

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE 15 FEBRUARY 2017

**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY 15 FEBRUARY 2017 AT 1000
HOURS IN COMMITTEE ROOMS 3 AND 4,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Bob Beauchamp, Alex Buchanan, Basharat Dad,
Neil Eustace, Des Flood, Nagina Kauser, Gareth Moore and
Habib Rehman.

NOTICE OF RECORDING

802 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs.

The whole of the meeting would be filmed except where there were confidential or exempt items.

APOLOGIES

803 Apologies were received from Councillors Nawaz Ali, Lynda Clinton, Jayne Francis, Penny Holbrook, Mike Leddy and Rob Sealey for their inability to attend the meeting.

MINUTES

Councillor Gareth Moore noted that Councillor Lynda Clinton's first name was spelt in correctly in minute No. 786 of the previous Minutes.

804 Subject to the above, the Minutes of the meeting held on 18 January 2017, having been previously circulated, were confirmed as a correct record and signed by the Chairman.

**CONTROL OF SEX ESTABLISHMENTS SEXUAL ENTERTAINMENT
VENUE LEGS 11, 193-194 BROAD STREET, BIRMINGHAM, B15 1AY**

The following report of the Acting Service Director Regulation and Enforcement was submitted:-

(See document No. 1)

The following people were in attendance for the hearing.

Sarah Clover – Barrister acting for the applicant
Thomas Taylor – Owner of the premises
Eddie Haxhia – Manager
Peter Atkins – Instructing Solicitor

David Kennedy, Licensing Section, made introductory comments relating to the report.

Sarah Clover, on behalf of the applicant, made the following comments in respect of the application:-

- (a) The applicant was Clear Blue Sky Thinking Limited who owned Legs 11 as part of a chain.
- (b) The Club had operated for a long time and this was the first time an objection had been received in respect of a renewal of the Sexual Entertainment Venue (SEV) licence.
- (c) The Manager Eddie Haxhia was previously the Deputy manager at the premises and therefore knew the premises well.
- (d) There were no objections from West Midlands Police or enforcement officers.
- (e) There was a single objection from an individual who was not in attendance so it was difficult to address the concerns or have the opportunity to ask questions.
- (f) Broad Street could not be seen as being a residential area as indicated in the objection as it was the heart of the City's night-time economy and was therefore a suitable location for a SEV. Indeed Legs 11 had operated on Broad Street for a number of years. The reference in the objection concerning the grant of Planning Permission for residential developments should not be given any weight as the area had not changed significantly.
- (g) The objectors' reference to a safe and friendly area for families and residents could be countered by the fact families would not be in the area when the premises were open. The Crescent Theatre and the Sea Life Centre referred to by the objector were some distance from the premises and operated at different times.

- (h) Broad Street had a number of SEV premises on it and Legs 11 would operate in compliance to the requirements of the relevant Authorities

In response to questions from Members of Committee, Sarah Clover made the following comments:-

- (a) There were no mandatory grounds of refusal and of the discretionary ones set out in paragraph 5.3 only d) applied. The character of Broad Street had not changed and it remained the entertainment hub of the City and its night-time economy. Legs 11 was one of the 8 SEVs that could operate within the ring road (A4540) and had had its SEV licence renewed consistently over a number of years.
- (b) Her use of the word iconic in her opening comments had been intended to indicate that Legs 11 was a well-known and respected brand in Birmingham that had had no trouble. The clientele knew they would not be exploited and the performers well treated.
- (c) The premises were in the right place and whilst there were residential properties in the streets off Broad Street the character of the area was one of entertainment and leisure use. It was not appropriate to base decisions on what may happen to the area in the future.
- (d) She assumed that the Sea Life Centre closed at about 1800 hours and highlighted that it was a day time tourist attraction. There was no conflict between the Sea Life Centre and Crescent Theatre and the application premises due to the distance and different footfall.

In summing up for the applicant, Sarah Clover commended the company and brand which had served Birmingham well. They had done nothing wrong and had the support of the enforcing regulatory authorities and the Council previously. The objector had not attended to explain their objection and allow questions to be asked so only so much weight could be attached to the objection. She invited the Committee to consider the previous renewal of the SEV licence, the calibre of the company and its compliance with regulatory authorities.

At 1028 hours Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer, the Committee Manager and the web streaming operator, withdraw from the meeting.

After an adjournment, all parties together with officers and members of the public were recalled to the meeting at 1047 hours and a summary of the decision of the Sub-Committee was announced. All parties were advised that the full decision would be forwarded to them within five working days and is set out as follows:-

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RESOLVED:-

That the application by Clear Blue Sky Thinking Limited for the renewal of the Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 in respect of Legs 11, 193 – 194 Broad Street, Birmingham, B15 1AY be granted.

