

Additional information for Members in respect of the Review application process

On the 31st July 2018 the Council (and other responsible authorities) received application for the Review of the licence for Knutsford Masonic Club (the Club). From this date certain periods are calculated, eg the date by which representations must be made (28 day consultation period) and the date by which a hearing needs to take place (20 working days from the end of the consultation period)

Also on the 31st July 2018, I emailed the solicitor acting for the applicant to confirm receipt. On that day the Licensing Team Leader also placed three Notices confirming the application and the representation period at the premises. A copy of the notices was also placed on the Council's website. These are requirements of the legislation and the requirements have been met.

On the 14th August 2018 I received a phone call from Mr Stokes, a Director and Secretary of the Club, where he confirmed that he was aware of the application by the operator, but had not received the paper work. He stated that post goes to the premises but is not always collected. There was also some suggestion that the previous operator of the premises did not always pass on post. I therefore wrote to Mr Stokes and provided a copy of the application. There was no suggestion at this time that the application has not been served on the Club.

On the 30th August 2018, Notices of hearing were issued to all parties giving a hearing date of 20th September 2018.

In response to this email, Mr Stokes telephoned and emailed me on the 31st August 2018 to state that the application made in July was not delivered to the Club. It was returned to Royal Mail endorsed 'not called for'. The solicitor acting for the applicant subsequently served the application on the Club at their registered office on the 28th August 2018. Mr Stokes raised the issue as he wanted more time to deal with the case. Mr Stokes stated in his email:

As the timetable for the submission of documentation and the hearing were set on the basis that we had received notice of the application at the end of July 2018, we would like to request an extension of time and revision of dates for submission and the hearing.

On the 31st I contacted the Council Legal Department to confirm how we should proceed with this matter. I also attempted to contact the applicant's solicitor and left messages without response.

In making a decision we considered the following options:

1. To deem the application invalid and require the process to restart in its entirety
2. To deem the application valid and extend time limits in the public interest at the hearing on the 20th September 2018 to a date determined by Members
3. To recalculate the date of hearing from the date the documentation was served on the premises licence holder by the applicant's solicitor. Thereby providing the additional time requested (ie 25 working days)
4. To deem the application valid and proceed with the hearing on the 20th September 2018

As well as taking into consideration the Licensing Act 2003 and the statutory guidance, we also specifically considered:

1. The Licensing Act (Premises licences and club premises certificates) Regulations 2005
2. The Licensing Act (Hearings) Regulations 2005

The Licensing Team considers that the time periods specified within the legislation are to allow time for representations to be made, for the premises licence holder to prepare their response, and to ensure the matter is dealt with in a reasonable timeframe (particularly when the issues faced by the applicant and those making representations are ongoing).

On the basis that the Council must act reasonably and without bias (ie fair to all parties) the Licensing Team considered that the fairest way to deal with the matter was option 3 (specified above). We also took into consideration that Mr Stokes' main concern was additional time to deal with the matter.

All those party to the review were informed of this decision on the 4th September 2018. On the 1st October 2018 the solicitor acting for the Club challenged this decision.

The issue over the service could be considered a procedural defect and while the legislation is silent on this specific situation, there is case law that can be looked to. This includes:

1. R. (on the application of D&D Bar Services Ltd) v Romford Magistrates' Court [2014] EWHC 344 (Admin); [2014] L.L.R. 761;
2. The Queen on the Application of Edward Clarke v Bristol City Council [2013] EWHC 4530 (Admin); 2013 WL 7090810

Both cases deal with licensing matters where the regulations have not been fully complied with. In both cases the High Court considered that such defects would not be fatal. Copies of the cases are enclosed.

Prior to the commencement of the hearing Members may wish to deal with this as a preliminary point and take information on the point from all parties.

The Licensing team has received correspondence from the other parties who have made representation (pages 131 & 133). Both parties have indicated that the hearing is necessary and that the applicant should represent them. Both parties have also stated that that they are continuing to suffer a public nuisance and provide the following dates as examples:

11th August 2018 – Music heard till 23:45

15th September 2018 – Further music heard

22nd September 2018 – music played beyond midnight and raucous shouting from departing guests until 1am

We understand that there has been some attempt at mediation between the parties. However, no agreement has been reached.

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