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Dear Mr Tolley

Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009

I refer to the report which is due to go to Licensing Committee on the evening of 8 October 2013, and would indicate here that we would, given, the Chairman's leave, intend to say a few words about the adoption of this policy to that Committee on Tuesday evening.

However, in the meantime, we would be grateful if you could kindly forward to the Chairman and members some further comments about the report which is drafted, and which will be before them at the Hearing.

As you know, this firm acts for the Pleasure Lounge, known as the Metropolis in Cambridge Heath Road, and for the Majingos Club in Canary Wharf. Both premises have operated as lap dancing venues for a number of years and the Metropolis, in particular, has operated as a dancing venue, and striptease club for decades, and since at least the 1970s.

We have already made our views known as part of the submissions to the consultation exercise which took place with regard to the adoption of the Act, and would refer the Committee to those submissions and we trust that they will be before it on Tuesday evening.

However, we make the following comments on the Report with specific regard to referenced numbered paragraphs within the Report as follows:

Paragraph 3.7

It is indicated that the consultations hosted online on the Council's website and paper copies would be provided if requested. This is not the case insofar as our client's experiences is concerned, or that of the campaign team who found it almost impossible to find paper copies even when asking Council officers, and eventually had to run off copies of the online screens in order to act as the questionnaire. We also

pointed to the Council, on several occasions during the consultation process, that only one reply could be sent from one computer. This prevented, for example, groups of people in residential care homes or old people's homes who may all have wished to respond to a consultation but could not do so because the computer in their place of residence only allowed for one reply. This problem was highlighted during the consultation process to Council officers by my firm. Copies of the relevant emails are available for inspection by the Committee.

Paragraph 3.8

This paragraph asserts that whilst 4,973 responses were received, some 1,400 forms were received from a single sexual entertainment premises within the Borough. In our submission, this is perfectly acceptable. It is true that a campaign was formed in order to illicit support for the venues arguments that the provisions of the 1982 Act should not be adopted in the Borough. The 1,400 forms collected from the premises were signed by people who either lived in the area or visited the premises regularly. The consultation process did not distinguish between those who lived in the area and those who did not, so there can be nothing wrong with the submission of 1,400 forms from individuals who were interested in responding to this consultation survey.

Paragraph 3.9

There is a reference in this paragraph to the fact that "it is probable" that some of the sexual entertainment venues have coordinated a response to the consultation. It is not probable – it is true. As we have indicated previously, at least three or four of the venues in this area felt under threat after decades of operation, and decided amongst themselves to mount a doorstep campaign which is perfectly legitimate in a democratic society in order to gather support to place before elected decision makers. Paragraph 3.9 seems to suggest that the coordination of the response is to such an extent that it has undermined the consultation as being one that can provide an accurate picture of wider community opinion.

It is unclear what is meant by this statement.

Leaving aside the 1,400 forms returned from one of the premises (which we still say should be included within the consultation) there are still left some 3,500 responses, all of which indicate that the provisions of the 1982 Act should not be adopted in the Borough. These responses have been raised as a result of a doorstep campaign as is perfectly proper and mounted by three of the four premises operating in the Borough. It is not clear why it is suggested that this has somehow "undermined the consultation" when, in fact, it can only serve to support the consultation given the numbers that have taken part. It was perfectly legitimate for those who supported the introduction of the legislation in the Borough to mount their own campaign and indeed Object the campaign group has been a vociferous part of the debate within the Borough. They

were perfectly entitled also to mount a doorstep campaign in the same way as our clients, and in the same way as any other campaign group concerned about any other issue in which the Council is involved. It is all part and parcel of the legitimate process of persuading Councillors by gathering in public opinion.

In our submission, it is not open to the Council to somehow assume what the "wider community opinion" is in this respect when the response to the consultation has been quite enormous and far more substantial than to many Council consultations that would normally take place where one may be lucky if one received a handful of replies.

Paragraph 3.9 also goes on to suggest that these results are in contrast to the community response received at the Council's consultation exercise on the adoption of the policy. However, the consultants used by the Council in scrutinising the results of that consultation came to the view that there was a 50:50 split on the adoption of the policy allowing for a plus or minus variation in numbers. It is incorrect to suggest, as this paragraph does, that there was a 52% vote in support of the policy and a 48% vote against it. The SMSR Report commissioned by the Council to analyse the results of the consultation indicated that there was a sampling error of approximately plus/minus 2% in the figures, and that, accordingly, their conclusion was that, insofar as the nil sexual establishment policy was concerned, opinion was split. They conclude that the survey has produced an inconclusive split result.

While it is correct to say in the report that, in one case, 75% of consultees were in favour of aspects of the sexual establishment policy, it must be pointed out that this figure only relates to the delineation of localities within the policy. An expression in favour of the manner in which the Council has defined the localities contained within the policy is clearly not an expression in favour of the policy itself as the figures reflect in the 50:50 split. In our submission that 75% figure should not be used as a reason for adopting the legislation which is the concern of this Report. That figure arose in the context of the adoption of a policy.

