

# Public Document Pack

Premises / Personal Licences Sub-Committee

20 October 2020

**MINUTES OF THE MEETING OF THE PREMISES / PERSONAL LICENCES SUB-COMMITTEE,  
HELD ON TUESDAY, 20TH OCTOBER, 2020 AT 10.00 AM  
IN THE TELEPHONE HEARING - FOR MEETINGS HELD THROUGH REMOTE  
MEANS OF A TELECONFERENCE, PUBLIC ACCESS DETAILS FOR THE  
TELECONFERENCE CAN BE OBTAINED FROM THE OFFICER WHOSE DETAILS  
ARE BELOW.**

<b>Present:</b>	Councillors V Guglielmi, Casey, Winfield and Coley (Stand-by Member)
<b>Also Present:</b>	William Moody, Licensing Officer, Essex Police, Gary Burke, Essex Police, Robert Howard, Premises Licence Holder and Jenna Howard, Designated Premises Supervisor
<b>In Attendance:</b>	Karen Townshend (Licensing Manager), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer), Emma King (Licensing Officer), Debbie Bunce (Legal and Governance Administration Officer), Emma Haward (Leadership Support Assistant) and Keith Durran (Democratic Services Officer)

**1. ELECTION OF CHAIRMAN FOR THE MEETING**

It was moved by Councillor Casey, seconded by Councillor Winfield and:-

**RESOLVED** – That Councillor V Guglielmi be elected Chairman for the meeting.

**2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies for absence or substitutions.

**3. DECLARATIONS OF INTEREST**

Councillor Winfield declared a personal interest in that his son was employed by Essex Police in CID but that he was based in Chelmsford. He did not consider himself to be pre-determined in this matter.

**4. REPORT OF CORPORATE DIRECTOR (OPERATIONS & DELIVERY) - A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - TRUTH/PULSE (FORMERLY BENTLEYS), 5 MARINE PARADE EAST, CLACTON-ON-SEA**

The Chairman (Councillor V Guglielmi) welcomed everyone to the meeting and made introductory remarks.

The Council's Licensing Manager (Karen Townshend) then gave a verbal summary of the written report and advised that the Sub-Committee had before it, for its consideration, as set out in item A.1 of the Report of the Corporate Director (Operations and Delivery) an application for the review of the Premises Licence currently held by Bentleys of Clacton Ltd submitted by Essex Police, being a Responsible Authority.

Section 2.2 of the written report set out the current opening hours for the premises which were:

**Sale of Alcohol on and off the premises**

Monday to Thursday	08:00 - 00:00
Friday	08:00 - 02:00
Saturday	10:00 - 02:00
Sunday	10:00 - 00:00

**Performance of Live Music**

Fridays and Saturdays	19:00 - 00:00
Sunday	15:00 - 22:00

**Performance of Recorded Music**

Monday to Thursday	12:00 - 00:00
Fridays and Saturdays	12:00 - 02:30
Sunday	12:00 - 22:00

**Late Night Refreshment**

Monday to Sunday	23:00 - 02:00
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**Non Standard Timings**

**Performance of Live Music**

Bank Holiday Sunday	15:00 – 00:00
Bank Holiday Monday	15:00 – 22:00
Christmas Eve / Christmas Day	finish at 03:00
New Year's Eve / New Year's Day	finish at 04:00

**Provision of Recorded Music**

Bank Holiday Sunday	15:00 – 02:30
Bank Holiday Monday	15:00 – 22:00
Christmas Eve / Christmas Day	finish at 03:00
New Year's Eve / New Year's Day	finish at 04:00

**Sale of Alcohol on and off the premises only**

Bank Holiday Sunday	08:00 – 02:30
Bank Holiday Monday	08:00 – 22:00
Christmas Eve / Christmas Day	finish at 03:00
New Year's Eve / New Year's Day	finish at 04:00

The ability to sell or supply alcohol and/or refreshment to residents and their bona fide guests at any time.

It was also reported that Bentleys of Clacton Ltd had been the Premises Licence holder since a variation and transfer of the licence on 8 May 2018, and that Jenna Howard had been the Designated Premises Supervisor (DPS) of the premises since 14 February 2018.

