

Minute and Decision of the Licensing Committee meeting 3rd – 7th February 2014

The Licensing Committee reconvened on 3rd February 2014 to determine the single issue as to whether they should recommend the adoption of an Early Morning Restriction Order (EMRO) to full Council. The Committee met over the 5 day period, Monday 3rd February 2014 to Friday 7th February 2014, commencing at 9.30am each day on the 4th to 6th February and at 10.00am on 7th February. On the morning of 7th February, the Committee was advised by all parties that there were no outstanding issues and it was confirmed that cross-examination would not be permitted during the hearing.

In advance of that hearing, the Committee had considered voluminous documentation comprising of 5 bundles (A-E).

Mr Kolvin QC, on behalf of the Lancashire Constabulary, called 35 witnesses over the course of two days. Those witnesses all spoke in favour of an EMRO from their respective positions. In conjunction with that live evidence, the Lancashire Constabulary had submitted documentation of approximately 369 pages (bundle A). Mr Kolvin QC helpfully provided some written submissions that the Committee had the opportunity to consider in full and prior to the evidence being heard. Once all witnesses had finished giving evidence, the Committee took the opportunity to ask questions, where appropriate.

After the Lancashire Constabulary, Mr Craig Southall gave evidence against the EMRO and in doing so provided a visual presentation. That presentation consisted of the documentation in bundle C at pages 82 to 99. He also submitted a copy of the Home Office Guidance dated July 2013 entitled 'next steps following the consultation on delivering the Government's alcohol strategy' although the committee noted that this document had already appeared in bundle B at pages 65-105.

Mr Mark Marshall, the Licensing and Health and Safety manager for Blackpool Borough Council then gave evidence in support of the EMRO through his representative Mr Colbourne. Mr John Gaunt presented the case on behalf of Funny Girls Limited (bundle C) and Mr Newby gave evidence as part of its case.

Claire Smith (bundle E-67), the President of Stay Blackpool then gave evidence in opposition to the EMRO followed by Mark Seargeant from Kaos Nightclub. Mr Andrew Buchannan

(bundle E-137), the Director of Operations at Daniel Thwaites also gave evidence in opposition to the proposed EMRO. Mr Coen made representations on behalf of Punch Taverns PLC (E-263) and thereafter, Mr Dave Daley (E-34) gave evidence on behalf of Unite the Union. He was also the designated premises supervisor (dps) for The Castle Public House on Central Drive.

The third day of evidence concluded with Mr Peter Bowden of World Wide Club Holdings Limited (bundle D) who made representations and gave evidence on behalf of Club Sanuk. With the agreement of all parties and to make efficient use of the time remaining that day, Mr Bowden agreed to concentrate on his response to the Lancashire Constabulary statistics that day, before concluding his presentation the following morning.

Once Mr Bowden had concluded, Mr Stuart Green (bundle E-104), the Operations Director and dps of Club Sanuk gave evidence against the EMRO. Mr Gerald Gouriet QC then made representations on behalf of the Association of Licensed Multiple Retailers (ALMR) (bundle B) followed by Mr Stephen Walsh QC on behalf of Stonegate Pub Company (E-324). Finally, the Committee heard evidence from Pearl Mina (E-252), a local Public Relations and Media Specialist.

Mr Kolvin QC produced and disseminated some further documentation comprising of three statements from the following witnesses; Chief Inspector Mills, Tara Lucey and Sgt Sarah Salisbury. Some concern was expressed by the parties and the Committee gave all parties the opportunity to consider that further information, Mr Kolvin QC having helpfully summarised the content and purpose of the same. The Committee resolved to consider that documentation with the exception of the file note appended to Sgt Salisbury's statement which Mr Kolvin QC stated he would not rely on in any event. Having sought legal advice, the Committee considered that the parties had agreed to the inclusion of this further documentation in accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005.

Mr Kolvin QC also provided some helpful written closing submissions and again, the parties were provided with copies and afforded some time to consider them in full. The Committee made it clear that in allowing the Lancashire Constabulary time to close their case, they would enable any party to respond should they so wish. Once Mr Kolvin QC had presented

his closing submissions, Mr Gouriet QC, Mr Walsh QC, Mr Daley, Mr Bowden, Mr Holmes (Funny Girls), Mr Southall, Mr Newby and Mr Seargent all made brief submissions in response that were duly recorded and considered by the Committee.

The Committee was grateful to all of those who had made representations and to those that had attended at the hearing to express their views. The Committee considered all the documentation contained within the Bundles, together with the further documentation provided during the hearing and particularly the written submissions provided.

The Decision

The Committee reconvened to make its decision on Friday 7th February 2014 at which time it agreed that under Section 100 (A) of the Local Government Act 1972, the public be excluded from this part of the meeting on the grounds that it would involve the likely disclosure of exempt information as defined in paragraph 5 of Part 1 of Schedule 12A of the Act.

The Committee unanimously resolved to recommend that the EMRO should not be adopted.

Reasons

The Committee considered that this was an extremely important decision for Blackpool and took time to ensure that the totality of the evidence was assimilated. It is not the Committee's intention to rehearse every aspect of the evidence heard, however the Committee draws on some salient aspects below.

