



London Borough of Hammersmith & Fulham

Licensing Committee Minutes

Tuesday 12 October 2010

PRESENT

Committee members: Councillors Victoria Brocklebank-Fowler (Chairman), Joe Carlebach, Marcus Ginn, Peter Graham, Steve Hamilton, Alex Karmel, Matt Thorley, Colin Aherne, Wesley Harcourt and Caroline Needham

Other Councillors: Councillor Greg Smith

Officers:

Nick Austin, Assistant Director- Public Protection & Safety
Valerie Ellison, Head of Commercial Operations
Sanju Manji, Trading Standards & Licensing Manager
Stephanie Needham, Commercial Services Manager
Jon Gorst, Principal Environmental Services Lawyer
Owen Rees, Committee Coordinator

1. MINUTES OF THE MEETING HELD ON THE 14TH JANUARY 2010

RESOLVED THAT:

The minutes of the meeting held on 14 January 2010 be agreed and signed as an accurate record of the proceedings.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Alford, Cartwright, Cooney and Ivimy.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. SEXUAL ESTABLISHMENT VENUES AND SEX ESTABLISHMENT LICENSING POLICY

Stephanie Needham, Commercial Services Manager, gave a presentation to the Committee on the proposed Sexual Establishment Venues Licensing Policy. As a result of the Policing and Crime Act 2009, local authorities have the ability to adopt

extra powers with regard to the licensing of sex establishments. In conjunction with the adoption of these powers, it was proposed that the Council adopt the Sexual Establishment Venues Licensing Policy, which set out the criteria under which such venues would be licensed.

Stephanie Needham set out the process of consultation to which the draft policy had been subject to, and the responses received. She said that the policy included the principle of relevant locality, i.e. that a premises' surroundings would be taken into account when deciding whether to grant a licence. She listed the borough's existing sex establishments- Simply Pleasure, Secrets, and the Erotica Exhibition held under a Temporary Licence. She explained the activities for which they were licensed, the fees for which they were currently liable and what effect the change in policy would be likely to have. She explained the process by which licences would be converted after the adoption of the new powers, and the timescale for doing so.

The level of fees had yet to be agreed, and would be set as part of the annual fee setting process; in setting them, the Council would need to take into account the LACORS guidance and EU Services Directive on fee levels. Fees would be set at a level to recover the costs of a new application, with the renewal fees for some licences potentially being reduced.

Nick Austin, Assistant Director of Public Protection and Safety, said that the introduction of the policy had allowed wider consultation with residents and would allow the Council additional controls over such establishments.

Councillor Aherne raised concerns that the policy made reference to lap dancing, which he understood to be illegal. Valerie Ellison, Head of Commercial Services, said that the terminology was drawn from Home Office guidance, which had included lap dancing, as it is commonly understood, under paragraph 2.3, as an example of relevant entertainment. Paragraph 2.4 of the guidance recognises that the understanding of the exact nature of the description of lapdancing may vary and should be treated as indicative and that decisions to grant licences should be based on the content of the entertainment. It did not mean that the Council would or could licence activity that was illegal.

Councillor Ginn asked about the process for setting fees, and how pricing would be decided. Valerie Ellison said that the Council needed to justify the level of fee charged. In the light of the recent application to open the Fox strip club, the Council had a good sense of the high costs involved in processing such an application. Under the new legislation, the Council would be able to charge any agreed fee on the first day that applications were received.

With regard to the level of fees, Councillor Carlebach said that the current level of fees did not seem to reflect the level of disruption caused by the various businesses, and that a pro-rata cost for temporary licences did not appear likely to recover the full cost of their administration. Valerie Ellison said that such issues would be considered in the review of fees. Councillor Smith said that the fee payable was not available to be used to defray the costs of policing venues, but that the conditions under which a licence was granted might reflect this.

RESOLVED THAT

Full Council be recommended to agree

i. That schedule 3 (as amended) to the Local Government (Miscellaneous Provisions) Act 1982 shall apply to its area and shall come into force on 1st April 2011, and;

ii. That the Council adopt the levels of the appropriate maximum number of sex establishments within specified areas of the borough as set out at paragraph 6 of the Sex Establishment Policy, and;

iii. That the Council make and adopt the regulations which provide a set of standard conditions applicable to sex establishments, and;

iv. That Full Council adopt the Sex Establishment Policy.