An application for the Review of the Premises Licence for Truth/Pulse [formerly Bentleys] had been submitted by Essex Police. This had been received by the Licensing Authority on 25 August 2020 on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder had been breached; as the Premises Licence holder Bentleys of Clacton Ltd and DPS Jenna Howard had been found by Essex Police to be in breach of The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 in that it had operated as a nightclub or otherwise operated as a venue which was open at night, provided music and had a dance floor or other space for dancing

Notice of the review application had been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompanied it. In particular, a notice detailing the review application had been clearly displayed on the premises concerned and on the Tendring District Council Website for the prescribed 28 day period. Periodic checks had been undertaken by the Licensing Authority to ensure that this was the case. The notice period had expired on 23 September 2020.

The Licensing Authority had therefore accepted the review application and was satisfied that it had been properly served. The Council's Head of Customer and Commercial Services was satisfied that the application and the representations that it made were relevant to the licensing objectives and were not vexatious, repetitious or frivolous in nature.

No representations had been received from any other of the Responsible Authorities. However, an e-mail had been sent to Ms Howard, DPS, from the Council's Environmental Services on 25 August 2020 informing her that the risk assessment that had been submitted was not adequate and had given guidance on what was required.

The Sub-Committee was aware that other persons could also make representations in regards to review applications. Other persons in terms of the Licensing Act 2003 could include any individual, body or business and in accordance with paragraph 8.13 of the Section 182 Guidance issued by the Secretary of State (April 2017 version) which accompanied the Licensing Act 2003, were entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, those persons could themselves seek a review of a premises licence.

Such representations had to be relevant and not considered by the Licensing Authority to be vexatious, repetitious or frivolous. They could be made in opposition to, or support of, an application and could be made by any individual, body or business that had grounds to do so. The S182 Guidance was silent on whether representations could be made against an application for a review, or in support of the respondent to the review. However, given that the Guidance is was silent on this question, but clearly indicated that other persons could make representations in regards to a review and that representations could be made in support of applications, it was reasonable to assume that representations could also be made in support of the Premises Licence Holder (Bentleys of Clacton Ltd) in this matter for due consideration by the Licensing Sub Committee and as part of the Review application hearing process.

It was therefore reported that there was one letter from a resident in support of the premises licence holder (Bentleys of Clacton/Pulse Ltd).

The Sub-Committee also had before it the relevant sections/extracts of the Council's Statement of Licensing Policy in respect of Review applications.

Following Members' consideration of this review application submitted by Essex Police, Section 52 of the Licensing Act 2003 stated that Members of the Licensing Authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considered necessary for the promotion of the Licensing Objectives.

Those steps were:-

- (i) to modify the conditions of the licence
- (ii) to exclude a licensable activity from the scope of the licence
- (iii) to remove the Designated Premises Supervisor
- (iv) to suspend the licence for a period not exceeding three months
- (v) to revoke the licence

For this purpose, the conditions of the licence were modified if any of them were altered or omitted, or any new conditions were added as a result of this Review Hearing.

In addition to the above measures, Members were advised that it was also open to them that they could for example decide to take no action in respect of the review application, or issue an informal/formal warning letter and/or recommend improvement to the premises and its management within a particular period of time if they decided that on consideration of the facts and balance of probabilities, this was a reasonable, proportionate and appropriate approach to take in regards to this Review application.

No specific recommendation was made by Officers to the Licensing Sub-Committee in respect to this Review application other than in accordance with Section 52 of the Licensing Act 2003 (as shown above). Members of the Licensing Sub-Committee were asked to reasonably, proportionately and appropriately determine the application for a Review of a Premises Licence in respect of the premises in its own right and on its own merits taking into account all matters detailed in in the agenda, report and accompanying papers and any other relevant matters that were brought up at the hearing itself by any of the parties that had an interest in this Review hearing.

The Chairman asked if anyone had any questions that they would like to ask the Licensing Manager following her summary. There were no questions asked.

William Moody, Licensing Manager for Essex Police addressed the Sub-Committee and stated that he had not seen the letter of support mentioned in the report. The Chairman then agreed that a short adjournment would now take place in order for the letter to be sent to him and give time for him to read it. The Sub-Committee also took time to read the letter.

The meeting recommenced and William Moody asked the Sub-Committee not to take the letter of support into account. He then addressed the Sub-Committee and gave an overview of Essex Police's case.

Mr Moody explained that the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations 2020 had come into force on 4 July 2020 which allowed licensed premises to reopen but this did not include premises designated as nightclubs or places designated for dancing.

He alleged that The Truth/Pulse Nightclub had reopened on 14<sup>th</sup> August 2020 for two evenings in breach of those regulations. The Police had attended the premises on 15<sup>th</sup> August following provision to them of a video that they had seen of the premises apparently operating as a nightclub on the previous evening, 14<sup>th</sup> August 2020.

