



Report to: **Licensing Committee Meeting – 23 June 2022**
 Director Lead: **Matthew Finch, Director – Communities & Environment**
 Lead Officer: **Alan Batty, Business Manager – Public Protection, Extn. 5467**

Report Summary	
Reason for Report	To inform Members of the agreement reached in settlement of the appeal submitted by the Corn Exchange, Newark.
Report Title	Update on the Appeal for The Corn Exchange, Newark
Purpose of Report	To provide Members with an update on the agreement reached in settlement of the appeal submitted in relation to the Corn Exchange Newark.
Recommendations	That Members note the outcome of the appeal against the Corn Exchange Premise Licence.

1.0 Background

- 1.1 In July 2020 an application was submitted by Corn Exchange Newark Ltd. for a licence for the premises known as the ‘Corn Exchange’ 18 Castlegate Newark. The application gave rise to thirty three representations some in support of the application and some against it. A Licensing Panel was convened to hear the application.
- 1.2 The Licensing hearing took place on 21 August 2020, with the panel consisting of Councillor Rita Crowe – Chairman, Councillor Ronnie White and Councillor Lee Brazier. The Panel heard an abundance of evidence, with representations against the application being made by Nottinghamshire Police and the Environmental Health team of the Council.
- 1.3 After hearing all the evidence and after lengthy deliberation the Panel granted licence. The hours of operation requested in the licence were amended to reflect the different activities that were stated to be taking place in different areas (and different floors) of the building. A number of additional conditions were also attached to the licence.
- 1.4 The applicant did not agree with the outcome of the Hearing and submitted an appeal against the decision to Nottingham Magistrate’s Court.

- 1.5 As Members will no doubt be aware there has been a severe back log in the courts which has resulted in the appeal hearing being delayed and only being listed to be heard in January 2022. A week before the appeal hearing an adjournment was requested by the applicant due to his attendance at a funeral. A new date of 11 May was agreed for the appeal hearing. The Council had to seek its own adjournment (of a week) due to the availability of a witness, which meant that the case was to be heard on 16 May.
- 1.6 During the run up to the dates set out above the Council had been preparing its case to defend the appeal. To this end, an external barrister specialising in licensing law was appointed to represent the Council.
- 1.7 On receiving the evidence supplied by the appellant in support of his case the Council's barrister formed the opinion that on balance the appellant was highly likely to win the appeal. One of the main reasons for this was the change to the night time economy of Newark over recent months and the police response. Two premises within Newark Town centre have recently submitted applications and been granted licences for operating hours until 3.30am. The barrister reflected that this had resulted in very different circumstances in relation to policing and late opening within the town that the Hearing Panel would not have taken into account during their consideration of the original application, thus weakening the case.
- 1.8 The Police Licensing Officer who gave evidence at the hearing has been absent from work due to sickness since April and as a result not been available to provide additional statements, countering the arguments put forward by the appellant. This was further exacerbated by the long term absence of the Senior Police Licensing Officer.
- 1.9 Having considered all the legal arguments and taking the advice provided by the barrister into account, there was then the deliberation of the potential cost to the Council if the appeal was lost. The appellant's barrister had stated that she intended to make an order for the total costs payable to be awarded against the Council if the appeal was successful. Whilst the Council would have been in a position to argue that it made the original decision on good faith based on the evidence at the time it must also consider the strength of any appeal and the evidence available at the time of the appeal. As stated above the Council's barrister was of the opinion that there was a strong likelihood that the appeal would be successful and that the costs order would be made against the Council. The estimate was that this would amount to more than £10,000.
- 1.10 The Business Manager - Public Protection in discussion with the Senior Legal Officer agreed that a negotiated out of court settlement was appropriate taking all the circumstances into account. The Chairman of the Committee was made aware of the principal of agreeing a settlement.
- 1.11 Both the hours of the licence and the conditions attached to it were amended and agreement was reached. The conditions attached to the licence were considered to provide the control over the licence that was necessary. The amended hours were in excess of those agreed by the Panel and in line with those requested by the applicant in the original application.

- 1.12 Whilst the agreed outcome is different to the decision made by the Hearing Panel it must be seen in the context of the passage of almost two years, the impact of the pandemic on town centres and the recent licences granted with extended times.
- 1.13 The District Judge has instructed the Licensing Authority to issue a new licence in line with the agreement submitted to the court

2.0 Proposal/Options Considered and Reasons for Recommendation

That Members note the contents of the report.

3.0 Implications

- 3.1 In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability. No implications have been identified.

Background Papers and Published Documents

Licensing Act 2003