

23 June 2019

MOST URGENT

**Mrs J Foley
Licensing Partnership
PO Box 182,
Sevenoaks
TN13 1GP**

Dear Jessica

Food Fest, Lullingstone Castle, Eynsford Kent
Hearing 31st May 2019-Food Fest LTD - 19/00660/LARPE

As you know we are objecting to the application for an alcohol and music license for The Food Fest on 1st and 2nd June 2019.

We have previously written to you individually expressing our concerns about the legality of the application, having regard to the uncertainty over precisely who is applying. The purpose of this letter is to put Sevenoaks District Council (SDC), as licensing authority, formally on notice as to exactly what those concerns are and the urgent action we may elect to take prior to the listed hearing.

1. The application was first lodged with the council on 21st February, and was stamped by Sevenoaks District Council (SDC) on 22nd February. You have advised us that that first application was incomplete and was subsequently withdrawn.
2. A second application was then validated and published [*on SDC's website*] on 10th April. Public notices were displayed on [*the premises*] 17th April, a week later than required (Reg 25 (Licensing Act 2003 (Premises Licences And Club Premises Certificates) Regulations 2005)(SI 2005/42). The application and notices all list the applicant as "The Food Fest Ltd". This name appears once on the covering email of the published application, and four times on the extra form "Consent of individual to being specified as premises supervisor". Pages 1-4 of the application were not published.
3. Food Fest Ltd is registered with Companies House under company number 08052777, with a registered office in Leeds, Yorkshire, and is listed as a 'dormant' company.

4. We understand that a public notice was not published in a local newspaper at any time during the required period (see Reg 25(b)(ii), Premises Licences Etc. Regulations, as above).
5. Andrew Baker (AB) met with Janet from SDC Licensing on 25th April and expressed concern that the applicant, The Food Fest Ltd, appeared to be a dormant company. Jessica Foley (JF), Senior Licensing Officer at SDC emailed AB on 26th April to advise that “we have found the business on Companies House no: 09837484”. This company number relates to The Kent FoodFest Limited, a company name that has not been published at all during the application process and does not appear in the hearing bundle. AB replied to JF that he had been confused as the application had been made in the name of The Food Fest Limited. He requested a copy of the completed application form.
6. On 28th April Katarina Hudecova (KH) sent an email to JF asking for the Event Management Plan and advised that some information was missing from the application form, in particular boxes N and O specifying the hours which licensable activities were being applied for. An amended application was subsequently uploaded to the SDC website on 30th April with the hours in section O added in by hand. As before, the only applicant name mentioned on the amended application was “The Food Fest Limited” and the first four pages were not published. The amended application was listed on SDC website as being published on 26th February (which was patently incorrect).
7. On 9th May AB sent an email to JF pointing out the inconsistencies between the applicant’s name on the application and public notice and the number quoted in JF’s email, and stating that the notices should be withdrawn and redisplayed. Simon Giles (SG) also sent an email to JF on 10th May advising that there was an error with the applicant name and that this should render the application invalid. SG wrote a further email to JF on 16th May setting out the position more fully, and drawing JF’s attention to the need to act quickly in refusing the application in order to mitigate the negative effects of a last-minute cancellation of the event.
8. JF replied to SG on 17th May stating that “the company number is on the application form which means their identity is certain. This is the only company with a similar name at that registered address”. SG replied on 17th May requesting to see the pages of the application containing the company number as they had not been published online, and asking whether in the event that the licence was granted the licence would be issued to The Food Fest Limited as per the application, or whether the name on the licence would be changed to “The Kent FoodFest Limited”.

9. JF replied to SG on 20th May clarifying that if the licence was granted it would be to “the correct company name, as per the registered number”, and attaching the missing pages from the application form. The missing pages again state The Food Fest Limited as the applicant, however on page 4 of the application the name is quoted as “The Kent FoodFest Limited” with company number 09837484. In addition to being stated as the applicant on the public notice, the Food Fest Limited is stated as the applicant six times in total on the application form. It is both extraordinary and totally misleading to any interested parties that the Kent FoodFest Limited should be quoted along with the corresponding company number just once and on a page that was not published until long after the issue had been raised.
10. On 20th May, the Trading Name on SDC’s web portal was changed from The Food Fest Limited to Kent FoodFest Ltd (The), although the applicant name remains as The Food Fest Limited. This was the first mention of Kent FoodFest Ltd on SDC website or in any published materials.
11. As you will be aware, case law tells us that mistakes as to the description of an identifiable person can be corrected by the licensing authority. However, in cases where the publication of the application or the applications themselves are made in the names of a different person who is incorrectly identified, then that application is void *ab initio*, which cannot be corrected.
12. In R (*on the application of Essence Bars (London) Ltd t/a Essence*) v *Wimbledon Magistrates’ Court and Royal Borough of Kingston upon Thames* [2016] EWCA Civ 63 the court considered the effect of a mistake made in the notice of appeal against the revocation of the club’s premises licence by the licensing authority. The question for the Court of Appeal was whether there was power to amend a notice of complaint in civil proceedings in the magistrates’ court by substituting the name of the company which, as premises licence holder, had standing to appeal, in the place of the name of another company which did not have such standing.
13. It was not suggested in argument that, if the mistake was one of identity, there was jurisdiction to correct the name. The submission was rather that the District Judge and the Judge in the Administrative Court erred in concluding that they were bound by the Divisional Court cases on the Magistrates’ Courts Act 1980, s 123 to conclude that this was a case of mistake of identity rather than a case of misdescription.
14. The court held (para 68) that where a name and a description are both used in a document that it was necessarily the former rather than the latter which identified the party in question, unless the maker of the mistake realised that the named person was not the person who satisfied the description.
15. We would argue that precisely the same principle applies here: the applicant is identified by the name used (The Food Fest Limited), rather than any company number which may have been latterly provided.

