

APPENDIX 7

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 6.30 P.M. ON WEDNESDAY, 8 JANUARY 2014

**ROOM MP701, 7TH FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE
CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Peter Golds (Vice-Chair, in the Chair)
Councillor David Edgar
Councillor Marc Francis
Councillor Ann Jackson
Councillor Denise Jones
Councillor David Snowdon

Other Councillors Present:

None

Officers Present:

Paul Greeno – (Senior Advocate, Legal Services)
John McCrohan – (Trading Standards & Licensing Manager)
David Tolley – (Head of Consumer and Business Regulations
Service, Safer Communities, Communities
Localities & Culture)

Simmi Yesmin – (Senior Committee Officer, Democratic Services)

Guests Present:

Gareth Hughes – (Jeffery Green Solicitors)
David Dadds – (Dadds Solicitors)
Julian Skeens – (Jeffery Green Solicitors)

1. APOLOGIES FOR ABSENCE

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

- § Councillor Carli Harper-Penman
- § Councillor Khaled Ahmed
- § Councillor Rajib Ahmed
- § Councillor Md. Maium Miah
- § Councillor Joshua Peck

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of Disclosable Pecuniary Interests.

3. ITEMS FOR CONSIDERATION

3.1 Consideration of the Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009 -Update

At the request of the Chair, David Tolley, Head of Consumer and Business Regulations, introduced the report and explained that the Licensing Committee on 8th October 2013, had requested for an extraordinary meeting to be held to discuss the proposed fees structure for Sexual Entertainment Venues (SEV). It was noted that the report covered a cost analysis of the fees structure and gave the Licensing Committee the option of reconsidering its decision not to adopt the legal framework to licence sexual entertainment venues by proposing recommendations to Full Council.

It was noted that the issues which were of concern were the exclusion of the White Swan Public House from the Sexual Entertainment Policy, the reconsideration of the fees and not to adopt the framework legislation to permit a licensing regime for SEVs.

It was further noted that there was no specific licensing regime in place for SEV's and therefore there is currently no control on the number of venues permitted in the Borough. Mr Tolley explained 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 and such licences would be reviewed annually.

It was noted that venues including the White Swan as an existing operator would benefit from the exemption of the "nil limit" provided for existing premises in the SEV policy. Mr Tolley stated that it was not possible to withdraw or waiver the White Swan from the policy. However it would benefit from the nil limit as an existing premises.

Mr Tolley then explained the breakdown of the £9000 fee and detailed the costs in relation to compliance visits. He explained that the Council must determine its fees on a cost recovery basis so comparison with fees in other boroughs was not a relevant consideration. However it was noted that compared to 13 other London boroughs there was 5 boroughs charging below Tower Hamlets and 8 boroughs charging higher than Tower Hamlets ranging from £10,000 - £22,523.

Mr Tolley concluded by highlighting the consultation process that took place and was noted that the overall consultation response represented only a small percentage of those who worked and lived in the borough.

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

Mr Gareth Hughes, speaking on behalf of Metropolis and Aston's Champagne and Wine Bar, stated that the decision made at the previous Licensing Committee on 8th October 2013 was a valid decision and still stands, he explained that there had been an attempt to take a report to full Council on this matter, which was withdrawn on the night due to legalities.

Mr Hughes questioned the procedure and process which was followed to call the extraordinary meeting as he believed that an extraordinary meeting was not requested at the previous meeting and that the consideration of fees did not allow discussion for the adoption of the legislation. He concluded by asking Members to consider his previous concerns stated in his representations.

Mr David Dadds, speaking on behalf of White's Gentleman's Club, stated that he supported all comments made by the previous speaker. He highlighted the findings from the consultation process and expressed concerns around the fees. He stated that a decision was made on 8th October 2013 not to adopt the legislation and this was valid.

Mr Dadds believed to have had concerns of pre-determination as this meeting was to re-visit the previous decision and to re-open that decision to reconsider the option to adopt the legislation.

Members then heard from Mr Julian Skeens, representing Nag's Head, he also supported the comments made by his colleague Mr Gareth Hughes and added that the agenda papers recorded that Council had delegated power to the Licensing Committee to decide whether or not to adopt the legislative scheme to licence sexual entertainment in the Borough and the Committee had decided that following due process it should not be adopted, therefore the decision was valid.

The Chair then invited Members to put questions to the speakers. There were no questions for the speakers.

The Chair asked Mr Paul Greeno, Senior Advocate to provide legal advice to Members in response to the concerns raised. Mr Greeno explained that issues had been raised in relation to the lawfulness of the Licensing Committee in considering this matter.

