

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL
LICENSING COMMITTEE

Minutes of the Meeting held on 16 September 2021 at 10.00 am

Present:-

Cllr J J Butt – Chairman

Present: Cllr S C Anderson, Cllr D Borthwick (In place of Cllr L Williams),
Cllr D Brown, Cllr R Burton, Cllr B Dion, Cllr B Dove, Cllr G Farquhar,
Cllr D Farr, Cllr L Fear (In place of Cllr N Decent), Cllr D A Flagg,
Cllr A Hadley, Cllr T Johnson and Cllr D Kelsey

12. Apologies

Apologies for absence were received from Councillors N Decent and L Williams.

13. Substitute Members

Notification was received from the nominated representative of the relevant Political Group Leader that Cllr L Fear would substitute for Cllr N Decent and Cllr D Borthwick would substitute for Cllr L Williams.

14. Declarations of Interests

There were no declarations of interest submitted on this occasion.

15. Confirmation of Minutes

RESOLVED that the minutes of the Licensing Committee held on 19 May 2021 and of the Licensing Sub Committees on 12, 13 and 27 May, 7 and 9 June, 21 July and 4 August 2021 were confirmed as a correct record and signed.

16. Public Issues

The Chairman reported that one statement had been received by a Member of the Public in relation to Agenda Item 7 (Sex Establishment Policy), the statement was read out by Democratic Services on their behalf.

Statement from Sara Armstong

In 2010 Bournemouth was ranked among the worst 10 places in the country for sex crimes. Dorset Police said that numbers were skewed due to large numbers of people visiting the town for the clubs. With alcohol fuelled ASB it's difficult to attach incidents to particular venues, yet this evidence is admissible when considering licences. Therefore, it follows that numbers of sexual assaults should be considered for SEVs. With increasing sexual assaults - gardens, beach and Old Christchurch Road, and rising DV, the licensing board must take responsibility for the culture they are creating and the consequences for women visitors and residents

The Chairman thanked Sara Armstrong for her statement.

17. BCP Council Gambling Act – Statement of Licensing Principles

The Licensing Manager presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'A' to these Minutes in the Minute Book.

The Committee was advised that Council is required to publish a Statement of Licensing Principles under section 349 of the Gambling Act 2005 (the Act) every three years, and that the purpose of the Statement is to define how the Licensing Authority will exercise its responsibilities under the Act.

Further to this the Committee was advised that this will be the first Statement of Licensing Principles to be published by BCP Council since its creation in April 2019, and that the draft policy has been prepared by officers for consideration and amendment by the Licensing Committee ahead of required public consultation for 12 weeks.

The Committee discussed the paper and raised the following amendments to be made prior to the policy going out to consultation: -

- references to 'lives sufficiently close' be amended to read 'resides'
- legacy email addresses be removed (those which reference legacy councils)
- reference to 'poole betting' on page 180 of the agenda be amended to read 'pool betting'

In addition the Legal Advisor informed that the document would be checked for typos, missing words and grammar and corrected accordingly before being sent out for consultation.

RESOLVED that subject to the amendments above being incorporated the policy as presented be released for the required 12 week public consultation as soon as is practicable.

Voting: Nem. Con. (1 abstention)

(Councillor G Farquhar requested that his abstention be recorded).

18. Sex Establishment Policy

The Licensing Manager presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'B' to these Minutes in the Minute Book.

The Committee was advised that Sex Establishment premises are regulated and licensed under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, and that this legislation was originally provided for the licensing of sex shops and sex cinemas before being amended by section 27 of the Policing and Crime Act 2009 to extend the scope of the schedule to include sexual entertainment venues.

In relation to this the Committee was informed that prior to Local Government Reorganisation, of the three legacy Councils, Bournemouth Borough Council and the Borough of Poole had existing Sex Establishment Policies, Christchurch Borough Council did not have an existing Sex Establishment Policy.

The Committee was further informed that on the 5 January 2021 BCP Council passed a resolution that this legislation should apply within the BCP Council area, allowing the BCP Council to control and regulate the operation of sex establishments within the conurbation assisted by way of the Sexual Establishment Policy once finalised and agreed by Full Council.

In relation to this the Committee was informed that the BCP Council Sex Establishment Policy has now been subject to a second round of public consultation following recommended changes to the draft policy presented to the Licensing Committee on 19th May 2021, and that the Policy sets out how BCP Council will control the type and number of sexual establishments within its area. These establishments include Sex Shops, Sexual Entertainment Venues (SEV's) and Sex Cinemas, and that it sets out the Conditions to be applied to any such licences granted and there are clear requirements set out for applicants when they are seeking to apply for a licence. Further to this the policy states that the character of the locality and its proximity to different types of premises as set out in the policy, will be considered in respect of each application.