16. In *Marco's case (Marco (Croydon Ltd) t/a A and J Bull Containers v Metropolitan Police [1984] RTR 24, R v Greater Manchester Justices, ex p Aldi GmbH and Co KG (1994) 159 JP 717* the Divisional Court had allowed an appeal against conviction, holding that the prosecution, misled by the name on the skip, had issued the summons in the name of the wrong company, that is to say the wrong person, and there was no jurisdiction to amend the information. Cases where the proceedings concerned a natural person whose name was mistakenly stated rather than a company, but where the right person received the summons and was before the court, were distinguished. Those cases were stated to be ones in which the prosecutor correctly identified the intended defendant but misstated his name. Glidewell J said that in *Marco's case* the justices' had accurately stated the question of law, but did not apply it correctly.
17. More recently, in *Platinum Crown Investments Ltd v North East Essex Magistrates Court and (1) Colchester Borough Council (2) Cyril Thomas [2017] EWHC 2761 (Admin)* Treacy LJ and Dove J sitting in the Administrative Court considered a case of mistaken identification of a corporate entity and in which the principle was reviewed in a Case Stated (treated as a matter brought before the court by way of judicial review (para 21)), namely that where the wrong person had been summonsed, amendment was not permissible to substitute a different defendant, but where the prosecutor had merely mis-stated the name the amendment should be made (per the dicta of Glidewell J. in *Marco (Croydon) Ltd v Metropolitan Police [1983] Crim LR 395*).
18. In the court's decision Lord Justice Treacy suggested (emphasis added):
31. ' .. *Essence Bars Ltd* was also concerned with the question of amendment under s.123. Although the court there was not dealing with a criminal matter but dealing with **an appeal to the Magistrates' Court pursuant to the Licensing Act 2003, Beatson LJ, giving the main judgment, did not consider that that made a material difference.**
32. He reviewed the decisions in *Marco (Croydon) Ltd, Aldi* and *Sainsbury*. At para. 44 he said:
- "44 Two points emerge from these cases. **The first is that an error as to the identity of the defendant named which impacts on the jurisdiction to hear or determine a case is irremediable in the absence of express and specific powers that provide a remedy.** The second is that, where there is a mistake as to identity, **section 123 is not to be construed broadly to enable an amendment substituting the person who should have been named in the information or summons for the person that was in fact named,** after the expiry of the relevant limitation period. In those cases it appeared that no one was misled by the error."

19. The following points are self-evident:

- (1) There are, as a question of fact, two entirely different and separate legal entities:
 - a. “The Food Fest Ltd”; and
 - b. “The Kent FoodFest Limited”
- (2) In all the public documents until 20 May, long after the time for representations had expired, the application was described as being made in the name of “The Food Fest Ltd”
- (3) The change of name of to a different company, on 20th May, “The Kent FoodFest Limited”, was a procedure for which there is no authority in the Licensing Act 2003 or its attendant regulations.
- (4) The identity of the applicant is a key and critical component of an application, potentially determining whether objections are raised in relation to an application by reason of the applicant’s legal standing (see s.16), past experience (or lack of), as well as issues relating to crime and disorder (see s.18).
- (5) It is neither possible nor lawful in any case to alter the identity of an applicant during the course of an application.

20. The signatories to this letter are, as you are of course aware, vehemently opposed to this application on a number of substantive grounds, which we were prepared to pursue at the hearing on 31 May. However, where, as we have been advised by Leading Counsel, the application is fundamentally and irremediably defective for the reasons stated, we believe it is our clear duty to make that fact known to all concerned at the earliest opportunity, so that cancellation of the prospective event (which, incredibly, has been widely publicised to take place the day after your sub-committee’s hearing!) can be arranged.

21. In the present case it is absolutely clear that the application was made in the name of the wrong person and as such cannot be corrected. It would therefore be unlawful for the application to be considered on 31st May, much less granted by the council, in the name of a company that has not complied with the procedures.

22. In addition, if the public notice was not published in a local newspaper, the application is also invalid and should be rejected for this reason alone.

23. It also cannot be said that SDC have not known about the invalidity of the application as, even ignoring that the application was apparently checked and validated on 10th April, the matter has been raised on several occasions since, and the consequences of not rejecting the application in a timely manner have been highlighted.

Please can you confirm by return that the applicants will be notified that the hearing cannot go ahead on 31st May, failing which we will take further legal advice as to our remedies, which may include immediate injunctive relief in the High Court.

This letter will also be delivered by hand 23rd May 2019, we expect a response no later than 4pm, Friday 24th May 2019

Yours sincerely

Simon and Elizabeth Giles – South Wing, Lullingstone Castle
Andrew Baker and Katarina Hudecova – White Passage, Lullingstone Castle
Richard and Valerie Wells – Lakeside, Lullingstone Castle
Jonathan and Sharon Ward – The Old Stables, Lullingstone Castle
Belinda Carrick and Andrew Perman – Moll Cob, Lullingstone Castle