FIELD DAY FESTIVAL, MERIDIAN WATER, 5 ARGON ROAD, EDMONTON, LONDON N18 3BW

LONDON BOROUGH OF ENFIELD LICENSING SUB-COMMITTEE

HEARING 8TH MAY 2019

SUBMISSIONS OF BROADWICK VENUES LIMITED IN RELATION TO THE LICENCE PLAN

INTRODUCTION

1. Amongst 22 allegations of non-compliance made by Tottenham Hotspur FC[1] ("TH") is an allegation that the statutory procedural requirements in relation to plans contained in the Licensing Act 2003 ("the Act") and the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 ("the Regulations") have not been met.

2. TH submits that this:

> *"... results in the Licensing Authority not having authority to consider the applications ..."*

3. TH's submission is reiterated in its "Outline Submissions" dated 1st May 2019 in which it states[2]:

> *"Accordingly, the LSC [Licensing Sub-Committee] has no jurisdiction to grant a premises licence: section 18(1)(a). Jurisdiction to grant a premises licence arises where a licensing authority "receives an application ... made in accordance with section 17."*

4. The legal advisor to the licensing authority has invited the applicant to reply to TH's argument. This is the applicant's reply.

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[1] Page 149.
[2] Paragraph 3(b)

5. TH's argument, which is regrettably unsupported by any judicial authority, is bad in law. To the contrary, binding case law makes it clear that a licensing authority is not deprived of jurisdiction because of departures from procedural requirements. It is not at all clear why THFC has not drawn the Sub-Committee's attention to the well-established legal authorities on the topic.

6. Furthermore, it is embarrassing but necessary to point out that both of the plans on TH's own premises licences lack the detail required by the Act and Regulations. It is something of a mystery why TH purports to apply to the applicant standards which it does not apply to itself.

7. The application was not rejected as a nullity by the London Borough of Enfield officers as the processing authority. Nor did officers consider it necessary to seek further detail on the plan. Nor did the London Borough of Enfield as a responsible authority make a representation on the application, whether in relation to the plan or any other matter. Council officers were right not to reject or make representations on the plan.

8. The reality is that when an application is made for a licence for a large, outdoor, multi-use event space which will be in operation for a great variety of events over a large number of years, it is impossible to provide a detailed layout plan. Many events which will take place under the licence have not even been conceived of, let alone fully designed. Accordingly, the overwhelmingly common practice, acceded to by licensing authorities across the land, is to provide plans in the form set out by the applicant, and indeed by TH.

9. This does not trouble licensing authorities because the main parameters for future events, e.g. the number of events per annum, maximum hours, capacities, noise limits and so forth are set by the licence, together with conditions requiring specified procedures to draw up and consult upon the Event Plan for each event. Following the grant of the licence, and in succeeding years, the plans for individual events are then developed following detailed consultation with the responsible authorities and transport authorities, usually constituted as a Safety Advisory Group or Multi-Agency Event Planning Team. Some licences require the Event Plan to be agreed by the SAG, some require consultation with the SAG and/or responsible authorities. Some require

sign-off by the licensing authority itself. That is very much a matter of local preference.

10. The point apparently principally relied upon by TH is therefore not only bad in law, but entirely at odds with how major event planning for outdoor spaces necessarily occurs.

11. The applicant will deal first of all with the practice in major event planning and then explain why such practice does not deprive the licensing authority of jurisdiction to determine the application.

MAJOR EVENT PLANNING

12. There are many large, open spaces which have flexible licences designed to accommodate a broad range of events in the future. These include: parks, commons, festival sites on open fields, stadia, arenas and so forth. There are also large exhibition buildings which are similarly able to host a wide variety of events and benefit from flexible licences.

13. Some licences are framed so as to permit an unlimited range of events such as concerts, performances, festivals, fairs and exhibitions. Others permit just one recurring event, such as the Glastonbury Festival in Mendip or the Wireless festival in Finsbury Park.

14. What these licences have in common, though, is that they are framed to permit a high degree of flexibility in relation to events far in the future, some of which will not even have been conceived of yet, let alone been through the intensive design and planning process necessary for the staging of a major event.

15. Furthermore, to set the plan in stone long in advance of the event is likely to be stultifying and impracticable. The final layout design is often the result of many months of liaison with responsible authorities. It cannot be set down by a licensing sub-committee months or even years ahead.

16. Worse, to seek to tie down every detail in the licence plan may pose a serious risk to the licensing objectives. A week of rain before an event takes place may result in having to move a stage or some other structure for safety. Experience from the first

day of the festival, or an intelligence briefing, may result in a reconfiguration of the layout on the advice of the event's professional consultants or responsible authorities. If the plan is fixed from the date of the application, it will be impossible to respond to contingencies without applying for a variation. But the variation cannot be granted in less than 29 days. This would give the premises licence holder the unfortunate choice of running the event in strict accordance with the plan and so endangering the public or running it so as to promote the licensing objectives and so committing a criminal offence by departing from the licence plan.

