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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.

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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 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.

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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

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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

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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

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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.

JEFFREY  
GREEN  
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Solicitors

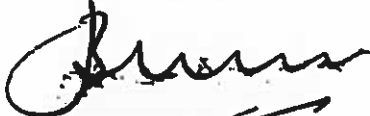
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We are grateful for your consideration of these matters.

Kind regards.

Yours sincerely



**GARETH HUGHES**  
**Barrister and Director**  
**for Jeffrey Green Russell Limited**

Enclosure(s)