

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

STANDARDS AND ETHICS COMMITTEE

RECORD OF THE DECISION OF THE COMPLAINTS SUB-COMMITTEE MEETING HELD ON 15 NOVEMBER 2017

SUBJECT MEMBER Councillor Robert Bird [Rotherham MBC] [in attendance]

COMPLAINANT Mr A [in attendance]

THE COMPLAINTS SUB-COMMITTEE

Councillor Allen (Rotherham MBC) (in the Chair)
Councillor Simpson (Rotherham MBC)
Councillor R Swann (Woodsetts Parish Council)
Mr P Edler (Independent Co-opted Member)
Ms J Porter (Independent Co-opted Member)

INDEPENDENT PERSON

Mr Phil Beavers

ROTHERHAM MBC OFFICERS

Dermot Pearson (Monitoring Officer)
Stuart Fletcher (Investigating Officer)
Debbie Pons (Democratic Services)
Sumera Shabir (Legal Services)

The Complaint

The Investigating Officer presented his investigation report to the Sub-Committee (the Panel).

The Complainant was the applicant for a premises license under the Licensing Act 2003, in respect of the premises known as the Sportsman Inn, 55 Broad Street, Parkgate, Rotherham. The application was for a themed public house for which the objective was to create a safe and gender friendly environment for the LGBT and fetish community and was determined by the Licensing Sub-Committee at its meeting at Rotherham Town Hall on 4 May 2017.

The Complainant submitted a written complaint about the conduct of the Subject Member at that meeting and said that the Subject member had made a comment ("not in my back yard") which the Complainant found to be "highly offensive gender-phobic and homophobic". The complaint was received on 17 May 2017 and the Subject Member was invited to submit a response which was received on 30 May

2017. In his response the Subject Member said that his comment about “not in my back yard” was made in connection with the excessive proposed opening hours and refuted any suggestion that he was homophobic or gender-phobic.

The views of the Independent Person [Mr David Roper-Newman (DRN)] were sought and as a result further clarification was sought from the Subject Member as to the capacity in which he had attended the meeting. The issue being that the *Code of Conduct for Members and Co-opted Members* would not apply to a councillor acting in a purely private capacity. Given the uncertainty on that issue the Monitoring Officer referred the matter for a Hearing.

The Investigating Officer’s Presentation

The Investigating Officer took the Sub-Committee through the complaint form, the response from the Subject Member, the views of the Independent Person [DRN], the further clarification from the Subject Member, the minutes of the meeting of the Licensing Sub-Committee held on 4 May 2017, the Democratic Services Officer’s notes of the meeting and the officers’ report for the premises licence application.

The Investigating Officer referred the Sub-Committee to the following parts of the Code of Conduct for Members and Co-Opted members:

Scope

- 2** *(1) Except when you are acting as a representative of the Council when sub-paragraph (2) applies, you must comply with this Code whenever you –*
 - (a) conduct the business of the Council (which, in this Code, includes the business of the office to which you are elected or appointed); or*
 - (b) act, claim to act or give the impression you are acting as a representative of the Council.*
- 3** *(1) You must treat others with respect.*
 - (2) You must not:-*
 - (a) do anything which may cause the Council to breach any of the equality duties;*
- 5** *You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.*

The Evidence of the Complainant

The Complainant’s evidence was that he had assumed the councillors who attended the Licensing Sub-Committee to object, including the Subject Member, were attending as councillors. They had been contacted for their views as councillors and attended as councillors to object on behalf of local people. No-one else was

objecting and there had been notices and an advertisement. His premises closed earlier than other premises. The Subject Member had even said that he knew he “wasn’t supposed to say it”, making it wrong in itself. The closing time was brought earlier to 12:30am in any event and people who could have objected on the grounds of noise had not done so and the licensing application had been duly advertised.

Upon questioning by the Panel, the Complainant confirmed that the 12:30am closing time applied every night, that the school and the nursing home had been contacted with an offer to reduce the music volume if necessary and there were no youth related anti-social behaviour issues. He said that due to the premises being LGBT friendly customers would drive to them and so would often not be drinking and confirmed that there would be DJs at the premises but not live bands. He was asked whether he took the comment personally and said that it was aimed at his customers.