It is not agreed that the results obtained on the Sexual Entertainment Policy Consultation are in contrast necessarily to those obtained on the adoption of the legislation consultation. It would be quite open for someone to suggest that the legislation ought not to be adopted but then to take a different view on the question of whether, if it is adopted, the policy suggested is the right one. It does not necessarily follow that because 98% of respondents were against the adoption of legislation that 98% of respondents should be against the proposed policy.

In our submission, there is therefore no inconsistency with regard to the consultation on the adoption of the legislation. A full, and proper, democratic exercise has been carried out with which the Council has found no fault. There is no allegation by Council officers, nor should there be, that there has been any wrong doing in the

gathering in of support. As indicated above, it is a perfectly correct exercise in a democratic society that proponents of particular arguments on either side may approach members of the public to gauge their support. The response is not misleading or inaccurate if 98% of respondents take a particular view and only 2% take the opposite view.

Accordingly, it is clear to those making this submission that, in the absence of any other indications to the contrary the Council should take on board the views of nearly 5,000 of its own residents or 3,500 of its residents (if one excludes the 1,400 forms from the venue) which is still an enormous majority against the adoption of the legislation.

Paragraph 3.10

The paragraph fairly states what we have set out in our submissions above. That it is for elected members to determine whether a campaign which involves knocking on doors to obtain support for a particular view is legitimate or illegitimate in a democratic society. It is clear that elected politicians, during elections, do exactly the same in order to obtain votes for their own parties on the basis of the attractiveness of the policies offered, and elected members will readily recognise this legitimate function. The same is also true of those who choose to campaign on particular issues whether it be, for example, the closure of a local hospital, the abolition of a school bus service, or a planning development located near to a particular group of residents. All of these issues would engender concerns, both for and against, amongst members of the community, and it would be perfectly valid for those on either side of the argument to gather in support for those arguments. This is exactly the case with regard to the adoption of the provisions of the 1982 Local Government (Miscellaneous Provisions) Act.

Whilst it is true that a strong "no" response does not prevent adoption by the elected members, and it is perfectly legitimate for them to find in the alternative, it must be right that such a substantial response of 4,973 responses, as set off against 108 in favour of the policy, should weigh heavily in elected members decisions. It is clear, that certainly 3,500 of those submitting submissions are local residents who will be keen to test whether elected members come to a view fairly based upon what those individuals have expressed in consultation and will bear this in mind during Council elections in 2014. That is the democratic process.

Paragraph 3.11

We are told in paragraph 3.10 that a strong "no" response does not prevent adoption if there remain good reasons for the regulation of sexual entertainment venues. However, it is submitted that paragraph 3.11 and 3.12 do not go on to provide those "good reasons". Paragraph 3.11 merely says that the scheme gives local people a

greater say over venues in their area. However, it is clear that many of the venues have been operating for many years in Tower Hamlets without causing any problems to the local community, and there has not been, over the last 40 years operation of the Metropolis in Cambridge Heath Road, any individuals coming forward to say that the premises should not be in this area. All premises are well controlled already under the Licencing Act 2003, and are subject to strict conditioning about the performances that take place at the premises and the conduct of both dancers and customers. The Police have not expressed any concerns with regard to crime and disorder that is often alleged outside any of the premises and there is no great well of opinion that would demonstrate that, under the Licensing Act 2003, any of these premises are causing any of the problems set out by objectors.

Paragraph 3.11 simply asserts that there are "negative impacts on local communities brought about by these venues" but does NOT provide any evidence of what those negative impacts are. There has certainly been no great campaign over many, many years from members of the public demonstrating against the existence of the current licensed premises, setting out what are the "negative impacts on their local communities". The Council is invited to list these negative impacts. A mere assertion that there are such impacts is, in our submission and before the adoption of legislation, insufficient.

Members are invited to consider the evidence of what it is alleged are the "negative impacts" on the local communities in reaching this decision. It is submitted by this firm that there is no such evidence presented in this Report that could persuade members to run counter to the expressed views of almost 5,000 people in that area.

Paragraph 4.1

This paragraphs relates to the fees of £9,000 per application as set out in the Appendix to the Report. However, it is not clear how this figure is to be comprised, and the Council will be aware of the recent decision involving Westminster City Council and Hemmings which was decided in the Court of Appeal, which indicated that costs of enforcement could not be recovered under this heading and that it was in fact only the cost of the administration of the licence application system that could be so recovered. The Appendix to the Report does not set out the basis upon which the figure of £9,000 is worked out, and it is, therefore, submitted that without that detailed explanation of how the figures are comprised the licensing committee run the risk of falling foul of the Hemmings decision in seeking to recover monies in respect of which there is no right of recovery.

David Tolley 7 October 2013

We would be grateful if these submissions could be placed before the members of the Committee prior to, or at the hearing, on Tuesday evening. We would also seek an opportunity of a few minutes to present such arguments before that Committee.

Kind regards,

Yours sincerely

GARETH HUGHES
Barrister and Director
for Jeffrey Green Russell Limited