TOWER HAMLETS

Meeting of the

EXTRAORDINARY
LICENSING COMMITTEE

Wednesday, 8 January 2014 at 6.30 p.m.

SUPPLEMENTAL AGENDA 2

		PAGE NUMBER	WARD(S) AFFECTED
3.	**ITEMS FOR CONSIDERATION**		
3 .1	**Consideration of the Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009 -Update**	**1 - 16**	**All Wards**

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6 January 2014

By email and post

Our Ref: GBH/SECLIC1/14970.00001

Dear Mr Tolley

Adoption of the Sexual Entertainment Venue Licensing Regime under Local Government (Miscellaneous Provisions) Act 1982

I have been requested by my clients at Metropolis and at Astons (Majingos) Champagne Bar to make further submissions to you in respect of matters to be determined at the Licensing Committee Hearing on 8 January 2014. I would be grateful if a copy of this letter could be placed in front of members prior to the meeting in the same way as you did on the previous Licensing Committee and Council Meeting Agenda.

I would ask that my two previous letters to the Council and both to the Licensing Committee dated 7 October and to full Council dated 27 November 2013 be included within the correspondence as well.

There are several comments which we would seek further to add with regard to the latest report to the Licensing Committee both in terms of procedure and content.

Procedure

It is submitted that the Licensing Committee on 8 October did not request an Extraordinary Meeting to be held to discuss the proposed fee structure for Sexual Entertainment Venues as is suggested in paragraph 1.1. This was certainly a matter considered at that meeting but, of course, the eventual decision was to reject the proposal altogether so accordingly there would be no requirement for any report back on the fees in circumstances where the Committee had rejected the proposal outright in any event.

It is therefore submitted that there is no lawful basis for this Extraordinary General Meeting because the Committee which sat in October rejected the proposal outright, and the necessity, therefore, to consider fees was rendered otiose.

In our respectful submission the decision of the Committee on 8 October 2013 must stand as a valid decision. The revised report at paragraph 3.5 recognises that:

> "A properly made decision not to adopt the framework legislation to enable licensing of Sexual Entertainment Venues was made (on 8 October 2013)".

Given that the author of the report and the Council's legal advisor clearly take the view that the decision in October was "properly made" no legal authority is presented to the Committee which sets out its status in determining this matter in light of the valid previous decision.

Furthermore, the full Council sought to call in this matter for further consideration in December but this was subsequently withdrawn from its consideration by the Council's legal advisor and monitoring officer. There has therefore been no overriding of the October decision.

The monitoring officer of the Council meeting in December agreed that there was no mechanism for tabling this matter before a meeting of the full Council.

In the new report of this meeting the recommendations are ones which involve further recommendation to full Council. Whilst this may be the correct way of removing a matter such as this into a meeting of a full Council there is still the obstacle in the way of the initial rejection properly determined by the Licensing Committee under delegated authorities on 8 October 2013.

Furthermore, whilst the report states that this Extraordinary Meeting was requested by 8 October 2013 Committee it is to be noted that such an Extraordinary Meeting was only suggested in order to discuss the issue of the proposed fee structure which is made clear in paragraph 1.1. It is did not recommend an Extraordinary Meeting of the Committee in order to discuss the validity of the decision which it is was taking to reject the proposals outright on the 8 October. The lawfulness of the Committee meeting to discuss this matter is therefore in question on this ground.

As a further point, we would ask the Committee to note that it apparently has no power in any event to consider the issue of fees in respect of Sexual Entertainment Venue licences under the Local Government (Miscellaneous Provisions) Act 1982.

Paragraph 3.3.7 of the scheme of delegations in the Council's constitution sets out the powers of the Licensing Committee and the Committee can determine fees and charges in respect of a number of licensing consents and approvals for which it already has responsibility.

Paragraph 1, referring to its functions, does not include matters under the Local Government (Miscellaneous Provisions) Act 1982 and it is currently therefore unable to make any such recommendation to the full Council.

We would further submit that there is no documented evidence that the 8 October Licensing Committee formally requested an Extraordinary Meeting on the issue of fees. There is no signed Minute of the Meeting of the Licensing Committee on that occasion and it is not clear, therefore, on what basis it is suggested that such an Extraordinary Meeting was sought. In any event, as we have submitted above, no Extraordinary meeting could have been sought in circumstances where the Committee rejected the adoption of the legislation outright.

