

LICENSING COMMITTEE

MINUTES OF A MEETING of the Licensing Committee held on Wednesday, 23 October 2013 at 9.30 am at the Guildhall, Portsmouth

Present

Councillors Les Stevens (Chair)
 Margaret Adair
 Peter Eddis (standing deputy for Phil Smith)
 Ken Ellcome
 Jason Fazackarley
 Ken Ferrett (left after item 6)
 Margaret Foster
 Aiden Gray (left after item 6)
 Jacqui Hancock
 Lee Mason
 Sandra Stockdale
 April Windebank

5. Apologies for Absence (AI 1)

Apologies of absence were received from Councillors David Fuller, Eleanor Scott and Phil Smith. Councillor Peter Eddis was present as substitute.

6. Declarations of Members' Interests (AI 2)

Councillors Margaret Foster and Jason Fazackarley declared a personal interest in agenda item 8 - Licensing Act 2003 - Application for the withdrawal of Club Premises Licence - Big Slick, 240 Fratton Road, Portsmouth - in that they both know the owner of the premises. They agreed to leave the room during discussion of this item.

7. Minutes of the Licensing Policy Committee meeting held on 21 January 2013 (AI 3)

(TAKE IN MINUTES)

RESOLVED that the minutes of the Licensing Policy Committee meeting held on 21 January 2013 be agreed and signed by the chair as a correct record.

8. Minutes of the Licensing Sub Committee meetings held on October 3, 10 & 17, November 21, December 12 & 19 2012, and January 9 & 25 2013, February 6, March 6, April 24, May 14, June 4 & 14 and July 23 & 31 2013 (AI 4)

(TAKE IN MINUTES)

RESOLVED that the minutes of the Licensing Sub Committee meetings as listed above be agreed and signed by the chair as appropriate, as a correct record of that meeting.

9. Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 Sex Establishment Licensing - Consideration and Adoption of Standard Conditions (AI 6)

Members confirmed that they had read the written deputations from Sarah Bland, Portsmouth resident, Chair of Solent Feminist Network that had been circulated to members prior to the meeting.

Mr Ojla, owner of Wiggle and Elegance and John Fernandez, manager of Wiggle asked the committee to note the following comments:

- 97% of respondents to a consultation two years ago were in favour of keeping the establishments open.
- Of all the night time economy businesses in the area, the police reported that these types of establishments caused the fewest problems.
- Crime in the area was reduced because of the CCTV around Wiggle.
- Clients appreciate the venues because they are quieter than pubs and more upmarket. They can enjoy a chilled out evening in the company of pretty girls.

They outlined their concerns with some of the proposed conditions that were set out in appendix B of the report:

50 Members were asked to compare flyers which were circulated to the committee from Elegance and those promoting entertainment nights in pubs and clubs in the area. The latter showed photos of scantily clad women whilst the former was a silhouette of a woman pole dancing.

42 If they were prohibited from displaying their logo it would be difficult for customers to differentiate between them and other venues.

43 It would not be practical to come to the licensing committee for approval of every external display or advertising material before these are used.

Paul Ojla, OJs Group asked members to consider his comments on the following proposed conditions:

7 It would be difficult to define what is meant by the term vicinity in this context. He asked if the 'touting or soliciting custom' referred to handing out flyers. Promotion is very important to a business.

17 This condition is not required.

31 If the conditions can be amended at any time by the council, what is the point of this meeting?

42 The logo of Wiggle (a silhouette of a woman pole dancing) is not seedy so there is no need for this condition.

50 Prohibiting flyers and similar promotional material would put this business at an unfair disadvantage with regard to other venues.

Councillor Adair thanked the licensees for keeping the promise made at the previous licensing policy meeting to paint the front of the building located in Granada Road.

In response to the points raised and further questions from the committee, the Licensing Manager made the following points:

- Venues with licences to provide sexual entertainment are subject to much stricter regulatory regime than those with alcohol licences.

