

SOUTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE SOUTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 10 MAY 2012 AT GRAND JURY ROOM, GUILDHALL, MARKET PLACE, SALISBURY SP1 1JH IN RESPECT OF AN APPLICATION FOR SEXUAL ENTERTAINMENT VENUE CLUB ROUGE

Present:

Cllr Trevor Carbin, Cllr George Jeans and Cllr Jonathon Seed

Also Present:

Paul Taylor, Senior Solicitor and Linda Holland, Senior Licensing Officer
Mrs M Douglas and Mr M Munns – Interested parties
Mr John Wallsgrove – Applicants solicitor
Mr Robert Ash – Applicant
Mr Kevin Welch - Applicant

1 **Election of Chairman**

Nominations for a Chairman of the Licensing Sub-Committee were sought and it was

Resolved:

To elect Councillor Jonathan Seed as Chairman for this meeting only.

2 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the “Procedural Rules for The Hearing of Applications Under Schedule 3 of The Local Government (Miscellaneous Provisions) Act 1982 - Sexual Entertainment Venues” (Pages 1 – 6 of the Agenda refers).

3 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

4 **Declarations of Interest**

There were no interests declared.

5 **Licensing Application - Application for Sexual Entertainment Venue Club Rouge, 23-25 Milford Street, Salisbury**

Application by Mr Robert Stephen Ash and Mr Kevin Leslie Welch for a Sexual Entertainment Licence (SEV) at Club Rouge, 23-25 Milford Street, Salisbury

The Licensing Officer introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration. She explained that the application was to provide lap dancing, pole dancing and topless strip tease. The applicants already held a premises licence under the Licensing Act 2003 but this application was under a separate regime.

No complaints had been received during the ten years that the club has been operating. However the Council had received three representations to this application, a 42 signature petition and an e-petition with 2 signatures. There had been no objections from responsible authorities.

In accordance with the procedure detailed in the agenda, the Applicant, the Responsible Authorities and the Interested Parties were given the opportunity to address the Sub-Committee.

Key points raised by Mr Jon Wallsgrove on behalf of the Applicants were:

- Highlighted the Thwaites decision in which the Court had held that licensing decisions should not be based on unsubstantiated concerns and speculation, in the face of contrary evidence
- Venue had been operating for 10 years with no complaints.
- Mr Ash was a trained and qualified security guard and had been involved with Club Rouge for 8 years. He originally bought the Club, then sold it and had now bought it back. He is a personal licence holder, member of the British Institute of Innkeeping and member of Pubwatch. He has hands-on involvement in the Club.
- Mr Welch had been in the trade for 30 years. He had been involved in the Club for 6 years. He is a personal licence holder.
- Gareth Ash, who is the son of Mr Robert Ash, had undertaken a personal licence holder's course and an SIA course - he would work as a door supervisor.
- There was an experienced team running the Club.

- The Club requested to open the premises during the day for fitness classes and therefore requested the removal of condition 4(i)
- Regarding conditions 5(f) and (g), the entrance door was currently open and fixed. The inside of the premises were not visible through the open door. Asked for the removal of these two conditions.
- Regarding condition 7(d) the only physical contact permitted in the Club is when dancers sit on the customer's laps. This condition would prohibit this. The doorman would be there to impose the rules. He therefore requested that this condition be amended.
- The only reasons for refusal of the licence would be if it was considered to be inappropriate due to locality and there had never been any objections from the surrounding area. Although it was within the boundaries where it could be refused there had not been any evidence produced that there were going to be any adverse effects, only opinions and speculation.
- There had been suggestion that the clientele could cause Salisbury a problem but Mr Ash knows many of the customers and in his experience people are well-behaved and there have been no problems. Asked that weight be attached to this fact.

Questions

Members of the committee asked the following questions of Mr Wallsgrove:

How do you attract customers and do you have plans to enlarge the premises?

No plans to enlarge the premises. Trade is built on reputation, there is signage at the premises and that is all

Is there a noise breakout when the door is open?

The speakers are in the dance room – too far away for sound to carry out. There have never been any complaints about noise.

How are the two VIP areas monitored?

There is a doorman in each area.

Regarding condition 7(d) lap dancing occurs when people purchase dance?