17. The solution to this issue which has achieved extremely widespread acceptance is for an outline plan to be submitted with the application and a list of conditions which provides for the subsequent working up, event by event, of an event plan, in consultation with the SAG or Multi-agency Event Planning Team, as indeed has happened here.

18. To give the Licensing Sub-Committee some idea of the breadth of venues whose premises licence incorporates an outline plan, a small selection of plans is submitted herewith. Some show only a perimeter. Some show a modicum of detail. None show all the detail set out in the Regulations:

    (1) Central Park, East Ham.
    (2) South Park Plaza, Queen Elizabeth Olympic Park,
    (3) Victoria Park.
    (4) Alexandra Palace Park
    (5) Boomtown Winchester
    (6) Isle of Wight Festival
    (7) Download
    (8) Dock X
    (9) Elland Rd
    (10) Tottenham Hotspur FC: Park Lane Square.
    (11) Tottenham Hotspur FC: stadium.

THE LAW

19. Section 17(3) of the Act says that an application must be accompanied by a plan of the premises in prescribed form.

20. The contents of the prescribed form are set out in regulation 23 of the Regulations. They include the boundary, the points of access and egress, structures, stages, WCs, fire safety equipment, kitchens and so forth.

21. Section 18 of the Act provides for determination of the application for a premises licence. Section 18(1) materially provides that the section applies:

> *"... where the relevant authority –*
>
> *(a) receives an application for a premises licence made in accordance with section 17."*

22. In this case, the plan submitted[3] showed the perimeter of the premises, fire safety equipment and emergency exits, but did not show other things set out in regulation 23 such as fixed structures, stages and the like.

23. The question is what is the consequence of such omissions?

24. According to TH, the consequence is that the licensing authority has no jurisdiction even to determine the application. In other words, even if there had been no representations at all, the licensing authority would have been prohibited by the Act from granting the application. As such, says TH, the application was effectively a nullity.

25. The difficulty with TH's submission is not just that it is impracticable and would stymy the basis of major event planning in England and Wales. It is that it wholly ignores and is contradicted by binding legal authority.

26. In R (D&D Bar Services Limited) v Romford Magistrates Court [2014] EWHC 344 (Admin) there were defects in a public notice advertising a licensing review. This breached regulations under section 51. Just as section 18 states that it applies when there has been compliance with section 17, so section 52 says that the review proceeds where the application is made in accordance with section 51.

27. This led the premises licence holder to say that where there had been breaches of the regulations under section 51, the licensing authority, the London Borough of

[3] Page 101.

Redbridge, had no jurisdiction to determine the review. It submitted that Redbridge had no power to waive the breach and proceed to a hearing: rather, the whole application had to start again. This is essentially what TH is seeking to argue here.

28. The argument was rejected by Redbridge's licensing sub-committee, which proceeded to determine the application for review. It was then rejected again by the District Judge in the magistrates' court, and yet again by the High Court.

29. The District Judge 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 judgment, where non-compliance anywhere near approaches the degree or status that would go to the jurisdiction of the committee."*[4]

30. The High Court stated that it agreed entirely with the District Judge's approach.[5] According to the High Court:

> *"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."*[6]

31. The matter was revisited, with the same outcome, in R (Akin) (trading as Efes Snooker Club) v Stratford Magistrates' Court [2015] 1 WLR 4829. This time, it was said that a notice of review was defective because it did not contain the grounds of application. The premises licence holder tried to persuade both the licensing sub-committee and the district judge on appeal that the sub-committee had had no jurisdiction because of the defects in the notice. Both attempts failed, as did a further judicial review challenge in the High Court, before a very senior court consisting of Lord Justice Beatson and Mr Justice Simon. In the High Court, the premises licence

[4] Cited at paragraph 19 of the High Court judgment.
[5] See paragraph 20.
[6] Judgment paragraph 19.

holder also argued, without success, that D & D Bar Services had been wrongly decided.

32. Lord Justice Beatson was highly critical of the argument that the breach deprived the Licensing Sub-Committee of jurisdiction. He described it as a *"back to the future"* approach. He said it was:

> *"... inconsistent with the general modern approach to the consequences of non-compliance with procedural requirements in statutory regimes. That approach reflects the emphasis in modern approaches to statutory construction on the purposive approach. The approach for which Mr Whale argued would lead to a version of what in other contexts has been described as "tabulated formalism."*[7]

33. As to whether there was substantial compliance, the Court held that the licensing authority could consider the whole application and not merely the alleged defects.[8]

34. The Court also said that the authority could consider whether there was evidence of prejudice to anybody as a result of the alleged defects.[9] Here, there was no prejudice. Members of the public were sufficiently notified of a pending application.

