

<b>LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)</b>	<b>Agenda Item 25</b>  Brighton & Hove City Council
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**BRIGHTON & HOVE CITY COUNCIL**

**LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)**

**3.00PM 21 NOVEMBER 2013**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Powell (Chair), Deane (Deputy Chair), Simson (Opposition Spokesperson), Lepper (Opposition Spokesperson), Bennett, Gilbey, Hyde, Kennedy, Marsh, Robins, Rufus and C Theobald

**Apologies:** Councillors Duncan, Jones and Pidgeon

**PART ONE**

**14. PROCEDURAL BUSINESS**

**14.1a Declaration of Substitutes**

There were none.

**14.2b Declarations of Interest**

There were none.

**14.3c Exclusion of the Press and Public**

In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

**RESOLVED** - That the press and public not be excluded from the meeting during.

**15. MINUTES OF THE PREVIOUS MEETING**

- 15.1 RESOLVED** – That the minutes of the Licensing Committee (Non Licensing Act 2003 Functions) Meeting held on 27 June 2013 be agreed and signed as a correct record.

**16. CHAIR'S COMMUNICATIONS**

**16.1 Hackney carriage & private hire vehicles suspensions & revocations**

The Chair advised that since the last Licensing Committee, officers in the Hackney Carriage Office had:

- Revoked 3 driver licences
- Refused 2 licences on medical grounds
- Suspended 1 driver on medical grounds
- In addition 5 drivers have received formal warnings

**17. CALLOVER**

- 17.1 RESOLVED** – That all items be reserved for discussion.

**18. PUBLIC INVOLVEMENT**

18a.1 There were none.

18b.2 There were none.

18c.3 A Deputation was submitted by Mr K McGrath.

18c.4 The Chair welcomed Mr McGrath to the meeting and asked him to present his deputation. The Deputation stated:

We are prompted to bring this appeal to the Committee for two reasons;

- We only became aware that the SEV fee had increased to £6500 in early November 2013, even though this decision was made last year. With the utmost respect, we would ask that the Local authority in future adopt a working practice to notify license holders of increases as and when they are set. If we had been aware of this, we could at least have tried to make some plan or financial provision for it over the last year.
- We have previously made discretionary arrangements with the authority to pay this license fee by instalments, but have again only very recently been advised that this may not be possible in the current year. We appreciate the historic support that this arrangement has provided to us through a very difficult trading period.

However, having received no prior notification of either the 41% fee increase or the change of policy on instalment payment has created an immense and urgent problem which is compounded by the flat rate nature of the SEV fee itself. The fixed fee structure takes no account of the size of the premises, the revenue of the premises or the level of individual costs incurred directly or indirectly at particular premises by the Local

authority. When the SEV License was first introduced, representations along these lines were made by us to the Committee and we suggested that a fee linked to Rateable value was a more appropriate structure whereby the fee would generally reflect the size of the business. The Committee decided ultimately to adopt a fixed fee structure and I highlight this now only to draw your attention to the dramatic impact that such a large increase in the fee has upon a small local operator, as opposed to a large multi million pounds, national or international operator. The Pussycat Club ("PC") was the first of 3 local lap-dancing clubs and was originally established in Hove in 1998, moving to its current location in Brighton in 2007. PC is privately owned and operated by the McGrath family and is fundamentally different from the other two license holders in two respects;

- PC is a private members club which only admits members who are subject to a 48 hour waiting period, guests of members and does not admit or offer membership to the under 25's. Annual membership fees are payable by members and guest admission is charged at £15 per person.
- PC is a very small club located in a discreet secondary location, on two floors with a maximum capacity of 100 persons, but as the second floor is used not as a seating area but as the dance area only, the practical capacity is 45 persons.