With specific regard to Extraordinary Meetings of Committees the Council's constitution sets out clearly the procedure for so doing in Part 4 which is entitled "Rules of Procedure". Paragraph 3 refers to the calling of Extraordinary Meetings and indicates that this may only be done by the Council or the Chairman of the Council as well as the monitoring officer and any five members of the Council or relevant Committee if they have signed a requisition presented to the Chairman of the Council and he has refused to call a meeting within 7 days of the presentation of the requisition.

There is no reference in the Committee report as to why the meeting is an Extraordinary Meeting other than the suggestion in paragraph 1.1 that the Licensing Committee suggested such a meeting on 8 October 2013. However, that may only be done if 5 members of the relevant committee have signed a requisition which has been presented to the Chairman of Council and the Chairman of Council has refused to call a meeting within 7 days of the presentation of the requisition.

The Council is now put to proof and we request sight of the relevant requisition document signed by 5 members of the Council set out in paragraph 3.1.1 of the Rules and Procedure and the nature of the subject matter contained within the resolution, request or requisition which led to the Extraordinary Meeting being called.

Finally, if the report of the Licensing Committee is correct at paragraph 1.1 and the Extraordinary Meeting has been called in order to discuss the issue of fees then it is clear from the Council's constitution at paragraph 3.3 of the Rules of Procedure that no other business may be conducted at the Extraordinary Meeting other than that specified in the Resolution which led to its being called. There are clearly other matters set out in the report which officers are seeking the Committee to consider which were not part of the original request of the Extraordinary Meeting which was based upon fees only.

In summary, the Committee may not deliberate on the issue of the adoption of the legislation at this meeting and this is without prejudice to our contention that the adoption was, in any event, rejected at 8 October hearing.

Treatment of Existing Premises

Paragraph 3.9 of the report now acknowledges that there is no guarantee that existing premises would be successful in obtaining licences under an adopted scheme as all applications must be considered on their merits. This was clearly an issue which concerned

members of the Committee sitting on 8 October and was one of the reasons why the adoption was rejected. We make the same submissions that we made on that occasion in respect of this point and that is that the legislation should not be adopted in circumstances where operators who have been based in the area in, for example, in the case of the Pleasure Lounge for 40 years without any significant incident should face the removal of its ability to operate in the way it has done for that period of time. All of the premises in question have been subject to annual renewals in the past without incident and have been subject to the Licensing Act 2003 regime which provides for the review of such licences in the event of any breach of conditions.

That reasoning still applies and we would invite Committee members to consider it at their hearing on 8 January 2013.

Fees

Despite further elaboration in the Committee report it is still not made clear precisely how the fees are comprised.

We make the same point as previously set out in the letter to both the Licensing Committee and the full Council, that 210 hours is an excessive amount to be able to spend upon one application with possible enforcement costs added in.

At paragraph 3.17 the report states that times required for overtime in both covert and overt visits are undertaken by two officers. It is presumed that these are the officers listed in the table on page 8 of the report as "licensing officer" and "compliance enforcement visits". However, there is a total number of hours set out at 210 which at one 2 hour visit would add up to over 100 visits per annum when currently operators are experiencing not a single visit per annum.

It is not clear why given the history of the premises for which this firm acts, and their good records, why a licensing enforcement office visit would be required once every 3 days. Even if each visit were between 4 and 5 hours this would still add up to 42 separate visits and this seems vastly excessive in the circumstances. Our clients currently report to us that they are not even aware of one visit per annum.

The processing of the application also appears to be somewhat excessive given that there is built in an estimate of 15 working days at 8 hours a day on administering one application. This would add up to some 120 hours of officer time simply to process an application which again seems vastly excessive. It should also be remembered that all of the premises named are already subject to the Licensing Act 2003 regime meaning that officers will already be aware of those premises and compliance with plans and surveys. In order to maintain their current status as premises licence holders under the Licensing Act 2003 they are under a duty to ensure that the premises are suitable in terms of public safety and if there is any doubt

about this then officers will be aware of such matters under the existing regime. This is not a brand new regime where all matters with which officers have to be familiar are new.

It is accepted that officers may have to spend time liaising with applicants and objectors during the consultation process and preparing report for Committee and attending those hearings. However, it is again suggested that the time in this respect is excessive.

