

APPENDIX 5

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 7.00 P.M. ON TUESDAY, 8 OCTOBER 2013

**COMMITTEE ROOM C1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5
CLOVE CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Carli Harper-Penman (Chair)

Councillor Peter Golds (Vice-Chair)

Councillor Khaled Uddin Ahmed

Councillor Rajib Ahmed

Councillor Denise Jones

Councillor David Snowdon

Councillor Ann Jackson

Other Councillors Present:

Nil

Speakers

Gareth Hughes

- Barrister, attending for agenda item 4.1

David Dadds

- Barrister, attending for agenda item 4.1

Insp. Kevin Wheeden

- Metropolitan Police, attending for agenda item 4.3

PC Mark Perry

- Metropolitan Police, attending for agenda item 4.3

Officers Present:

Paul Greeno

- (Senior Advocate, Legal Services, Chief Executive's)

Andy Bamber

- (Service Head Safer Communities, Crime Reduction Services, Communities, Localities and Culture)

Kathy Driver

- (Principal Licensing Officer)

Chris Lovitt

- (Associate Director of Public Health)

Andrew Weaver

- (Head of Environmental Protection, Communities Localities and Culture)

David Tolley

- (Head of Consumer and Business Regulations Service, Safer Communities, Communities Localities & Culture)

Alan Ingram

- (Democratic Services)

COUNCILLOR CARLI HARPER-PENMAN (CHAIR), IN THE CHAIR

1. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of the following Members:

- § Councillor David Edgar
- § Councillor Marc Francis
- § Councillor Md. Maium Miah
- § Councillor Joshua Peck

Apologies for lateness were submitted on behalf of Councillor Denise Jones.

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of Disclosable Pecuniary Interests.

The Chair declared a personal interest in that she had received multiple representations regarding agenda item 4.1 – “Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009”, specifically in favour of adopting the new regime, although she had also received some representations against its adoption. However, whilst noting the representations her opinion had not been influenced by them.

Councillor Peter Golds declared a personal interest in the same agenda item on the basis that he would be speaking in favour of the White Swan Public House, 556 Commercial Road, and had visited the premises on occasion.

3. MINUTES

RESOLVED

That the minutes of the Licensing Committee meeting held on 4 June 2013 be confirmed and signed as a correct record by the Chair.

4. ITEMS FOR CONSIDERATION

The Chair indicated that the order of business of the meeting would be varied so as to consider agenda item 4.4 after item 4.2. However, for ease of reference the order of business in these minutes remains as set out on the original agenda.

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

At the request of the Chair, David Tolley, Head of Consumer and Business Regulations, introduced the report requesting the Committee to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009, which would allow the licensing of sexual entertainment venues (SEVs) and bring into effect the

policy for control of sexual entertainment premises as adopted by Cabinet on 11 September 2013.

Mr Tolley pointed out that 11 existing businesses held premises licences under the Licensing Act 2003 with permissions that would be affected by the adoption of the SEV legislation and these businesses could submit applications to operate under the new legislation. Such licences would be reviewed annually.

The Chair indicated that she would allow two persons, who had requested speaking rights, to address the Committee. The speakers would be allowed three minutes each, in line with the time limits for speaking at full Council meetings.

Gareth Hughes, speaking on behalf of Aston's Champagne and Wine Bar, 187 Marsh wall, London, E14 9SH, stated that supporters of the premises had experienced difficulties during the consultation on SEV legislation in obtaining paper copies of documents to allow representations. There had also been problems in sending electronic representations from premises where there was only one computer.

Mr Hughes added that the report indicated that 4,973 responses had been received, with 1,400 being submitted from one establishment in the Borough. However, his Clients considered this perfectly acceptable as the forms garnered were signed by local residents or people who visited the premises regularly. This also meant that some 3,500 responses had been received indicating that the SEV regulations should not be adopted and these had been raised as a result of a doorstep campaign by premises operating in the Borough. He made the point that supporters of the SEV legislation (the group "Object") had also led their own campaign in favour of adopting the legislation. He expressed the view that the amount of replies submitted supported non-adoption of the legislation and there had been no hint of foul play in conducting the campaign. There had been no abuse of the consultation process and the Committee should take account of the resulting outcome. Whilst the "no" response did not prevent the Committee from adopting the SEV legislation, there was no evidence to suggest it should be adopted.

