, in their view, the location was simply not suitable for these types of events.

At this point of the hearing, the Chair invited the Licence Holder's representative, Mr Newman, to present their case. In introducing their case, Mr Newman stated that with hindsight the location had not been correct for the 'originals' event and it had caused upset and difficulties. It was noted that this was due to sections of the crowd disregarding traffic management instructions. The Committee heard that a proportional response would be to hold a different event at the location with a

lowered maximum capacity to 3000 rather than 5000 with set decibel levels, limited to three events per year. The Committee noted that this was offered as a condition. It was also noted that the updated representation from environmental health supported these conditions.

The Committee also heard that the licence holder and his team had worked closely with the local authorities ahead of the events via SAG meetings and other correspondence. It was noted that there had been a disconnect with the highways and parking departments though, leading to no traffic wardens attending on the day of the event. Mr Newman also stated that contrary to the view held by Essex Police, the Safety Advisory Group did feel the location was suitable and they had believed an event could be held safely with the traffic plans in place.

In summary, the Licence holder and their representatives felt that a lowered attendance to 3000 along with limited decibel levels and a limit to three events per year, was proportionate and fair. It was also noted that no further events would be held by 'the originals' and that to revoke the licence completely would be disproportionate and unfair.

The Committee also heard from Paul Brookes, who was representing the licensing authority and answering any questions about the representation made by Environmental Health. He informed the Committee that he had also attended the SAG meetings in the run up to the events. He stated that the second traffic plan was better but also failed. In his opinion it had failed because of the behaviour of people attending the event. People had not followed and in fact had deliberately ignored or disregarded traffic control instructions. The Committee were also informed about the change made to the Environmental Health representation and the conditions which had been agreed.

At this point in the hearing the Committee asked some questions and received the following responses:-

- Essex Police felt that a lowered capacity to 3000, would simply make no difference in their opinion and the existing issues would still be present. They stated that perhaps a capacity of 500 would be suitable for the location.
- The Licence Holder felt that 50% of attendees would travel by car, but this had clearly been underestimated.
- The Licence Holder referred to the email chain in Appendix H, detailing discussions for traffic wardens to attend the event.
- The Licence Holder stated that around 4750 of the 5000 potential capacity attended the event.

The Committee also heard from Mr Sammour and his representative, Mr Grimsey. They referred to the representation they had made along with the supporting documents from various specialists and the videos taken of the road safety issues. They made the following points and stated that along with Essex Police, they felt a revocation was the only suitable outcome:-

- The event was a complete surprise and no local engagement had been held prior to the event.
- There were significant concerns regarding noise levels and public safety.

- The two expert reports detailed in the agenda pack highlighted the various public safety issues and noise disturbance issues with events being held at the location.
- It was quite rare for the issue of public safety to be the main issue when considering a review of a licence, but in this specific case, it was certainly the main issue the Committee needed to consider.
- As already detailed by Essex Police, the public safety issues included cars parking on verges, cars driving on the wrong sides of the road, pedestrians walking in the road, cars speeding, traffic cones being removed and no street lighting in the area. It was also noted that emergency vehicles would have been unable to reach nearby residential properties or the event itself.
- The Licence Holder had not been able to prevent these safety issues during the second event despite updated traffic management plans.
- The points raised by the Licence Holder regarding the specific crowd that attended, were irrelevant and conditions cannot be put on a licence specifying who can or cannot attend.
- The location is simply unsuitable, and it was a miracle that no major injuries or worse occurred during the two events.
- The detailed reports from experts included in the agenda pack had not been referenced in the updated submissions from the Licence Holder.
- No evidence had been provided to prove that a 3000 capacity would lead to a safe event.

The Committee also heard from Cllr Robertson, of Little Waltham Parish Council. The Committee noted that the Parish Council echoed the views presented by the Police and the Local resident and felt a revocation was the only reasonable outcome. The Committee considered the following points made by the Parish Council:-

- Various emails and calls had been received by residents and a local meeting had been held prior to the second event.
- The A130 is a main artery road and is certainly not suitable to park on due to the high speeds involved.
- Traffic issues lead to major public safety concerns alongside concerns of anti-social behaviour by some attending the events.
- The closure of the main road had led to traffic being directed through the small village of Little Waltham, which could not accommodate the traffic levels.
- The reduction to a 3000 capacity would not lead to any improvements.
- The event was of no benefit to local commerce in the village.
- Police resources should not have to be used to police an event of this nature, as they have more important issues to be attending.
- The personal circumstances of the Licence Holder (whilst they warranted sympathy) were completely irrelevant to the determination of a statutory review of this nature and should not be taken into account.

In response to questions from the Committee, the following responses were received:-

- The Licence Holder felt that the financial effect on them should be taken into consideration.
- The Licence Holder also felt that a capacity of 3000 would clearly be less impactful than 5000.

- The Licence Holder also stated that the SAG had felt the events would be safe and they were the experts.
- The representative of the local resident stated that it was upon the Licence Holder themselves to promote the Licensing Objectives and not anybody else.

