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Blackpool Council

11 June 2021

To: Councillors Collett, Hugo, Hunter, Hutton, D Scott, R Scott and Wilshaw

The above members are requested to attend the:

PUBLIC PROTECTION SUB-COMMITTEE

Tuesday, 22 June 2021 at 6.00 pm
In the Council Chamber

A G E N D A

1 DECLARATIONS OF INTEREST

Members are asked to declare any interests in the items under consideration and in doing so state:

(1) the type of interest concerned either a

- (a) personal interest
- (b) prejudicial interest
- (c) disclosable pecuniary interest (DPI)

and

(2) the nature of the interest concerned

If any member requires advice on declarations of interests, they are advised to contact the Head of Democratic Governance in advance of the meeting.

2 MINUTES OF THE LAST MEETING HELD ON 25 MAY 2021 (Pages 1 - 4)

To agree the minutes of the last meeting held on 25 May 2021 as a true and correct record.

3 APPLICATION TO TRANSFER A SEXUAL ENTERTAINMENT VENUE LICENCE (Pages 5 - 70)

To consider an application by Pool Construction Ltd to transfer the Sexual Entertainment Venue licence for Eden, 15 – 17 Queen Street, Blackpool.

4 DATE OF NEXT MEETING

To note the date of the next meeting as 20 July 2021.

Venue information:

First floor meeting room (lift available), accessible toilets (ground floor), no-smoking building.

Other information:

For queries regarding this agenda please contact Sarah Chadwick, Democratic Governance Adviser, Tel: (01253) 477153, e-mail sarah.chadwick@blackpool.gov.uk

Copies of agendas and minutes of Council and committee meetings are available on the Council's website at www.blackpool.gov.uk.

Present:

Councillor Hutton (in the Chair)

Councillors

Farrell
Hunter

D Scott
R Scott

Wilshaw

In Attendance:

Sarah Chadwick, Democratic Governance Advisor

Sharon Davies, Senior Licensing Solicitor

1 DECLARATIONS OF INTEREST

There were no declarations of interest on this occasion.

2 EXCLUSION OF PRESS AND PUBLIC

The Public Protection Sub-Committee considered excluding the public and press from agenda items five and six as those items contained information which was exempt from publication by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

It considered that the public interest would not be served by allowing the information to be held in open session due to the sensitive information about individuals outlined.

Resolved: That under Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of Agenda Item Five, Hackney Carriage and Private Hire Driver Licences and Agenda Item Six, Use of Delegated Powers since the last meeting.

3 MINUTES OF THE LAST MEETING HELD ON 27 APRIL 2021

Resolved: That the minutes of the meeting held on 27 April 2021 be approved and signed by the Chair as a correct record.

4 ADOPTION OF BLACKPOOL COUNCIL'S POLICY ON THE USE OF THE NATIONAL REGISTER OF TAXI LICENCE REVOCATIONS AND REFUSALS (NR3)

The Public Protection Sub-Committee considered the proposed policy on the use of the National Register of Taxi Licence Revocations and Refusals (NR3) for Hackney Carriage and Private Hire Drivers and the outcome of a consultation which had been undertaken with trade representatives.

MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETING - TUESDAY, 25 MAY 2021

Mr Ryan Ratcliffe, Licensing Enforcement Officer, presented the item and explained that the Register had been commissioned by the Local Government Association to allow Licensing Authorities across the country to share information on refusals and revocations of Hackney Carriage and Private Hire driver licences. This would prevent people found not to be fit and proper in one area from securing a licence elsewhere.

Members were advised that a four week period of consultation had recently been completed with taxi trade representatives on the adoption of the NR3 and Blackpool Council's policy on the use of that Register, during which no responses had been received from the trade. The Sub-Committee acknowledged the need to participate in the Register and so resolved to approve the adoption of the NR3 initiative and Blackpool Council's policy on the use of that register and recommend them to the relevant Cabinet Member.

Resolved:

1. To endorse participation in the National Register of Taxi Licence Revocations and Refusals (NR3) initiative.
2. To recommend the proposed Policy on the use of the NR3 to the relevant Cabinet Member.
3. To note that it is proposed that the Policy on the use of the NR3 will be reviewed after 5 years.

5 APPLICATION TO TRANSFER A SEXUAL ENTERTAINMENT VENUE LICENCE

The Sub-Committee considered an application by Pool Construction Ltd to transfer the Sexual Entertainment Venue (SEV) licence for Eden, 15 – 17 Queen Street, Blackpool.

Further information had been submitted by the applicant after the publication of the agenda and in light of this new information Members agreed more time was needed to consider the application. The Sub-Committee therefore decided to defer the case to a later date.

Resolved:

That the application to transfer the Sexual Entertainment Venue (SEV) licence for Eden, 15 – 17 Queen Street, be deferred to a future meeting.

6 HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a licence holder, A.L.D., who had been convicted of offences or who had otherwise given reasons for concern.

Mr Ryan Ratcliffe, Licensing Enforcement Officer, presented the case and explained that A.L.D. had been a licensed driver since 1990. Members were informed that A.L.D. had previously appeared before the Sub-Committee twice, latterly in 2019 when they were issued with a warning letter and advised that any future appearance would likely result in suspension or revocation of their licence.

