

LICENSING SUB-COMMITTEE

WEDNESDAY, 20TH JULY, 2022

36 Election of Chair

RESOLVED that Councillor Judes Butt be elected Chairman of the Sub-Committee for the duration of the meeting.

Voting: Unanimous

37 Apologies

An apology for absence was received from Councillor George Farquhar and Councillor David Kelsey, as a reserve member, assumed the role as a Licensing Sub-Committee member, in his absence.

38 Declarations of Interests

There were no declarations of interest.

39 Protocol for Public Speaking at Meetings

The Protocol for Public Speaking at Meetings was noted.

40 Temptation 1 Yelverton Road Bournemouth

Present:

From BCP Council:

Sarah Rogers, Senior Licensing Officer

Nananka Randle, Licensing Manager

Michelle Cutler, Clerk to the Sub Committee

Matt Lewin – Barrister, Legal Advisor to the Sub-Committee

The Chair made introductions and explained the procedure for the hearing which was agreed by all parties.

The Licensing Officer presented a report, a copy of which had been circulated and a copy of which appears as Appendix A to these minutes in the Minute Book.

The Sub Committee was asked to consider an application made by Admiral Bars (Hampshire) Limited for the renewal of the licence to use the premises as a sexual entertainment venue, providing relevant entertainment, for a further twelve-month period. A variation to the second-floor plan was also requested in order to bring it in line with the Licensing Act 2003 premises licence plan, which was granted by way of minor variation on 15th April 2022. In addition, the applicant sought the approval of a new widow display.

The Licensing Authority received 4 valid objections.

The following persons attended the hearing and addressed the Sub- Committee to expand on the points made in their written submissions:

For the Applicant:

Robert Sutherland, Keystone Law, representing the Applicant
Alastair Weatherstone (Director of Applicant Company)

Objecting:

Susan Stockwell
Cllr Dunlop
Cllr Northover

The Sub Committee asked various questions of all parties present and was grateful for the responses received. All parties had the opportunity to ask questions. All parties were invited to sum up before the Sub-Committee retired to make its decision. Before concluding the hearing, the Legal Advisor advised all parties of the right of appeal.

RESOLVED that the licence be renewed and the variation to the layout be granted , but consent for the proposed external display be refused.

Reason for Decision

1. On 20 July 2022, a hearing was held to determine an application by Admiral Bars (Hampshire) Ltd ("the Applicant") for:
 - a. the renewal of a Sexual Entertainment Venue ("SEV") licence at Temptation, 1 Yelverton Road, Bournemouth ("the Venue"),
 - b. a variation to the second-floor plan; and
 - c. approval of a new external display.
2. In making the decision, the Sub-Committee have taken into account:
 - the reports pack (which includes the application form and objections)
 - evidence presented and submissions made by the parties at the hearing
 - the Council's Sex Establishment Policy ("the Policy") and guidance issued by the Home Office
3. The decision of the Sub-Committee is to renew the licence and grant the variation to the layout, but to refuse consent for the proposed external display. The reasons for the decision are as follows.
4. The Venue has operated as a lap dancing club for 17 years, principally as Spearmint Rhino under different ownership. It has held an SEV licence since 2010. The licence was last renewed in June 2021. The licence was transferred to the Applicant in October 2021.
5. The application was advertised and the Council received objections from five members of the public. Neither Dorset Police nor any other responsible authority objected to the application.
6. The Licensing Officer advised the Sub-Committee that she had attended a joint inspection of the Venue with Dorset Police in March 2022. On the basis of that visit, she was satisfied that everything seemed in order with one or two minor issues that were being dealt with promptly.

7. The Applicant relied largely on a written statement provided by the company's director and shareholder, Mr Weatherstone, which the Sub-Committee have read. The Applicant's representative confirmed that the licence authorised the Venue to trade for 24 hours, 7 days a week but, in practice, it trades from Wednesday to Saturday and that it opens at 9pm. He believed that the external displays (which did not have the Council's consent and have been removed following objections) complied with the conditions of the licence. He also believed that the silhouettes were gender neutral. The Applicant was prepared to accept the standard conditions set out in the Policy. The Applicant was also prepared to accept an external display which removed reference to a "strip club" or similar. The Applicant was asked about the Venue's entry policy which (according to the FAQs on its website, apparently discriminated against female customers) and confirmed that unaccompanied women were entitled to enter the Venue. As for the locality and vicinity of the Venue, the Applicant stated that it was located in the town centre and in the vicinity of a number of other venues (the casino, late night bars, clubs, etc) which attract adults at night for entertainment purposes.

8. One local resident made an objection at the hearing. She stated that the Sub-Committee had no power to commit themselves to future decisions and were not tied to past decisions. She stated that the Sub-Committee are required to consider whether to re-license the Venue afresh every year and that the Sub-Committee did not owe any special allegiance to the Applicant. She pointed to three websites operated by the Applicant which had been displayed externally which, although they may not have illegal content, contained indecent material without age verification which, she said, reflected poorly on the Applicant's suitability. She also stated that the local area was increasingly residential.