The Subject Member did not wish to question the Complainant.

The Evidence of the Subject Member

The Subject Member spoke about his background as a worker in the steel industry and his role as a senior official in the Iron and Steel Trades Confederation. He explained the work he had done in his trade union role over the years in promoting respect, dignity, equality and diversity. The Subject Member referred to his move back to Rawmarsh from his role with the ISTC in South Wales, his standing for election and his work as a councillor on community cohesion and with voluntary and community sector organisations in Rawmarsh and Parkgate.

He confirmed that no residents had complained to him about the licensing meeting, but that he and Councillor Sheppard had objected to the proposed 2am closing time and that he was concerned about the premises’ proximity to the home for the elderly and the likelihood of noise disturbance from the slamming of doors.

The Subject Member spoke about his “not in my back yard” comment and said he was referring to the proximity of the premises to his home, which was half a mile away.

Upon questioning by the Panel and the Independent Person [Mr Beavers] the Subject Member was asked why he had prefaced his remarks by saying “I know I shouldn’t say this...” and replied that he was referring to the proximity of the premises.

He was also asked about his comment that he did not have any problem with people doing whatever they want to do in their homes and whether he would have made the same comment about a different community [ie not the LGBT community]. The Subject Member said he would have made the same comments about a different community as his objection was about opening hours.

The Subject Member was also questioned about the capacity in which he had attended the meeting of the Licensing Sub-Committee and he accepted that he and Councillor Sheppard had not made it clear that they were not attending as

councillors and referred to no objections having been made to him as a ward councillor. He confirmed that he had not attempted to have the minutes of the Licensing Sub-Committee meeting amended so as not to refer to him as a councillor.

Summary

The Investigating Officer summarised the matters before the Sub-Committee.

The parties were invited to sum up and the Subject Member said that it had been a naïve comment on his part and the Complainant said he had nothing to add.

The Findings of the Sub-Committee

The Sub-Committee considered whether the Code of Conduct applied to the Subject Member's conduct at the Licensing Sub-Committee meeting on 4 May 2017 and concluded that the Subject Member was conducting the business of the office of a councillor by acting as a ward councillor. The Subject Member was therefore acting in an official capacity and was subject to the Code of Conduct for Members and Co-Opted Members when he made the "not in my back yard" comment. In doing so they had regard to the views of the Independent Person and took into account the following matters:

- The Subject Member had made no clear expression to the Licensing Sub-Committee that he was attending as a private individual rather than as a ward councillor.
- Councillor Sheppard's formal consultation response email of 10 April 2017 said "myself and Cllr Bird would like to make a representation ..." and was copied to the Subject Member at his Council email address.
- The minutes of the Licensing Sub-Committee meeting refer to the Subject Member as a councillor and he had not taken the opportunity to challenge the accuracy of the minutes.
- Given that the Subject Member lived half a mile from the premises the impact on him as a private individual would be very limited.
- A member of the public attending the Licensing Sub-Committee meeting would have come away with the clear impression that the Subject Member was there as a councillor.

The Sub-Committee went on to consider whether by his conduct the Subject Member had breached of the Code of Conduct for Members and Co-Opted Members and, having regard to the views of the Independent Person, concluded that his remark was highly offensive and he had breached the Code by failing to treat others with respect. In doing so they took account of the following matters:

- Although the Subject Member had given evidence that his concern was about opening hours his comments that he did not have any problem with people doing whatever they want to do in their homes suggested that he would have treated an application for premises which were not intended to cater for the LGBT community differently.

- Given that he was not a member of the Licensing Sub-Committee and therefore not a decision maker the Sub-Committee did not find that the Subject Member had done anything which might cause the Council to breach any of the equality duties.

The Sub-Committee considered whether, as set out in the complaint, the “not in my back yard” complaint was homophobic and gender-phobic. They found that there was insufficient evidence to support such a finding and that it was not clear to what extent the Subject Member’s discomfort with the application related to the fetish theme rather than issues of sexual orientation or gender.

In the light of their findings the Sub-Committee resolved to recommend that the Standards & Ethics Committee censure the Subject Member at its next meeting and that its findings and decision should be published on the agenda of the next meeting of that Committee.

Dated: 29th November 2017