During their recent driver renewal process a check of A.L.D.'s DVLA driving licence had revealed they currently had nine penalty points for three separate speeding offences

MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETING - TUESDAY, 25 MAY 2021

between June 2019 and November 2020, of which only two were declared by A.L.D. on their application. Mr Ratcliffe further reported a number of historical speeding offences between February 2000 and March 2014 totalling 31 penalty points over that time. He highlighted Section 14.5 of the Hackney Carriage and Private Hire Convictions Policy which stated that licensed drivers who accumulated nine or more penalty points would be referred to the Sub-Committee for consideration and concluded that as A.L.D.'s driving record was well below the standard expected from a licensed driver the minimum of a suspension was recommended.

In response, A.L.D. informed Members that the demand for work had reduced to only working three or four nights a week due to the pandemic which had put a strain on their finances, adding that they felt they had been unfortunate to have been caught speeding fractionally over the limit. A.L.D. explained that the offence which had not been declared on their application occurred whilst driving a private car, not a licensed vehicle and requested that the Sub-Committee noted the length of time they had been driving when considering their case.

The Sub-Committee carefully considered the information provided by both parties. Members expressed concerns over the number and frequency of offences accrued and felt A.L.D. demonstrated a lack of remorse with regards to their driving record. Consideration was given to imposing a two week suspension but due to the number of offences received over a significant period of time agreed to impose a four week suspension.

Resolved:

To suspend A.L.D.'s Hackney Carriage and Private Hire Driver Licences for a period of four weeks.

7 USE OF DELEGATED POWERS SINCE THE LAST MEETING

Mr Ryan Ratcliffe, Licensing Enforcement Officer, updated Members on the use of Delegated Powers to revoke a Private Hire Driver's licence since the last meeting.

Mr Ratcliffe reported that Lancashire Constabulary had made the Licensing Service aware of a serious road traffic collision which took place on 2 May 2021 involving a Private Hire vehicle. The driver of that vehicle, D.W.M., tested positive for a controlled substance when swabbed at the roadside by the attending police officer.

D.W.M. was subsequently invited to attend an interview with the Licensing Service on 14 May 2021 to discuss the matter, at which the account provided by them in relation to their use of controlled substances was not deemed to be satisfactory. As a result, the Licensing Enforcement Officer had decided on balance that D.W.M. was not a fit and proper person and so revoked D.W.M.'s Private Hire Driver's licence with immediate effect.

Resolved: To note the update on the use of Delegated Powers.

MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETING - TUESDAY, 25 MAY 2021

8 DATE OF NEXT MEETING

The date of the next meeting was confirmed as 22 June 2021.

Chairman

(The meeting ended 6.45 pm)

Any queries regarding these minutes, please contact:
Sarah Chadwick Democratic Governance Adviser
Tel: (01253) 477153
E-mail: sarah.chadwick@blackpool.gov.uk

Report to:	PUBLIC PROTECTION SUB-COMMITTEE
Relevant Officer:	Tim Coglan, Head of Public Protection
Date of Meeting	22 June 2021

TRANSFER OF SEXUAL ENTERTAINMENT VENUE – EDEN, 15–17 QUEEN STREET, BLACKPOOL

1.0 Purpose of the report:

1.1 To consider an application by Pool Construction Ltd to transfer the Sexual Entertainment Venue (SEV) licence for Eden, 15 – 17 Queen Street, Blackpool.

2.0 Recommendation(s):

2.1 The Sub-Committee will be requested to determine whether to transfer the SEV licence for Eden, 15-17 Queen Street to Pool Construction Ltd.

3.0 Reasons for recommendation(s):

3.1 An objection has been received therefore the application to transfer the licence needs to be determined.

3.2 Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.3 Is the recommendation in accordance with the Council’s approved budget? Yes

4.0 Other alternative options to be considered:

4.1 None, once an application is submitted and representations received it must be determined by the Sub-Committee.

5.0 Council priority:

5.1 The relevant Council priority is “The economy: Maximising growth and opportunity across Blackpool.”

6.0 Background information

- 6.1 Eden, 15-17 Queen Street, Blackpool has been licensed as a Sexual Entertainment Venue (SEV) since September 2013. The licence has been held by AA Recreation 1 Ltd since 15 January 2021. The Licensing Service received an application on 8 April 2021 from Pool Construction Ltd to transfer the licence (copy attached at appendix 3a).
- 6.2 Following advertisement of the transfer application, the Licensing Service received a public objection via email on 5 May 2021 from the Directors and Shareholders for AA Recreation 1 Ltd (copy attached at appendix 3b). The objection looks at the suitability of the applicant, criteria for which is detailed in Blackpool Council's Sex Establishment Policy 2016 (copy attached at appendix 3c).
- 6.3 Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 governs the issue of SEV licences.

The Act provides a number of grounds on which an application may be refused –

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- (c) that the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard
- to the character of the relevant locality; or
 - to the use to which any premises in the vicinity are put; or
 - to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

- 6.4 A witness statement on behalf of the applicant David Moseley, Director of Pool Construction Ltd, was received by email from Kuit Steinart Levy LLP on 24 May 2021 in response to the representation and is attached at appendix 3d.
- 6.5 Further correspondence was received by email on 24 May 2021 from Keystone Law acting for the objector arguing a procedural error in the advertising of the application, a copy of which is attached at appendix 3e. A response on the procedural points raised was received on 8 June 2021 from Kuit Steinart Levy LLP on behalf of the applicant and is attached at appendix 3f.

