

Democratic Services Department
London Borough of Tower Hamlets

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Simmi.Yesmin@towerhamlets.gov.uk

Our Ref: dd/lb/STE1-5

Your Ref:

8th January 2014

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.

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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 LLP