

Hearing for Euro Foods – 28.03.17

Points of law

Point 1 - A committee's decision must be evidence based. Any matter that is taken into account must be based on real evidence that can be challenged and tested. Any information provided to the committee anonymously cannot be taken into account as it cannot be scrutinised or challenged and it would be wholly unfair and against the right to a fair hearing under human rights legislation.

That is why residents or people who want to make a representation against a licensing application are not permitted to be anonymous.

Barbara Murray relies on a significant amount of anonymous information. No person can establish if this is true, accurate or fair and any reference to it should be disregarded.

Point 2 – The information gathered by Barbara Murray involved her visual scrutiny of the premises deliberately to obtain information about the business with a view to using the information as part of this application hearing. She claims that she is walking by or sitting on the benches or standing on the street on no less than 6 occasions and sitting in Café Lamarlyn with PC Clare Cossar.

This is directed surveillance which requires authority under the requirements of the Regulation of Investigatory Powers Act 2000. In taking these actions there is a failure to comply with RIPA, associated guidance or human rights safeguards. This is in conflict with pronouncements by the Information Commissioner's Office about the importance of Local Authorities and the Police observing the rules in relation to investigatory procedures, to prevent the undermining of public confidence in the use of such techniques.

There is no doubt that the Local Authority, in accepting any of this evidence will be relying upon evidence of directed surveillance, in conflict with statutory requirements, and should not be accepted. The Local Authority have no power to rely on the evidence improperly obtained.

Point 3 – Apparently, staff from local businesses report continual problems with street drinkers and alcohol related crime, nuisance and disorder. Yet the police do not provide any statistics, incident logs or reports to substantiate this claim.

Point 4 – There is a claim that alcohol has continued to be sold without a licence and yet there is no evidence for this. These claims should be rejected.

The Operating Schedule

The fact the authorities deem that there are insufficient measures in the operating schedule is a matter that the police could have easily resolved. An applicant who submits his own application is not an expert in licensing and cannot determine for themselves what the police may deem appropriate. The police have just as much responsibility to approach the applicant and work in partnership as an applicant has to contact them and both parties can be equally criticised in that regard.

A condition that no cans of beer, lager or cider above 5.5% ABV would address the issues raised directly. However, that condition need to be very careful worded so as to not prevent the sale of the higher strength premium products which street drinkers don't buy. They also only buy products in cans or plastic and not glass.