The Committee also heard from Mr Arundell, who was also representing the Licence Holder. He stated that the only issue raised by the statutory authorities was of public safety concerns related to traffic and not any other issues. It was noted that if the Committee felt those concerns were mitigated by a lower attendance then there were no other reasons not to allow the licence to continue. It was also noted that it was very uncommon for so many attendees to arrive by car and this had contributed to the issues experienced. The Committee also heard that the site was very typical in nature of ones used for similar events elsewhere and that it was believed events could be delivered safely at the site.

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.

RESOLVED that the Committee has decided not to revoke the licence on this occasion but instead considers it appropriate for the promotion of the four licensing objectives that the following steps (which involve modification of the conditions of the licence) be taken:-

- 1) The imposition of the conditions proposed by Mr Lewis Mould (on behalf of Environmental Protection Services) in his amended representation (29 November 2021) which is set out in Appendix C to the report before Committee.

Note: these conditions include the condition which limits licensable activities to a maximum of 4 weekends (to include Friday, Saturday, and Sunday) in any calendar year.

- 2) The imposition of a further condition to the effect that the number of patrons at any event shall not exceed 1,500 patrons.

Reasons for Decision

1. The Committee considers that the incidents which took place on the 24 July and 04 September and which resulted in Essex Police seeking a review of the licence were unacceptable. The three licensing objectives cited by Essex Police in their application were engaged and had been undermined to various degrees. The incidents - in particular the need to respond to and manage the major traffic management issues - had been a drain on police resources. In addition, noise nuisance had been experienced by local residents and there had been some isolated incidents (albeit relatively low level) of anti-social behaviour on the part of patrons connected to the parking on Essex Regiment Way.

2. The Committee is mindful of the fact that the licence holder had consulted / agreed a traffic management plan for the 04 September event with the Safety Advisory Group (SAG). However, as Paul Brookes, the Chair of SAG had

confirmed, the reality was that this plan (and, indeed, the plan for the previous 24 July event) had failed to work in practice in relation to traffic management. Even though it might be the case that the licence-holder had used their best efforts on the 04 September to try to control the escalating traffic issues, these efforts had been ineffective. Public safety had been seriously compromised. Both the law and the Guidance make it clear that the licensing authority's duty on a Review is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community. The fact that the licence-holder and staff working at the event may have fully complied with conditions attached to the licence and used their best efforts to resolve the traffic issues arising in the course of the event and were themselves appalled at how things turned out could not detract from this duty. In addition, whilst reference had been made to the personal difficulties that Mr Silver and his close family were going through and this warranted sympathy, they were completely irrelevant to the determination of the Review and the Committee could not (and did not) take them into account in making its decision.

3.The Committee is satisfied on the evidence before it that there had been noise nuisance emanating from both the events on 24 July and 04 September 2021. The Council's Environmental Protection Service had received a number of noise complaints from residents about both events, and officer visits during the September event had confirmed that high levels of noise, causing disturbance, were audible at nearby residential properties. (The licence-holder did not, in any event, dispute this noise nuisance.) The Committee considers, however, that imposition of the stringent conditions proposed by Mr Lewis Mould and set out in Appendix C to the report (which, among other things, restrict licensable activities to 4 weekends in the calendar year and impose maximum noise (decibel) levels) would, if properly adhered to, prevent the recurrence of such noise nuisance.

4.The Committee is satisfied on the evidence before it that the event on the 04 September in particular gave rise to major road traffic problems, with (among other things) vehicles travelling the wrong way around roundabouts, driving over the central reservation, the road becoming gridlocked at points, and patrons ignoring / disregarding event marshals and parking dangerously along Essex Regiment Way to avoid waiting in the queue to access legitimate parking facilities on the event site. Patrons who had parked on Essex Regiment Way were walking on and across Essex Regiment Way to access and egress the event site, putting themselves at risk of being hit by traffic. These concerns and congestion issues necessitated the closure by Essex Police of Essex Regiment Way for several hours and the consequential diversion of traffic through Little Waltham and other areas. (The licence-holder does not dispute the 04 September event gave rise to these problems which undermined the licencing objectives in question.)

5.The Committee has given both careful consideration and attached considerable weight to Essex Police's submission that the only appropriate step for the Committee to take in this review is to revoke the licence, because if the premises were allowed to continue to operate under the licence they (Essex Police) believe traffic chaos would ensue and that public safety etc would once again be undermined. Ultimately, however, it is for the Committee (not Essex Police) to assess the matters / issues and reach its own

determination on the step(s) that it was appropriate to take to promote the licensing objectives. The Committee is prepared to accept Essex Police's contention that even if capacity (patrons) at events were to be reduced from 5,000 to 3,000 this would not be acceptable – traffic management issues could still arise and undermine the public safety objective.