David Dadds, speaking on behalf of White's Gentleman's Club, 32-38 Leman Street, London, E1 8EW, stated that he supported all the previous speaker's comments and felt that the Officer request in the report to support adopting the legislation was an undemocratic approach, as the Committee should take account of the results of consultation and give this appropriate weight. In addition, there was an issue relating to staff and job protection, as some 2,000 people in the Borough were employed by establishments affected by the legislation. Businesses should not have to apply annually for licences, as proposed if the new regime were adopted. Mr Dadds expressed concern that the SEV policy had already been adopted and there could be pre-determination of the matter accordingly. He referred to the Chair's remarks that she had not been unduly influenced by representations and asked whether the Committee might have been influenced by the policy.

The Chair stated that it was not unusual for councillors to receive representations from residents on many issues. She had received representations from both sides of the argument but this had not influenced her responsibilities under the Councillor Code of Conduct.

Paul Greeno, Senior Advocate, legal Services, added that the SEV policy had been adopted by Cabinet but none of the Licensing Committee was a Cabinet Member and it was confirmed that none had spoken in favour of the legislation at the Cabinet meeting.

The Chair then invited Members to put questions to the speakers, who responded that:

- § The consultation representations were very significant in that almost 5,000 people felt aggrieved enough by the proposals to say that the legislation should not be adopted. This far outweighed the number in favour.
- § No specific details of claimed negative impact of the premises affected by the SEV legislation had been given.
- § The Cabinet report had raised concerns over women's safety but contained no further details and the current Licensing Act provisions provided satisfactory regulation of licensed premises.

The Chair invited Members to put questions to Officers, who responded that:

- § There had been initial problems in the consultation problem with no more than one response being allowed from any individual computer. However, people had been advised that paper documents were available and the computer bar had been removed later. No complaints had been received from retirement home or care home residents in this connection.
- § There was no way of knowing whether responses had been made by Tower Hamlets residents.
- § The consultation had contained no reference to adverse impacts of SEV premises and simply asked whether or not the legislation should be adopted.
- § The Committee was not obliged to follow the results of the public consultation but must be satisfied in their own minds that it would be appropriate to adopt the SEV legislation. There could be challenge by judicial review, should the legislation be adopted and this could eventually be referred to the European Court of Appeal. However, a decision not to adopt could likewise be challenged.

Councillor Peter Golds asked why the White Swan Public House was included as a SEV establishment as it provided no entertainment such as lap dancing or pole dancing. An amateur strip night was held once per week and people disrobed to their underwear – this was simply burlesque. Like many gay venues in the Borough, the White Swan was experiencing hard times and the proposed £9,000 annual licence fee could put it out of business. The inclusion of the White Swan in this legislation had elicited a world-wide response.

Mr Tolley commented that this pub had been included with all premises that had existing licences containing the provision for regulated sexual entertainment. All such premises would be assessed to see whether they would be covered by the SEV regime. If it were determined that they were not covered, they would only be monitored as usual. There would be an all-encompassing process to examine whether businesses were affected by the legislation and the White Swan was included in this process due to the terms of its current licence.

Councillor Golds expressed concern that the consultation procedure had been launched originally at the London Mosque, where there was unlikely to be much favour for SEV establishments. He felt that the White Swan should be excluded from the SEV policy as it was by no means such a venue. There had never been any complaints about the premises made by responsible authorities or residents during its existence for the best part of a quarter of a century. It was being put forward to be included in the policy on the basis of an event lasting about an hour and a half each Wednesday night. The White Swan was one of the last gay venues in the Borough and he was convinced that the SEV policy would put it out of business. There had been discussions about the premises a year and a half ago and he could not understand why it was included unless due to latent homophobia.

Mr Tolley replied that relevant conditions were already on the premises licence but if sexual entertainment were not offered, it would not be included in the proposed new regime.

