

REGULATORY COMMITTEE

Minutes of the annual meeting held on Tuesday 14 June 2011, at the Town Hall, Royal Leamington Spa at 3.30 pm.

PRESENT: Councillors; Cross, Gill, Mrs Goode, Guest, Illingworth, Pratt, Ms Weed and Wreford-Bush.

Apologies for absence were received from Councillors Mrs Falp and Mrs Gallagher.

1. **APPOINTMENT OF CHAIRMAN**

RESOLVED that Councillor Pratt be appointed Chairman for the ensuing municipal year.

2. **APPOINTMENT OF VICE CHAIRMAN**

RESOLVED that Councillor Guest be appointed Vice Chairman for the ensuing municipal year.

3. **DECLARATIONS OF INTEREST**

Minute number 5 – Application for a Sex Establishment Licence

Councillor Pratt declared a personal interest as a member of the Leamington Society and explained that he had no knowledge of this case prior to receiving the papers or the objection by the Leamington Society. In his opinion any decision by this Committee would not challenge his membership of the Society because he was an ordinary member who had limited involvement. He had not taken a view on the case and wanted to consider all the representations prior to determining the application.

The applicants' representative asked if Councillor Gill had an interest because he was Ward Councillor for the application site. The Chairman permitted Councillor Gill to talk with the Council's Solicitor and Senior Committee Services Officer and adjourned the meeting to enable this discussion to take place. On reconvening the meeting the Chairman asked the Senior Committee Services Officer to explain the advice he had provided to Councillor Gill. He explained that under the Code of Conduct Councillor Gill had no declarations of interest to make. However he had discussed with Councillor Gill the rules over predetermination and previous involvement in this case.

Councillor Gill explained that he had not been involved in the case to date and wanted to consider all the representations before determining the application.

4. **MINUTES**

RESOLVED that the minutes of the meeting held on 18 March 2011 be approved and signed by the Chairman as a correct record.

REGULATORY COMMITTEE MINUTES (Continued)

5. APPLICATION FOR A SEX ESTABLISHMENT LICENCE

The Committee considered a report from Community Protection that outlined an application for a Sex Establishment Licence (SEL) that had been received from Shades Snooker Club Ltd. The Committee were asked to determine the application in line with the agreed procedure.

The Chairman introduced members of the Committee and Officers and asked all others present to introduce themselves, they were; Mr and Mrs Ransford (the applicants); Mrs S Fitzgerald (the applicants representative); Mr T Naylor a local resident and WCC Councillor for an adjoining Ward; Mr M Tanner, representative of Majestic Wine Warehouse; Dr A Cook, on behalf of CLARA and Leamington Society; Mrs J Alty representing herself and the Green Party; Archie Pitts, Friends of Leamington Railway Station and local resident; and Mr Chandra of the Shree Krishna Mandir Muslim Society.

The Licensing Services Manager outlined the report. The report explained that following revisions to Local Government (Miscellaneous Provisions) Act 1982 by the Policing and Crime Act 2009, which enabled licensing authorities to license "sexual entertainment venues" where relevant entertainment was provided before a live audience for the financial gain of the organiser, the Council had adopted the revised amendments and the necessary policy.

It was accepted that the entertainment provided by Shades Gentleman's Club in High Street, Royal Leamington Spa fell within this definition and the applicants were therefore required to apply for a licence for a Sex Establishment.

Currently the entertainment provided by Shades held a Premises Licence under the Licensing Act 2003 and this would continue to be in force until October 2011. The license had been in operation and during this time no complaints had been received by the Police or Warwick District Council.

If the Sex Establishment Licence was granted the relevant conditions from the Premises Licence, under the Licensing Act 2003, along with all other conditions and hours of operation were outlined in the report.

There had been 27 objections to the application, which were appended to the report along with a map of the area and a copy of the Council's Policy on Sex Establishments.

The Chairman invited the applicants' representative to outline their application and respond to the objections that had been received.

Mrs Fitzgerald outlined the application where the hours applied for were considerably less than those currently operated under the Licensing Act 2003 and highlighted that no complaints had been received by the Police, Warwick District Council or the press. The premises had strict conditions on its licence, with strict rules for both its customers and the women who dance there to encourage good behaviour in the club which showed a premise that was committed to ensuring it was well run.

She explained that table dancing had been around for a long time with venues across the country. Shades Gentleman's Club was successful because it was a social club with regular customers who came to chat and talk as well as watch

the pole dancing. The Club's clientele during the week was largely business men but the weekends saw more of the general public attending. Fifteen percent of the Clubs clients were women but on some nights this proportion could be higher and couples also attended the venue. The Club was not a sleazy venue with men in raincoats but a well presented club.

Mrs Fitzgerald turned to respond to the objections that had been made about the application. A letter from Ian Davidson had been circulated, at the request of the applicants, as part of the agenda. The letter had been distributed widely in the area to residents and businesses but despite this only 26 objections were received. Of the objections received four were from residents, two were from businesses, one from a charity and eight were from religious organisations.

