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

This page is intentionally left blank

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

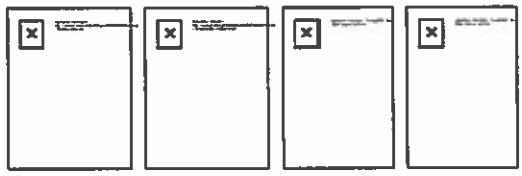
Should the committee adopt the standard conditions may I suggest that the word "drunk" is substituted for "intoxicated" in condition 31. Most customers where alcohol is sold are intoxicated to some degree, it is only when they become drunk that intervention is required

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

Julian
Julian Skeens
Director
for Jeffrey Green Russell Limited
(+44(0)2073397018
+44(0)7836275095
+44(0)2073070245

Top Rated Licensing Individual and
Top Rated Licensing Firm for 25 Years.



[redacted]
Solicitors

Waverley House
7-12 Noel Street London W1F 8GQ
Fax: +44 (0) 20 7339 7001 Web: jgrweb.com DX: 44627 MAYFAIR
Tel: +44 (0) 20 7339 7000

Direct Email: gbh@jgrlaw.co.uk
Direct Fax No: 020 7307 0252
Direct Dial No: 020 7339 7012

Mr David Tolley
Head of Consumer and Business Regulations Service
London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 1BY

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.

<u>Treatment of Existing Premises</u>

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.

[redacted]
Solicitors

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)

This page is intentionally left blank

Dadds LLP

Mr John S Williams
Service Head Democratic Services
London Borough of Tower Hamlets
DX: 42656 ISLE OF DOGS

Our Ref: dd/lb/STE1-5

Your Ref:

27th November 2013

e-mail: johnS.williams@towerhamlets.gov.uk

Dear Sirs,

Re: Consideration of the adoption of the Sexual Entertainment Venues Licensing Regime in Tower Hamlets

Further to your email of yesterday's date we take the view that there was insufficient time in which to respond fully before 2pm today however we have taken our client's instructions and we are of the view that the decision whether or not to adopt the policy was properly delegated to the Licensing Committee on the 11th September 2013. They have resolved not to adopt the Policy and that is the decision from the resolution of the council.

We would need to reconsider the point on quashing the decision of the council. It is our understanding briefly looking at the Constitution, that there is a mechanism for doing such, however your note suggests this only applies to Full Council and not council meetings. If we are wrong on this point please let us know, i.e. have we misunderstood. We see no provision, or been directed to any decision to allow for the decision to be made again, given the clear democratic rule made by the Licensing Committee.

We note that the council report has not been written in a way that reflects the meeting of the licensing committee. Our Mr Dadds was present along with other solicitors, barrister and members of the public. It was clear, as far as this firm is concerned, that a decision was made.

The salient point why the decision was refused was because there could be no guarantee that the existing trades and business that held a licence would be guaranteed to obtain a new licence. A legal advisor said each application would be made on its own merits subject to policy of the existing Cabinet, and there was the possibility that the existing licence may not be reissued and it was that reason in our opinion the two particular members of Committee decided against the resolution.

We ask that this matter be deferred from tonight's council meeting to allow those who may be affected by the decision time to consider the report and its contents and make appropriate representations if necessary. We remind you that we wrote to the licensing authority on 15th October 2013 asking for an update. We enclose a copy of our letter for your reference. We do not believe it is appropriate that we should be asked to comment and only given short notice of this matter being revisited.

In the absence of the deferral we seek permission from the Speaker of tonight's meeting to make oral representations and make reference to this letter. Our Mr Dadds could be in attendance if permission is given.

We look forward to hearing from you as a matter of urgency.

