TOWER HAMLETS

Directorate of Law, Probity & Governance
Legal Services

6th Floor
Mulberry Place
5 Clove Crescent
London E14 2BG

DX: Tower Hamlets Legal Department
42656 Isle of Dogs

Tel 020 7364 4348
Fax 020 7364 4804/4861
Email david.galpin@towerhamlets.gov.uk

www.towerhamlets.gov.uk

Jeffrey Green Russell
Solicitors
Waverley House
7-12 Noel Street
London W1F 8GQ
F.A.O Gareth Hughes

Sent by email: gbh@jgrlaw.co.uk

26 March 2014

Our Reference: L/DG/nb
Your Reference: GBH/MXS

Dear Sir,

Re: Report to full council on adoption of the sexual entertainment licensing regime

I refer to your letter dated 24 March 2014, which concerns the report to be presented to the council of the London borough of Tower Hamlets tonight. We propose that, contrary to your suggestion, full council should proceed to consider the report tonight. We will place your letter before full council together with this response.

The Council considers that adoption of the relevant licensing regime is a non-executive function. We do not agree with your construction of regulation 2 and item B15 of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, which we think ignores the significance of section 2 of the 1982 Act being expressly listed in the second column. However, we prefer to base our approach on section 2 of the 1982 Act, which makes it clear that a decision of the authority is required, and regulation 2(11) of the Functions Regulations, which indicates in such circumstances that the decision should be a non-executive decision.

We consider there is sufficient material in the report for the council to address the three conditions specified in Regulation 14 of the Provision of Services Regulations 2009 –

1. A scheme must not discriminate against providers and there is nothing to suggest that adoption of the scheme in Schedule 3 would have that effect.
2. The need for an authorisation scheme should be justified by an overriding public interest. Paragraph 3.35 of the report sets out the considerations to be taken into account in this regard. It is for the Council to decide whether those matters constitute a sufficient public interest which overrides the suggestion that providers should be left unregulated by this scheme, albeit subject to other regulation, such as under the Licensing Act 2003. The recommendation of officers is that the matters in paragraph 3.35 do constitute a sufficient, overriding interest.

3. The public interest objective should not be capable of being attained by a less restrictive measure, such as inspection after commencement of the service activity. As specified in paragraph 3.35 of the report, one of the public interest objectives is to give local people a greater say over venues in their area. This would not be achieved by a regime of inspection after commencement, nor by reliance solely on the regime under the Licensing Act 2003. Paragraph 5.5 of the report makes it clear that the sex establishments licensing regime is not coincident with the Licensing Act 2003.

You have made comments about the lawfulness of the Council's policy under the proposed scheme. The adoption of the policy by Cabinet is referred to in paragraph 3.3 of the report and the effect of that is further addressed elsewhere in the report, including in paragraph 3.12. The adoption of the policy will not be before full council for consideration and has not been the subject of legal challenge.

You have criticised the proposed application fee under the licensing regime. The justification for the proposed application fee is set out in the report. It is considered there is sufficient material provided to enable members to make a decision.

Yours faithfully,

David Galpin
Service Head – Legal Services