Mr Greeno added that the Committee did not have the remit to decide the SEV policy, which had already been decided by Cabinet, but had to consider whether or not to adopt the legislation under which the policy could be implemented. The Committee could not place any premises outside the SEV policy and Officers would have to carry out an assessment to determine whether or not the White Swan was included in that policy.

Councillor Peter Golds then proposed a motion, seconded by Councillor David Snowdon: "That the White Swan Public House be excluded from the proposed SEV policy."

The motion was put to the vote and was **agreed** unanimously. The Chair indicated that she would confer with Councillor Golds on how best to bring this decision before full Council.

Discussion then ensued on the proposed level of SEV licence fees, with Councillor David Snowdon asking how the proposed £9,000 fee had been decided.

Mr Tolley replied that this had been benchmarked with other London Councils who already operated the SEV regime. The fee included compliance time, incorporating premises visits and assessing applications, legal costs and bringing such matters to committee. This was a new fee and could be reviewed, including a downward adjustment. There was a potential for work equivalent to an additional one to one-and-a-half full time posts. In response

to queries, Mr Tolley added that the current liquor licensing fee was in the region of £300.

Councillor Khaless Ahmed felt that an increase from £300 to £9,000 could not be justified, especially when there had only been 5,000 consultation responses, and felt that there should be a cap on the 11 SEV premises which were proposed and these should be excluded from the new policy. If this were done, an annual licence review should not be needed.

The Chair commented that the SEV policy would have the effect of applying a cap and the annual review was required by the new legislation.

Members put forward the view that the proposed fee was very high compared to other annual fees that were already charged and no financial analysis was contained in the report to justify this. Mr Tolley referred to his previous comments on matters that had been taken into consideration in deciding the licence fee and stated that benchmarking showed that the proposal was about on parity with neighbouring local authorities that had adopted the policy. The Licensing Committee could review the fee annually and the next review would allow more details of the elements comprising it.

The Chair indicated that a decision on the actual licence fee could be deferred but this would have an impact on the start date for the SEV policy and would potentially require an extraordinary meeting of the Committee. If there were to be further discussion on the proposed fee, members were not best placed to try and set an alternative amount at this meeting.

Councillor David Snowdon proposed a motion, seconded by Councillor Peter Golds: "That any decision on a fee level for a SEV licence be deferred for consideration at an extraordinary meeting of the Licensing Committee to be held prior to a Licensing Sub-Committee this year and contain details of a breakdown of related costs and the outcome of the benchmarking process."

The motion was put to the vote and was **agreed** unanimously.

The Chair indicated that she would confer with Officers on how best to proceed with the matter and added that it would be necessary to hold the extraordinary meeting within the next few weeks to allow a policy implementation date of 1 January 2014.

Councillor Rajib Ahmed referred to the earlier comments of Councillor Khaless Ahmed relating to the capping of the number of premises allowed by excluding the 11 premises mentioned in the report. Mr Greeno stated that it would not be possible to adopt new legislation whilst excluding some premises that were affected. He added that, if the Committee did not adopt the legislation, SEV licensing would not apply in Tower Hamlets and premises would continue to be regulated under existing Licensing Act provisions.

The Chair then put to the vote the Officer recommendation to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended

by section 27 of the Policing and Crime Act 2009, whilst excluding a decision on the licence fee to be charged.

On being put to the vote, with three votes for and four against, it was –

RESOLVED

That the Officer recommendation in the report to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009, be **NOT AGREED**.

The Chair indicated that the report, therefore, fell.

4.2 Fees Review - London Local Authorities Act 1991& Gambling Act 2005

At the request of the Chair, David Tolley, Head of Consumer and Business Regulations, introduced the report advising Members of a review that had taken place regarding licence fees that could be set locally and proposing revised levels thereto.

