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Blackpool Council

Dear Councillor

PUBLIC PROTECTION SUB-COMMITTEE - TUESDAY, 12TH JULY, 2022

Please find attached additional information for Tuesday, 12th July, 2022 meeting of the Public Protection Sub-Committee, which was received after the agenda had been despatched.

Agenda No Item

- 2 **APPLICATION FOR A NEW SEXUAL ENTERTAINMENT VENUE LICENCE - 11-13 QUEEN STREET (Pages 1 - 6)**

Additional submission from applicant

Yours sincerely

Sarah Chadwick
Democratic Governance Senior Advisor

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AA RECREATION 1 LIMITED – NEW SEV, 11-13 QUEEN STREET, BLACKPOOL

SUMMARY OF APPLICANT'S SUBMISSIONS

- This is not a new hearing. Mr Newton's application for a new SEV Licence for 11-13 Queen Street has already been considered by the Sub-Committee on 8 September 2021 (see attached decision letter where we have highlighted the following points):
 - The Sub-Committee were not persuaded that Mr Newton is unsuitable to hold a SEV Licence.
 - Mr Moseley's late objections to the SEV application were dismissed.
 - The Council will look to work with an operator to move a business if possible.
 - It is possible to engineer a situation where one licence is granted and another surrendered (i.e. where a licence is cancelled under LG (MP) Act 1982 Schedule 3 s. 16).
 - The Sub-Committee decision was deferred until the outcome of Mr Moseley's appeal was known (it is still unknown).

- Mr Newton is a highly experienced, compliant and well regarded SEV operator, with 2 SEV sites in Blackpool.

- In practice, this application is a one-for-one swap of another SEV Licence which is held by Mr Newton (AA Leisure 1 Limited) at 169 Promenade, Blackpool, FY1 5BQ (SEV0002). Mr Newton has previously offered to cancel this SEV Licence, subject to the grant of the new SEV at 11-13 Queen Street.

- This SEV Licence application was submitted on 8 April 2021. It came before the Sub-Committee on 8 September 2021. The Council's Sex Establishment Policy 2016 ("SEP 2016") was in force at the time the application was submitted and at the time the application was heard. Section 3.3 of the SEP 2016 states:
 - "The local authority may refuse an application if it is satisfied that the number of sex establishments of a particular kind in the relevant locality at the time the application is made, is equal to or exceeds the number which the authority considers appropriate for

that locality". For the Bloomfield, Claremont, Foxhall and Talbot Wards, the appropriate number of sexual entertainment venues is 4.

- Given the proposal to cancel the SEV Licence at 169 Promenade, the grant of a new SEV Licence at 11-13 Queen Street would not exceed the SEP 2016 cap of 4 SEVs (in fact there would only be 3 in total, with one new application/appeal outstanding).
 - In our submission, it would be totally unreasonable to apply the nil cap on SEVs contained in the Council's Sex Establishment Policy 2021-2026 ("SEP 2021-2026") to this application, as the SEP 2021-2026 only took effect from 20 October 2021 (i.e. 6 months after this application was made and 1 month after the hearing in September 2021, when the application was deferred). In our view it would be totally unfair to apply the SEP 2021-2026 cap, just because a decision on the application was deferred. If the Sub-Committee is in agreement that the SEP 2016 applies (which is how the Policy is worded), LG(MP) Act 1982 Schedule 3 s.3(b) would not be a valid ground to refuse the application.
- The fact Mr Moseley (Pool Construction Limited) has dragged his heels for so long on his appeal to the Magistrates' Court (it is now over 12 months since his application for transfer of the SEV Licence was refused) should not prevent the Sub-Committee making a decision on this SEV application. Mr Newton is being penalised by Mr Moseley's delay, when he simply wishes to get on with trading at the site.
 - If the Magistrates' Court were to grant Mr Moseley's appeal (it is now listed for hearing in October 2022) it could, in theory, lead to 2 SEVs trading side-by-side on Queen Street. The Sub-Committee was previously concerned about the potential for conflict between operators in this scenario. Whilst this is unlikely, Mr Newton does not foresee any potential for conflict if this scenario did arise.
 - Given the Sub-Committee's comprehensive reasons for previously refusing to transfer the SEV Licence for 15-17 Queen Street to Mr Moseley (Pool Construction Limited) on the basis of his unsuitability, it is our submission that the Magistrates Court is unlikely to overturn that decision

on appeal, as the appellant would have to prove to the Court that the Council's decision was wrong.

- The Sub-Committee is requested to conclude this deferred SEV Licence application and to determine that there are no valid grounds under LG(MP) Act 1982 Schedule 3, s.12(3)(a) which would justify the refusal to grant AA Recreation 1 Limited (Mr Newton) a new SEV Licence at 11-13 Queen Street.