6.6 Does the information submitted include any exempt information? No

7.0 List of Appendices:

- 7.1 Appendix 3(a) - Transfer application (Pool Construction Ltd)
- Appendix 3(b) - Objection (Directors and Shareholders - AA Recreation 1 Ltd)
- Appendix 3(c) – Sex Establishment Policy 2016
- Appendix 3(d) – Witness Statement of David Moseley
- Appendix 3(e) – Procedural argument from Keystone Law
- Appendix 3(f) – Response to procedural argument from Kuit Steinart Levy LLP

8.0 Financial considerations:

- 8.1 None.

9.0 Legal considerations:

- 9.1 Renewal of this licence may only be refused on one of the grounds listed in Schedule 3 Local Government (Miscellaneous Provisions) Act 1982.

There is the right of appeal to the Magistrates' Court.

10.0 Risk management considerations:

- 10.1 None.

11.0 Equalities considerations:

- 11.1 None.

12.0 Sustainability, climate change and environmental considerations:

- 12.1 None.

13.0 Internal/external consultation undertaken:

- 13.1 None.

14.0 Background papers:

- 14.1 Local Government (Miscellaneous Provisions) Act 1982.

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Blackpool
Application to change a sex shop and cinema
licence
Local Government (Miscellaneous Provisions) Act
1982

For help contact
licensing@blackpool.gov.uk
 Telephone: 01253 478397

* required information

Section 1 of 5

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference

Not Currently In Use

This is the unique reference for this application generated by the system.

Your reference

DAV645/1

You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?

Yes No

Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name

Pool Construction Ltd

* Family name

n/a

* E-mail

rebeccaingram@kuits.com

Main telephone number

0161 838 7888

Include country code.

Other telephone number

Indicate here if the applicant would prefer not to be contacted by telephone

Is the applicant:

Applying as a business or organisation, including as a sole trader
 Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means the applicant is applying so the applicant can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

* Is the applicant's business registered in the UK with Companies House?

Yes No

* Registration number

10915522

* Business name

Pool Construction Ltd

If the applicant's business is registered, use its registered name.

* VAT number

GB n/a

Put "none" if the applicant is not registered for VAT.

Continued from previous page...

* Legal status

* Applicant's position in the business

Home country

The country where the applicant's headquarters are.

Registered Address

Address registered with Companies House.

* Building number or name

* Street

District

* City or town

County or administrative area

* Postcode

* Country

Agent Details

* First name

* Family name

* E-mail

Main telephone number

Include country code.

Other telephone number

Indicate here if you would prefer not to be contacted by telephone

Are you:

An agent that is a business or organisation, including a sole trader

A sole trader is a business owned by one person without any special legal structure.

A private individual acting as an agent

Agent Business

* Is your business registered in the UK with Companies House? Yes No

* Registration number

* Business name

If your business is registered, use its registered name.

* VAT number

Put "none" if you are not registered for VAT.

* Legal status

Continued from previous page...

* Your position in the business

Home country

The country where the headquarters of your business is located.

Agent Registered Address

Address registered with Companies House.

* Building number or name

* Street

District

* City or town

County or administrative area

* Postcode

* Country

Section 2 of 5

DETAILS OF THE LICENCE, PERMIT OR REGISTRATION

Identifying The Licence

* Type of licence, permit or registration held

The activity the licence covers.

* Licence, permit or registration number

Name Of The Licence Or Permit Holder

Put the name of the individual or business that is the current licence holder. If there are joint licence holders, just name one.

* Name

Address Of The Premises

Is the address the same as (or similar to) the address given in section one?

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

Yes No

* Building number or name

* Street

District

* City or town

County or administrative area

Postcode

* Country

Continued from previous page...

Contact Details

Are the contact details the same as (or similar to) those given in section one?

If "Yes" is selected you can re-use the details from section one, or amend them as required. Select "No" to enter a completely new set of details.

- Yes No

E-mail

* Telephone number

Other telephone number

Section 3 of 5

ABOUT THE CHANGE

Type Of Change

* What do you want to do with the licence, permit or registration?

Subsequent questions will only refer to "licence", but that also includes permits and registrations.

- Surrender it
 Transfer it
 Report a change

The licence or permit is no longer needed.
The licence or permit should be transferred to another person or organisation.

* Transferring A Licence

- Are you the current licence holder (or representing them)?
 Are you intending to be the new licence holder (or representing them)?

* Is the transfer to be with immediate effect if permission is granted?

- Yes No

You must allow time for the authority to make its decision.

Request To Transfer

If it is intended to have joint licence holders, describe the **additional** licence holders.

Is the intended licence holder:

- Applying as a business or organisation, including as a sole trader
 Applying as an individual

Their Business

Is the applicant's business registered in the UK with Companies House? Yes No

Registration number

* Business name

VAT number

Put "none" if the applicant is not registered for VAT.

* Legal status

Continued from previous page...