Yours faithfully

Dadds

DADDS LLP

JEFFREY
GREEN
RUSSELL
Solicitors

Waverley House
7-12 Noel Street London W1F 8GQ
Fax: +44 (0) 20 7339 7001 Web: jgrweb.com DX: 44627 MAYFAIR
Tel: +44 (0) 20 7339 7000

Direct Email: gbh@jgrlaw.co.uk
Direct Fax No: 020 7307 0252
Direct Dial No: 020 7339 7012

Attention: Mr David Tolley
Head of Consumer and Business Regulations Service;
and
All Council Members
London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 1BY

27 November 2013

Our Ref: GBH/SECLIC1/14970.00001

Dear Mr Tolley and Councillors

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

We note that the Council has now been asked to adopt the provisions of Local Government (Miscellaneous Provisions) Act 1982 in respect of Sexual Entertainment Venues which we understood had been rejected by the Licensing Committee at its meeting in October 2013. Notwithstanding that decision, officers have chosen to bring this matter back to full Council and we would ask the Council to adopt the same view as its delegated Licensing Committee.

We would make the following points about the Report submitted to the full Council meeting, whilst relying on all those points made in our previous letter of 7 October 2013 which was before the Licensing Committee.

1. Fees

1.1. It is still not clear that fees have been properly calculated either mathematically or in accordance with law. The figures set out at 3.9 of the Report to Council are based upon one establishment and add up to £9,000. However, it is not made clear why a licensing officer should take 105 hours to process an application at a cost of £2,625. 105 hours to administer an application for a sexual entertainment venue licence seems excessive and extreme. Further, it is not made clear as to why it is suggested that a further £2,625 is required under the heading "Compliance Visits and Costs". It is suggested at paragraph 3.10 that certain test purchasing monies are required to pay for lap dancing session for licensing officers. The average cost of a 3 minute dance from a dancer is about £20 so it is difficult to see how a licensing

officer visiting such a premises would require 130 lap dances before deciding whether there was compliance with or breach of licensing conditions.

1.2. As we made clear in our previous letter to the Licensing Committee in October 2013 the recent case of Hemings v Westminster City Council (2013) makes clear that the costs of paying for enforcement are not recoverable by way of a licence fee.

1.3. It is hard therefore, to see how there can be such a dramatic difference in licence fees under the Licensing Act 2003 as those which Tower Hamlets are seeking to impose under the Local Government (Miscellaneous Provisions) Act 1982. The difference is that between what is currently a £600 fee for a premises licence to that which is proposed of a £9,000 fee for an SEV licence.

1.4. The Licensing Committee expressed grave concern over the level of fees and before they rejected the adoption of the Act in their area had asked for a review to be carried out of the fee rates. In our submission, this has not been answered by paragraphs 3.9-3.11.

2. The Consultation

2.1. With regard to the consultation we make the same points that we made in our letter of 7 October 2013 referring to paragraph 3.7, 3.8 and 3.9 of the Licensing Committee Report and would invite the Council to adopt that reasoning.

2.2. In essence, it is inappropriate for Council officers to refer to the fact that the participation in the democratic process has somehow "undermined the consultation". Anyone in the United Kingdom has the right to canvass for support for a particular proposition which stands to be decided in front of a Council Committee or for that matter Parliament. There has certainly been a coordinated campaign run by members of Object and the Fawcett Society society to adopt the provisions of the Act and it was entirely open to those who wished to support the adoption of the Act to themselves canvass local residents to ascertain their views. In this particular incident a decision was taken by the very concerned operators of establishments which have been located in this Borough for many years to conduct a door to door campaign to see how people felt about the adoption of the Act. They obtained responses and submitted these responses with the agreement of all parties to the Council as part of the process.

2.3. A point was raised in the Licensing Committee that 4,973 respondents opposing the policy was a fraction of the total population of Tower Hamlets, and whilst this may have been true it is a fraction which is far in excess of the miniscule total in comparison that supported the adoption of the Act, namely 108 people.

2.4. It is totally denied, therefore, that the inappropriate remarks contained within the Report about a campaign which has produced a significant number of people opposed to the policy which officers seek to introduce has somehow skewered the process. In our submission it should inform the process and the nearly 5,000 people who oppose the adoption of the Act within the London Borough of Tower Hamlets will clearly be monitoring the Council Committee meeting to see if their views are taken into account. The officers within paragraph 3.15 seek to compare a consultation on the adoption of the Act within the London Borough to a consultation which took place on the adoption of the Policy. However, that consultation was evenly split and give or take the differentials could have resulted in a majority against the adoption of the Policy.