Police Officers had spoken to the Designated Premises Supervisor, Jenna Howard who said that she could not control people dancing whilst they were waiting at the bar.

They spoke to the Designated Premises Supervisor, Jenna Howard who said that she could not control people dancing whilst they were waiting at the bar.

Mr Moody explained that the Police felt that as premises had been allowed to be reopened since 4<sup>th</sup> July 2020 then lessons should have been learnt in that time.. The Police did not accept that the bar or other staff were powerless to stop dancing there were SIA door staff as well as the DPS and bar staff on duty both nights. There was live music, with a DJ streaming music to the venue, all clearly heard outside the premises and as witnessed by the Police. It was clear to the Police that it was a clear and calculated action to reopen the premises with music and dancing in contravention of the Covid-19 Restrictions.

Mr Moody further stated that a meeting had subsequently been held with Jenna Howard where the seriousness of the situation had been relayed. It was explained to Ms Howard that the evidence gathered would be passed to the Council's Environmental Health Team.

The result was that a Prohibition Notice had been issued by the Council's Environmental Health Officers which had demonstrated in Mr Moody's opinion how serious they had considered the breach to be. The Notice had stated that: "you must cease with immediate effect the operation of the business premises as a night club with dancing." – this was the first Prohibition Notice issued by the council's Environmental Health Officers. That Prohibition Notice remained in force until such time as the Secretary of State published directions terminating the "emergency period" which would not be until the restrictions or requirements set out in the Regulations were believed to be no longer necessary.

Mr Moody then explained that although full revocation of the premises licence was an option they considered that there should be a suspension for up to three months and amended conditions applied to the Licence. Mr Moody explained that he felt the Licensing Authority must send a clear message that a breach must not go unchallenged.

The Chairman then asked the Sub-Committee if they had any questions for Mr Moody.

Mr Moody was asked whether he felt that Mr and Mrs Howard were clear about the law in these circumstances and he confirmed that as there had been a five week period

between premises being allowed to reopen and Truth/Pulse reopening on 14<sup>th</sup> August 2020 the regulations should have been clear and understood by them.

Mr Moody was then asked whether there had been previous warnings and he explained that these breaches had occurred on the first weekend that Truth/Pulse had been reopened. He confirmed that after the Prohibition Notice had been served they had chosen not to reopen. He said that if they had reopened then this would have been in breach of the Prohibition Notice and would itself be a criminal offence.

The Chairman then asked Mr and Mrs Howard if they had any questions for Mr Moody. Mr Robert Howard, the Sole Director of Bentley of Clacton Ltd, the Licence Holders asked whether Mr Moody was a Police Officer and Mr Moody confirmed that he was not a Police Constable, but that he was the Licensing Officer for Essex Police.

Mr Howard then stated that there had been a meeting between Michael Cook of the Council's Licensing Team and William Moody after he saw them at a neighbouring venue prior to the venue reopening on 14<sup>th</sup> August 2020. He stated that they were aware that Truth/Pulse were turning the car park at the premises into an outside seating area and that the premises would be fully compliant with the restrictions. They had also discussed the volume levels of the music at the premises and whether a noise limiter should be installed.

Mrs Howard then stated that Mr Cook and Mr Moody had been offered the opportunity to see what the venue was offering but that the offer had not been taken up.

Mr Howard further claimed that as he was one of the people considered to be a vulnerable person at high risk as he suffered with numerous health problems including diabetes and a heart condition he would not have put himself at risk of contracting COVID by reopening the premises without the required health and safety measures in place.

In relation to noise levels at the premises Mr Moody confirmed that this was not the reason that the Police had asked for the Licence to be reviewed. It was pointed out that the restrictions had since 17<sup>th</sup> October been changed further in that patrons were now not allowed to go to the bar for service but that table service was now the only way of being served in a licenced premises and Mrs Howard said that she hoped that the Sub-Committee understood what level of restrictions had been in place on 14/15 August 2020.

The two videos that had been submitted as evidence by Essex Police were then shown to the Sub-Committee. Those videos consisted of a clip of inside Truth/Pulse on the evening of 14<sup>th</sup> August 2020 which appeared to show dancing and also the video taken from the bodycam of one of the Police Officers who had visited the premises on the evening of 15<sup>th</sup> August 2020.

The Sub-committee Chair asked whether everyone had had a chance to view these videos as it was important that they were viewed by everyone, and now would be a good opportunity to view them. Arrangements were made for the two videos to be played, and although there was some difficulty, including initially with the sound, with the assistance of TDC's IT officers those difficulties were overcome and everyone confirmed they were able to view and to hear both videos in their entirety.

