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FAO: Ryan Ratcliffe
Licensing Enforcement Officer
Council Chamber
Town Hall
Talbot Road
Blackpool

24 May 2021

Dear Sirs,

Re: Transfer the Sexual Entertainment Venue (SEV) Licence for Eden, 15-17 Queen Street, Blackpool

We refer to the above application and the documentation which has been provided to us by the Council in advance of the hearing tomorrow night.

It would appear to us that the applicant has made a significant procedural error in relation to the advertising of this application, which would render the application invalid.

The applicant is Pool Construction Limited. However, the site notice and newspaper advert state that David Moseley is the applicant. Section 10 of the Local Government (Misc Provisions) Act 1982, Schedule 3 requires the applicant to give public notice of the application in a local newspaper and on site. The notice must be in such form as the appropriate authority may prescribe. The Council's SEV Policy at section 2.1 (b) states that the newspaper and site notice MUST state the name of the applicant (which it does not).

The requirement to advertise the name of the applicant is critical because it gives objectors an opportunity to object on the grounds that the applicant is unsuitable to hold a SEV. This issue is one of the discretionary grounds for refusal of an application to transfer a SEV under Schedule 3 s.12 (3)(a).

Failing to state the correct name of the applicant in the site notice and newspaper advert has denied objectors the opportunity to object to the suitability of the applicant (Pool Construction Limited) to hold a SEV licence.

We envisage that the applicant will argue that this procedural error can be overlooked by the Council in line with the ruling of His Honour Judge Blackett in *R (D&D Bar Services Limited) [2014]* (attached). Whilst we accept that minor errors on a notice of application (such as the font size) would not render an application such as this void, failure to advertise the name of the applicant is not a minor error that can be overlooked. This has denied objectors the opportunity to raise

objections to the applicant's suitability to hold the SEV licence. It is therefore a significant procedural error which cannot be overlooked.

As such, it is our view that the application is void due to this procedural defect and that the hearing tomorrow should be cancelled as a result as there is no valid transfer application to consider.

We await your response on this point.

Yours faithfully,

Keystone Law

Keystone Law Solicitors

Neutral Citation Number: [2014] EWHC 344 (Admin)

Case No: CO/16844/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2014

Before :

HIS HONOUR JUDGE BLACKETT SITTING AS A JUDGE OF THE HIGH COURT

Between :

R (D&D Bar Services Limited)	**Claimant**
- and -	
Romford Magistrates Court	**Defendant**
- and -	
London Borough of Redbridge	**Interested Party**

Philip Kolvin QC and Jeremy Phillips (instructed by **Dadds LLP**) for the **Claimant**
David Matthias QC and Gary Grant (instructed by **The Borough Solicitor**) for the **Interested Party**

Hearing date: 29 January 2014

Approved Judgment

His Honour Judge Blackett:

Introduction

1. This is a rolled up hearing at the outset of which I granted permission to apply for judicial review.

2. This is an application for permission to appeal by way of judicial review, the decision of District Judge Lucie sitting in North East London (Romford) Magistrates' Court on 7 November 2013. The basis of claim is that the public notice advertising a licensing review was defective in that it failed to specify the grounds for the review and its last three lines were printed in Font 14 instead of Font 16 as prescribed by Regulations. The Claimant submits that these two failures rendered the whole review process and appeal void and that process should be restarted *ab initio*.

3. The Claimant operates a nightclub named "Funky Mojoe" located at 159-161 High Road, South Woodford, London. The interested party is the London Borough of Redbridge (LBR) acting as the Licensing Authority. On 30 January 2013 the Head of Community Protection and Enforcement for LBR applied for the review of the Claimant's premises licences under the Licensing Act 2003, section 51. Notices were displayed asking for representations from any parties or responsible authorities to be made in writing and submitted to LBR between 31 January and 27 February 2013. Twenty two representations were received from the public.

4. On 27 March the Claimant's solicitor informed LBR that the notices had failed to comply with the requirement of the relevant Regulations. He was informed that the matter would be determined by the Licensing Sub Committee when they undertook the review. That review took place at a public hearing on 18 – 19 April 2013. The Licensing Sub Committee determined that nobody had been misled or disadvantaged by the failures on the notices and there was no reason to grant an adjournment. The

review hearing went ahead and the Licensing Sub Committee modified the conditions of the licences, particularly in relation to the terminal hours.

5. The Claimant appealed against this decision to the Romford Magistrates. District Judge Lucie heard the appeal and handed down his judgment on 7 November 2013. The Claimant repeated the submissions that the notices were defective and submitted that the review hearing by the Licensing Sub Committee was therefore invalid. District Judge Lucie rejected those submissions. In so doing he found as a matter of fact that the notices were defective, but the two errors were minor irregularities.

