

Licensing Committee

Friday, 6th February, 2015
2.00 - 4.15 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Garth Barnes, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton and Jon Walklett
Also in attendance:	Vikki Fennell and Louis Krog

Minutes

1. APOLOGIES

Apologies were received from Councillor Wendy Flynn.
The Chairman reminded members that if they were unable to attend a meeting that they should ask a substitute to represent them.

2. DECLARATIONS OF INTEREST

Councillor Barnes declared an interest on agenda item 5, the renewal of the licence for the sex establishment venue, as being ward councillor for this area he would be speaking as an objector.

3. PUBLIC QUESTIONS

There were no public questions.

4. MINUTES OF MEETING HELD ON 9 JANUARY 2015

The minutes of the Licensing Committee held on 9 January 2015 were approved and signed as a true record.

With the agreement of the Committee, the Chair took agenda item 6 before agenda item 5 as this was likely to be a longer agenda item.

5. RENEWAL OF SEX ESTABLISHMENT VENUE

Having declared an interest earlier in the meeting, Councillor Garth Barnes stepped down from the committee at this point as he was speaking as an objector.

At the beginning of the meeting, an additional document produced by the applicant was distributed to members and the Chair gave the committee several minutes to look at it.

After briefly reading it, members expressed concerns about the document and the ward members due to speak on this topic requested to see a copy, but this was disallowed by the chair.

In consultation with the Legal Officer it was agreed not to permit this document as part of any evidence as it was submitted too late and the document was subsequently collected back in.

The Chair explained the format for the meeting and how much time would be allocated to the speakers.

The Licensing and Business Support Team Leader, Louis Krog, introduced the report concerning an application for the renewal of a Sex Establishment Venue (SEV) licence in respect of the premises located on 12-14 Bath Road. The renewal application was received on 15 December 2014 from Bath Road Property Limited. The Officer informed members that no changes to the terms or hours of the current issued licence had been applied for, but Bath Road Property Limited had applied to change the trading name of the premises from 'Diamond' to 'Fantasy'.

Appendix A showed a copy of the application form; Appendix B showed the premises layout, Appendix C the location map, Appendix D showed a copy of the current licence and Appendix E outlined the Core Commercial area.

The Officer reminded members of the mandatory and discretionary grounds for refusal, that members could not take into account objections on moral grounds and that the Council's policy in relation to the regulation and control of SEVs had changed since this licence was initially approved. He also advised that the new policy should not fetter member's decision.

The Officer informed members that 25 representations in relation to this application had been received from local residents and these were enclosed in the background papers. He also informed members that no objection or comments had been received from the Chief Officer of Police for Gloucestershire Constabulary.

The Officer advised that members having considered all the relevant matters needed to decide whether to grant the application as applied for, grant the application subject to any additional terms or refuse the application.

The Chairman advised committee members that they were not there to discuss whether Cheltenham should have a SEV or not, but to decide within the context of the policy or have discretion to vary from the policy that was agreed in October 2014. Principally members had to decide whether to exercise that discretion taking into account the location, and fitness of the applicant to operate such a premises. Members also needed to decide what weight to give to the boundaries of the central shopping area as the SEV was outside of this by only a matter of metres. The committee also needed to consider the request for the name change from 'Diamond' to 'Fantasy'.

The Solicitor representing the Applicant attended the meeting and spoke in support of the application, stating this was an unusual application as the major objections were dealt with a year ago when the licence was granted and since then there had been no problems with anti-social behaviour or other incidents and the club had operated without any issues being raised with the Police or Licensing. The only factor that had changed was that the Council had adopted a policy defining the area where such a club could exist and this club now fell

just the wrong side of the dotted line of this boundary. The Solicitor referred to two questions asked by members at Council in October 2014. The first question acknowledged that the SEV situated in Bath Road would fall outside the defined town centre area and that when considering any renewal application, the applicant would have to give evidence as to why an exception should be made in their case. The Cabinet member also said at the time that an existing establishment would always have an argument for discretion as an existing business.

To support this argument for discretion, the Solicitor asked the committee to consider the way the club had been properly run without any incidents. He said that his clients had invested money into the business, had improved the facilities and security of the club, and believed that there was a desire for such a club in the town as it had not folded. He pointed out that his clients would not have done this if they knew the policy would change and they might lose their licence in 6 months' time. He pointed out that had the Council not changed its policy it would be a straightforward renewal without any problems. He also asked members to bear in mind that they had no right of appeal as the Council had decided there should not be any SEVs in this area so there would be no option but to have a judicial review.

