

MINUTES of the meeting of Regulatory Sub Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday, 13 August 2008 at 10.00 a.m.

Present: Councillor P Jones CBE (Chairman)

Councillors: PGH Cutter and JW Hope MBE

In attendance: Councillors BA Durkin

15. ELECTION OF CHAIRMAN

Councillor Brig P Jones CBE was elected as Chairman for the Regulatory Sub-Committee hearing.

16. APOLOGIES FOR ABSENCE

No apologies for absence were received.

17. NAMED SUBSTITUTES (IF ANY)

There were no substitutes present at the hearing.

18. DECLARATIONS OF INTEREST

There were no declarations of interest made.

19. PRELIMINARY POINT IN RESPECT OF APPLICATION FOR A PREMISE LICENCE 'ROCK 'N' ROOTS 2008, RYE MEADOW, MUCH MARCLE, HEREFORDSHIRE'

Prior to determining the application outlined in Agenda Item 6, Members were required to resolve various preliminary issues. The Licensing Officer presented his report and advised Members that Section 18 of the Licensing Act stated that the Licensing Authority only had power to determine an application if the criteria outlined in section 17 had been complied with. He added that Section 17(5) required that applicant to:

- (a) Advertise his application within the prescribed period-
 - (i) In the prescribed form, and
 - (ii) In a manner which is prescribed and is likely to bring the application to the attention of the interested parties likely to be affected by it;
- (b) Give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period.

He also stated that Regulation 25 (advertisement of application) required the applicant to advertise his application for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant

licensing authority, by displaying a notice prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises and in the case of a premises covering an area of more than 50 sq/m, a further notice in the same form and subject to the same requirements every 50 metres along the perimeter of the premises abutting any highway. The sub-committee was further advised that the applicant was also required to publish a notice in a local newspaper circulated in the vicinity on at least one occasion during a period of 10 working days starting on the day after the day on which the application was given to the relevant licensing authority.

The Licensing Officer added that Regulations 26 and 27 stated that:

In the case of an application for a premise licence, the notices referred to in regulation 25 shall contain a statement of the relevant licensable activities which it is proposed will be carried on or from the premises

In the case of an application for a premises licence under section 17 the person making the application shall give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority.

The Licensing Officer advised members that in his opinion the applicant had failed to comply with the regulations detailed above. He noted that although the application had been accepted by the Licensing Authority on 10 July 2008, a copy was not served on the Police Authority until 15 July 2008. He also added that the police had only received a faxed copy of the application from the Applicant with no original document ever being submitted.

He also advised members that on visiting the site he had only seen one notice on the main entrance. There were no notices displayed on either end the footpath running through the site, nor at 50 metre intervals along the footpath as required.

Finally he noted that the applicant had advertised the application in the Worcester Evening News. He confirmed that the Worcester Evening News did not circulate in the village of Much Marcle.

The applicant advised the sub-committee that 4 notices were placed on the site. He also stated that he had contacted the Ledbury Reporter in an attempt to place an advertisement.

Members retired in order to make their decision, on their return the Legal Advisor read out the following statement:

'The committee have heard from our Lawyer that we do have the powers by virtue of Regulations 31 and 32 of the Hearings Regulations to rectify procedural irregularities in respect of the hearing, which have arisen by virtue of Reg 6(4) of those Regulations. We consider that the Licensing Departments communications to individual objectors and local people overcomes such irregularity sufficiently. We are therefore satisfied we can hear matter today.'

In respect of the other deficiencies pointed out by Mr Spriggs, the Licensing Officer, we have noted that he stated that upon inspection on 23 July 2008 only one Notice was displayed, that the wrong newspaper was chosen to publish the Statutory Notice, though we heard from the Applicant that he made some approach to the Ledbury Reporter. We are satisfied that the Worcester Evening News that carried the Notice is not a local newspaper.

We have also heard that as a fact the Police did not legibly receive the faxed Notice sent to them on 11 July. We have heard from the Police as to their consequent actions, also noting that there was no follow-up action by the applicant to check they had received it. Regulation 21 of the Premises Licence Regulations in particular states that service by electronic means must be agreed in advance and backed up by the sending of the Notice in writing.

Mr Stephens, the applicant, obviously did his best in respect of the Notices but this included displaying them on adjacent licensed premises rather than staking them along any perimeter and more importantly along the length of the public footpath running through the site, which constitutes a public highway.'

The Chairman concluded the meeting with the following statement:

'For this reason we follow Option 2 of the Report to us in that we conclude the statutory requirements have not been sufficiently complied with and therefore conclude that the Licensing Authority has no power to determine this application. We make this decision having had the case of Newcastle Justices pointed out to us, but we feel that the deficiencies are so manifest in this case to be incapable of rectification to the extent that we can be satisfied, on the balance of probabilities that no prejudice has taken place and that there is no risk that anyone who might wish to object has been prevented from doing so.'

RESOLVED:

That the statutory requirements have not been complied with and therefore the Licensing Authority has no power to determine the application.

20. APPLICATION FOR A NEW PREMISE LICENCE 'ROCK 'N' ROOTS 2008, RYE MEADOW, MUCH MARCLE, HEREFORDSHIRE.'

The Licensing Officer advised the Sub-Committee that as the statutory requirements have not been complied with, the Licensing Authority had no power to determine the application.

The meeting ended at 11.00 a.m.

CHAIRMAN