5. REVIEW OF STATEMENT OF LICENSING POLICY 2010

The Committee received and reviewed the revised Statement of Licensing Policy, produced as part of a three-year review.

RESOLVED THAT

Full Council agree that the Statement of Licensing Policy be adopted.

6. LICENSING LAW UPDATE

Jon Gorst, Principal Environmental Services Lawyer, gave a presentation on the legal aspects of the Licensing process. The presentation covered appeals against decisions taken by the Licensing Sub-Committee, reviews brought by Responsible Authorities, relevant recent case law and possible future revisions to legislation.

6 appeals had been made against Sub-Committee decisions in the period since the last meeting- The Green, The Crescent, Jazz, Fulham Fried Chicken, Sainsbury's Askew Road, and Fiesta Havana. The Council had reached agreement over the Green, the appeals by The Crescent and Jazz were withdrawn, the appeals by Sainsbury's Askew Road and Fiesta Havana were pending and the appeal for Fulham Fried Chicken had been upheld.

Jon Gorst described some of the common factors in the outcome of appeals. It appeared that magistrates wished to see the weight of evidence against the specific premises itself, rather than evidence of anti-social behaviour in the area as a whole. This had informed the decisions taken by the Council and applicant in the appeals by The Green and Jazz; and in the case of Fulham Fried Chicken, where surprisingly, the magistrate had allowed the hours applied for, even though the premises fell within the Saturation Zone established in Fulham, on the grounds that it did not sell alcohol and that there were other takeaways operating similar hours in the area.

He then described the judicial review brought against the Council by Prime Food regarding a closure order. The licence holder's company had become insolvent, and the Council had not received an interim authority notice within the required time limit, therefore the premises licence covering the two premises lapsed and a letter was given to the premises advising them of this. Prime Food had contended that this was effectively a closure order, and in breach of the Licensing Act. The Court had found for the Council, and awarded costs.

Jon Gorst also described the 4 reviews brought during the year, at Jazz, 69 Goldhawk Road, Chateau 6, 563 Fulham Road, 115-117 Uxbridge Road and The Raven, 376 Goldhawk Road, and which had been heard by the Sub-Committee.

Councillor Aherne said that it would be helpful to receive the information on appeals in a written report, in the style of the reports received by the Planning Applications Committee. The Committee requested that officers present information on appeals and reviews brought in a similar format to future meetings.

In relation to changes in legislation, Jon Gorst then described the impact of Section 33 of the Policing and Crime Act 2008, which expanded the definition of Interested Parties to include Councillors. Under the revised regulations, Councillors could not only submit representations on applications, but could also initiate a review of a premises licence.

In relation to case law, the most relevant recent decision remained Thwaites PLC vs Wirral Borough Council. The decision had established that Section 182 Guidance issued by the Secretary of State was guidance not statute. Licensing Authorities should, therefore, take it into account as an important factor in their decision making, but not one that overrode statute.

In relation to recent discussions at a Licensing Sub-Committee hearing regarding the impact of long-established premises on new residents, Jon Gorst described the verdict reached in the case of Miller vs Jackson, where it was found that, in relation to a long established cricket ground bordering on a residential garden, the resident's objections were of less value for the cricket ground having been established before their arrival. The decision did not have a direct bearing on licensing, nor form a precedent, but had interesting parallels to some issues encountered.

With regard to recent changes to the Licensing Act, Jon Gorst said that from October 2010, changes would be introduced on the notification of Temporary Event Notices (TENS), giving greater notice to the Police, new procedures for the death, incapacity or insolvency of the licence holder and new mandatory conditions on proof of age schemes. With regard to possible reforms, measures under consideration included the ability to ban the sale of low-cost alcohol, an increase in fines for selling to underage drinkers, higher fees for late night licences, automatic revocation of licences for non-payment of fees, a further increase in the notice required for TENS and a change in the evidential requirements for Cumulative Impact Policies, meaning that the presumption to grant would be reversed.

RESOLVED THAT

- (i) The presentation be noted, and;
- (ii) Officers be requested to submit appeals information in written format to future meetings.

Meeting started: 7.00 pm
Meeting ended: 8.07 pm

Chairman

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