Richard Williams, Solicitor

Keystone Law 11.07.22

Date: 20 September 2021

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Dear Sirs

Re: Application for a SEV licence at 11-13 Queen Street Blackpool

On 8th September 2021, the Public Protection Sub-Committee considered an application by AA Recreation 1 Ltd for a new SEV licence at 11-13 Queen Street Blackpool. Mr Newton, the director of the applicant company attended the hearing represented by Mr Williams. Ms Clover, Counsel appeared to represent David Moseley who had lodged a written objection to the application outside of the 28-day period for objections.

The panel first considered whether they should hear Mr Moseley's objection. Having heard representations from both parties, they determined that they should exercise their discretion to consider the objections as Ms Clover had informed them that concerns had been raised during a previous hearing to consider Mr Moseley's application to transfer the SEV licence for Eden, 15-17 Queen Street and the objection was submitted within days of that hearing.

The objection was on a number of grounds:

1. To grant would create a 5th SEV venue, when the Council's policy was 4.
2. In the application, the applicant offered to surrender the licence for 15-17 Queen Street, any surrender would be unsafe due to the on-going appeal against the refusal to transfer the licence to Pool Construction Ltd, Mr Moseley being the director of that company.
3. Mr Newton is an unsuitable person to be granted a licence due to the poor quality of his existing operations. Mr Newton's honesty and integrity had been called into account in view of his dealings with Mr Moseley and his holding to ransom of the existing licence for 15-17 Queen Street.
4. Mr Newton had expressed the wish to hold all SEV licences in Blackpool which would have the effect of creating a monopoly

The Sub-Committee were not persuaded by the argument that Mr Newton (and therefore his company) are unsuitable to hold a licence. Mr Newton is an experienced operator of SEV venues in Blackpool. Had

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the Police or the Licensing Service had any concerns about the operation of his venues, the Sub-Committee would have expected at the very least to have received objections to this application. Indeed, had Mr Moseley had any genuine concerns about Mr Newton's suitability as a licence holder, the Sub-Committee would have expected him to have lodged his representations during the 28 day period allowed by the legislation. At the time of the hearing in June that led to the objection, these venues were still closed, and had been since the first lockdown in March 2020 therefore Mr Moseley's views on the shabbiness of Mr Newton's other businesses must have been formed prior to the enforced closure. The Sub-Committee are also aware that Mr Newton and Mr Moseley entered into negotiations concerning the lease for 15-17 Queen Street and Mr Moseley appears to have been content to grant a lease, the breakdown of the negotiations appear to have been over clauses in the lease, not Mr Moseley's suitability to operate that type of business. Mr Moseley's comments about Mr Newton holding the existing licence to ransom are noted, but it was this Sub-Committee, who determined that Mr Moseley was unsuitable to hold this licence, not Mr Newton. Whilst this decision is subject to appeal, Mr Newton's honesty and integrity cannot be called into question for raising the concerns to the Sub-Committee, which they felt sufficient to refuse the transfer application.

Mr Moseley's comments concerning a monopoly are noted and will be taken into consideration in the event that the Sub-Committee are asked to consider an application that would have the effect of creating a monopoly.

The Sub-Committee are aware that a licence is not a possession. Accordingly, they would not require the surrender of a licence as a condition of granting another of their own initiative. There can be situations where an operator wishes to move their business in circumstances where the authority are unlikely to grant an additional licence. In this situation, the authority would look to work with the operator with a view to assisting the operator to move, if possible. It is possible in the authority's view to engineer a situation where one licence is granted and one is surrendered if the parties so desire.

Although the Sub-Committee has discounted Mr Moseley's objections, the existence of the licence at 15-17 Queen Street does cause concern. Mr Newton has indicated that even if he could operate the licences at 11-13 and 15-17 Queen Street, he would not as it would not be commercially viable, as he would be competing against himself. If Mr Moseley is successful in his appeal, and he obtained the licence for 15-17 Queen Street, granting a licence for 11-13 Queen Street to Mr Newton would result in identical businesses next door to each other operated by parties who have been in dispute with each other. This type of establishment does not appeal to everyone enjoying the night-time economy in Blackpool, the Sub-Committee's concern is that the granting of the licence applied for today could result in identical businesses next door to each other competing for the same, limited market creating conflict. For this reason, the Sub-Committee is of the view that it cannot make a final decision on this application without knowing the result of the appeal concerning 15-17 Queen Street. The Sub-Committee therefore defer their decision on this application until the Magistrates' Court have determined Mr Moseley's appeal.

Yours faithfully

Sharon Davies

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