She reminded the Committee that each application should be judged on its individual merits, suggested that a lot of people did not know the club was there and half the clubs customers were local residents. If the map on page 78 of the agenda was taken as close proximity to the premises there were few residential premises, businesses that would be closed when the premises open and a religious temple, the entrance to which was on a different road, which the applicant believed would be closed long before their clients arrived.

She explained that there was case law in place that stated you could consider the locality of the premises but not the moral case of the activities. When considering the locality the area needed to be considered carefully. For example, the location of a sex shop next to a school could be in appropriate due to opening hours and the customers it attracted. In this instance there was no effect on local residents and the nursery, school and shops would not be open when the club was open, the academy of dance appeared to be closed at present and the bus stops ceased operation at 9.00pm when the club opened. The charity shop below the premises had no objection to the operation of the club.

The Chairman invited the Committee to ask questions of the applicant and their representative and summarised below:

- The premises was no longer a Snooker Club or a Club where membership was required and the general public could walk in subject to the rules of the club;
- The rules were available in writing on every table on the premises;
- There was no proposed increase in costs and at present an entrance fee was only charged on Friday and Saturday;
- 28 people were employed at present;
- The Clubs costs and rules were in place to manage younger clientele and stag groups were normally asked to book prior to attending;
- The premises did not have a smoking area but smokers were permitted to smoke at the entrance way, which was swept and cleaned daily;
- The licence, if approved, would be for twelve months and the current conditions of the Licensing Act licence relevant to the Sex Establishment licence would be transferred across;
- The applicants did not want to canvas their regular clients for support;
- The nearest residents were above the pub on the corner of Tachbrook Road;
- It was the applicants' opinion that there had been a campaign to oppose the application and considering this there had been very few objections;
- The applicants recognised that people would walk past the premises but they did not feel this could affect those people when the premises was closed

At this point, 4.45pm, Councillor Guest gave his apologies and left the meeting.

The Chairman thanked the applicants for their submission and asked the objectors to make their submissions to the Committee.

Mr Tanner, of Majestic Wines, outlined their objection as set out in the representation on page 59 of the agenda. He explained that while they normally closed at 8.00pm occasionally they held special events in the evening up to 10.00pm. The store had not been as successful as other stores and if this could not be changed there could be a need to move to another area. The area did have a reputation of poor character but to change this, businesses like Majestic Wines needed to come into the area.

Mr Tanner responded to questions from the Committee explaining that he had not discussed the club with his customers because he believed this to be inappropriate. The business wanted to bring new customers into the area but the perception of the area was not good, there were alcoholics in the park, needles had been found in the Majestic car park and problems like this needed to be addressed to encourage other premium brand businesses.

Dr Cook spoke to her objection which was set out on page 22 of the agenda. She explained that there were residents within Wise Street and that the new Station House development was under construction near to the premises. This was a family area with the temple and nurseries present, parents would not want their children raised near a sex establishment and while, there may have been no complaints to date retrospective, action after an assault would be worse.

In addition the premises was close to both the railway station which served over 1.8 million people per year and principle bus stops within the town. Old Town was an area of economic decline and the community had worked hard to reverse this trend.

In response to a question from the Chairman Dr Cook accepted that the premises would be operating outside the opening times of the nursery and school but explained there could be older children in the area when the premises was open.

Mrs Alty outlined her objection, page 34 of the agenda. In addition she explained that Mr Davidson's letter had been sent to less than 100 properties and only those in the immediate area. It was generally accepted that most people would not put pen to paper no matter what and, if approved, this would be bad news for the area.

Mr Naylor outlined his objection, page 69 of the agenda, explaining that he was a Warwickshire County Councillor for a neighbouring ward. In his opinion there were cultural and religious issues with the location, there was sheltered accommodation under the railway bridge and accommodation along Bath Street and along with the other areas mentioned, this premises was close to several residential areas.

Mr Naylor responded to a question from Councillor Mrs Goode that he had not received any concerns from residents but this did not mean that people did not object to the premises, the objection really was location.

Mr Pitts outlined the objection of the Friends of Leamington Railway Station as set out on page 33 of the agenda.

Mr Chandra outlined the objection of Shree Krishna Temple, page 17 of the agenda. He explained that the address of the temple was 10b Wise Street and they did use premises at this address as well as off High Street. He accepted that the Temple and Centre did close earlier but for specific events they were open throughout the night. They were of the opinion that the area would be tarnished by the granting of the licence and while the area needed long term regeneration this would not assist that. He explained that within the locality there were more residential properties, as well as the Temple, but these were not shown on the map included within the agenda.

Mr Chandra, following a question from Councillor Illingworth, explained that the temple had been present since 1982.

The Licensing Services Manager, in response to a question, advised the Committee that a condition could be placed on the licence requiring written approval for the signage on the premises.