At the moment, under the Licensing Act 2003 regime premises pay between £315 and £635 for the renewal of their premises licence.

The figures set out in the recent report represent something like a 2,500% increase on fees compared with those under the 2003 Act.

Accordingly, without prejudice to the argument set out above about the validity of this process, the Committee is invited not to impose fees of this level but at a substantially lower rate.

Consultation

We refer to the points we have previously made in letters to both the Licensing Committee and full Council with regard to the consultation. We invite members to consider the points that we have raised in respect of the consultation in those previous letters. Reference is again made to the "industry" running a campaign. In this case, the "industry" consisted of a handful of local premises licence holders arranging for themselves a doorstep campaign as anyone is entitled to do on any issue. No vast amounts of money were spent on this campaign which consisted merely of the voluntary efforts of those in support of the premises in question. In contrast to the 4 or 5 operators in question there has been a significant national campaign with significant financial backing run by both Object and Fawcett Society who have been present in the debate with regard to the adoption of this legislation in nearly all Boroughs where it is being considered. It was entirely open to them, and it is assumed that this has happened, to run their own doorstep campaign.

It is submitted that just under 5,000 responses to a local government consultation is a significant number and one which councillors will have to take seriously into consideration. The results within the total vote with 97.8% indicating that they do not wish the Act to be adopted in this area is in our submission an overwhelming number.

In paragraph 3.30 it is suggested that the overall consultation represents only a small percentage of those who live and work in the Borough and that it is not possible to know whether those who did not make representations would have supported or were against adoption of the scheme. This would be an argument against having consultation at all on the basis that one could never know how those who did not vote would have voted had they done so. It is submitted that if a local authority decides to consult then it has to take on board the views of the significant number of people who did actually take time to participate in that

exercise rather than make assumptions about how the rest of the population might have voted. There is no way of knowing, without a 100% consultation, how those other people would have voted in the circumstances and accordingly this should not be a matter taken into consideration in this context. There is further a reference to the fact that the adoption of a scheme could "facilitate policy interventions that enhance the ability of the Council to limit the impact of SEVs on the community and on particular groups at risk of exploitation" but it does not go on to say what such "policy interventions" might be or who the groups are who are at risk of exploitation. There is no evidence within the report of any group that is exploited or facing exploitation and whilst this may be an argument for the future in terms of subsequent adoption of the legislation it cannot be submitted as an argument here for such issues that might arise at some non-distinct time in the future.

Further reference is made to the proposed policy providing "support" for the continuation of existing premises but it is submitted that this is not what is proposed with that policy. It only indicates that existing operations will not be subject to the nil policy but it does not provide any protection for existing premises who will still be subject to an application process hearing and to representations that may be made. Such representations may persuade Councillors sitting on the Licensing Committee not to grant the Sexual Entertainment Venue Licence.

Finally, there is a reference in paragraph 3.30 of a new licensing regime "limiting the negative impact on local communities brought about by these venues". However, there is no reference at any point in the report to what these "negative impacts" might be. There is no broad concern expressed in the report from any source about the so called "negative impact" on local communities and it is therefore submitted that this is not a ground or a reason for adopting a policy on this occasion.

Finally, paragraph 5.8 which contains the comments on the legal directorate indicates that the consultation which took place on the adoption of the Sex Establishment Licensing Regime is "the more relevant of the two consultation exercises referred to in the report".

It goes on to advise the Council that if it wishes to take a different approach to that expressed in the consultation then there would need to be good reason for

that approach and then points out that reasons are set out in the report both for and against. However, we can see no reasons set out in the report for or against the adoption of the legislation and have set out our views in this respect in the above paragraphs.

We would be grateful for the ability to elaborate on these points at the Licensing Committee on 8 January 2014 as we did before 8 October hearing and we would respectfully ask that this letter and two previous letters which we submitted both to the October Licensing Committee and to the full Council are attached to this submission.

Mr David Tolley 6 January 2014

We are grateful for your consideration of these matters.

Kind regards.