6. On a careful analysis, however, the Committee is unable to accept the wider position put forward by Essex Police - namely, that the location of the licensed premises is simply not suitable for events of this kind - or at least for events with a capacity exceeding 500 patrons. (The Committee notes that in the course of the hearing, Mr McManus, on behalf of Essex Police, and in a response to a question from Cllr Jones, conceded that if the number of patrons was reduced to 500 then this would not be problematic.) There is, in the Committee's view, no empirical / objective evidence before the Committee to support the position taken by Essex Police. Conversely, it is a fact that the current premises licence was granted on 02 July 2021 and its scope permitted the number of patrons who attended the events on 24th July and 4th September. The SAG approved traffic management plans for the two events were likewise predicated on the basis that, with the appropriate traffic control measures in place, the capacity was acceptable. From an objective standpoint, for Essex Police suddenly to take the stance that the licensed premises (which have adequate parking facilities on site to accommodate patrons) is completely unsuitable for events (or events not exceeding 500 capacity), is not, on the evidence before the Committee, sustainable. On balance, the Committee is of the view that the failure of the traffic management plans and the difficulties experienced on 04 September were, in the main, attributable to the actual behaviour of the patrons attending the event (i.e. ignoring traffic management and acting in an irresponsible manner), rather than indicative of the location itself being unsuitable for licensable activities of the kind authorised by the licence. (The Committee notes that this was, indeed, the view expressed by Mr Paul Brookes at the hearing.)

7. The Committee has also had regard to the licence-holder's assertion that had there been traffic wardens (i.e. Civil Enforcement Officers) and a tow truck in attendance during the September event then the traffic chaos could have been avoided. The Committee has given some, limited, weight to this factor. The Committee has taken note of the fact that Civil Enforcement Officers (who are employed by and operate under the auspices of the South Essex Parking Partnership) do not have the power to tow away vehicles. They are limited to issuing (and affixing to offending vehicles) Parking Contravention Notices which require the payment of a civil penalty fine. Only the police (and certain other agencies) have the powers (in certain circumstances) to arrange for the removal of parked vehicles. Furthermore, the Committee considered that even the presence and operation of a tow truck on the 04 September would have had little impact in relation to vehicles already parked on Essex Regiment Way, given the sheer number of vehicles involved. The Committee agreed, though, that the visible presence of Civil Enforcement Officers would be likely to deter some patrons from parking illegally.

8. Whilst there may be different views on what the acceptable capacity limit for events should be, the Committee itself is satisfied (taking into account its own local knowledge of the location) that a capacity limit of 1,500 patrons would not undermine the licensing objectives, subject to there being an adequate SAG approved traffic management plan being in place and adhered to. Having regard to the traffic chaos that occurred on the 04 September and the information before it at the present time, the Committee considers that the imposition of this condition limiting capacity is appropriate for the promotion of public safety.

9. In determining this review the Committee has also considered the licence-holder's suggestion that a condition could be attached to the licence precluding the location from being used in the future for "The Originals" events. However, the Committee is of the view that a condition of this nature would be potentially ineffective and difficult, if not impossible, to enforce - as in terms of substance it concerned more with restricting the genre of the music played and the age / cultural makeup of patrons attracted to such music, rather than with a particular identifiable group of performers. Furthermore, the Committee has some doubts as to whether a condition of this nature would be appropriate or even legitimate given that it could be regarded as discriminatory in some respects. The Committee takes the view that it is essentially a matter of judgement for the licence-holder to determine which groups / music genres are appropriate to invite to perform at events. Furthermore, even if such a condition were to be feasible the Committee would still consider it appropriate to impose the condition limiting capacity to 1,500 and the conditions proposed by Mr Mould.

10. The Committee has also had regard to the reference by Essex Police in their application to disturbances reported by staff at a nearby McDonalds restaurant, with lots of customers entering the restaurant at once and being argumentative and aggressive to staff, albeit it would appear that this incident has not resulted in any formal police investigation or institution of criminal proceedings. The Committee notes that the licence-holder disputes that there is a proven nexus between this incident and the event. In this regard the Committee is mindful of paragraph 11.7 of the Guidance and is inclined to agree. Even if it could be shown that the individuals in question were connected with attendance at the event, it does not necessarily follow that there is a causal connection between the event and their actual behaviour at McDonalds.

INFORMATIVE

Whilst the matter hasn't influenced the Committee's decision, the Committee notes that there appears to have been a "disconnect" or misunderstanding / breakdown in communication of some sort as between the licence-holder and SEPP / Essex County Council regarding the attendance "traffic wardens" (Civil Enforcement Officers) at the 04 September event. The licence-holder appears to have been under the impression (rightly or wrongly) that there would be Civil Enforcement Officers in attendance, with Essex County Council also involved in some degree, and that also there would be a tow truck available with capability to tow away offending vehicles. The Committee is unable to comment on whether provision of such services would have been feasible on the day (save that as already mentioned, SEPP Civil Enforcement

Officers do not have the powers to remove vehicles) and if so the terms on which they would have been provided. The Committee would stress, however, that ultimately it is the responsibility of the licence-holder to ensure that arrangements of this kind have been agreed and confirmed with the agencies in question.

The meeting closed at 12:09pm

Chair