Yes there are rules on no touching but if someone purchases a lap dance then there is contact. This would be strictly supervised and monitored by the doorman on duty.

You requested to open for a fitness class – would you require other facilities?

No

What would be the times of the fitness class and would food be provided?

No just a fitness class – no food.

There were no questions from the interested parties.

Key points raised by the Interested Parties were:

Mrs Mary Douglas

- Milford Street is in the middle of Salisbury, a city which attracts tourists from all over the world because of its medieval character and rich history. The street has many shops and hotels, and is just round the corner from the Market Place, the focal point of the city. The Samaritans are up the road, council offices are next door and round another corner is a local church and children's nursery. It is not a suitable place for a sex establishment.
- The club was applying for a Sex Establishment Licence for the first time, as required by the new legislation. It was, therefore, by definition, a new sex establishment, as indicated on page 7, para 3.1. As such, it is not permitted if within "inappropriate proximity" (defined as a distance of 200m in direct line of sight, or 100m if there is no direct line of sight) to six categories of activities. This venue is within inappropriate proximity to every one of these categories.
- The report also included three other factors, which were not listed as issues that should be considered when determining an application. These were complaints, opening hours and location of other premises. Some activities will take place within inappropriate proximity to the Red Lion Hotel and a sex establishment is a different type of venue from other licensed premises and the rest of the night-time economy.

Questions

Members of the committee asked the following questions of Mrs Douglas:

How can you see a conflict with the nursery at night? Where is the evidence?

I am referring to Wiltshire Council's policy. It is an inappropriate locality.

In response to questions from the sub-committee the Council's solicitor confirmed that each application had to be considered on its own merits and that the Sub-Committee could depart from Council's adopted policy if they considered it appropriate. The Council's policy provided guidance within which applications were to be considered but it did not have the same weight as statutory guidance, such as the S.182 Guidance for Licensing Act matters.

The solicitor also confirmed that, although the premises had been operating for a number of years, this application had to be treated as being for a new sexual entertainment venue, as the premises had now been brought within the scope of the licensing legislation. However, the sub-committee should take into account the fact that the activities being applied for had been taking place at the premises for some time as part of its considerations.

The applicant was given the opportunity to ask questions of Mrs Douglas.

Why do you feel that there is a need to safeguard the proximity of the club?
I am simply referring to Wiltshire Council's policy

Mr Munns

- The club is on a public highway - would feel embarrassed having to explain the premises to a child.
- If entertaining guests and had visitors to the area would not want to expose them to a sexual entertainment venue.

Members of the committee asked the following questions of Mr Munns

Are you suggesting no advertising at all outside the premises?

Yes

Do you live in the vicinity?

No

If you walked past the door what would draw a child's attention to the premises?

There is a picture of a lady on a swing outside the premises.

The applicant was given the opportunity to ask questions of Mr Munns.

How many of your guests have mentioned Club Rouge?

None

The Sub-Committee members then retired at 2pm to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Hearing reconvened at 3pm

Following the deliberations of the Sub-Committee Members, the Solicitor for the Council made a statement that no material legal advice had been given in closed session

Resolved:

The Southern Area Licensing Sub Committee has resolved to GRANT the licence for the following licensable activities:-

To provide the following forms of 'relevant entertainment':- lap dancing, pole dancing and topless stage strip-tease as follows:

The hours are as follows:

Day	Hours
Monday	22:00 to 04:00
Tuesday	22:00 to 04:00
Wednesday	22:00 to 04:00
Thursday	22:00 to 04:00
Friday	22:00 to 04:00
Saturday	22:00 to 04:00
Sunday	Closed

And subject to the following conditions:

1. **Exhibition of a Licence**

- a) A copy of the licence and any special conditions attached shall, at all times, be displayed in a conspicuous position on the premises so as to be available for inspection by the police, the fire authority and authorised officers of the Council.

2. **Hours of Opening and Closing**

- a) The premises shall not operate as a sexual entertainment venue outside the permitted hours stated on the licence.

3. **Management of Licensed Premises**

- a) The licence holder or some responsible person, being 21 years of age or over, nominated by him/her in writing shall be in attendance at the premises at all such times as the premises are open to the public and any nomination shall be produced to any Police Officer or Authorised Officer of the Council or Police and give the name and address of the person nominated.
- b) The name of the person responsible for the management of the premises, whether the licensee or the manager, shall be displayed in a conspicuous position within the premises throughout the period during which he is responsible for the conduct of the premises.