In summing up the Solicitor told the committee they had discretion to go outside the policy and to grant renewal and asked them to exercise discretion in this case. He did not believe it would set a precedent, as new business ventures would know of the policy boundaries beforehand and thus would not set up in the wrong area.

Councillor Klara Sudbury as ward councillor for College ward spoke on behalf of the objectors. She reiterated the reasons she had objected in first place highlighting that the objections were based on location and not moral issues, as the club was on the edge on a residential area, near to a supermarket and religious venues and other sensitive premises where children frequented. There was also a bus stop outside the venue and it was near a park, so it was not the right location. She also referred to a recent road safety trial in the Bath Road area that had failed and thus felt that this area was not suitable for any licensed activity. Councillor Sudbury informed the Committee that she had had a report of a problem, that being the doormen encouraging a group of men to go into the club leaving their female companion behind. She said local residents felt they had not been listened to and that it was a social issue that affected all in society. This SEV exceeded the number of SEVs allowed in the area and she urged the Committee to follow their policy as this was not the right location for a SEV.

Councillor Garth Barnes also as ward councillor for College ward proceeded to speak on behalf of the objectors. He stressed that the location was a key factor and that this had been discussed at Council before they agreed the policy. He considered that the fact this premises was so close to the core commercial area was irrelevant as clearly it was outside of the defined policy area. On that basis he could not see any grounds for discretion for allowing this renewal and considered it would be a travesty of democracy. His suggestion was that the applicant should look for an alternative venue within the policy area and suggested that the committee could renew the licence for a further year whilst they found another suitable venue.

In reply to various questions from members, the following points were made:-

- The Officer confirmed that the compliancy of the club had been very good, with a few initial issues having been resolved.
- The Licensing Officer had only received one Police report of common assault and no further action was taken.
- A member referred to 4.9 a,b,c,d in the report relating to properties in sensitive areas and asked for clarification that the committee were considering these points as part of their deliberations. It was confirmed that it was relevant to their decision.
- It was confirmed that the door staff at this premises were different to the ones operating at the club next door.
- It was confirmed that the fatal incident that had occurred in that area had happened outside another licensed premises in the area.
- The Solicitor advised that many problems often related to the offer of 2 for 1 drinks. This club did not offer any discounted drinks.
- With regard to the strict conditions placed on advertising, members asked about a van advertising in a car park and whether the club would advertise during race week. The Solicitor advised that the van must have been from Swindon and that the club were aware that under their current licence conditions, they were not allowed to advertise. He did though point out that this seemed unfair when others, ie pop up and 'one off' nights, could do this during race week without regulation.
- The Applicant confirmed that the club was open Tuesday to Saturday, 10pm to 4am; that they had an average of 20-30 people attending during the week with more at weekends and during race week. They had regular customers and a more mature clientele and offered entertainment to older people.

In response to the Chairman's request for the applicant to substantiate her suitability to running such a club, she replied that she had 12 years' experience of running lap dancing and gentlemen's clubs and was fully aware of the policy regarding the running of such clubs and her duty of care to the girls etc, and was in compliance with it all. She informed that her customers were more mature, polite and a different clientele to neighbouring Kukui night club and others in the area, that it was not cheap to go there with highly priced drinks and that as the opening hours were 10pm to 4am, there were no children or church users around at that time. She stressed that it was a legal business, it was licensed and everything had been done to comply with the licence.

In summing up, the Solicitor representing the Applicant said that if the Committee felt that the club had not been properly run he would understand their refusal, but the club was properly run and he therefore asked the committee to exercise their discretion. He pointed out that if the club was across the road or on top of the supermarket opposite, they would be inside the policy area and the renewal would be straight forward. He referred to 4.9, a, b, c, d in the report relating to properties in sensitive areas and stressed that these issues were all there a year ago when the licence was granted. The club was being run in compliance with the licence and he invited members to use their discretion.

At this point the Chairman proposed that the committee adjourn to consider their decision.

Members adjourned from the Chamber at 15.26.
Members returned to the Chamber with their decision at 16.02.

