

Licensing & Appeals Sub-Committee – 12 November 2020

Minutes of the meeting of the **Licensing & Appeals Sub-Committee** held on **12 November 2021** when there were present:-

Chairman: Cllr Mrs L Shaw

Cllr P J Shaw

Cllr Mrs C A Weston

OFFICERS PRESENT

S Greener	- Principal Licensing Officer
C Brook	- Licensing Officer
R Hurst	- Senior Solicitor
S Sheridan	- Environmental Health Officer
J Spink	- Senior Solicitor
S Worthington	- Principal Democratic & Corporate Services Officer
L Morris	- Democratic Services Officer

APPLICANT

Cllr M G Wilkinson

ALSO PRESENT

J Smith
E Smith
L Eade

1 PROCEDURE FOR LICENSING HEARING

The Sub-Committee noted the procedure to be followed during the hearing.

2 LICENSING PREMISES REVIEW – LICENSING ACT 2003

The Sub-Committee considered the report of the Assistant Director, People & Communities asking Members to determine an application made under Section 51 of the Licensing Act 2003 for a review of a premises licence in respect of the premises known as Crafty Casks, 33 Eastwood Road, Rayleigh.

In support of his application, the applicant stated that he represented residents living above Crafty Casks after receiving several letters of complaint. The applicant stated that the premises is being used in a different way to its intended purpose as a Micro Pub. The premises is not complying with the conditions put in place and is causing a public nuisance, continuing to do so despite receiving a noise abatement notice.

The applicant indicated he did not wish for the premises to close, but for amendments to be made to opening hours and to when alcohol can be served.

The applicant also asked for security to be included in conditions of the licence.

In response to questions from the Sub-Committee, the applicant advised that:-

They have not been to the premises because they have been involved in opposing it from the planning stages and did not wish to compromise their position. The applicant clarified that when discussing opening times the comparison was to other Micro Pubs, and not other drinking establishments in the area.

The Environmental Health Officer stated that the licence holder has failed to comply with the conditions of the licence on the following grounds:-

Prevention of Crime and Disorder

Reference was made to evidence showing the sale of alcohol to the public outside of licensed hours, as well as behaviour consistent with recreational drug misuse.

Public Safety

Attention was drawn to evidence showing Chris Smith, the licence holder's son, lighting a cigarette behind the bar before passing the lighter to a member of the public on the other side of the bar. Other staff members were seen to light cigarettes as well. This is a breach of the Health Act 2006.

The evidence also showed a lack of compliance with Covid safety measures, such as shaking hands and hugging, which contributed to a high risk of transmitting the virus.

Public Nuisance

The Officer drew attention to complaints about noise and anti-social behaviour. A resident provided footage to support the claims but did not want to submit this due to fear of reprisals. The Officer reiterated that the noise abatement notice was served based on fact and is a demonstration of Mr Smith's inability to comply with the conditions put in place by Rochford District Council. Efforts were made to work with the licence holder but there was no agreement on proposed conditions to address the public nuisance.

In response to questions the following was noted:-

Statutory nuisance is subjective and based on the average person being able to enjoy their property. Readings were taken in the flat directly above the premises following a request from the resident of that property. It was noted that failure to comply with a noise abatement notice can result in legal action.

Formal conditions were requested instead of relying on the existing action plan for the longevity of the licence and to make the conditions enforceable. This request was due to evidence that the licence holder struggles to comply with conditions.

The Sub-Committee heard from a resident of the flats above the premises. They explained the impact of the premises on residents and their mental wellbeing, with the main issue the level of noise. They have not heard from the licence holder and were concerned about speaking out for fear of reprisals.

An interested party spoke on behalf of licence holder. She expressed concern about the strain the situation has caused on her mental health and explained reasons for changing her position from supporting the review to supporting the licence holder, stating this was nothing to do with her business being linked to the premises. The interested party stated that they were unhappy with the premises at first, but expressed support for the changes made since.

The interested party confirmed they had contacted Environmental Health because of the noise, but no longer considered this an issue.

The licence holder expressed regret at the events depicted in the evidence. He believed the sound proofing was good but has not played live music since the abatement notice. The licence holder said it is a shame the neighbours did not complain to him directly but he would like to engage with residents. He thanked the licensing officer for their guidance and was pleased that neither they nor Essex Police supported the review. The licence holder took issue with the mention from others about the fear of reprisals and the image created of the establishment, stating they are a small business and serve the community well.

In response to questions from the Sub-Committee, the licence holder advised that:-

He is not at the premises very often and it is his son and a member of staff who are there regularly, although he has spent more time there recently. He accepted there was a lack of control over customers complying with conditions such as consuming alcohol outside, but efforts have since been made to educate customers and this has improved.

In closing, the Environmental Health Officer asked the Sub-Committee to consider if the licence holder was a fit and proper owner to hold a licence. The Officer reminded the committee that all evidence points to a disregard for the rules already in place.

The applicant asked the Sub-Committee to consider the fact that it is not the licence holder who is present and his son is a very different person. They also reminded the Sub-Committee that there is a large amount of resistance to conditions and this is why they should be made permanent and enforceable.

The Sub-Committee retired from the hearing with the Legal and Democratic Services Officers to consider the decision and returned for its announcement. It had considered all the written evidence and the representations made by all parties at the hearing. The Sub-Committee had also considered the conditions submitted by Environmental Health in order to promote the licensing objectives of:-

- The prevention of crime and disorder
- The prevention of public nuisance
- Public Safety

The Sub-Committee were sensitive to the fact that no representations were made at the hearing by Essex Police or the Licensing Authority. The Sub-Committee found that on the balance of probabilities Crafty Casks were responsible for causing a noise nuisance to residents. It was accepted that there was a failure to engage with the Environmental Health Officer, but noted the engagement with the Licensing Authority in complying with an action plan. The Sub-Committee believed these steps were not enough to alleviate concerns and therefore resolved to include the additional conditions proposed by Environmental Health. Conditions relating to staff training and CCTV were also amended.

Resolved

That the licence be amended, subject to the conditions agreed by Environmental Health and additional conditions as set out in the final decision notice. (ADPC)

The meeting commenced at 2pm and closed at 4.04pm

Chairman

Date

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