Yours sincerely

GARETH HUGHES
Barrister and Director
for Jeffrey Green Russell Limited

Enclosure(s)

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From: Julian Skeens [JMS@jgrlaw.co.uk]
Sent: 07 January 2014 20:22
To: David Tolley
Cc: Gareth Hughes; Simmi Yesmin
Subject: Extraordinary Meeting 8/1/14

Importance: High

Dear Mr Tolley

Thank you for indicating that this missive would be circulated to members of the committee prior to the hearing. I confirm that I shall be representing the Nag's Head 17-19 Whitechapel Road London E1 1DU that has provided nude entertainment at this site since 1982

I have had the benefit of reading my colleague Gareth Hughes' letter of the 6th January and adopt his representations and would make the following additional comments.

The Agenda papers record that the Council delegated power to the Licensing Committee to decide whether or not to adopt the legislative scheme to licence sexual entertainment in the Borough. The committee decided that, following due process, it should not be adopted.

In an apparent ruse to revisit that decision (see para 5.13 page 15), the committee is being asked to consider the appropriate level of fees for the licences that it has decided cannot granted. If the Council wishes the decision to be revisited, due process requires that it should start the process afresh

The agenda papers record that the existing public consultation "must be taken into account" (para 5.8, page 14) but it was flawed and the papers go on to speculate what the result would have been without that flaw. The only way that issue can be resolved is, due process which requires it to consult afresh without that flaw

The agenda papers recite at 1.5 page 5 that "there is currently no control on the number of venues in the Borough" which is not true. The present licensing regime is controlled by the Licensing Act 2003. Any new application can be refused, any change in style of operation can be the subject of Review and revocation, see also paragraph 3.3 page 6 which correctly states that any application for a sexual entertainment licence must be decided "on its merits". The new regime does not allow councils to refuse licenses on moral grounds

The Nag's Head has provided sexual entertainment (as defined) under a licence since 1982 and the concerns expressed in relation to the White Swan apply equally here and raise the fundamental issue of the protection of human rights (as defined). The holders of licences are entitled to expect organs of government to protect their property, in this case a license (see Tre Traktorer Aktiebolag v Sweden 1989). Adoption of the new legislation puts that in jeopardy (see White Swan arguments).

Should the committee decide to recommend adoption of the legislation (and it is difficult to understand how it could recommend that given that the Council has delegated the decision to the committee) the Nag's Head should not have any additional conditions as is proposed by the standard conditions

Should the committee adopt the standard conditions may I suggest that the word “drunk” is substituted for “intoxicated” in condition 31. Most customers where alcohol is sold are intoxicated to some degree, it is only when they become drunk that intervention is required

The course of conduct or process recommended by the Agenda papers is fundamentally flawed. The strength of argument and the strength of feeling expressed elsewhere, would suggest that, if the legislation is adopted, it will be the subject of costly challenge. The appropriate way for the Council to reconsider its previous decision is not to fudge it as suggested, but to apply due process, give local democracy a fair hearing by re-consultation and armed with that voice of democracy, reconsider the matter afresh with open minds

Thank you once again for agreeing to circulate this missive

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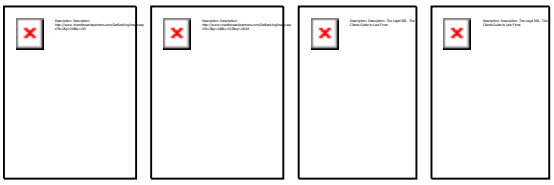

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Dadds LLP

Democratic Services Department
London Borough of Tower Hamlets

DX: 42656 ISLE OF DOGS

Our Ref: dd/lb/STE1-5

Your Ref:

8th January 2014

Simmi.Yesmin@towerhamlets.gov.uk

Dear Sirs,

Re: Adoption of the Sexual Entertainment Licensing Regime under Local Government (Miscellaneous Provisions) Act 1982

We write with reference to the above and confirm we are instructed on behalf of Whites Brasserie of 32-38 Lehman Street, London, E1 8EW to make further submissions to you in respect of the matter to be determined at the Licensing Committee Hearing on 8th January 2014.

It is our opinion based on the information presently before us that the Extraordinary Meeting of the licensing committee is not constitutional and any decision it makes ultra vires.

The reason for this is that the council licensing committee meeting held on 8th October 2013 resolved not to adopt Schedule 3 of the Local Government (Miscellaneous provisions) Act 1982 as amended by Section 27 of the Police and Crime Act 2009. This decision of the licensing committee is a valid one and properly made.