The legislative framework

6. Part 3 of the Licensing Act 2003 (the Act) is concerned with the review of premises licences. By section 51(3) the Secretary of State must by regulations under this section:

   a. require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;

   b. require the authority to advertise the application and invite representations about it to be made to the authority by responsible authorities and other persons;

   c. prescribe the period during which representations may be made by the holder of the premises licence, and responsible authority or any other person;

   d. require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

7. S52 is concerned with the determination of an application for review. By sub section (1) this section applies where:

a. the relevant licensing authority receives an application made in accordance with section 51,

b. the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and

c. the authority has complied with any requirement imposed on it under subsection (3)(b) or (3)(d) of that section.

8. Part 5 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005/42 (the Regulations) is concerned with the advertisement of review by a licensing authority. Regulation 38 (1) specifies that the relevant licensing authority shall advertise an application for the review of a premises licence –

a. by displaying prominently a notice

(i) which is

(aa) of a size equal or larger than A4

(bb) of a pale blue colour; and

(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16

9. Regulation 39 specifies that notices referred to in regulation 38 shall state

a. the address of the premises about which an application for a review has been made,

b. the dates between which responsible authorities and any other person may make representations to the relevant licensing authority,

c. the grounds of the application for review,

d. the postal address and, were relevant, the worldwide web address where the register of the relevant licensing authority is kept and where and when the grounds for the review may be inspected; and

e. that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

The parties' submissions

10. Mr Kolvin QC for the Claimant submitted that this case raises a matter of great importance under the Licensing Act 2003. He submitted that where there has been a substantive breach of the notification and advertisement requirements of the Act in relation to applications for review (the substance of this case) or other authorisations, the licensing authority does not have jurisdiction to waive the breach and proceed to a hearing. It must, he says, as a matter of statutory interpretation start the whole procedure again.

11. Mr Kolvin submitted that the Licensing Act 2003 was radical legislation which took a patchwork of licensing controls and placed it in the hands of the local authorities, and made it their duty to promote licensing objectives (crime and disorder, public nuisance, protection of children, public safety) in their decision making. The key part of the legislative purpose was to provide for greater local involvement in the licensing process and decision making. The Act originally created the concept of "interested parties" but that has been extended to "other persons" by the Police Reform and Social Responsibility Act 2011. Notices announcing a review of a licence are important in that they ensure those other persons are informed of licensing reviews and decisions.

12. In this case, it is agreed that the notice advertising the review of the Claimant's licence did not comply with two of the requirements of the Regulations in that (1) it did not specify the grounds for review (it listed two of the licensing objectives without any further explanation) and (2) three lines at the bottom giving details of how the application for review could be inspected at the LBR's offices were printed in 14 and not 16 font

(the rest of the notice was in the correct font and contained the correct information).

13. Mr Kolvin submitted that the decision maker should approach these defects under a two-stage test. First there must be an exercise in construction of the statutory framework. The question is, did Parliament intend non compliance with the requirements in the Act and Regulations to be fatal? If the answer is yes, then that is the end of the matter. The whole process is void and must start again. If the answer is no, then the decision maker must go on to determine the imputed intention of Parliament. If the imputed intention was that non compliance was not fatal then the decision maker should go on to consider whether there had been substantial compliance taking account of whether there had been any prejudice and the overall balance of justice.

14. Mr Kolvin also said that there is no "slip rule" in the 2003 Act and its absence was deliberate. The matter was raised during the passage through Parliament of the Gambling Act 2005 which does contain a slip rule, but none was inserted in the 2003 Act. The wording of the Act in relation to notices is mandatory: if the three requirements of s52(1) are not complied with, then there can be no hearing to determine a licensing matter. In this case Mr Kolvin submitted that s 52(1) (c) required the LBR to comply with the requirement of s51(3)(b) which required the LBR to advertise the application. Regulation 39(c) specifies that the notice shall contain the grounds of the application for review and Regulation 38(1)(a)(i)(cc) requires the notice to be printed legibly in black ink or typed in black in a font of a size equal to or larger than 16. The terms of the Regulations are mandatory – they specify that the authority shall comply with the requirements. The agreed failures to comply with those requirements demonstrate that the advertisement is not valid, so the LBR did not comply with s51(3)(b). In those circumstances s52(1)(c) was not satisfied so s51 did not apply: the hearing which was held was invalid, the decision it reached was void and should be quashed and the review process should start again.