The Committee was further advised that the policy does not impose a limit to the number of sexual entertainment licences permitted within the BCP area. However, any proposed location will be considered on the basis of the character of the locality and whether the grant of the application would be inappropriate having regard to the proximity of the location to the local characteristics listed within the policy. Each application will be considered on its own merits. The characteristics include proximity to residential premises, cultural facilities, public leisure facilities, premises used by children, hospitals, and tourist attractions.

The Committee was informed that during the second consultation period, a Councillors' briefing took place on 29th June 2021 to ensure all BCP Councillors had the opportunity to ask questions of officers and discuss the rationale behind the proposed policy.

In addition the Committee was advised that the views of dancers within the local SEV's were sought and in the majority of cases the feedback was that they feel safe and secure in their chosen work environment and they did not feel exploited but empowered in relation to this the Committee was informed that the workers are self-employed with their choice of venues and working shifts, and venues invest in facilities and security to attract the better dancers.

The Chair asked that an explanation be given regarding the statement "*in the majority of cases the feedback was that they feel safe and secure in their chosen work environment*". The Licensing Manager explained that it was regarding the specific wording and not that anyone had stated that they did not feel safe, a majority of responders had used the wording 'feel safe and secure'.

Equalities issues were addressed via the EIA and approved by the EIA panel. In relation to this the Committee was informed that overall, the impact of the policy is positive, strict licence conditions should ensure safe well managed venues for both patrons and dancers. There is no indication of crime associated with local venues therefore, there is no negative proven

impact on the safety of dancers, patrons or members of public in the vicinity.

In addition it was reported that local research by the Community Safety team analyst has found no evidence to link licensed SEVs and violent crime, and that research shows only one reported violent crime linked to these establishments within the BCP area during the period 2018 to March 2020 when they had to close as a result of the pandemic.

The Chair asked for clarity in the definition of *“one reported violent crime”* the Community Safety Manager confirmed that in this instance it was a customer slapping the behind of a dancer.

Analysis of reported sexual violence across Bournemouth & Poole suggests that only 15% of all such reports were in any way linked to Bournemouth’s night-time economy and none linked to SEV’s.

The Committee was further informed that a Licensing Committee Member workshop took place on 10th August to consider the results of the further consultation. All consultation feedback was considered including out of time submissions and members felt that the views of local dancers and the lack of evidence connecting the SEVs to crime, give positive weight to the policy. It was considered that the majority of consultation comments were outside the scope of the licensing framework and as such cannot carry weight in the decision-making process.

Licensing Members were asked to further consider the consultation responses and to agree the final wording of the policy which will then be recommended to full council for approval.

The Chair informed that four questions and four statements had been received in advance of the meeting from Members not on the Licensing Committee. The Chair welcomed the statements and questions and invited the questions and statements to be read out in turn, those unable to attend the meeting requested their questions and statements be read out on their behalf.

Question from Councillor Lisa Northover

Can I draw the committee’s attention to the case of Sheffield Council, who following legal action conceded that it *“has wrongly ignored objections based the potential impact on gender equality treating them as moral objections and irrelevant.”*

Can this committee assure me that the comments which have not been considered on the basis that they are objecting to venues on *moral grounds* are not in fact legitimate concerns from women about safety?

Response from Linda Cole, Senior Solicitor (Litigation Team)

The Sheffield City Council case referred to in the Question is where the Council acknowledged that they had failed to comply their public sector equality duty when making a decision to grant a new SEV licence.

The Court found that *“There is no direct evidence that the Defendant [Sheffield City Council] has had due regard to the Public Sector Equality Duty (as it is required to do under s.149 of the Equality Act 2010). The decision gives no indication that it has been considered“* (as no

reference to this duty in either the decision notice or the minutes) ...So the Court found, *there is a tenable basis for the Claimant's inference that the Defendant has wrongly ignored objections based on the potential impact on gender equality, treating them as moral objections and irrelevant.*"

It appears that Sheffield City Council had not undertaken an Equality Impact Assessment (EIA) before they granted this SEV licence

In my view the Council has not ignored their Public Sector Equality Duty (PSED) and treated concerns re public safety as irrelevant or dismissed them as moral grounds. An EIA has been undertaken.

The Licensing Committee and or working party has considered

- Police statistics re Sexual Violence in the BCP area, with no connection linked to existing venues
- The experiences of those working in the industry,
- Lack of complaints received by Council from Police or members of the public re existing venues

They have looked long and hard at this policy, sending it out for a second round of consultation and giving opportunity to those in the industry to share their experiences and based on the evidence before them to date cannot say with any certainty to date that there is an increased risk to woman of sexual harassment to women in the BCP area based on gender

Today is another opportunity for the Licensing Committee to further consider this policy and the further responses to the consultation.