As a consequence, PC is a discreet, quiet and entirely trouble free premises where the significant anti social behaviour and public order issues which are often evident at other venues simply do not exist. It is our argument that PC therefore creates little or no requirement for additional resources, such as additional police and licensing resources, which are increasingly required to be provided at other clubs who encourage free admissions by persons as young as 18. PC has not had any time or opportunity to plan for or make provision for the new increased fee, nor indeed had any time to make provision for single payment of such a fee and it is a commercial reality that trading conditions throughout the current recession have been extremely difficult for several years and many small businesses like us lack any support from the banks, even our new state owned banks. Our own principal bankers were Bank of Scotland ("BOS"), now Lloyds. BOS provided us with an overdraft facility of £30k for many years, but the new state controlled Lloyds withdrew this facility, demanding repayment despite that the facility had been properly conducted by us for many years. Like many small businesses, we had used our overdraft as working capital to meet unexpected expenditure, such as this massively increased SEV fee, but this is no longer an option available to us. My research has been limited by the short time available to me but I understand there is some suggestion that there may be ambiguity if the license is issued before the full fee is received. Even as a layman I would contest this and I can think of many licenses which are issued with an associated instalment agreement, such as my own TV License. There has also been an argument made to me of financial probity and administration costs. This can surely be addressed by making an administration or interest charge such that the authority achieves increased revenue with any such agreement. I understand that income raised by license fees aims to cover the cost of administration of each regime within constraints of regulation, that such fees must be reasonable and it is incumbent on you to review fees in a proper and transparent way and set such at a level you can reasonably expect to recover. There appears to be no legal authority that you cannot accept fees by instalments. Permitting PC to pay this fee over the year will at least recognise the unfairness to us of the fixed fee structure and go some way towards recognizing that PC is the one of three venues which does not in fact add to the Authority's costs. Perhaps in the longer term, the Committee could consider

generally whether it is possible to allocate costs, as supplementary annual fees, directly against any venue where additional resources are provided which incur additional or unusual costs. At the moment there exists a balance amongst the 3 license holders who each pursue different segments of the market. If the PC License were to become available, it is possible, perhaps even likely that another large operator would move into Brighton & Hove. It is my submission to you that this would be generally undesirable strategically for our city and I say this not as the operator but as a city resident with young children. This is of course a secondary argument to the proposal before you but worthy of consideration as an aspect of this appeal.

- We formally request that the Committee do not withdraw (at such short notice) the discretionary facility previously agreed and permit the Head of Regulatory Services discretion to consider our request for an instalment payment arrangement for the forthcoming year.
- We formally request that the Committee take account in its generality, of the contents of this document when setting new fees for the 2014-15 year and consider the adverse impact of the fee on small business. We respectfully ask that any further increase be kept to a minimum and related to inflation.

18c.5 The Chair thanked Mr McGrath and stated:

The information relating to this is covered by the licence fee report at item 22 in the agenda. The Council is clear on the basis of fees collected and the basis on which these are calculated. This is dealt with in detail in the report. Officers have explained to Mr McGrath that legislation makes no provision for payment by instalments. In this case, officers have in previous years, in recognition of supporting business, offered the facility to pay in instalments.

The corporate debt collection and recovery policy states that business debtors seeking help due to financial difficulties will, where appropriate, be considered for alternative payment plans on a case-by-case basis, however allowing for an instalment system in the past has resulted in cases of late and non-payment causing budgeting monitoring issues. For clarity, it is preferable for the full fee to be collected before the licence is issued. Strictly speaking, an applicant for the grant of a sex establishment licence should pay the fee at the time of application and although the authority's officers had tried to help local business, offers had informed applicants that they could no longer accept part payments. Not only is there no clear legal authority but occasionally these arrangements had led to late payment and budget management difficulties. Sex entertainment licences are currently issued annually, the maximum period. Licences for shorter periods would increase costs. Sex entertainment venues and sex shops are currently at the policy cap, three and five respectively.

18c.6 The Chair said that Mr McGrath would receive a written copy of her response.

## **19. MEMBER INVOLVEMENT**

19a.1 There were none.

19b.2 There were none.

19c.3 There were none.

19d.4 There were none.

## **20. STREET TRADING DESIGNATION (POST CONSULTATION)**

20.1 The Committee considered a report of the Head of Regulatory Services to designate Memorial Way in the Old Steine as a consent street. The report was presented by Ms J Cranford.

20.2 Councillor Simson asked if it was agreed to make Memorial Way a consent street, whether it could be used for a farmer's market everyday except the three days listed in the report. Ms Cranford confirmed it could. Councillor Simson asked for clarification on what constituted a 'farmers market' as opposed to a 'normal' market, and was advised it depended on whether the products for sale were sourced locally.

20.3 Councillor Hyde was concerned over the position of a market and felt that there was too much traffic in that area and was too close to the War memorial. Whilst she wanted to support another market in the city, she was not in favour of one in that area.