15. Mr Kolvin submitted that District Judge Lucie erred when he relied on the line of authorities including R (Jeyeanthan) v Secretary of State [2001] 1 WLR 354 which require the Court to consider what consequences should flow from the breaches. He submitted that this line of cases deals with situations where the statute makes a requirement and does not set out the consequences of breach. Where the consequence of breach is set out, it is the duty of the public authority to observe it. A public authority cannot second guess the will of Parliament. Here the statute is perfectly clear that the jurisdiction to hold a review hearing and exercise regulatory powers is reserved for cases where there has been procedural compliance. The merits of the case are irrelevant: if there is no procedural compliance there is no jurisdiction to hold a hearing. Mr Kolvin referred to a number of authorities to support his contention that the courts have quashed administrative actions on jurisdictional grounds based solely on a construction of statute without engaging in a wider balancing exercise on merits.

16. Mr Kolvin submitted that the case does not get past the first stage. The intention of Parliament is clear from the words used in s52 of the Act – the section applies only if the three requirements are fulfilled. If any are not then there is no jurisdiction to hold a hearing. Nevertheless, he submitted, if the Court was against him and moved on to the second stage, the failure to provide grounds in the notice meant the issue was not substantial compliance because there had been no compliance with Regulation 39(c). He relied on London and Clydeside Estates Ltd v Aberdeen District Council [1980] 1WLR 182. Lord Hailsham said: "a total failure to comply with a significant part of a requirement cannot in any circumstances be regarded as substantial compliance with the total requirement in such a way as to bring the respondents contention into effect."

17. Mr Matthias QC for the Interested Party submitted that the Claimant was wrong in his approach. It would be extraordinary if Parliament intended the whole review to be a nullity solely because there were some errors in a notice. The legislation does not disclose an intention to render the review

process invalid because of a minor and inconsequential error. It is only where legislation specifies what will happen if there is a breach or failure (a stage 1 case) that the issue can be resolved by applying the legislation. Were it does not so specify (a stage 2 case) the intention of Parliament must be imputed. In this case the legislation does not specify the consequences of a breach of the Regulations, therefore there is a need to impute Parliament's intention from the wording of ss 51 and 52 of the Act. At the time the Act was passed, Parliament did not know precisely what would be within the Regulations, but it is safe to conclude that Parliament would not have intended the review process to be invalidated because of a failure to comply to the letter with every detail of Regulations which had not yet been written. The words "this section applies" is not determinative – it is not a clear enough form of words to discern an express intention of Parliament to say what happens in the event of a breach of Regulations.

18. Mr Matthias submitted that against this background District Judge Lucie's approach was correct. It is important to look at the consequences of any breach or failure and then impute what Parliament intended. He referred to a number of cases where legislation did not specify the consequences of failure and that exercise was undertaken.

Discussion

19. Mr Kolvin suggested that Regulations which are mandatory make compliance easier, so that there can be no doubt that unless they are complied with to the absolute letter, then the process is invalid. That may be so, but in my view it could never have been the intention of Parliament that minor errors on a notice or advertisement for a licensing review should make any subsequent consideration of the licence void. Such an approach would lead to absurd consequences. It is clear that there must be substantial compliance with Regulations 38(1) (a) and 39 but the process should not be frustrated by minor errors. Mr Kolvin's suggestion that there has been a total failure to comply with a significant part of a requirement does not reflect the reality of what occurred. District Judge Lucie considered the errors in the notice to be "minor irregularities." In

the context of this case that is an entirely reasonable conclusion with which I agree and he was right to follow the approach in R v Soneji [2006] 1 AC 340 (HL) and R v Secretary of State for the Home Department ex parte Jeyeanthan [2000] 1 WLR 354. At paragraph 26 of his judgment he said:

"It appears to me that it would not be in the overall interests of justice to quash the decision of the committee as a result of the irregularities. Had any party been able to show substantial prejudice or injustice then the decision may have been different. This is not a case, in my judgement, where non-compliance anywhere near approaches the degree or status that would go to the jurisdiction of the committee."

20. I agree entirely with the District Judge's approach.

Conclusion

21. I completely disagree with Mr Kolvin's submission that this case raises a matter of great importance under the Licensing Act 2003. It is, like so many other licensing cases, one which turns on its facts. It is a case which has been handled impeccably by the Licensing Sub Committee and the District Judge on appeal. The submission from the Claimant that the process should be invalidated solely because of two minor errors on a notice is entirely without merit.

22. For the reasons I have given, this claim is dismissed.

Costs

23. I invite the parties to make submissions as to costs. This can be done in writing or at the request of either party at a further short hearing to be arranged in the usual way.