- c) All members of staff shall be easily identifiable as such. If required by the Council in writing the Licence Holder shall ensure that during the hours the premises are open for business every employee or person working in the license premises wears a badge of a type approved by the Council indicating his name and that he is an employee or person working in the premises.
- d) The licence holder shall exhibit in a conspicuous place inside the licensed premises and at the point of access to the licensed premises a notice stating that persons under the age of eighteen years are not permitted on the premises.
- e) No other notices unless pursuant to these Regulations may be exhibited.
- f) The licence holder shall not display in any position visible to persons outside the premises any matter which does not comply with the Indecent Displays (Control) Act 1981.
- g) The licence holder shall not display any advertisement which is visible to persons outside the premises except as permitted by these Regulations or under the Act and no advertisements shall be displayed wherever visible which depict any sex article as defined.
- h) The licence holder shall maintain a daily register in which shall be recorded the name and address of any person who is to be responsible for managing the sex establishment in the licensee's absence and the names and addresses of those employed in the sex establishment. The register is to be completed each day within 1 hour of the premises opening for business and is to be available for inspection by the police and by authorised officers of the Council and police.
- i) The licence holder must submit a set of "House Rules" to the Licensing Authority as part of the application process; these rules will form part of the licence, and must be complied with. All performers must sign an agreement to adhere to these House Rules.
- j) Where the licence holder is a body corporate or an incorporated body, any change of director, company secretary or other person responsible for the management of the body shall be notified in writing to the Council within 14 days of such change and such written details as the licensing authority may require in respect of the change of personnel shall be furnished within 14 days of a request in writing from the Council.

4. **Operation of the Premises**

- a) The Licence Holder shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
- b) The licence holder shall not permit any person other than persons employed by him, his servant or agent, statutory undertakers or, if applicable, his landlord to enter upon any part of the premises which are not available to the public in connection with the display, sale, hire, exchange, loan or demonstration of sex articles.
- c) No person under the age of 18 shall be admitted to any part of the premises which is used as a sex establishment or be employed in the business of the sex establishment.
- d) All persons working in the premises, including performers, shall be aged not less than 18 years old.
- e) Neither the licence holder nor any employees or agent shall personally solicit custom for the sex establishment outside or in the locality of the premises.
- f) The licence holder shall not permit the display outside the premises of photographs or other images which indicate or suggest that relevant entertainment takes place in the premises.

External advertising of relevant entertainment shall not include any of the following:

- Any depiction of full nudity
 - Any depiction of partial nudity
 - Any depiction of overtly sexual or violent images or any other images which may give rise to concerns in respect of public decency or protection of children or vulnerable persons from harm
- g) No sex articles shall be used, displayed, sold, hired, exchanged, loaned or demonstrated in a sexual entertainment venue or sex cinema.
 - h) The licence holder shall not knowingly allow the licensed premises to be the habitual resort or meeting place of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution.
 - i) The licensed premises shall not be open for the purposes of which a sex establishment licence is granted on any occasion when the Council may signify in writing to the licence holder, occupier or other person having at

the time the care and management of the premises, that the same should not be open.

5. External Appearance

- a) A notice stating that no person under the age of 18 shall be admitted to the premises must be displayed on the outside of the premises.
- b) The licence holder shall ensure that the interior of the sex establishment is not visible to persons outside the premises.
- c) The exterior of the licensed premises shall be of a design and materials approved by the Council. The exterior of the premises shall consist of material and colours of a discreet nature appropriate to the character of the locality and shall be in keeping with the appearance of other premises in the vicinity.

Detailed proposals for the external appearance of the premises shall be agreed with the Council's Delegated Officer within 14 days of the notification of the determination of a grant of the application for a new premises licence.

The approval shall be subject to ratification by the Council's Licensing Committee.

- d) The interior and exterior of the licensed premises shall be kept in good repair and condition.
- e) No illuminated signs or exterior lights shall be affixed to the licensed premises unless approved by the Council's Delegated Officer and shall be subject to ratification by the Council's Licensing Committee.
- f) The entrances, windows and openings to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers-by.