- Condition 6 has been in place since 1982 when the controls of SEVs were first established. It is not appropriate to have SEV staff touting for business on the public highway.
- The SEV policy is currently based on the assumption that there will be no SEVs in Portsmouth with the exception of existing premises. However, licences could be transferred to new operators.
- The details of the licence for SEVs have not yet been agreed so the current external displays and flyers are not subject to any conditions unless they are considered to be injurious to children or offensive.

42 In order to give the committee discreet control of displays the following wording could be added at the end of the condition 'with the approval of the Licensing Authority.'

43 & 50 It is important to bear in mind that these conditions also apply to sex shops and cinemas and that future operators may adopt more aggressive marketing tactics. The committee could delegate authority for approving external displays or advertising to officers.

In response to a question from the committee, the Assistant City Solicitor explained that other Licensing Authorities are rationalising standard conditions for sex establishments to bring them in line with changes in the law and that any condition is subject to challenge.

Councillor Ellcome expressed concern regarding the following proposals:

- Applying stricter restrictions on SEVs than on other night time economy venues.
- Delegating authority to one officer to substitute, delete, vary or amend the conditions at any time.
- The prohibition of displays of the human form which would include Wiggle's logo which is not pornographic. Pole dancing is a recognised form of fitness training.

The Licensing Manager explained that:

- The flyers for events in pubs and clubs that had been circulated were produced by a promoter that runs event nights and entertainment.
- Sexual entertainment can be provided at venues that are licensed to provide alcohol up to 11 times per year. The licensing committee can only consider the promotion of the licensing objectives and censorship legislation when reviewing these venues. However, a SEV can provide entertainment of a more sexual nature.
- Officers would only vary conditions in very limited circumstances, for example to allow more flexibility or to reflect changes to the law. Over the last 22 years officers have not sought to vary any.
- If the committee were to allow displays of the human form this would also apply to sex cinema adverts. Potential issues might arise if the conditions are relaxed.
- External signs are not subject to any regulation at the moment.
- The committee would need to consider how to distinguish between sex cinemas, SEVs and sex shops.

In response to questions from the committee, the Licensing Manager explained that the proposed conditions are based on a national template and best practice from other local authorities.

Councillor Lee Mason proposed the following amendments:

7 The Licence holder nor any employee or agent shall tout or solicit custom for the sex establishment immediately outside or in the vicinity of the licensed premises *prior to a watershed at 9pm.*

17 & 43 Any external advertising, words, signs, displays or illuminations *must be removed if objected to by the council.*

42 The exterior of the premises shall not contain any displays or depictions of an *overtly sexual and graphic nature [...]*

48 Performers may not stand in a state of undress in any lobby.

50 Remove.

The Assistant City Solicitor advised that the amendment to number 17 would entail confusion regarding powers of entry and potential damage to property. The original proposed wording would be simpler to enforce.

RESOLVED that:

- 1. The standard conditions as set out in Appendix B of the report subject to the following conditions being removed: 7, 42, 48, 50 be approved and adopted.**
- 2. The existing conditions applicable to sex establishments as set out in Appendix A be rescinded.**
- 3. Authority be delegated to the Head of Health, Safety and Licensing to substitute, delete, vary or amend such conditions at any time subject to a subsequent report to the Licensing Committee advising of any changes.**

10. Scrap Metal Dealers Act 2013 - New statutory powers to licence scrap metal dealers and motor salvage operators (AI 5)

The Licensing Manager introduced her report and in response to questions from members, clarified the following points:

- Many applications have already been received.
- Mobile collectors will be required to display a licence disc, similar to taxis.
- Hampshire Police leads on enforcement of scrap metal legislation.
- The Act sets out the checks the site trader must carry out when accepting metal.
- Mobile collectors require permits for each area in which they operate.
- Dealers could not have a site and a mobile licence in the same licensing area but could have a site licence with one authority and a mobile collectors licence with another.
- House clearers may not in certain circumstances require a licence if collection of scrap metal is not their primary business but each case will be judged on its own merits.
- Staff will be trained on their new powers to enter and inspect sites and will use a risk-based approach to visits.
- Licensing Authorities are bound by the Local Government Agency's recommendations that arose from the Hemming v Westminster case: councils should ensure that the fees do not reflect costs of addressing unlicensed business activity; are based on costs and are transparent.
- The committee could ask for a report in six months' time to assess officer time spent on this.