The Chairman read the rationale for the Committee's decision.

The Committee had examined all the documents submitted and considered all the representations made at the hearing. It had particular regard to the written objections concerning the location of the premises and the Council's Policy of 13 October 2014 concerning generally inappropriate locations for sexual entertainment venues.

The Committee had noted that the government guidance and case law made clear that moral objections to sexual entertainment were not relevant to consideration of the application. With this in mind the Committee disregarded any passages within the representations received which expressed moral concerns.

The Council's Policy states that the current premises is within the zero limit for SEVs.

The Committee had considered the location of the premises and despite the location there was no evidence that there had been any issues involving the premises since it opened last year.

The Committee had noted that the applicant had a benefit of a good track record in operating the premises and that Gloucestershire Constabulary did not object to the application.

The Committee had used its discretion with regard to the boundary having regard to the applicant's submissions and the fact it had traded for almost a year without issue.

The Committee would like to make it clear that it was not setting any precedent.

The Committee did consider all discussions during the hearing and in particular those relating to 4.9 a,b,c,d, in terms of proximity to other premises, but decided to use its discretion as to whether these were suitable issues in this case.

Upon a vote to approve the renewal of the licence, it was 6 for, 2 against

RESOLVED, that the renewal of a Sex Establishment Venue licence in respect of the premises located on 12-14 Bath Road be granted.

Upon a vote to change the name, it was 6 for, 2 against

RESOLVED, that a change in trading name of the premises from 'Diamond' to 'Fantasy' be approved, with any further changes coming back to committee.

6. APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY-ROTUNDA TAVERN, 3 MONTPELLIER STREET, CHELTENHAM

The Licensing and Business Support Team Leader, Louis Krog, introduced the report concerning the application from Mr Stephen Ashley of 3 Montpellier Street, Cheltenham, trading as the Rotunda Tavern. He informed members that Mr Ashley had existing permission to place four picnic style tables with attached benches on the highway during the operating hours of the premises and that he was now applying to extend that permission to 24 hours a day, so that the street furniture would be in place 24 hours a day, every day.

Appendix A showed a photograph of the furniture and Appendix B showed plans of how the tables and chairs would be positioned when the premises were open and when the premises were closed.

The Officer pointed out that for practical reasons the tables and benches were already left out overnight, which was technically a breach of licensing consent.

The Officer advised that members needed to decide whether they felt the application was compatible with the current Street Scene Policy.

In reply to questions from members, the Officer clarified that:

- No complaints had been received or incidents happened regarding the tables and chairs being left outside during the 2 and a half years that they had been there.
- Other businesses with more portable tables and chairs did have to take them in. This business was unique in that the benches were heavier.

This latter point raised concerns by a member that other premises may decide to use heavier picnic style tables that could be left outside and thus this would set a precedent. Another member questioned the committee's consistency in their street scene policy.

Many members expressed concerns about insurance cover and public liability, especially during the closure of the premises and wanted assurance that the applicant was fully covered and that there would not be any liability on behalf of the Council.

The Applicant, Mr Ashley, attended the meeting and spoke in favour of his application. He confirmed that the tables and chairs were not collapsible and therefore could not be brought in, but that in the 2 and a half years that they had been in situ there and left out overnight there had not been any incidents. He felt that the bench style tables were in keeping with a good old English pub and give it an identity rather than aluminium tables and chairs. Mr Ashley confirmed that the benches were chained together and made safe during the premises closing time. He also informed members that he was fully insured and had public liability insurance up to £5m.

Again a member queried whether there had been any after of hours anti-social behaviour, to which the applicant reiterated that there had not.

The chairman proposed an amendment to 1.4.1 that the application be approved subject to adequate insurance cover and that if there were any issues that the matter be brought back to committee.

Upon a vote it was 6 for, 2 against, 1 abstention

RESOLVED, that Mr Ashley's application in respect of 3 Montpellier Street, trading as the Rotunda Tavern, for permission to leave 4 picnic style tables with attached benches on the highway 24 hours a day, be approved subject to adequate insurance cover, as members felt the application was compatible with the current Street Scene Policy.

Upon a vote that the application be refused, it was 2 for, 7 against.

7. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

None

8. DATE OF NEXT MEETING

6 March 2015

Roger Whyborn
Chairman