9. Cllrs Northover and Dunlop also made objections at the hearing. Both councillors echoed many of the resident's objections. Cllr Northover stated that the surrounding area had changed, with a huge number of new cafes and other businesses opening which had given the area a more vibrant and family-oriented feeling. She was also concerned about the website links which had been displayed for children to see and that this showed poor judgment on the part of the Applicant. She asked the Sub-Committee to consider what kind of environment this Venue created for the safety of women. Cllr Dunlop stated that there had been a lot of complaints since the Applicant took over the Venue. She said that the Council had made a conscious decision to change the character of the area, to attract more families and businesses and that a SEV in this location completely undermined those efforts and was contrary to the Council's core values. She asked the Sub-Committee to acknowledge that this area had undergone significant change, meaning that a SEV was now unsuitable.

10. The Sub-Committee have been advised of the discretionary grounds on which to refuse to renew the licence in paragraph 12(3) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 and that, in light of the objections received, grounds (a) and (d) are the most relevant. The Sub-Committee are aware of the rule that "moral" objections to SEVs cannot be taken into account but have also had due regard to the three equality objectives in the Public Sector Equality Duty (section 149 of the Equality Act 2010). The Sub-Committee also confirm that this application has been considered on its own merits.

11. Taking all of this into account, the Sub-Committee are satisfied that the SEV licence should be renewed. As for the suitability of the Applicant, the Sub-Committee consider that Mr Weatherstone's professional background and experience in this industry makes him suitable to hold a licence (through his company). The Sub-Committee also attach great weight to the Licensing Officer's confirmation that the Venue was compliant with its licence conditions at her inspection earlier this year. The Sub-Committee do not consider the website links to undermine the Applicant's suitability: they were not unlawful, although it is accepted that their content will not be to everyone's taste.

12. As for the locality and vicinity of the Venue, based on the Sub-Committee's local knowledge, it was considered that there has been no a material change in the character of the area since the licence was last renewed. The Sub-Committee acknowledge that some new businesses have moved in but it was also taken into account that this Venue primarily trades late at night when most of the businesses referred to by the objectors have closed. The Sub-Committee also bear in mind that Yelverton Road is not a main thoroughfare and is more of a side road and so is unlikely to attract significant numbers of passers-by. The Sub-Committee do not accept that the continued presence of this longstanding SEV for a further year is inappropriate in this location or that it creates a risk to the safety of local people.

13. There were no objections to the variation of the second-floor layout and the Sub-Committee note that this layout has already been approved by the Licensing Authority. Therefore, the Sub-Committee are content to grant this variation to the licence.

14. The Sub-Committee do not accept the Applicant's contention that the silhouettes in the proposed external displays are gender neutral. The Sub-Committee believe that the general public would believe these silhouettes depict women in sexualised positions and give a strong indication that this is a SEV. In light of the objections received, the Sub-Committee consider that the proposed external display could be construed as offensive to public decency and therefore the Sub-Committee refuse this application. However, the Sub-Committee are content with the current external display as it appears in Appendix A of the reports pack.

15. In line with the Policy, the Sub-Committee will substitute the current licence conditions for the standard conditions at Appendix A of the Policy.

16. There is no right of appeal against this decision.

41 Exclusion of Press and Public

RESOLVED that under Section 100 (A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 2 in Part I of Schedule 12A of the Act and that the public interest in withholding the information outweighs such interest in disclosing the information.

42 Consideration of Suitability for a new Private Hire Driver Applicant

This item was restricted by virtue of paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.

Exempt information – Categories 1 (information relating to any individual) and 2 (information which is likely to reveal the identity of an individual).

The Chair made introductions and explained the procedure to be followed in considering this item, which was agreed by all participating parties.

Attendance:

From BCP Council:

Wesley Freeman – Licensing Officer
Johanne McNamara – Legal Advisor to the Sub-Committee
Michelle Cutler – Clerk to the Sub-Committee

The Driver was also in attendance.

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.

Councillors were asked to decide whether the applicant was a 'fit and proper' person to hold a Private Hire Driver's licence.

The Sub-Committee asked various questions of all parties present and was grateful for the responses received.

All parties were invited to sum up before the Sub-Committee retired to make its decision. Before concluding the Hearing, the Legal Advisor advised all parties of the right of appeal.

RESOLVED that having considered the written report of the Licensing Officer and the verbal submissions and responses to questions provided at the hearing by all parties and having regard to the BCP Hackney Carriage and Private Hire Driver Policy and the relevant guidance documents issued by the Institute of Licensing (IOL) and the Department of Transport, the Sub-Committee have decided that the applicant is not a 'fit and proper' person to hold a private hire drivers licence at this time.

Reason for the Decision

Section 11.2 of the BCP Taxi policy states that there should be a 3-year period free from convictions from the restoration of the DVLA licence and the Sub-Committee notes the applicants DVLA licence was restored in August 2020, so the 3-year time period falls short of 1 year. The Sub Committee did not feel that there was any reason present to justify departing from the Policy.

The Sub-Committee also note the guidance issued by the Institute of Licensing 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' at section 4.39, which states *that Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. However, subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted a licence or retain a licence.*

Right of Appeal

All parties to the application have the right to Appeal to the Magistrates Court within the period of 21 days beginning with the day on which the Applicant is notified by the Licensing Authority of the decision in writing.

Wednesday, 20th July, 2022

Voting - Unanimous

Duration of the meeting: 10.00 am - 1.55 pm

Chairman at the meeting on
Wednesday, 20 July 2022