Those matters detailed in the application and the Licensing Authority's approved standard conditions will form part of the licence issued in accordance with Paragraph 6.1.1 of the Committee Report.

REASONS

The Committee carefully considered the representations made by the Applicant's legal representative, and the written objection submitted arguing that the Licence should not be renewed, as set out within Appendix 5 of the Report. Those making an objection had decided not to attend the Committee meeting, but their objection was nevertheless considered in detail by the Committee and addressed by the applicant's legal advisor.

Those making the objection referred to:

- Broad Street and the surrounding streets becoming more and more residential areas by the granting of planning permission for several large residential developments;
- That they wished the area to be safe and friendly to everyone who visits or lives in the area; and,
- That this included families with children visiting the Crescent Theatre and Sea Life Centre and business people staying in hotels in the area.

The Committee had regard to the location of the premises, and in particular paragraphs 10 and 11 in the City Council, Sexual Entertainment Venue Policy (effective from 1 November 2014) when considering if the renewal of the licence would be inappropriate having regard to Use of the Premises in the Vicinity (paragraph 10) and the Character of the relevant locality (paragraph 11).

The Committee noted that the relevant locality is not defined in the applicable legislation or government guidance; it is dependent on the surroundings of the premises at the time of the application. For the purposes of determining the Application, the Committee found that the relevant locality in this case is the Broad Street area, which is characterised as being the heart of Birmingham City Centre's vibrant night time economy with a number of lap dancing clubs.

Although the Committee accepted that the Broad Street area and surrounding streets were becoming more residential in nature, it did not accept that the relevant locality predominant feature was residential. In the absence of those making the objection either attending the meeting, or providing further clarity around the nature of the objection or any evidence to support their assertion, it was reasonable for the Committee to conclude that the relevant locality was not predominantly residential.

The Committee had to base their view on the character of the relevant locality and nearby premises at the time of the application and not as it may develop in the future.

The Committee were reminded that the upper limit set by the Council for the number of Sexual Entertainment Venues which fall within the ring road (A4540) was eight of which 3 are located on Broad Street.

Although the objector(s) had specifically referred to area by the Crescent Theatre and Sea Life Centre in support of their objection, neither was located within the immediate vicinity of the Premises. The Committee accepted that the opening and closing times for both of these venues would be entirely consistent with the operation of the Premises. These venues would typically close earlier than the applicant's premises busiest trading hours.

The Committee were not convinced that the applicant would run and manage the premises, in anything other than a professional manner, having regard to safety of members of the public. The applicant's legal representative also informed the Committee that the applicant was an experienced operator, and had managed these premises without any intervention from either the Police or any Regulatory body during the periods covered under their previous licences. Indeed there were no observations from the Police in respect of the Application and no objection from anyone other than those referred to above. It was therefore appropriate to surmise that the suitability of the applicant and proposed premises was good.

In reaching this decision, the Committee has given due consideration to the City Council's Sexual Entertainment Venue Policy, the information contained in the application, the written representation received and the submissions made at the hearing by the applicant and their legal adviser.

Under the provisions contained within Schedule 3, paragraph 27 of The Local Government (Miscellaneous Provisions) Act 1982, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

At this point in the meeting it was proposed by the Chair, and agreed, to consider agenda item 8.

PROPOSALS FOR VEHICLE EMISSION STANDARDS FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See document No. 2)

Councillor Basharat Dad declared a non-pecuniary interest in that a family member was in the taxi trade.

Chris Neville, Head of Licensing, circulated a letter from the Mayor of London and the Leaders of Birmingham City Council, Derby City Council, Nottingham City Council, Leeds City Council and Southampton City Council to the Prime Minister dated 10 February 2017:-

(See document No. 3)

He went on to make introductory comments relating to the report and explained that the contents of the report had been discussed at length at the previous day's Trade Liaison meeting and members of the trade had asked him to advise the Committee of some of the themes raised as follows:-

