

MENDIP DISTRICT COUNCIL

Minutes of the virtual meeting of the Licensing Sub Committee held on Thursday 9 July 2020 by Live Stream, commencing at 2pm.

Present: Councillors Simon Carswell (Chair), Michael Dunk and Sam Phripp

Officers

Present: Helen Bowen	Committee Officer
Lesley Dolan	Legal Advisor
Olivia Denis	Licensing and Business Support Officer
Jack Godley	Senior Licensing and Business Support Officer
James North	Committee Officer
Ben Sugg	Committee Officer
Phil Wake	Enforcement Monitoring Officer

Applicant: Avon and Somerset Constabulary

Others

Present: Rachel Clark	Neighbourhood Sergeant, Frome & Shepton Mallet
Kevin Hardwill	Business Safety Officer, East Somerset Group, Devon & Somerset Fire & Rescue Services
Nicola King	Police Licensing Officer, Mendip & South Somerset

Agenda Number		Actions
1	<p>Chair’s Announcements</p> <p>The Chair asked the Committee Officer to confirm that the Live Stream was in progress.</p> <p>Once this was confirmed, the Chair asked all present to introduce themselves. All those expected at the meeting were present apart from the licence holder, Mr Taft.</p>	
2	<p>Apologies and Reconstitution of Membership</p> <p>None.</p>	
3	<p>Declaration of Interests</p> <p>None.</p>	

4	<p>Licensing Hearing</p> <p>The Chair noted that, in Mr Taft's absence, it would be necessary to decide whether to proceed with the meeting, and asked whether the representatives of the responsible authorities had any objections to the meeting continuing.</p> <p>The Neighbourhood Sergeant, Frome & Shepton Mallet stated that Mr Taft had told her beat manager, PC George Simpson, that he would be dialling in, but would be requesting an adjournment.</p> <p>The Legal Advisor stated that the Sub-Committee should consider when the papers for the meeting had been supplied to Mr Taft, and whether this would have given him a reasonable amount of time to consider them and take advice.</p> <p>The Licensing and Business Support Officer stated that the initial report and accompanying papers had been posted within the required time frame, and that the supplementary update documents had been posted the previous day and hand delivered around midday that day (8 July 2020). She had also had a telephone conversation with Mr Taft on 8 July 2020 and had informed him of the date and time of the hearing. However, despite attempting to contact him three times on the morning of the hearing (9 July 2020) she had been unable to get through.</p> <p>The Neighbourhood Sergeant for Frome & Shepton Mallet, raised various concerns over the process leading up to this hearing. She stated that her Chief Inspector had attempted to speak with licensing officers, unsuccessfully; the Police had written to Mendip on this matter and had also taken legal advice from a leading licensing specialist. The Police believed there might have been a breach of the Licensing Act 2003, hearing regulations 2005, regarding Regulations 6 and 18. She also stated that the police had put these concerns to Mendip the previous day, but had been unable to speak with any Mendip licensing officers.</p> <p>Her first query concerned the advertisement. This had been published on the website, but she stated that it was in the wrong place and also headed incorrectly. She acknowledged that a printed copy of the advertisement had been displayed at the premises, however she queried whether this was sufficient as fewer people were</p>	Olivia Denis
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out and about due to lockdown, and thus less likely to see the advertisement.

She also noted that the Mendip had refused to publish certain additional statements that the Police had wished to submit, on the grounds that they had missed the 5 working day deadline and would need to seek permission at the hearing. She requested a reference to the relevant legislation. She also stated that Mr Taft had told the police he had only see the relevant representations yesterday, and had not had sufficient time to address these.

The Legal Advisor noted that Regulation 6 of the Licensing Act related to notices and Regulation 18 to representations. A representation was communication from a responsible authority, neighbour or interested party. The expiry date for representations relevant to this hearing was midnight on the previous day to this hearing (8 July 2020). The issue of information concerned events that had happened after the application had been lodged.

With respect to the deadline, she stated that this was not part of the Licensing Act, but as a public authority, Mendip was bound by the Local Government Act 1972, schedule 2, regarding the convening and notice of meetings of the primary authority. These stipulated that papers had to be circulated at least 5 clear days before the hearing. Thus the deadline for publication of the agenda for this meeting was the close of business on Wed 1 July 2020. The final day for representation was thus the day after this deadline, Thursday 2 July 2020.

The additional information related to events that had occurred subsequently to submission of the Police's application.

Regarding the additional information, the Sub-Committee was entitled to ask for and be provided with all relevant information, therefore this information should come before the Sub-Committee.

The Police Licensing Officer, Mendip & South Somerset, queried whether the hearing would require Mr Taft's consent in order that the supplementary evidence could be heard, and how this consent could be obtained for this meeting in his absence? She also queried whether in fact Mr Taft had been given sufficient time, and asked whether this problem could have been avoided "if the date had been set correctly".

The Legal Adviser stated that the issue was not consent but whether the Mr Taft had had sufficient time to review the paperwork. She agreed that the problem could have been avoided if a different time frame had been adopted.

The Chair stated that if the Sub-Committee were not satisfied that the correct process had been followed, the meeting would have to be adjourned.