Business Address

* Building number or name

* Street

District

* City or town

County or administrative area

Postcode

* Country

Home country

The country where the applicant's headquarters are.

* Have the existing licence holder(s) given their consent?

Yes No

* I give permission for the existing licence holder(s) to be contacted in connection with the determination of this transfer

Section 4 of 5

OTHER RELATED LICENCES

* Are there other current licences, permits or registrations for these premises with this authority?

Yes No

Will any change in the same way as this application?

Yes No

In some cases there may be additional fees associated with changes to these other licences. List each one affected in the same way. Ensure that you only include licences, permits and registrations regulated by this authority.

Type of licence, permit or registration The activity the licence covers.

Licence, permit or registration number

Section 5 of 5

PAYMENT DETAILS

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

This formality requires a fixed fee of £370

DECLARATION

Continued from previous page...

- * I am aware of the provisions of The Local Government (Miscellaneous Provisions) Act 1982. The details contained in the application form and any attached documentation are correct to the best of my knowledge and belief.
I understand that the information I have provided, will be held by the Council on both computerised and manual files.
- * This data may be made available on a public register if so required by relevant legislation. The data may also be disclosed to other departments within the Council and other organisations, but only in order to ensure compliance with relevant legislation, for identification purposes or to prevent or detect fraud or a crime.

Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

* Full name	<input type="text" value="Kuit Steinart Levy LLP"/>
* Capacity	<input type="text" value="Solicitors and Authorised Agents"/>
* Date	<input type="text" value="07"/> / <input type="text" value="04"/> / <input type="text" value="2021"/>
	dd mm yyyy

Once you're finished you need to do the following:

1. Save this form to your computer by clicking file/save as...
2. Go back to <https://www.gov.uk/apply-for-a-licence/sex-shop-and-cinema-licence/blackpool/change-1> to upload this file and continue with your application.

Don't forget to make sure you have all your supporting documentation to hand.

OFFICE USE ONLY

Applicant reference number	<input type="text" value="DAV645/1"/>
Fee paid	<input type="text"/>
Payment provider reference	<input type="text"/>
ELMS Payment Reference	<input type="text"/>
Payment status	<input type="text"/>
Payment authorisation code	<input type="text"/>
Payment authorisation date	<input type="text"/>
Date and time submitted	<input type="text"/>
Approval deadline	<input type="text"/>
Error message	<input type="text"/>
Is Digitally signed	<input type="checkbox"/>

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Company number **10915522**

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Filter officers

<input type="checkbox"/> Current officers
Apply filter

1 officer / 0 resignations

MOSELEY, David

Correspondence address **580-582 Lytham Road, Blackpool, Lancashire, England, FY4 1RB**

Role Active **Director**

Date of birth **December 1949**

Appointed on **15 August 2017**

Nationality **British**

Country of residence **England**

Occupation **Director**

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Details for application - Blackpool x +

https://licensify-admin.publishing.service.gov.uk/blackpool/application/606dced8c441793bbaef4d01

Licensing Applications Help

kelly.guy@blackpool.gov.uk

Submission Summary

[Start Processing](#) [Collect](#)

Application ref:	blackpool-1059874	Tacit consent does not apply Process by: 06/06/2021 Status: Not collected
Licence:	Application to change a sex shop and cinema licence	
Applicant name:	Kuit Steinart Levy LLP N/a	
Applicant email:	rebeccaingram@kuits.com	
Submitted on:	07/04/2021 16:25	
Total fee:	£370.00	Recent History Notification to rebeccaingram@kuits.com: Sent on 07/04/2021 16:47 Notification to licensing@blackpool.gov.uk: Sent on 07/04/2021 16:47 Notification to : Failed on 07/04/2021 16:47 Notification to : Failed on 07/04/2021 16:47
Payment status:	Paid	
Civica ref:	SELMS00000348	
Amount paid:	£370.00	
Fee outstanding:	£0.00	
Application		
Kuit Steinart Levy LLP N/a application form		Start processing to download the application

Type here to search

15:21 08/04/2021

SEX ESTABLISHMENT LICENCE APPLICATION

Notice of application for transfer of a sex establishment licence pursuant to Schedule 3 Local Government (Miscellaneous Provisions) Act 1982.

Take notice that on 7 April 2021, Mr David Moseley applied to Blackpool Council for the transfer of a sex establishment licence for:

Eden One, First and Second Floors, 15-17 Queen Street, Blackpool

If granted the application will allow the premises to operate as a /sexual encounter venue at the following times

20:00 – 04:00 daily

Any person wishing to make objections on the application may do so in writing to:

Licensing Service, Blackpool Council, Municipal Buildings,
PO Box 4, Blackpool, FY1 1NA
Tel: 01253 478397, Fax: 01253 478372
Email: licensing@blackpool.gov.uk

The grounds of the objection must be stated in general terms.

A copy of the application for this licence is kept by the Licensing Authority at the above address. This application can be viewed by appointment from Monday to Friday between 10.00a.m. and 4.00p.m.