It was common ground between the parties that there were significant levels of violent crime within the Town Centre and that something must be done to address this. The Committee noted that the question it had to consider was whether the imposition of the EMRO as defined was appropriate for the promotion of the licensing objectives. The Committee noted that this EMRO would seek to prevent the supply of alcohol from 03:00 to 06:00 within the defined area. The Committee noted that the effect of the EMRO would not be to close those premises during such hours and would not prevent any other licensable

activities such as the playing of live or recorded music, or the provision of late night refreshment to name but a few.

The Committee accepted that the EMRO area covered an area of approximately 0.26 square kilometres and that approximately 22 premises were directly affected in terms of trading within that area and/or within the EMRO hours.

The Committee was mindful of the broad discretion it was being afforded in considering the appropriateness of the EMRO and in doing so concentrated on the statutory language of s.172A (1) of the Licensing Act 2003. The Committee focused on their duty to promote the Licensing Objectives with particular emphasis on the prevention of Crime and Disorder and the prevention of Public Nuisance. The Committee had regard to the Guidance issued pursuant to s.182 of the Licensing Act 2003 and particularly to paragraphs 9, 13, 16 and 30-39 of that guidance. The Committee was mindful of the fact that the EMRO, if adopted, was not to be considered a permanent measure and that it should be monitored appropriately.

The Committee derived limited assistance from the Statistical evidence provided by and commented upon, by the parties. The Committee agreed with the Lancashire Constabulary that the case did not turn on any detailed statistical examination.

The Committee considered the evidence as to other measures that had been adopted and tried within Blackpool and agreed that such measures were largely complimentary to one another.

The Committee, having reviewed all the evidence, considered the proportionality of the EMRO and concluded that whilst positive action was required, this EMRO was not appropriate in the circumstances. Having considered the evidence, the Committee did not feel that the EMRO would have a positive effect on violent crime in the EMRO hours or overall. The Committee was mindful that the evidence confirmed that the overwhelming majority of 'troublemakers' were from an FY postcode and that the so-called 'stag's and hen's' were not the main protagonists of such crime.

The Committee was also mindful of the fact that essentially there were two main operators trading in the area after 3am, namely Flamingo's and Club Sanuk and that there was limited criticism of these operators overall.

The Committee was not convinced that 'turning off the tap' at 3am, as was the phrase commonly used throughout the hearing, would have a positive impact on the prevention of crime and disorder. The Committee noted that one effect might be that a great number of individuals would be spilling out onto the streets at the same time and this had the potential for increased levels of crime, disorder and nuisance. The Committee was of the view that there was also a real risk that patrons would 'hoard' drink in anticipation of any 3am terminal hour and that this also mitigated the 'turning off of any tap' at 3am. Whether there was hoarding or an exodus at 3am, the Committee was of the view that both scenarios may have a negative impact on the licensing objectives.

The Committee considered that the totality of the evidence confirmed that the troublemakers responsible for crime, disorder and nuisance, were fortunately in the clear minority and that the cause of such trouble could not be 'laid at the feet' of alcohol consumption within the so-called EMRO hours. The Committee considered that the likely cause was linked to the consumption of alcohol prior to 3am.

The Committee was concerned of the potential negative impact of the EMRO on Blackpool as a whole and whilst no person could accurately predict the extent of that impact, it was concerning that some investment had been placed on hold and it was likely there would be some negative impact that reached further than those premises trading in the EMRO area. Having regard to the proportionality of the EMRO, the Committee noted the extent to which an EMRO may be employed (namely from 12pm) and the Lancashire Constabulary's assertion that this proposal was modest, however, they were concerned that the behaviour of the minority was affecting operators who it was not being said were responsible.

For all those reasons the Committee did not consider that this EMRO was appropriate.

Recommendations

The Committee was of course mindful of its duty to do all that it can to prevent crime and disorder and the rejection of this EMRO proposal should not be seen as any failure to meet that duty. In such circumstances, the Committee was of the view that, in refusing this EMRO, there was nevertheless the need for some positive action within Blackpool. The

Committee was of the view that this hearing had in fact been a positive exercise and it is hoped that it will provide a catalyst for change.

The Committee intends by such recommendations, that they will serve to rebuild a relationship between the parties that had, to some extent, suffered in recent times. The Committee does not attribute any blame for this at any one party and instead endorse a positive outlook to any future relationships that are essential to the continued improvement of Blackpool's late night economy.

As such, the Committee unanimously also recommend the following;

- (1) That the Council supports the formation of a multi agency Night Time Economy Working Group including but not limited to the representatives of the Lancashire Constabulary, the Licensing Committee, the relevant Cabinet Members, the Heath Sector, Pubwatch, Trade Organisations and more general Tourist Organisations and asks the Licensing Committee to meet at the earliest opportunity to formalise its membership.
- (2) That subject to the agreement of (1) above, the Night Time Economy Working Group present its initial recommendations to the Licensing Committee within three months of its creation.
- (3) That the Council requests the Chief Executive to write to the Chief Constable of Lancashire Constabulary requesting him to give urgent consideration to increasing the levels of policing in the night time economy having regards to the Licensing Committee's stated view that additional police officers deployed in strategic locations reduce crime and disorder within the night time economy. This letter should request the Chief Constable to report back to the Licensing Committee within 3 months.

Chairman