The Business Safety Officer, East Somerset Group, Devon & Somerset Fire & Rescue Services stated that the reference to his representation having been made two days prior to the meeting was incorrect. He had submitted it to Mendip on 18 June 2020 and it had been acknowledged, and he had only discovered later that his representation had not been treated as having been received on that date. In addition, he noted that he had not received any of the paperwork for this meeting.

The Sub-Committee then proceeded to discuss whether the meeting should proceed or not.

Councillor Sam Phripp did not agree that it should be adjourned. In his opinion, the officers had made every effort to ensure Mr Taft had received the papers, and it had been established that despite knowing the date and time of the meeting he had not attended. Councillor Phripp also felt that Mr Taft had had sufficient time to read the papers served upon him the previous day.

Councillor Michael Dunk's opinion was that personal reasons or the need to seek legal advice might indicate that Mr Taft had had insufficient time to study the papers. Councillor Dunk stated that Mr Taft's lack of contact with Mendip was worrying, but also noted that other parties at the hearing had spoken of difficulties in contacting to Mendip officers.

The Licensing and Business Support Officer stated that Mr Taft had her contact number, and contact numbers for the committee officers, but that she had received no missed calls. Councillor Dunk felt that, on balance, Mr Taft should be given the benefit of the doubt.

The Police Licensing Officer, Mendip & South Somerset requested further discussion to establish whether or not there had been any breaches of the Licensing Act 2003 and whether the hearing had taken place a sufficient amount of time after the end of the consultation period, before coming to a decision on whether the meeting

should proceed. She requested a reference to the timetable, and queried whether it referred to 5 days or 5 working days.

The Legal Advisor clarified that:

- The Local Government Act 1972, schedule 12, clause 4 (1a) stated that agendas should be available at least 5 clear days for meetings, which excluded weekends (thus 5 clear working days).
- The Licensing Act 2003, hearing regulations 2005, schedule 1, clause 7, stated that premises licence hearings had to be within 20 working days, beginning with the day after the end of the representation period. In this respect, the meeting had taken place unusually soon after the end of the consultation period, but was valid under the regulations.

Councillor Phripp sought further confirmation that the Licensing Act had not been breached. The Neighbourhood Sergeant, Frome & Shepton Mallet reiterated her earlier statement that the Police had taken legal advice on this matter, but had not had an opportunity to discuss it with Mendip. She also reiterated her earlier statement that the advertisement had been published in the wrong part of the website, and headed incorrectly as a new licence.

The Licensing and Business Support Officer stated the two notices at the Bell Hotel had been affixed with red hazard tape, and that the live feed confirmed members of the public had seen it. There was also a notice at the Council's reception. She acknowledged that it had been not been published correctly on the website and commented that steps had been taken to remedy this.

Councillor Phripp queried whether the Government have given any advice following COVID-19 that might affect the requirements for physical publication of advertisements. The Licensing and Business Support Officer confirmed that the Government had issued no such advice.

The Chair asked the representatives the Neighbourhood Sergeant, Frome & Shepton Mallet whether she thought the hearing should proceed further. The Neighbourhood Sergeant, Frome & Shepton Mallet stated that she felt it would not – she was concerned that if its decision were appealed, the appeal might go against Mendip. It would be fairest to all parties to adjourn, also bearing in mind

that the Business Safety Officer, East Somerset Group, Devon & Somerset Fire & Rescue Services had not received the papers.

The Licensing and Business Support Officer stated that the initial report had been sent to all the responsible authorities, including the fire service.

At this point, the Sub-Committee discussed whether to proceed.

The Chair, Councillor Simon Carswell, thought that the meeting should be adjourned. Councillor Sam Phripp was of the opinion that the legislation had been followed and that Mr Taft had been given sufficient time. However, he sought the Legal Advisor's opinion on a potential challenge in the Magistrates Court.

The Neighbourhood Sergeant, Frome & Shepton Mallet clarified that her concerns were that there were grounds for appeal, because she had never attended a hearing which was the day after the end of the consultation period. The Legal Advisor concurred that this was unusual, and could give rise to a challenge, though she was not in a position to advise whether this was likely to be successful. She also pointed out that the Business Safety Officer, East Somerset Group, Devon & Somerset Fire & Rescue Services' representation had been served late and that in theory any party could have made a representation up until midnight on Wednesday 8 July, which would have left Mr Taft no time at all to review the papers.

Councillor Michael Dunk felt that it was important that the police and other authorities could see that due process had been followed. If the meeting were adjourned, there would be no excuse for Mr Taft not to attend the next meeting and not to be in contact with Mendip. Councillor Dunk was also concerned that the Magistrates Court might take the view that the hearing date was too early, even if within the letter of the law.

At this point, the Sub-Committee concluded that the meeting should be adjourned.

The Legal Advisor stated that the date and time for the next meeting needed to set at this point.

This was set for 11am on Thursday 16 July 2020.

	<p>The Legal Advisor stated that she would respond to the email from The Police Licensing Officer, Mendip & South Somerset formally, in advance of the rescheduled hearing.</p> <p>It was agreed that Business Safety Officer, East Somerset Group, Devon & Somerset Fire & Rescue Services would attend the meeting and receive a full set of papers.</p> <p>The Chair then closed the meeting.</p>	
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The meeting closed at approximately 2.45 pm