As you will be aware the cabinet met on the 11th September 2013 and the Mayor resolved to ask the licensing committee to consider whether to adopt Schedule 3 as aforementioned. Please be aware of the decision of the Mayor in the Minutes of the meeting of the 11th September 2013.

Therefore the authority and delegation for the licensing committee to resolve to refuse to adopt has been made via the resolution of the Mayor.

We do not see on any information before us that the Cabinet has met since the 8th October 2013 decision and resolved any other resolution that would in effect ask the licensing committee to consider this matter again. We also note that previously the licensing committee were asked to resolve the matter in its entirety whereas the proposed resolution for the hearing of tonight, 8th January, just asks whether to recommend to full council to resolve and adopt Schedule 3 as aforementioned.

Therefore the licensing committee are being asked to undertake a completely different task in any event and regardless of the adoption or not it would appear that would be a route for which this matter will then proceed to full council. Clearly this course of action has not been resolved by any Cabinet decision that we are aware of.

May we suggest that someone within the local authority, whether it be an officer or a political member, is not happy with decision of 8th October 2013 and wishes for that to be set aside and for the decision to be made again at full council. It is our opinion based on information before us and having regard to the Constitution, that any decision made by the licensing committee tonight would be ultra vires.

We draw your attention to previous correspondence where we set out our view in relation to overturning decisions made by the Council and its committees and the required procedure and signatures required.

Furthermore we are concerned that an Extraordinary Meeting has been called to discuss fee structure and whilst that has been discussed the officer sets out amongst other things that it is an opportunity for members to reconsider their decision of 8th October to refuse to adopt. We say this will be unlawful as the Council's procedure does not allow for other business to be discussed or decided upon at the Extraordinary Meeting.

The suggestion that the licensing committee requested an Extraordinary Meeting to discuss the fee structure for Sexual Entertainment Venues is misconceived because whilst concerns were raised regarding fees they were advised by Paul Greeno solicitor that if they did not choose to adopt Schedule 3 then there would be no need to discuss fees further.

We are surprised of the very short notice given just prior to Christmas and the way in which this matter, being of such importance to our client and many others, of having to respond to such an issue in short notice given the Local Authority as well as most businesses close for an extended period over the holiday period.

In relation to what the committee are being asked to consider this evening notwithstanding the aforementioned comments we say the following:

1. Mr Paul Greeno advised the committee that if they did not adopt Schedule 3 as aforementioned then there would be no requirement to consider the proposed standard conditions and fee structure. Therefore we are surprised that the Local Authority are proceeding to call this Extraordinary Meeting to discuss fee structure when its own Legal Adviser has made it clear that if the matter was not resolved in a positive way then they need not proceed to discuss fees, as the matter falls away in its entirety.

2. The matters raised regards to White Swan remain the same, in other words if it is deemed necessary they would have to apply for a licence had the Local Government (Miscellaneous provisions) Act 1982 as amended by Section 27 of the Police and Crime Act 2009 (Schedule 3) been adopted. The position remains the same that each application would have to be considered on its own merits and in accordance with the Council's own policy at that time. This remains to be the case and we can see no reason why that this matter is being considered again.

3. As mentioned in previous correspondence the main reason in our opinion that two members in particular voted not to resolve was because existing operators would not be assured that their applications would be renewed and having consequences upon their business and secondary trade, for example taxis, restaurants, other services and businesses that support the night time economy. This remains the same and as it was acknowledged by Mr Greeno on the night that even though there is a nil policy and exception for those existing businesses to apply, it does not mean those existing businesses will automatically receive a licence and in fact their applications would be judged by the new policy, and could be refused if the premises and its location are in conflict with the Policy which had been adopted by the Cabinet on the 11th September 2013.

We have had the opportunity to read the letter of Jeffrey Green Russell of 6th January and support the comments made within. For the reasons set out above we do not believe that the Cabinet resolved for the licensing committee to consider this evening to recommend to full council to adopt. Furthermore the council has already resolved not to adopt and we can see no lawful reason why that decision should be overturned and we would expect the council to be open and transparent in its dealings and if it is unhappy with the decision made 8th October 2013 then it should say so and start the process again to reconsider the point.

Therefore we do not believe it will be lawful for the licensing committee to reconsider its lawful decision of the 8th October 2013.

We ask that this letter be placed before members of the licensing committee and confirm as previously written our Mr Dadds will be in attendance.

Yours faithfully

Dadds

DADDS LLP

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