6. Internal Layout and Condition of Premises

- a) The licence holder shall maintain the premises in good repair and condition as well as carrying out his duties under the Health and Safety at Work etc Act 1974 and other related legislation.
- b) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of an emergency.

- c) Lighting shall be in operation continuously during the whole time that the sex establishment is open to the public.
- d) Any alterations or additions to the premises shall not be made without prior written consent from the Council. A variation application will be required to make any such changes to the internal or external look of the building.
- e) No fastenings shall be fitted to any booth or cubicle within the Sex Establishment. Appropriate fastenings are permitted on toilet doors.
- f) Any changes in the layout or management of the premises to be approved in advance by the Council.

7. Provision of Relevant Entertainment

- a) Any person who is providing relevant entertainment must be briefed verbally or in writing by the licence holder or his deputy about the conditions that relate to the premises and any code of conduct.
- b) Any person providing relevant entertainment shall be made aware that their activities will be recorded on CCTV.
- c) The performer(s) shall sign in a register that they have received briefings and these shall be retained for 12 months and made available for inspection by any Police Officer or authorised officer of the Council.
- d) During any performance of relevant entertainment there must be no physical contact between the performer and any member of the public. The only exceptions are the placing of money or tokens in an item of clothing worn by the performer or in the performer's hand or during a lap dance the performer may sit on a customer's lap but the customer must keep his or her hands in plain sight of staff.
- e) There shall be no penetration of a performer's genitals or anus by any means.
- f) Performers shall not engage in masturbation and/or oral sex.
- g) No customer shall participate in any relevant entertainment except at the consent of the performer and must remain seated at all times.
- h) No customer shall be required or encouraged to participate in any relevant entertainment against their will.

- i) No customer shall have any clothing removed during any relevant entertainment.
- j) On completion of relevant entertainment performers shall dress immediately and leave the performance area.
- k) Performers are not to solicit, exchange contact details, addresses or telephone numbers with customers, or arrange to meet customers off the premises.

8. **Safety and Security**

- a) The licence holder shall maintain good order in the premises at all times and shall ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not cause annoyance to residents and persons passing by.
- b) Relevant entertainment may only take place in 'designated areas' marked on the plan of the premises which was submitted as part of the application process.
- c) The licence holder shall have in place a policy concerning the safety of performers arriving at and leaving the premises, which shall be made in writing and made available to the Police or authorised officer of the Council or Police on request.
- d) The licence holder or deputy shall be present on the premises at all times whilst the relevant entertainment is taking place.
- e) The licence holder shall take all reasonable precautions for the safety of the public, employees and other persons working in the premises.
- f) A CCTV system shall be installed in the premises to the satisfaction of the Council's Licensing Officer. The system shall efficiently record the operation of the licensed premises and shall automatically indicate the date and time of the events recorded to a standard that would be acceptable as evidence in court.

All CCTV recordings shall be securely retained for a minimum of 28 days and shall be made available at the place licensed for inspection by a police officer or an authorised officer of the Council or police.

The grant of a licence for a Sex Establishment shall not be deemed to convey any approval or consent which may be required under any enactment bye-law order or regulation other than Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended.

Where there is any reference in these conditions to the consent of the Council being required, such consent may be given on such terms and conditions and subject to such restrictions as may be so specified.

If the Licence Holder wishes any of the terms of the licence to be varied any application must be made to the Council.

Reasons

The only relevant grounds for refusal would have been that the grant of the licence would be inappropriate having regards to the character of the relevant locality and the use to which premises in the vicinity are put. The sub-committee noted that there were a number of residential properties and shops in the vicinity together with a nursery, places of worship and historic buildings. The sub-committee also noted that the Council's policy provides that no new sex establishment will be permitted if situated within 100m distance of such buildings., However, the sub-committee were aware that they had to consider each application on its merits and that the premises had been operating similar activities to those applied for a period of ten years without complaints. There was no evidence of any adverse impact on the locality from those activities.

In reaching their decision the sub-committee took into account the Home Office Guidance on Sexual Entertainment Venues in particular paragraphs 4.19 to 4.21, (relating to the human rights issues to be considered when determining applications) and the Council's Sex Establishment Licensing Policy

(Duration of meeting: 12.30 - 3.05 pm)

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