The objection must be received by the Council no later than 5th May 2021

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- ◆ Full business address including post code,
- ◆ A contact telephone number
- ◆ Full wording for the notice you require
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APPLICATION NOTICE OF
APPLICATION FOR TRANSFER OF
A SEX ESTABLISHMENT LICENCE
PUBSIANT TO SCHEDULE 3 LOCAL
GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1982**

Take notice that on 7 April 2021, Mr David Moseley applied to Blackpool Council for the transfer of a sex establishment licence for Eden One, First and Second Floors, 15-17 Queen Street, Blackpool. If granted the application will allow the premises to operate as a sexual encounter venue at the following times 20:00 – 04:00 daily. Any person wishing to make objections on the application may do so in writing to: Licensing Service, Blackpool Council, Municipal Buildings, PO Box 4, Blackpool FY1 1NA. Tel: 01253 478977, Fax: 01253 478972. Email: licensing@blackpool.gov.uk. The grounds of the objection must be stated in general terms. A copy of the application for this licence is kept by the Licensing Authority at the above address. This application can be viewed by appointment from Monday to Friday between 10.00am and 4.00pm. The objection must be received by the Council no later than 5th May 2021.

OBJECTION TO THE TRANSFER OF SEV LICENSE 15-17 QUEEN STREET

APPLICANT DETAILS – David Moseley on behalf of Pool Construction Ltd

DATE OF OBJECTION – 4th May 2021

OBJECTOR DETAILS - Directors and Shareholders of ‘AA Leisure1 Ltd’, ‘AAEntertainment1 Ltd’, ‘AA Recreation 1 Ltd’.

INTRODUCTION

This objection is based upon concerns we have that the Transfer of licence will be contrary to Blackpool Councils Policy relating to Sex Entertainment Licences, if granted:

1. The applicant is someone without the relevant experience.
2. The applicant has a poor track record relating to compliance of licensed and commercial premises.
3. The applicant would also like it placed on record that he feels that Mr Moseley has used his position as the landlord to make the lease untenable to engineer a position whereby he can make this application to the Council. This was frankly engineered through deception and has caused the applicant much distress as the unreasonable behaviour gradually came to light. In retrospect this was to create a situation that would enable Mr Moseley to make this application.
4. The final observation is that if this is granted to Mr Moseley, and he subsequently breaches regulations this would bring the other license holders into disrepute by association when in reality they wish to comply with all regulations and continue to run venues that are an asset to the prosperity of the area of Blackpool in which they operate.

REASONS FOR OBJECTION

The relevant legislation *Schedule 3 Local Government (Miscellaneous Provisions) Act 1982* states the following.

Section 12 (3) a) The applicant is unsuitable to hold a licence by reason of having been convicted of offence or for any other reason.

The Councils own policy provides more detail on what it considers to be a suitable applicant and conversely an unsuitable applicant, the paragraphs highlighted in bold type are the points we intend to cover in this submission.

SUITABILITY OF APPLICANTS.

The Council will need to be satisfied that the applicants for a sex establishment licence are suitable to operate the business by ensuring:

a) that the operator is honest

b) That the operator is qualified by experience and/or knowledge to run the type of sex establishment That the operator understands the general conditions and will comply with them

c) That the operator is proposing a management structure which will deliver compliance with operating conditions, for example through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and in the case of a sexual entertainment venue, policies for the welfare of performers

d) If the application is for a sexual entertainment venue, that the operator can be relied upon to act in the best interests of the performers e.g., in how they are remunerated, the facilities provided, how they are protected and how and by whom their physical and psychological welfare is monitored

e) That the applicant can be relied upon to protect the public e.g., transparent charging and freedom from solicitation

f) That the operator can show either a track record of management of compliant premises, or that he/she has an understanding of the rules governing the type of licence applied for will employ individuals who have such a track record.

All applications will be considered but they are unlikely to be granted if any of the following apply:

a) The applicant has a criminal record. Offences that will be considered particularly relevant include convictions for:

- Dishonesty
- Violence
- Sexual offences
 - Drugs
- People trafficking

b) The applicant has previously been involved in running an unlicensed sex establishment.

c) If the licence were to be granted, the business to which it relates would be managed by or run for the benefit of a person other than the applicant who would be refused the grant of such a licence if they made it themselves

Mr Moseley has no experience of running a Sex Entertainment Venue and therefore cannot satisfy point b) above in either of the criteria listed. We would point out that one of the objector Directors and a Manager spent a complete season with an existing well respected license holder prior to them acquiring a SEV.

Considering points c) and f) together we feel Mr Moseley has a track record demonstrating serious non-compliance relating to 2 separate properties and businesses namely 15-17 Queen Street, Blackpool, and a Rest Home in South Shore. We believe these demonstrate both a lack of understanding, respect for the law and compliance with the necessary rules and regulations along with a lack of credible management structure and training protocols.

The Licensing Authority had cause to hear evidence from the Police and other Responsible Authorities on several occasions where concerns relating to Crime and Disorder and Protection of Children from Harm were raised.

The Council possess all the historic information regarding these proven breaches but for your convenience they are summarised in the attached appendix

CONCLUSION

Mr Mosely cannot demonstrate that he has a good track record that would satisfy the requirements of the policy, Premises Licence Reviews are not undertaken lightly and there has usually been a series of problems that have led to such a decision being made.

To have a licence suspended again is a rare occurrence usually only given to Licence Holders who leave the Committees with little other option.