20.4 Councillor Deane said agreeing to Memorial Way being a consent street would provide a new opportunity for businesses and therefore she supported the proposal.

20.5 Councillor Lepper felt that this was the wrong place for a farmer's market and previous markets in that area had not been successful, and so would not be able to support the proposals. Councillor Deane said she understood Councillor Lepper's concerns that a market had not been successful before, but if the road became a consent street it could be used for other events such as White Night.

20.6 Councillor Rufus said it was an underused part of the city and a farmer's market would encourage people to the area; he would therefore be supporting the proposal.

20.7 Councillor Gilbey noted that it wasn't a pedestrianised area and there was too much traffic, and being situated next to the War Memorial wasn't appropriate and therefore she couldn't support the proposal.

**20.8 RESOLVED** – That Members resolved not to designate Memorial Way as a consent street.

## **21. SETTING LICENCE FEES: SCRAP METAL DEALERS ACT 2013**

21.1 The Committee considered a report of the Executive Director Environment, Development and Housing, which set out the proposed fees for licences under the new Scrap Metal Dealers Act 2013. The report was presented by Mr M Savage-Brookes.

21.2 Councillor Simson noted that officers would have delegated power to award licences, and asked if they refused whether the matter would go before a Panel. Mr Savage-Brookes confirmed it would.

- 21.3 Councillor C Theobald asked if under the new legislation dealers would have to keep a record of who they'd obtained the scrap metal from. It was confirmed they would.
- 21.4 Councillor Gilbey asked for confirmation that there were two types of dealer. It was confirmed there were; those with a site and those who were itinerant and took metal to a permanent site.
- 21.5 Councillor Simson asked if dealer's needed a licence for each area they collected from. It was confirmed they would.
- 21.6 Councillor Deane welcomed the changes and said she would support the recommendations.
- 21.7 Councillor Simson asked whether there would be sufficient officer resources to ensure compliance, and whether the public would be advised that mobile traders needed to display their licence in their vehicles. Mr Savage-Brookes said that both the police and the local authority would have the authority enforce the legislation. With regard to publicising the changes, it hadn't been considered but could be done if it was felt appropriate.
- 21.8 Councillor Hyde asked whether the authority had considered visiting the various sites to ensure that traders were complying with the legislation. Mr Nichols said that an observation would need RIPA authority, but if there were reasonable grounds it could be applied for. Test purchasing had not been undertaken before, but as this was a new legislation it could be considered if it was felt appropriate.
- 21.9 Councillor Rufus asked whether a home owner would still be able to take items to scrap metal sites. Ms Cranford said that as a customer you could, but a person would need to provide a passport etc to be able to be paid for the metal.
- 21.10 RESOLVED** – That the proposed fees as set out in Appendix 3 to the report be agreed.

## **22. LICENCE FEES 2014/15**

- 22.1 The Committee considered a report of the Head of Planning and Public Protection, which set out the proposed licence fees and charges for 2014/15 relating to street trading, sex establishments, sex entertainment Licences, gambling premises, taxi licensing and other licensing functions. The report was presented by Mr T Nichols.
- 22.2 Councillor Lepper referred to Appendix 4 and noted the middle column was headed 2013/14 and asked if that was correct. Mr Nichols confirmed that was a typing error and it should read 2014/15.
- 22.3 Councillor Kennedy asked why some charges were coming down. Mr Nichols said the authority was complying with legislation, and they could only charge a fee to cover their costs.
- 22.4 Councillor Simson asked if establishments could be looked at individually. Mr Nichols said it was possible and the authority had considered that, but had taken the decision not to.

**22.5 RESOLVED:**

That the committee approved the following variation to licence fees:

- Hackney carriage driver fee +10%, hackney carriage vehicle fee -5%, private hire driver fee +10% and private hire vehicle fee -5%.
- Sex entertainment venues and sex establishments are decreased by -7.5%.
- Street trading fees - decreased by -5%.
- All Gambling Act 2005 fees: increased by 10% applied annually in 2014/15 and 2015/16 to remove the shortfall (except where already set at the maximum e.g. Adult Gaming Centres/Family Entertainment Centres).

**23. ITEMS TO GO FORWARD TO COUNCIL**

23.1 There were none.

The meeting concluded at 4.10pm

Signed

Chairman

Dated this

day of