It is not unlawful to grant a SEV licence, we just need to consider the potential impact on gender equality. Our duty is to consider the impact on the vicinity and the wider society and take mitigating actions to reduce the potential impact on woman.

These mitigating actions include,

- considering the protections provided for in the legislation,
- the fact they licence must be renewed annually,
- the conditions applied to any licence granted,
- compliance visits to venues,
- going back out for a second round of public consultation,
- consultation with Dorset Police,
- seeking the opinions of those working in the industry
- considering any complaints and information that may be received from the Police, performers, members of the public and those running the safe bus in Horseshoe Common
- the lack of objections made at any time there is an application for the renewal of an SEV licence.
- The lack of complaints, objections and information, can only allow us to conclude that the premises are well managed and woman are at greater risk in the BCP area as a result of these venues.

Woman have been given the opportunity to speak and the Council's duty is to consider the impact on all woman, both those who object and those who support these types of venue

Question from Councillor Lisa Lewis

Why have the vast majority of comments against having any sexual entertainment venues, particularly from women, not been considered?

Response from Nananka Randall, Licensing Manager

The original draft policy did include the option for licensing members to set a zero limit however this was not included in the final draft for consultation as the proposed policy sets out clear considerations for applicants which would naturally limit the location of any proposed venues based on the character and locality taking into account proximity to sensitive uses . Members workshops have considered consultation feedback and this meeting today is the opportunity for the full committee to further consider this feedback but consultation is for consideration but not to dictate the decisions made.

Question from Councillor Beverly Dunlop

This policy seeks to favour existing Sexual Entertainment Venues, to protect them for the life of the policy and furthermore seeks to sway the committee with threats para.26. That these venues may become nightclubs is irrelevant to this policy and no judicial review has ever succeeded. Para.27 states that there is nothing in the legislation to state Grandfather Rights cannot be used. This is incorrect.

Is the Committee aware that the Council cannot treat pre-existing clubs any differently from new applicants?

Grandfather Rights would therefore breach SEV legislation, and of course Competition law.

Response from Linda Cole, Senior Solicitor (Litigation Team)

Grandfather Rights also known as acquired rights is a term used in Licensing and any other area of law. It is neither specifically included or excluded in legislation dealing with SEVs. The purpose is to give some transitional protection to those who acquired rights under legislation or policy when those rules are to change. The Council can include grandfather rights in its policy if they choose to do so. When considering an application for renewal of an SEV licence, whilst existing venues can be refused, as the Licensing Authority is entitled to take a fresh look and can refuse even when there has been no material change in circumstance; it must also give regard to the fact a licence is already held.

A licence is considered as a possession and the Council could be put at risk of challenge, if that possession is taken away without taking into account that the permission has been in place for a considerable period of time. By including grandfather rights within the policy, for the life of this policy in respect of renewal applications; it is, in the absence of any evidence of concern in respect of these specific venues, a more measured and proportionate response. There have been no objections to renewals to date and there is no particular recent change in the character of the locality in which they operate. At the same time the Council is giving notice to these licence holders, that it may in the future look to amend its policy.

If grandfather rights remain in the policy, they only apply to the character of the location as it currently exists, if on application for renewal other issues are raised by those who may object, these objections will need to be considered in the usual way by the sub-committee. Likewise, if during the life of the policy there is further material change to the character of the location, then the sub-committee may decide to refuse the application for renewal.

Question from Councillor Anne Filer

In assessing the impact of SEV's on women, bias has been shown towards the clubs by allowing them to co-ordinate positive feedback from hand picked performers, one of whom is a manager of a club, about their experiences.

Response from Nananka Randall, Licensing Manager

The sexual establishment venues were asked to provide feedback from performers and anyone working within the trade.

The solicitor for FYEO put together a questionnaire and circulated this to all performers and responses were then sent back – all performers were also given the option to contact the licensing team direct – none did.

The solicitor for Spearmint Rhino co-ordinated and collated the performer responses.

The management of Wiggle asked performers to provide feedback if they so wished.

There is no evidence to support the allegation that dancers were handpicked.

Question from Councillor Anne Filer

Is the committee aware that the Council's public sector equality duty means they must consider the impact on all women, not only in the clubs but in the vicinity and wider society and why has this not been done?

Response from Linda Cole, Senior Solicitor (Litigation Team)

Refer to the answer I gave to the first question, some of which is similar.

Yes the Licensing Committee should be aware that their PSED includes the impact of on all women in the vicinity and wider society and I believe that has been done by consideration of evidence before them to date.