- (a) The timescales should be extended to enable the trade time to make preparations to replace their vehicles. Chris Neville indicated that this would have to be balanced with the Government's imposed deadlines.
- (b) A trade representative Mr Pearson had indicated that he was involved at a national level in discussions with the Department for Transport and he understood that in 2 to 3 weeks' time the Government intended to produce a national plan for the taxi trade. Chris Neville indicated that he had not had confirmation of that.
- (c) The trade was critical that the City Council was too early in developing its emissions policy without complete details of the levels of pollution and the location of the Clean Air Zones. Equally the Council was criticised for moving too quickly.
- (d) An Economic Impact Assessment should be undertaken on the economic welfare of drivers. Chris Neville indicated that he understood that Transport for London were making available to taxi drivers in London £3,000 to allow them to transfer their vehicles.
- (e) Consideration of the impact of the changes on disabled people needed to be undertaken particularly in light of the suggestion that in future the Hackney Carriage fleet would not have to be made up of a traditional London cabs but would contain saloon cars which were not as suitable to meet the needs of disabled people.
- (f) An Equalities Impact Analysis would have to be undertaken due to the fact that 90% of drivers were from ethnic minorities.
- (g) The economic situation of drivers who had loans already needed to be taken in to account. Chris Neville highlighted that there was currently no Government funding for LPG conversions.
- (h) The trade was critical of the Council for rushing in to the proposals without consultation. Chris Neville highlighted that over the last few years during meetings with the trade the introduction of Clean Air Zones and the implications for the trade had been discussed although he acknowledged that the report was the first time the issue had been in print. He noted that the consultation would begin soon.

- (i) The impossibility of timescales was raised but the suggestion of dealing with the oldest vehicles first was correct.
- (j) TOA suggested that the proposal would see 150 vehicles off the road and they highlighted that they provided a service to disabled passengers and those on access to work schemes so the impact of the proposal on them would have to be considered.
- (k) It was noted that Government policy for a number of years had been to encourage people to use diesel vehicles as they had less impact on carbon dioxide levels but now it was realised that they caused pollution.
- (l) Rather than the Council incur the fine for not meeting the standards, the money could be put to buying new vehicles for drivers.
- (m) The effect on businesses in the City of the reduction of taxis and private should be considered.
- (n) There was discussion relating to the need for new vehicle specification. Chris Neville felt that this should not be considered in isolation from these requirements. There was a lot to consider when deciding what to licence or not given that for an example electric vehicles tended to be smaller.
- (o) The Private Hire trade and the Hackney carriage trade should be treated evenly and it was further noted that additional capacity in garages able to convert vehicles to LPG would be required.

Members of the Committee made a number of comments relating to the report and officers responded to questions as appropriate.

During the discussion several members made reference to the short time for consultation and it was suggested that a 8 week period would be more appropriate for the consultation.

At the invitation of the Chair representatives of the trade spoke in relation to the proposals and drew members' attention to the impact of them on the trade, customers and drivers. Officers responded to some of the issues raised. Several of the people who spoke also mentioned the short timescale for the consultation which they thought should be longer.

Members of the Committee reconsidered the length of the consultation. Councillor Des Flood proposed that the consultation period be twelve weeks, Councillor Nagina Kauser seconded and it was agreed.

The Chair put the recommendations as amended above to the Committee and it was-

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RESOLVED:-

- (i) That, subject to the above amendment, officers be instructed to consult with the hackney carriage and private hire trade on the proposed

emissions policy for hackney carriage and private hire vehicles detailed in sections 8 and 9 of this report and which are set out in Appendices 1(a), 1(b) and 2 of the report;

- (ii) that the consultation extends for a period of 12 weeks and that officers report the results of the consultation to this Committee at the earliest opportunity; and
 - (iii) that Outstanding Minute No. 651 (ii) be discharged.
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At 1217 hours the meeting was adjourned.

At 1228 hours the meeting was reconvened and it was agreed to return to the original order of business.

At 1229 hours Councillor Nagina Kauser withdrew from the meeting.

REVIEW OF LICENSING AND PUBLIC PROTECTION FEES AND CHARGES 2017/2018

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 4)

Officers made introductory comments relating to the report and responded appropriately to Members' questions.

It was unanimously-

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RESOLVED:-

- (i) That the changes to the fees and charges as below be approved to take effect from 1 April 2017:
 - a. Trading Standards Services as detailed in Appendix 1.
 - b. Environmental Health and Pest Control Services as detailed in Appendix 2.
 - c. Register Office Services as detailed in Appendix 3; statutorily set charges are shown in Appendix 3(a) and a benchmarking comparison is shown in Appendix 3(b).
 - d. The Coroner's Service as detailed in Appendix 4.
 - e. Birmingham Account Team (formerly Surveying Services) as detailed in Appendix 5.
- (ii) that the tariffs for Fixed Penalty Notices, as detailed in Appendix 2a be set at the levels specified for the year 2017/2018. [All FPNs have

been set at the maximum prescribed tariff with no discount for early payment except where a statutory discount applies.]; and

- (iii) that authority be delegated to the Acting Director of Regulation and Enforcement and Heads of Service to authorise the negotiation of variations to the fees and charges identified in this report, in the interests of commercial flexibility.