2.5. It should be pointed out that the individual operators within Tower Hamlets carried out the same exercise with regard to the adoption of the Policy as they did with regard to the adoption of the 1982 Act. It is interesting to note that officers do not suggest that the results have somehow been skewered in that particular case which appears to be inconsistent thinking.

2.6. In any event, a survey on the adoption of the Policy is a very different survey to one on the adoption of the Act. It might be assumed that people thinking about the adoption of the Policy may already assume that the Act has been adopted and that therefore there would have to be a policy of some nature operating underneath that Act. It is then open for people to say that if there has to be a Policy because the Act has been adopted then there will be a greater percentage of support for that Policy given that some form of policy is to be introduced in any event.

3. Further reason for Licensing Committee Decision

3.1. There is a singular omission in the Report to Council Committee which is that there was a third reason why the Licensing Committee chose not to adopt the 1982 Act and that is that members were concerned, by a majority, that there was still no guarantee that the existing operators, many of whom have been in the Borough for decades, would retain their licences under the new system.

3.2. Whilst officers make clear in the Report that existing operators will not be subject to the "Nil" Policy that is no guarantee that Sexual Entertainment Venue Licences will be granted to those operators. It merely exempts them from one part of the policy. This was of significant concern to some of the members on the Licensing Committee and it was this that eventually led to the dismissal of the option to adopt.

3.3. Accordingly, paragraph 2.5 of the Report to Council is misleading when it suggests that the Policy "supports the continued operation of existing premises including The White Swan." The Policy singularly does not support the continued operation of

the existing premises but merely indicates that they should be exempt from the "Nil" Policy. That is not, a guarantee of their continued existence under the new regime. Given that this is a significant risk the operators for which this firm acts would oppose the adoption of the Act within the Borough.

3.4. It is clear that to date the premises for which this firm acts, namely Majingos and Metropolis, have operated without any issues or intervention from the Police or the Local Authority in many years, and that they are well controlled by way of conditions under the premises licence already in existence granted to them under the Licensing Act 2003.

This completes the further submissions that we would make on behalf of our clients in respect of the adoption of the 1982 Act by full Council, and we would ask that members take these matters into account as well as those which we still seek to rely upon set out in our letter of 7 October 2013, a copy of which is also attached.

We would respectfully ask that this letter be placed before members prior to the meeting of Full Council on 27 November 2013.

Kind regards.

Yours sincerely

pp

GARETH HUGHES
Barrister and Director
for Jeffrey Green Russell Limited

Enclosure(s)

Dadds LLP

Mr Paul Greeno
Senior Advocate (Deputy Team Leader)
Tower Hamlets Legal Department
DX: 42656 ISLE OF DOGS

Our Ref: dd/lb/STE1-5

Your Ref:

15th October 2013

Dear Sirs,

Re: Sexual Entertainment Licensing

We write further to the Council Licensing Committee Meeting held on 8th October 2013, where it was resolved not to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.

Please confirm what steps, if any, our client will need to undertake following the above decision, also please confirm if this concludes matters for this municipal year?

We look forward to hearing from you.

Yours faithfully

Dadds

DADDS LLP

Dadds Solicitors

Crescent House, 51 High Street, Billericay, Essex CM12 9AX
T: 01277 631811 F: 01277 631055 E: office@dadds.co.uk
W: www.dadds.co.uk DX: 32202 BILLERICAY

JEFFREY
GREEN
RUSSELL
Solicitors

Waverley House
7-12 Noel Street London W1F 8GQ
Fax: +44 (0) 20 7339 7001 Web: jgrweb.com DX: 44627 MAYFAIR
Tel: +44 (0) 20 7339 7000

Mr David Tolley
Head of Consumer and Business Regulations Service
London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 1BY

Direct Email: gbh@jgrlaw.co.uk
Direct Fax No: 020 7307 0252
Direct Dial No: 020 7339 7012

7 October 2013

By Post
Our Ref: GBH/SECLIC1/14970.00001

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.

JEFFREY
GREEN
RUSSELL
Solicitors

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