35. Finally, the Court stated that the correct approach to departures from procedural requirements in licensing was set down in R (Secretary of State for the Home Department) ex parte Jeyeanthan [2000] 1 WLR 354.

36. That case, which was decided by the Court of Appeal, confronted head on the idea – which is repeated by TH in this case - that procedural non-compliance nullifies the whole process. The Master of the Rolls Lord Woolf said at page 359 (with underlining added):

> *Because of what can be the very undesirable consequences of a procedural requirement which is made so fundamental that any departure from the requirement makes everything that happens thereafter irreversibly a nullity it is to be hoped that provisions intended to have this effect will be few and far*

[7] Judgment paragraph 42.
[8] Judgment paragraph 50.
[9] Judgment paragraph 51.

between. In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a situation that tribunal's task will be to seek to do what is just in all the circumstances: see Brayhead (Ascot) Ltd. v. Berkshire County Council [1964] 2 Q.B. 303, applied by the House of Lords in London & Clydeside Estates Ltd. v. Aberdeen District Council [1980] 1 W.L.R. 182.

37. TH's case is that the failure to comply to the letter with regulation 23 renders the application a nullity and deprives this Sub-committee of the jurisdiction to decide the application. Its problem, which it appears to have chosen to overlook, is that its case is in direct conflict with all the binding authority on the topic.

38. The Sub-Committee is not deprived of jurisdiction. Rather, the sub-committee should decide what are to be the consequences of failing to comply with all of the requirements of Regulation 23. According to the Court of Appeal, in so deciding, it should seek to do what is just in all the circumstances.

39. What is just in all the circumstances of this case? The applicant asks the Sub-Committee to consider the following factors:

    a. the application set out important parameters such as the capacity of events, hours, detailed conditions, site boundary, exits etc.;

    b. the application has now been further honed, reducing the number to one event per annum and significantly reducing the capacity;

    c. the plan was in essentially the same format as all plans for major outdoor event spaces where the layout of future events is unknown;

    d. the process of (i) the submission of an outline plan; (ii) imposing licence conditions which set the parameters for future events including the number of permitted events, capacity, hours, noise limits etc; (iii) imposing licence conditions which prescribe the process for event planning, involving

consultation with a SAG or similar body, is very well-established, and is appropriate to promote the licensing objectives;

e. to require the location of every structure to be set in stone in licence plans for future major outdoor events may prejudice the promotion of the licensing objectives if late changes are then required for operational or security reasons;

f. the licensing officers processing this application did not reject the application because of the format of the plan. Nor did they request further detail to be provided. They can be taken to have been aware of the usual process for the determination of licence applications such as this;

g. the sub-committee has the benefit of experienced responsible authorities advising it. None of them claims to have been prejudiced by the format of the plan when the application was lodged, and none claims to be prejudiced now;

h. in relation to the forthcoming Field Day event, there is an extremely detailed event plan[10] and a layout plan[11];

i. future Field Day events will be governed by the parameters set by the licence conditions, which include provision for a detailed layout plan to be provided to the licensing authority and responsible authorities. Obviously, if any responsible authority, or anyone else, considers that the planning for the event is not serving to promote the licensing objectives, they may apply to review the licence, and some have express statutory powers to prevent the event proceeding;

j. if the sub-committee decides that it does not have jurisdiction to proceed to determine the application, the result would be cataclysmic for the applicant. The event would need to be abandoned. Thousands of people who have booked tickets would have their plans frustrated and would need to be refunded their money. The applicant would incur huge liabilities to performers and other contractors. Its reputation would be seriously harmed. The Council's aspiration that Meridian Water should become a site providing large scale

[10] See list of documents at page 108.
[11] Page 286.

music and other cultural events would be damaged. All of this would be to no purpose save in aid of what the Court of Appeal has termed *"tabulated formalism"*;

k. the point is principally taken by a commercial rival whose own licence plans are similarly skeletal in nature. For it to complain of the format of the applicant's forms is, at best disappointing and at worst vexatious.

40. For all of these reasons, it is submitted that the justice of this case requires that the hearing proceed.

Other matters

41. TH's subsidiary point is that proposed licence conditions should not require that the SAG approve the any of the plans because it is a third party body.

42. The SAG chair has commented that she would prefer that the SAG itself should not approve the Event Safety Management Plan, as opposed to being consulted upon it.

43. The applicant has recast the proposed conditions accordingly. The final revised list of conditions will be submitted separately.

44. For these reasons, TH's subsidiary point simply falls away.

Conclusion

45. TH's various arguments are opaque and technical. They are some way from the merits of the case.

46. More importantly, they are wrong in law. Not only are they in conflict with all the binding authority on the topic, they don't mention the case law at all.

47. No serious prejudice can be claimed because of the format of the licence plan.

48. The licensing sub-committee is invited to dismiss all of these technical points and proceed to determine the application on its merits.

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7th May 2019

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