The press article relating to the rest home drives home the seriousness of the breaches Mr Mosley was convicted of when it highlights the Judges' comments:

"It must surely stand as a powerful deterrent for anyone who might suppose ensuring fire safety in premises they are responsible for is an option and not an obligation in law"

The Directors of the objectors Companies have spent much time and money developing processes and procedures that comply with and often exceed the stipulations in the SEV. All officers, staff and contractors to the businesses have been fully trained in the relevant processes and this training is regularly reinforced in team training meetings, one-to-ones and appraisals.

The fact is the Licence was issued to 'AA Recreation 1 Ltd' and expires in January 2022. Mr Mosley's attempt to transfer a licence without the current holder's consent is akin to applying to DVLA to have your neighbour's car registered in your name without have the decency to make an offer to buy it first.

His intentions are nothing short of disingenuous and in any other walk of life seeking to obtain property that belongs to another with the intention to deprive, would be unacceptable.

European Court Human Rights have established for some years that a Licence is a possession as such I have qualified rights to remain the holder of that possession.

APPENDIX TO OBJECTION – Previous Breaches

FIRST INCIDENT AND OUTCOME

The Blackpool Council being the licensing authority on the 24th December 2009 received an application from Lancashire Constabulary to review the premises licence issued in respect of Septembers, 15-17 Queen Street, Blackpool.

" The panel has listened to statements from responsible authorities which have indicated a lack of due process in the admissions policy for underage and intoxicated people. The panel are very concerned that Septembers have failed 4 test purchases in the last twelve months."

" The panel acknowledge the fact that all Health & Safety issues have been addressed although we note it was completed reactively rather than proactively."

" We are very concerned about the poor training of staff and ongoing training issues that have resulted in this licence being reviewed today. We appreciate that the premises licence holder accepts that the original aims of the bar were not but were disappointed more vigorous discussions regarding the varying of conditions were not discussed with the authorities. We accept that the issues discussed today do not impinge on the good name the restaurant has."

The committee resolved to do the following:

- Conditions numbers 3, 4, 27, 31, 32 and 41 in Annex 2 are to be removed
- The following conditions will be imposed:
 - The capacity of the ground floor will be limited to 100 (one hundred) people.
 - Seating must be available for at least 50 people on the ground floor at all times
 - All staff must attain BIIAB Level 1 training (or equivalent) within 4 weeks of commencement of employment at the premises.
- The following Annex 2 conditions will be amended:
 - 14: Remove word 'suitable' insert word 'monthly'
 - 20: All door supervisors must wear High Visibility jackets at all times whilst working on the premises.
 - 29: All drinking vessels on the ground floor must be polycarbonate or plastic
 - 42: Insert the word 'monthly' between 'receive' and 'training'
 - 43: reference to '21' to be substituted with '25'
 - 44: reference to 'challenge 21' to be substituted with 'challenge 25'
- Reduce the hours of operation: Licensable activities to cease at 03:00 every day and the premises to close at 03:30 every day.

In accordance with Section 52(6) of the Licensing Act 2003, the panel has decided to impose a condition that no licensable activity will take place on the ground floor of the premises for a period of 4 weeks from the date this decision takes effect.

We consider this to be necessary and proportionate to promote the four licensing objectives.

This decision will come into effect in 21 days unless notice of appeal is served within that time.

Date: 19th February 2010

.....

The salient points we wish to draw to the Committees attention are;

- **A lack of due process in the admissions policy for underage and intoxicated persons**
- **4 failed test purchases in 12 months**
- **Poor training of staff and on-going training issues**

SECOND INCIDENT AND OUTCOME

In July of 2010 a second Review was considered for the same premises where Mr Mosley was still the Premises Licence holder, the decision notice is found below;

The Blackpool Council being the licensing authority on the 23rd April 2010 received an application from Weights and Measures to review the premises licence issued in respect of Septembers, Queen Street, Blackpool.

The Panel considered carefully all the submissions presented in writing prior to the meeting and verbally at the hearing and noted the Police assessment of improvement in the premises. Members also noted that following the failed test purchase on 27th March, a further test purchase on 1st April had been passed in part. Members noted Mr Moseley's consent to the revised CCTV conditions suggested by the Police. However, they were of the opinion that it was necessary and proportionate in this instance to add further conditions to the licence to ensure the promotion of the four licensing objectives: the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm and it was agreed additionally to effectively suspend the licence relating to the ground floor by not allowing licensable activities on the ground floor for a period of 8 weeks

The Panel agreed that the following amendments be made to the conditions:

- *Conditions numbers 20, 21 and 22 in Annex 2 are to be removed*
- *The following conditions will be imposed:*
 1. *CCTV will be installed internally and externally at the premises and will comply with the following: -*
 - *The CCTV shall be installed, maintained and operated to the reasonable satisfaction of Lancashire Constabulary. All public areas of the premises, with the exception of the toilets, are to be covered by the system, including any outside seating area.*
 - *The system will display on any recording the correct time and date of the recording.*
 - *The system will make recordings during all hours the premises are open to the public.*
 - *VCR tapes or digital recording shall be held for a minimum 31 days and 28 days respectively, after the recording is made and will be made available to the Police or any authorised persons acting for a Responsible Authority for inspection upon request.*
 - *The system will, as a minimum, record images of the head and shoulders of all persons entering the premises.*
 2. *A staff member who is conversant with the operation of the CCTV system will be on the premises at all times when the premises are open to the public. This staff member will be able to show police recent data or footage with the absolute minimum or delay when requested.*
 3. *The Licence holder or Designated Premises Supervisor shall notify the Police Licensing Unit on any occasion when the CCTV or radio system is to be inoperative for a period in excess of one working day and shall provide a certificate from a competent person stating the reason for the system being inoperative and the measures which have been taken to satisfy the licence conditions.*
 4. *That two SIA trained door staff will be on duty from 9pm on Thursday, Friday and Saturday nights.*
 5. *That from 9pm every evening no persons under the age of 21, excluding staff on duty, shall be on the premises.*

In accordance with Section 52(6) of the Licensing Act 2003, the panel has decided to impose a condition that no licensable activity will take place on the ground floor of the premises for a period of 8 weeks from the date this decision takes effect.

We consider this to be necessary and proportionate to promote the four licensing objectives.

This decision will come into effect in 21 days unless notice of appeal is served within that time.
Date: 16th July 2010

The salient points we wish to draw to the Committees attention are;
Members noted a further failed test purchase on the 27th of March 2010 which occurred approximately 6 weeks after the hearing in February 2010 where underage sales seemed to be a recurring theme.
Members felt that it was necessary and proportionate to suspend the licence in order to promote the Licensing Objectives for a period of 8 weeks.

THIRD INCIDENT AND OUTCOME

The 3rd example of poor management we wish to highlight is the Rest Home that was operated by Mr Mosley, we have taken an article from the media which summarises the issues.

The owner of a care home in the Lancashire town of Blackpool has been given a landmark fine for fire safety breaches after a court ruled that he put the lives of his residents at serious risk.

David Moseley, the owner of the firm DM Care and the Ambassador Care Home in South Shore, was prosecuted after a fire broke out at the property in January 2012. This is when a large number of fire safety breaches were discovered at the 40-resident care home, suggesting that Mr Moseley and his management team had not undergone proper fire safety training. The breaches included the following:

- A fire exit route blocked by a Santa's Grotto
- Failure to have approved fire detection equipment
- Lack of working fire alarms

After admitting a total of seven breaches of fire safety regulations, Mr Moseley was fined £35,000 and ordered to pay more than £5,000 in court costs. This is the largest fine for such an offence ever handed out in Lancashire, as well as being the largest that Fleetwood Magistrates' Court could impose. Lancashire Fire and Rescue Service's Paul Ratcliffe said of the landmark fine:

"It must surely stand as a powerful deterrent for anyone who might suppose ensuring fire safety in premises they are responsible for is an option and not an obligation in law."

FOURTH INCIDENT

<https://www.lancs.live/news/lancashire-news/blackpool-care-home-shut-down-19065580>

Blackpool care home shut down after inspectors find poo-stained mattress and dirty fridge

A Blackpool care home has been shut down a number of shocking discoveries including poo stains on a mattress, a dirty medicine fridge, and residents being given the wrong doses of medicine.

Inspectors from England's health watchdog, the Care Quality Commission, visited Highbury House Care Home over five days in August 2019 after a person sustained serious injuries leading to a criminal investigation.

While they didn't assess the incident due to ongoing criminal proceedings, they found huge concerns at the Lytham Road care home, with people at risk from 'avoidable harm'.

In their report, published last Friday (October 2), they noted how the home had no up-to-date audits to ensure it was clean.

One mattress that was checked was 'ingrained with stains from faecal matter', they said.

The fridge that was used to store medicines was also unclean, with a box holding prescribed medicine stuck to the floor of the fridge.

Two residents had also been given the wrong doses of medicine because of 'poor record keeping' at the care home.

Inspectors came across a prescribed cream in one resident's room that was dated 2017, with the label on the cream indicating it did not belong to anyone currently living at the home.

"The provider representative and two staff members did not recognise the name on the cream bottle," inspectors said.

They added: "We found people were at risk of being given doses of some of their medicines too close together or at the wrong times because the provider representative's systems did not include checks to make sure this did not happen."

The care home was rated as Inadequate overall; the worst rating the CQC can issue.

It was rated Inadequate in the two categories concerning safety and good leadership, with Requires Improvement ratings issues for the three categories of effectiveness, care, and responsiveness.

Inspectors found that residents were not protected from the risk of abuse and unsafe care. Not all staff had received appropriate training, with one staff member working there for five months without any training relating to safeguarding audits.

One agency staff member even told inspectors that they were "just winging it" when it came to understanding residents' needs.

Ultimately, the CQC banned the care home provider, D M Care Limited, from running Highbury House, leading to the shutdown of the site.

Sex Establishment Policy 2016

Blackpool Council



Sex Establishment Policy 2016

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Sex Establishment Policy 2016

1. Introduction

This policy statement sets out Blackpool Council's approach to the regulation of sex establishments in the Borough.