Mr Moody stated that dancing could clearly be seen on the first video which showed that the premises had been open as a nightclub. The Council's Environmental Health Officer, Carol Archibald who was present at the meeting, informed the Sub-Committee that social media pages had advertised that a DJ would be at the premises.

In response Mrs Howard said that if people were seen to be dancing then they would have been stopped by the staff. She said that she had never had people queuing outside her premises before as shown on the video of the evening of 15<sup>th</sup> August 2020.

In turn, Mr Moody said that the Police had been contacted on 15<sup>th</sup> August 2020 by members of the public who were concerned that the premises had been operating as a nightclub. The first video had been uploaded onto snapchat a social media platform which deleted the videos after 24 hours. Mr Howard then challenged whether the video was actually of his premises and the timeline on the video was discussed whereby Mr Moody explained that when the video was shown it had clearly stated that it was from 18 hours before which would mean that it was taken on the night of 14<sup>th</sup> August 2020. The Door Security Officer at the premises had conceded when shown the video by the Police on the evening of 15<sup>th</sup> August that it had been taken from inside Truth/Pulse the day before.

It was discussed whether a video could be used as evidence if there was no time stamp on it. Carol Archibald stated that Officers had provided written statements regarding the video. There was also the advertising on social media that a DJ would be at the premises, that together with other information made clear the intention to open as a nightclub which was why the Prohibition Notice had been served.

Mr Howard then said that there was a neighbouring venue who had a DJ outside and Mr Moody had replied that the Police were not aware of this. Mr Howard stated that their DJ was not on the premises but live streamed the music.

Mr Howard then left the meeting at 12.10 p.m.

Mrs Howard then stated that she felt that they had responded to all of the questions asked of them and felt that there was the question of why would they put all the necessary measures in place in terms of signage, hand sanitizers etc. if they were going to breach the law. She also confirmed that they had not opened the premises since that time.

At the invitation of the Chairman, Mrs Howard then put forward the further points they wished to draw to the attention of the Sub-Committee that included the preparation of a huge outside seating area, the training of all staff, the risk assessments they had carried out and how they had worked with the police and TDC. Mrs Howard said that they had put in additional systems on the second night, i.e. the 15 August 2020, including a one-way system. Mrs Howard confirmed that on the basis of the Prohibition Notice they had chosen not to re-open, that things do keep changing, that the Gazette had run a news story about this meeting and there had been quite a lot being shared on social media, some of which she read out to the Sub-Committee.

The meeting being conducted via a Microsoft Teams Meeting programme during which the Howards had, in the earlier part of the meeting, experienced issues with their

connection, issues that had improved once they turned their camera off, Mrs Howard was asked again if there was anything else they wished to draw to the Sub-Committee's attention or whether they felt they had asked all the questions they wanted to, viewed the videos in their entirety and told the Sub-Committee everything they wanted to. Mrs Howard said she did not have any further questions or anything else to add but wanted the Sub-Committee to bear in mind the rules at the dates of these events and the various changes.

The Sub-Committee then retired in order for the Sub-Committee to consider the review application and reach a decision. Members asked the Council's Solicitor and the Legal and Governance Administration Officer to retire with them.

**5. ADJOURNMENT OF MEETING**

The meeting was adjourned whilst the Sub-Committee made its deliberations.

**6. REPORT OF CORPORATE DIRECTOR (OPERATIONS & DELIVERY) A.1 - APPLICATION FOR THE REVIEW OF A PREMISES LICENCE - TRUTH/PULSE (FORMERLY BENTLEYS), 5 MARINE PARADE EAST, CLACTON-ON-SEA**

After a period of time the Sub-Committee, the Council's Solicitor and the Legal and Governance Administration Officer returned to the meeting.

The Chairman of the Sub-Committee informed all parties present that, due to the amount of evidence that they needed to consider and the various considerations that needed to be taken into account, especially in view of the various and new restrictions due to the current Coronavirus Pandemic the Sub-Committee was not able to reach a decision at this time.

The Chairman stated that therefore the Sub-Committee would make its determination by Friday 23 October 2020 in accordance with Regulation 26(2) of The Licensing Act 2003 (Hearings) Regulations 2005. All interested parties would then be informed of the decision in writing.

The Chairman then formally closed the meeting.

The meeting was declared closed at 1.10 pm

**Chairman**