Councillor Les Stevens informed the committee that when a householder gives their scrap metal to a collector, they must check that it is disposed of appropriately. If it is dumped, the householder could be fined as well as the collector.

Members expressed concern that the fees are not sufficient to cover the costs of inspecting all scrap metal sites. These would include administration, travel time and a minimum of half hour visits to each scrap metal site every quarter.

The Assistant City Solicitor reminded the committee that the fees must be reasonable and proportional and based on evidence. The proposed fees are in line with other local authorities' fees. If the fees were raised without a breakdown of costs, the council would be exposed to challenge.

Councillor Ellcome noted that companies must be treated equally.

Councillor Lee Mason expressed concern regarding delegating powers to an officer.

Councillor Les Stevens informed members that he would be prepared to make a deputation to the Cabinet to raise their concerns.

RESOLVED that:

1. The contents of the report be noted.
2. The Licensing Committee recommended that the Cabinet delegate to the Head of Health, Safety and Licensing:
 - The administration and enforcement of the function including the setting of fees.
 - The power to request further information of applicants (schedule 1, paragraph 4 of the Act).
 - To determine applications (including refusal), revoke licences or to impose conditions under section 3(8) of the Act.
 - The power to issue or cancel a closure notice for unlicensed sites, and, where appropriate, to apply for closure orders (schedule 2 of the Act) and take such other action in this respect as may be required.
3. The Licensing Committee recommended that Council delegate the function to the Licensing Committee as and when the power to do so comes in effect in accordance with The Local Authorities (Functions and Responsibilities) (England) Regulations.
4. The Licensing Manager will include an addendum to the report that will be considered by the Cabinet in accordance with the Licensing Committee's instructions to show a full breakdown of the cost of quarterly inspections of sites and collectors in terms of officers' time and wages.
5. The Chair of the Licensing Committee will make a deputation on behalf of the committee to outline its concerns regarding the proposed fees.

11. Licensing Act 2003 - Proposed Delegation of Powers to Head of Health, Safety and Licensing - Withdrawal of a Club Premises Certificate (AI 7)

RESOLVED that:

1. The Licensing Committee noted the contents of the report.
2. Responsibility to give notice under Section 90 of the Licensing Act 2003 to withdraw a Club Premises Certificate where it appears that a Club ceases to satisfy the conditions required to be a qualifying club in relation to a qualifying club activity remains a non-delegated function and will be determined by the Licensing Committee.

12. Licensing Act 2003 - Application for withdrawal of Club Premises Certificate - Big Slick, 240 Fratton road, Portsmouth, PO1 5HH (AI 8)

The Licensing Manager presented the report and in response to questions from the committee, clarified the following points:

This came to the council's attention, following correspondence with the Gambling Commission which raised concerns about illegal gambling. Upon investigation, it became evident that the club was not being properly run.

If the certificate were withdrawn, the applicant would not be able to operate whilst waiting for appeal to be held.

Information was requested from the club to establish whether the club was being operated in good faith. Audited accounts, membership details. These were not provided. The Act says that if you can't be satisfied that it is run in accordance with the conditions the Licensing Authority must withdraw the club premises certificate.

The club must be established for purposes other than gambling but the webpage predominantly advertises the gambling facilities

Councillor Lee Mason refrained from voting on this item because he had been absent for part of the discussion.

RESOLVED that:

- 1. The contents of the report be noted.**
- 2. Notice be given to the Secretary of Big Slick Club Premises of the withdrawal of the club premises certificate as it appears to the Licensing Authority that the club does not satisfy the conditions for being a 'qualifying club' in relation to a qualifying club activity to which the certificate relates (section 61 of the Licensing Act 2003), namely that the club is unable to demonstrate to the satisfaction of the Licensing Committee that it's being run in good faith in that it has failed to provide sufficient evidence that the general conditions are being met and there are a number of concerns regarding the membership, finances and its overall purpose.**

The meeting concluded at 12.45 pm.

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Signed by the chair, Councillor Les Stevens