After a short discussion, it was unanimously –

RESOLVED

1. That the fee for Massage and Special Treatment Fees be increased by RPIX 3.1%.
2. That the fee for both a new application and an application for Renewal for Intense Pulse Light laser treatment shall be £500.
3. That the fee for a Betting Shop Licence shall be £500.
4. That the fee for an Adult Gaming Centre Licence shall be £650.
5. That all fees are non refundable once an application has been submitted due to the commencement of processing the licence.
6. That, where a business operates a selection of beauty treatments, only the higher fee is payable.
7. That these fees will commence on the 1st November 2013 and will apply to all new and renewed licences applications received from on or after that date.

4.3 Licensing Act 2003 - Responsible Authorities

The Chair indicated that a document from the Metropolitan Police had been provided for the meeting on a restricted basis and might result in Members asking follow-up questions of the Police in the next few days. Inspector Kevin Wheeden confirmed that Members could retain the paper but asked that its contents be regarded as confidential.

In introducing the report, David Tolley, Head of Consumer and Business Regulations, indicated that relevant Service Heads and Metropolitan Police representatives were in attendance to provide details of the evidential basis on which representations or reviews were brought to the Licensing Sub-Committee.

The Chair then invited those present to address the Committee.

Inspector Wheeden commented that his report showed that:

- § 500 calls complaining of anti-social behaviour were being made each week, although these were not necessarily related to licensed premises.
- § A tri-borough partnership was being set up to include the Tower Hamlets wards of Spitalfields & Banglatown and Weavers. This was currently in the planning stage. He invited suggestions for the best way to present information so as to be of most use to councillors.
- § Theft from the person cases in those wards were very high and much of this related to licensed premises.
- § A monthly licensing visit was undertaken, that included all licensed premises, not only liquor licences. Checks were made that numbers SIA staff were provided in accordance with licence requirements.

Andrew Weaver, Service Head Environmental Protection, presented the information contained in the circulated agenda pack and stated that a 10 year database was available concerning complaints and requests for intervention. When a new application was received, its management plan was examined and Members advised accordingly.

Chris Lovitt, Associate Director of Public Health, presented the information contained in the circulated agenda pack and added that, whilst only the Director of Public Health was able to make representations, bodies such as Barts NHS Trust were invited to make contributions. He added that:

- § Health was not yet a licensing objective, with its closest link being to the public safety objective.
- § London Ambulance Service data around binge drinking callouts was provided in the report, showing a substantial increase over the last year. LBTH had the 5th highest such callout of all London Boroughs and all wards except four had higher such callouts than the average in England.
- § The service was looking at means of highlighting possible problems such as the situation of licensed premises near homeless hostels and the NHS was very supportive of the saturation policy around the Brick Lane area.

Kathy Driver, Principal Licensing Officer, presented the information contained in the circulated agenda pack and indicated that:

- § Her service acted to provide evidence at such time as licence reviews were triggered and it was unlikely they would object to a licence unless another Responsible Authority did so. However, more activity was expected as the saturation policy came into play.
- § Operation Dimmock was an enforcement operation that had started in August this year and targeted instances of complaints from residents and other Responsible Authorities.

The Chair commented that she was particularly interested in noise complaints against pub and takeaways and was staggered by the incidence of such report in the Bow East ward, which had relatively few such premises. She felt that it would be helpful to differentiate between domestic and other premises.

Replies to questions from Members, included the following Officer comments:

- § The location of the Shoreditch triangle resulted in drunken people from other areas entering Tower Hamlets.
- § Operation Dimmock used Officers from other services for test purchases, etc., as Licensing staff were well known locally.
- § Premises selling food were almost exempt from framework hours and any proposal for policy change in this respect would need to be heavily evidence-based.

The Chair then thanked those present for their contributions to the report.

4.4 Legal Review

At the request of the Chair, Paul Greeno, Senior Advocate, Legal Services, introduced the first quarterly report setting out details of prosecutions and appeals relating to licensing enforcement activity.

The Chair thanked Mr Greeno for the information provided.

Councillor Golds thanked Mr Greeno particularly for information regarding 93 Feet East, which demonstrated that decisions made by members at Licensing Sub-Committee were fully justified.

RESOLVED

That the report be noted.

5. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

Nil items.

The meeting ended at 9.00 p.m.

Chair, Councillor Carli Harper-Penman
Licensing Committee