REVIEW OF LICENSING SERVICE FEES AND CHARGES 2017/2018

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 5)

Chris Neville, Head of Licensing, made introductory comments relating to the report and, in response to concerns raised by Councillor Gareth Moore relating to the fluctuation of the prices charged to drivers for licences as they were now being increased after the previous year's decrease, he explained that the reserves were being used correctly. He added that the charges for licences were also based on the cost of issuing them.

It was-

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RESOLVED:-

- (i) That the changes to the Licensing Service fees and charges be approved to take effect from 1 April 2017 as detailed in Appendices 1, 1(a), 1(b) & 1(d);
- (ii) that the Licensing Service fees and charges as detailed in Appendix 1(c), and 1(e) be noted;
- (iii) that the calculation of licence fees utilises brought forward credit balances for Hackney Carriage and Private Hire that have been allocated on the basis set out in paragraph 1.23;
- (iv) that the pricing strategy as detailed in paragraph 1.27 and 1.28 of Appendix 1 be approved and retained; and
- (v) that the proposal in paragraph 2.5 of the appendix to remove 6 month licences from the fees structure for Sex shops and Sex Cinemas be approved.

(Councillor Gareth Moore wished to be recorded as having abstained from voting on the above resolution.)

UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 6)

Mark Croxford, Head of Environmental Health, made introductory comments relating to the report. He responded to comments and questions from Members. In particular he undertook to upload on to the Council website the document 'Who are Gypsies and Travellers' previously circulated to Members.

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RESOLVED:-

- (i) That outstanding minute No. 775 be discharged; and
- (ii) that a further report be brought in 3 months to update on the various work items contained within this report.

At 1317 hours Councillor Des Flood withdrew from the meeting.

FIXED PENALTY NOTICES ISSUED DECEMBER 2016

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 7)

Mark Croxford, Head of Environmental Health, made introductory comments relating to the report and responded to Members' questions.

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RESOLVED:-

That the report be noted.

**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS
DURING NOVEMBER AND DECEMBER 2016**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 8)

Chris Neville, Head of Licensing, made introductory comments relating to the report.

813

RESOLVED:-

That the report be noted.

PROSECUTIONS AND CAUTIONS DECEMBER 2016

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 9)

Mark Croxford, Head of Environmental Health, made introductory comments relating to the report.

814

RESOLVED:-

That the report be noted.

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 10)

Chris Neville, Head of Licensing, requested that the Outstanding Minute No. 365(ii) relating to Committee Policy in respect of engine size and age of private hire vehicles be considered with Outstanding Minute No. 651(ii) as the two issues could not be dealt with separately. That was agreed and it was noted that Outstanding Minute No. 365(ii) would therefore be discharged.

Chris Neville, Head of Licensing, with reference to Outstanding Minute No. 620(iv) indicated that the matter would be dealt with by way of agreement in writing to members review the policy in a normal way but not including some of the type of venues that had been suggested that the City Council should look at as there was no evidence to support the change to the policy. It would however include sex shops and sex cinemas. He therefore requested that the Outstanding Minute be discharged which was agreed.

Chris Neville, Head of Licensing, advised that Outstanding Minute No. 648 would be reported upon in April and updated Members on the remaining Outstanding Minutes.

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RESOLVED:-

That Outstanding Minute Nos. 365(ii), 620(iv), 651(ii) and 775 be discharged and all other Outstanding Minutes be continued.

OTHER URGENT BUSINESS

The Chair was of the opinion that the following item could be considered as a matter of urgency in order to expedite consideration thereof and instruct officers to act if necessary:-

CCTV in Private Hire Vehicles

- 816 Councillor Gareth Moore made reference to a media story relating to the use of Dashcam footage in the successful conviction of a person who had attacked a private hire driver. He noted that there had been similar stories. The Councillor felt that the case should be used as a positive example for the introduction of Dashcams in private hire vehicles.

Chris Neville, Head of Licensing, indicated that officers had been requested to carry out work on that issue and a consultation would be undertaken. He noted that in informal discussions with members of the taxi trade he had had received positive feedback and he felt that any proposals put forward by the Council would be welcomed by the trade.

The Chair added that there was a lot of interest from the trade and at a recent trade meeting attended by Chris Neville and herself there had been a demonstration of the equipment.

AUTHORITY TO CHAIRMAN AND OFFICERS

- 817 **RESOLVED:-**

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The Committee ended at 1330 hours.

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CHAIRMAN