It had been stated that the Licensing Committee on 8th October 2013 did not request an extraordinary meeting. This was not correct. He explained that the extraordinary meeting had not been called as a result of that request. It had been called by the Monitoring Officer. This was following the report that

was to go to full Council on 27th November 2013. That report was pulled and following that, the Monitoring Officer advised that a report be re-submitted to full Council dealing with the same matters raised in the full Council report but via an extraordinary meeting of the Licensing Committee.

In respect of calling of an Extraordinary Meeting, Mr Greeno stated that Part 4 of the Council's Constitution set out the Rules of Procedure and which includes the Council Procedure Rules. Paragraph 3.1 of those Rules lists those persons who can request an Extraordinary Meeting. This list is to be read disjunctively as opposed to conjunctively. Paragraph 3.1.3 referred to the Monitoring Officer and the Chair. Following the Monitoring Officer's advice, contact was made with the Chair of the Licensing Committee and he had been advised that The Chair was happy for an extraordinary meeting to be called to consider this matter.

As the Monitoring Officer and the Chair were engaged in the context of the pulled report to full Council then the business on the agenda was not just restricted to merely fees and charges. Further as the Monitoring Officer and Chair were involved there is no need for a requisition document to be signed by five Members of the Council.

It was correct that the mechanism of calling the meeting was not addressed within the report but it was not realised that this was an issue until the representations were received.

It has also been stated that the Licensing Committee had no power to deal with the matters in the report. This was incorrect. Part 3 of the Council's Constitution deals with responsibility of functions and 3.1.1.2B provides for Licensing and Registration Functions. Paragraph 15 provides that the functions under The Local Government (Miscellaneous Provisions) Act 1982, section 2 and schedule 3 have been delegated to the Licensing Committee.

Part 3.7.7 sets out the Terms of Reference of the Licensing Committee and paragraph 4 gives to the Licensing Committee the power to determine fees and charges for the issue, approval, consent, license, permit or other registration for functions for which the Committee has responsibility. Pursuant to Part 3.1.1.2B paragraph 15, this is a function for which the Licensing Committee has responsibility.

Given the matters for which the Committee has responsibility it is reasonable for the Committee to be consulted before a report is then presented to full Council.

As to the fact that the Licensing Committee previously decided not to adopt the framework legislation does not stop the Committee from considering this matter afresh. A decision not to adopt a regime, or not to take some other administrative action, is not binding in the sense that the Council is stopped from revisiting it. At the end of the day, all Members are being asked to do is recommend to full Council and it will be for full Council to take the final decision whether to adopt.

As to the reasons why Members made their decision on the last occasion, as members did not give reasons for their decision (and are not required to do so) to suggest what was in Members minds when they made the decision is speculation. At the end of the day, Members were entitled to consider the matter afresh.

Mr Greeno concluded that there was no need for the matter to go firstly to the Mayor in Cabinet. The decision to adopt and in relation to fees and conditions was a non-executive function and as to notice of the meeting, the statutory time limits were met.

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

- The Licensing Committee was not making a decision but had the option to refer recommendations to Full Council.
- That the minutes of the meeting held on 8th October 2013 would be available on the agenda of the Full Licensing Committee meeting scheduled for 11th March 2014.
- That case law provided that one could look forward in relation to fees that would be needed therefore the costs of monitoring an applicant's continued suitability can be included in the calculation for the fee for the licence.
- That costs for compliance can often be very costly as test purchases were necessary.
- That the proposed fee 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.

On being put to the vote, with five votes for and one vote against, it was –

RESOLVED

1. That Full Council is recommended that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended, shall apply in the London Borough of Tower Hamlets in the London Borough of Tower Hamlets with regards to sexual entertainment venues.
2. That Full Council is recommended that the said Schedule 3 shall apply in the London Borough of Tower Hamlets from 31st March 2014, with regard to sexual entertainment venues.
3. That the proposed Standard Conditions for Sexual Entertainment Venues set out in Appendix 2 of the report is recommended to Full Council.

4. That the Sexual Entertainment Fee Structure set out in Appendix 3 of the report is recommended to Full Council.
5. That the Sex Establishment Licensing Policy set out in Appendix 1 be noted and applied in the application of Schedule 3 in London Borough of Tower Hamlets and supports continued operation of existing premises.

The meeting ended at 7.15 p.m.

Vice Chair, Councillor Peter Golds
Licensing Committee