

IN THE MATTER OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

AND

**IN THE MATTER OF THE TRANSFER SEXUAL ENTERTAINMENT VENUE (SEV) LICENCE
EDEN, 15-17 QUEEN STREET, BLACKPOOL**

OPINION

1. Those instructing represent Pool Construction Limited (sole director, Mr David Moseley), who has made an application to transfer the SEV licence for the above named premises from the current licence holder, Mr Newton.

2. Mr Newton was a prospective new tenant of the premises, and he and Mr Moseley, the landlord of the building were in negotiations in relation to a new lease. Those negotiations ended, and Mr Newton, the current licence holder will not be taking occupation of the building. However, as the negotiations have ceased, Mr Newton is not willing to provide consent, and is essentially holding Mr Moseley to commercial ransom. Mr Moseley requests that the licence be transferred to him as the landlord of the building, hence the application.

3. On 24 May, Mr Richard Williams of Keystone Law sent a letter to the Council on behalf of Mr Newton, who is the sole objector in this case. Clearly, Mr Newton's objection is designed to frustrate Mr Moseley, in furtherance of the commercial rivalry.

4. The letter from Keystone Law stated as follows:

“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)."

5. This legal challenge is without foundation and should be disregarded by the Council in considering this application for a transfer of the SEV licence. There is ample caselaw to confirm the correct approach in such situations.

6. The letter from Keystone Law has identified *D&D Bar Services Ltd v Romford Magistrates' Court and London Borough of Redbridge* (aka "Funky Mojoes"), which is only one of such cases.

The Learned Judge in that case said:

"It could never have been in 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."

"The process should not be frustrated by minor errors."

The issue in the current case is certainly minor, and not substantial.

7. *R v Secretary of State for the Home Department (ex parte Jeyanathan)* [2000] 1 WLR 354 and *R v Soneji* [2005] 4 All ER 3212006 1 AC 340, were specifically endorsed in *Funky Mojoe*

In the House of Lords in *Soneji*; Lord Steyn stated:

"In such cases, though language like 'mandatory,' 'directory,' 'void,' 'voidable,' 'nullity,' and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the courts, in deciding the consequences of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Procrustes invented by lawyers for the purposes of convenient exposition."

8. In *R (TC Projects Ltd) v Newcastle Justices* 2007 EWHC 1018 (Admin) Gibbs J ruled that the licensing authority must decide what the consequences of any failure to comply with any administrative requirement ought to be, on the basis of justice and proportionality in all the facts and circumstances of the case. Even where legislation uses language such as “must” or “shall”, this does not necessarily mean that the breach is fatal. The Authority will wish to take into account a number of considerations, including:

- (1) Has the purpose of the legislation been substantially achieved, even if not fully achieved?
- (2) Has a member of the public identifiably been discouraged from exercising a right to object?
- (3) Even if a member of the public has been deprived of an opportunity to make a representation, was the same objection effectively made by others, so that the Authority was in any event able to take it into account?
- (4) Was the breach deliberate or culpable?

9. In the current case, it is obvious that the administrative issue of the differing names on the application and notice, even if it could be described as an error, which is arguable, is not remotely prejudicial to the application or to any person who might wish to make a representation. Mr Moseley is the sole director of the company, and identifying the company is the same as identifying him. The public have not been misled in any way. Nobody would be deterred or encouraged in making a representation because of the details on the Notice.

10. In any event, Mr Newton, who is the person complaining of prejudice, is the person who has made a full objection, and was not remotely deterred or confused by the details on the Notice. In fact it is abundantly clear that Mr Newton knew exactly who the applicant was, given that his representation refers to ‘APPLICANT DETAILS – David Moseley on behalf of Pool Construction Ltd’. Indeed, he did not raise it as a concern at all, until he retained legal advisers, who have clearly raised it for the first time as a legal technicality, and not as a practical problem that has caused any identifiable disadvantage to anyone. It is notable that Mr Newton’s legal advisers are not alleging any actual prejudice.

11. In all the circumstances, the application and the notice amount to the same thing, and identify the person against whom any person might wish to lodge a representation, if they were minded to do so. The only person who is minded to do so is Mr Newton, in the course of pursuing his own agenda against Mr Moseley, and he clearly was not confused or deterred in his objectives by anything written on the application or notice. This is not only indicative of how any person might have reacted to the application and notice, but is also confirmation that the issues raised by Mr Newton will be before the Committee, and they will have an opportunity to consider them on their merits, and so no prejudice has been caused in any conceivable way.

12. I will be glad to be of further assistance, should it be required.

Sarah Clover
Kings Chambers
Birmingham
6 June 2021