Statement from Councillor Sandra Moore

I am against having sex establishments – lap dancing clubs, shops etc in this locality because I want to live in a family friendly area and sex establishments, shops, lap dancing Clubs etc are not family friendly.

I also want to attract more families to visit the area as families are less likely to want to camp on the beach, get drunk, engage in anti-social behaviour, drop litter on the beach rather than put it in the bins and wee in alleyways.

I want to attract family friendly visitors because I object to spending huge amounts of money cleaning up the area after the non-family friendly visitors have left.

Objecting to Sex establishments is one step towards this area becoming more family friendly and is likely to lead to savings in the cleansing budget

I also don't want to be known as a council who can't protect its own residents from sexual harassment. Having a policy etc does nothing practical to help actual sexual harassment from men gathering outside a sex establishment whatsoever. If you're walking nearby, you will experience it. Most of us have been victims of sexual harassment at some time or other – and a paper policy is not going to stop someone leering or propositioning you outside a sex establishment. It happens! This is harassment and we should not have to put up with it. This is nothing to do with morals, it's a practical way of reducing harassment, attracting a family friendly environment which has the added advantage of saving money.

Statement from Councillor Lisa Northover

I am speaking today to ask this committee to amend the policy for Sex Entertainment Venues by capping the number of premises at zero.

The reason for this is simple. The Equality Impact Assessment and the consultation finds that many women do not feel safe to be in the vicinity of the establishments. This is a real fear, I know this because I have experienced sexual harassment from customers leaving them and so have others.

The suggested mitigation for this is wardens and the safe bus, however both of these have been in place for a long time and neither stopped me getting propositioned nor the women with her seven year old daughter who reported an incident in the consultation.

While women are fearful of passing by these establishments we are not meeting our obligation under the equality act or our public sector duty to consider the wider impact on women and girls.

It cannot therefore be lawful to license such a business anywhere in the BCP area as women and girls have a right to feel safe everywhere

Statement from Councillor Lisa Lewis

Sexual violence against women and girls is an epidemic driven mainly by the Sex Industry. Pornhub provides easily accessible videos of females being beaten, choked, and sexually abused, many of them real. This sexual abuse is replayed in secondary schools and now primary schools.

SEVs are part of this industry that dehumanises women and exploits us as commodities, negatively impacting all women. This policy is simply a license for men to buy sexual services from women and if you approve it you are enablers of this dehumanisation and commodification. Is this the message you really want to send to women?

Statement from Councillor Simon Bull

I am very concerned that the committee is disregarding comments on the basis that they consider them to be on moral grounds and not taking into account that these objections may well be legitimate concerns about safety and gender equality.

The Chairman thanked the above Members for the submission of their statements and questions.

The Licensing Committee comprehensively discussed the report and appended policy and raised the following proposed amendments and comments in respect of this matter:

- In respect of the lack of the ability to whistle blow it was suggested that the following wording be incorporated within the policy to address concerns in relation to their being the opportunity to raise issues and concerns *'to give dancers encouragement'*
- The references to 'grandfather rights' be amended to read *'acquired rights'*
- Paragraph 10.4 of the policy be amended to read *'It has been determined that these existing licences will continue to be renewed, on application, by the existing operators during the lifetime of this policy if there is no material change in the character of the area in the intervening period. If there are any objections to an application it will be considered by the Licensing Committee in accordance with the relevant statute. This essentially provides acquired rights to these existing operators for the current time'*.
- The introduction of Paragraph 11.2 be amended to read *'...having regard to its proximity to for example...'*
- Reference be made within the list at Paragraph 11.2 to include that the area should be well lit with good transport links.
- Remove paragraph 11.5 and include the bullet points within paragraph 11.2.
- Retention of CCTV referred to in paragraph 30 be amended to require retention for 90 days (and not 31 days as set out).
- Paragraph 48 (c) be amended to remove the word *'intentionally'*, *'accidentally'* and *'or due to a 3rd party'* for the purposes of restraint.
- The policy be amended to ensure gender neutral terminology has been used.

RECOMMENDED that subject to the amendments above being incorporated the policy as presented be agreed and forwarded to full Council for approval.

Voting: 12:0 (2 abstentions)

(Councillor G Farquhar requested that his abstention be recorded).

19. Forward Plan

Members considered the Committees Forward Plan and in relation to this requested that the Update on Taxi and Private Hire Policies 2021-2025 item be referred to the Licensing Committee in the new year.

In addition the Chair advised Members that it was intended to hold a working group to review the Gambling Policy and that those members interested in sitting on the working group should advise the licensing manager.

The meeting ended at 1.10 pm

CHAIRMAN