Mrs Fitzgerald summarised their representation and responded to some of the points raised by objectors in their submission. It was the applicants' opinion that there was no impact from the business on the community, the issues raised by Majestic Wines were not attributable to the customers of the club, a lot of the comments/objections related to other business that would not be open when the club was open and the Council's policy would not be affected by any decision because each application should be considered on its merits. She added that while under a hundred letters may have been sent out there were still very few objections which provided no evidence of problems caused by the premises, there was a large club premises already on the street and, as promised, the banner would be removed. Once this was carried out it was suggested that people would not even know the premises was there.

The Chairman adjourned the meeting at 5.40pm and reminded that members should not discuss the application with anyone until the meeting reconvened.

Resumption of the adjourned meeting of the Regulatory Committee on 23 June 2011, at 2.30pm.

PRESENT: Councillors Cross, Gill, Mrs Goode, Illingworth, Pratt, Ms Weed and Wreford-Bush.

Apologies for absence were received from Councillors Mrs Falp, Mrs Gallagher and Guest.

Councillor Pratt welcomed members back, along with Mr Besant, representing the applicant along with the applicants Mr and Mrs Ransford. The Chairman asked all parties to leave while the Committee deliberated their decision.

RESOLVED that

having considered the application, the written representations, submissions from all parties at the hearing on 14 June 2011, the relevant legislation and Council policy, the Committee were of the opinion that the

application should be refused in line with the Council's Statement of Licensing Policy for "Premises to be licensed as sex establishments" paragraph 3.2 (A) and (D), in line with appendix f 3(d) i. and ii which reflects schedule 3 of the Act.

The grant of the SEL is inappropriate. The Committee had regard particularly to schedule 3 12(d)(i) and (ii) in coming to this decision.

The Committee were mindful of the character of the area which includes, in close proximity to the establishment, residential and religious premises and the character of Wise street, being a cul-de-sac, means that residents of Wise Street have to pass the entrance to the premises.

The Committee found that the presence of flats in the locality, meant that it was to be characterised as a residential area, together with the WDC SEL policy at paragraph 3.2, and schedule 3 12(d) (i) it was therefore inappropriate for the grant of the license.

Further, the presence of a place of worship (Shree Krishna Mandir Temple) in close proximity means that the character of the area makes it inappropriate for the SEL to be granted.

In considering (d)(ii), the committee further found that the presence of residential flats and a place of worship made the grant of an SEL so close to be inappropriate.

The committee, in considering to refuse the grant of the license has had regard to Article 1, protocol 1, and article 10 of ECHR, and do not find that they carry sufficient weight to overcome the objections to the grant of the SEL. The committee found that it was in the public interest not to grant the SEL.

The committee considered the applicant's submissions that the premises has been well run, (and indeed some objectors agreed that it was well run) and that the premises provide employment for some 28 people. The female entertainers are subject to strict working conditions, and the customers are similarly required to obey a set of rules. The club is successful, 50% of the clientele are regulars, and there is a strong social element, 15% of customers are women. The club is expensive and this defines the clientele. There were no objections from police or neighbours. The physical attributes of the club and the immediate proximity were discussed. The scale of the map was discussed, however there is nothing in that point as to "proximity". The applicant reminded the committee of the decision of Judge Collins in determining character without including moral arguments, and that the committee's decision should be on the facts, and not based on

innuendo. The applicant pointed out that the premises would not be operating at the same time as many of the nearby premises. Article 10 – the freedom of expression – was also considered.

There were irregularities in the objections received. Several objections were emailed directly to councillors, and after the deadline for objections had closed. These have been ignored.

Several objections were made in terms of the four licensing objectives of the Licensing Act 2003. These have been ignored, unless they could be characterised in terms of Schedule 3.

Several objections which were based wholly on either religious or moral grounds have been ignored. It is important to note that while people may have strong objections to sexual entertainment venues, Parliament has already debated the moral and religious basis for SEV, and the resulting legislation provides that they are legal where licensed. Only those grounds permitted by Schedule 3 may be considered in rejecting the license.

Where possible, objections framed partly on Schedule 3 grounds, and partly on moral or religious grounds, have been considered, but only to the extent that they can be characterised in the grounds permitted by Schedule 3.

The broad scope of the remaining objections may be summarised as follows: the presence of an SEV in old town mitigates against the attempts by WDC and the community to regenerate the area; the presence of an SEV close to places of worship and charities is inappropriate; and the proximity of residential property makes the SEV inappropriate.

The Chairman invited all parties back in at 5.05pm, informed of the decision and reminded the applicant of their right to appeal the decision to the Magistrates Court within 21 days of written notification of the decision.

(The meeting ended at 5.05pm)

(The Committee and applicant were notified on 24 June by the Licensing Services Manager that contrary to the original understanding there was no right of appeal of the decision and only a Judicial review of the decision was available to the applicants).