Nothing in this policy undermines the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act

The policy covers the operation of the following:

1.1 Sex Shops

A sex shop is defined as any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating –

- a) Sex articles; or
- b) Other things intended for use in connection with, or for the purpose of stimulating or encouraging –
 - i) Sexual activity; or
 - ii) Acts of force or restraint which is associated with sexual activity.

1.2 Sex Cinemas

A sex cinema is defined as any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which –

- a) Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage –
 - i) Sexual activity; or
 - ii) Acts of force or restraint which are associated with sexual activity;
- or
- b) Are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions.

But does not include a dwelling house to which the public is not admitted.

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1.3 Sexual Entertainment Venues

A sexual entertainment venue is defined as any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

“Relevant entertainment” means –

- a) Any live performance; or
- b) Any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)

The following premises are not sexual entertainment venues:

- a) Sex shops and sex cinemas
- b) Premises which provide relevant entertainment on an infrequent basis i.e. premises where –
 - i) No relevant entertainment has been provided on more than 11 occasions within a 12month period;
 - ii) No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - iii) No such occasion has lasted longer than 24 hours
- c) Other premises or types of performance or displays exempted by an order made by the Secretary of State

1.4 Waivers

Schedule 3 of the 1982 Act makes provision for the Council to grant a waiver from the requirement to hold a sex establishment licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit.

The Council does not consider it would be appropriate to permit waivers from the requirement to hold a sex establishment licence in respect of sexual entertainment venues particularly as the legislation allows relevant entertainment on an infrequent basis of no more than 11 occasions within a 12month period, providing there is at least one month between each period of entertainment which itself does not last for more than 24 hours.

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The Council may at any time give a person who would require a licence but for a waiver notice that the waiver it to terminate on a date not less than 28days from the date the notice is given.

Whilst each application will be considered on its own merits by the Public Protection Sub-Committee in light of the exemption in relation to the provision of relevant entertainment on an infrequent basis the Council takes the view that waivers are unlikely to be appropriate in relation to relevant entertainment and would only be covered in exceptional circumstances.

2. Making an Application

Applications for the grant, renewal, variation or transfer of a licence must be made on the prescribed form which is available upon request from the Licensing Service or at www.blackpool.gov.uk. Applications can be submitted on paper or electronically.

New applications or variations which involve a change of layout must be accompanied by a plan of the premises to which the application relates. The plan must show:

- a) The extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
- b) The location of points of access to and egress from the premises;
- c) the location of escape routes from the premises;
- d) In a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
- e) Fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
- f) In a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
- g) In a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
- h) In the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
- i) The location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and

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j) The location of a kitchen, if any, on the premises

2.1 Advertising of applications

Applications for must be advertised on/near the premises to which the application relates and in a newspaper circulating in the Borough.

On the premises

A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day the application was given to the Council. The notice must be in such a position that it can be conveniently read by members of the public.

The notice must be on paper sized A4 or larger containing the information detailed below printed legibly in black ink.

In the newspaper

Applicants must give public notice of the application by publishing an advertisement in a local newspaper that circulates in the Blackpool Borough no later than 7 days after the date the application is made.

The notice must state:

- a) Details of the application and activities proposed to be carried on,
- b) The full name of the applicant,
- c) The postal address of the premises, or where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
- d) The date, being 28 days after the day on which the application was given to the Council, by which representations may be made to the Council in writing.

A specimen notice is available upon request from the Licensing Service or on our website www.blackpool.gov.uk.

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2.2 Objections

Objections must be made in writing (email is acceptable) within the period of 28 days from the date on which the application is given to the Council and should include the following:

- The name and address of the person or organisation making the objection
- The premises to which the objection relates
- An indication whether the objector consents to their name and address being disclosed to the applicant.

No weight will be given to any objection that does not contain the name and address of the person making it.

An objection must state the grounds on which the objection is made. Persons making an objection are encouraged to provide full reasons for their objection and, where possible, demonstrate how their reasons are relevant to the mandatory and discretionary grounds for refusal (if any) as set out in this policy.

No weight will be given by the Council to objections made on moral grounds or those that are in the opinion of the Council, frivolous or vexatious.

Where an objection is received, the applicant will be notified of the general grounds of the objection. The name and address of the objector will not be disclosed to the applicant unless the objector has consented to this

3 Determination of applications

When considering applications, the Council will have regard to:

- (a) the Local Government (Miscellaneous Provisions) Act 1982
- (b) any supporting regulations;
- (c) this Statement of Licensing Policy.

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This does not, however, undermine the rights of any person to apply for a licence and have the application considered on its individual merits, nor does it override the right of any person to make objections on any application where they are permitted to do so under the Act.

All applications for new sex establishments and variations of existing licences will be determined by the Public Protection Sub-Committee irrespective of whether objections have been received. The Sub-Committee will also consider renewal applications where the Lancashire Constabulary have made comments or objections have been received. At the hearing the applicant and any objectors **who made objections within the statutory period** will be given the opportunity to address the Sub-Committee.

Uncontested applications for renewal will be determined by the Head of Licensing.

When determining an application the Council will take account of any comments made by the Police and any objections made. Each application will be considered on its own merits.

Where a hearing has taken place before the Public Protection Sub-Committee, unless otherwise advised, its decision will be given at the end of the hearing and ~~all parties~~ **the applicant and the objectors** will receive written confirmation of the decision together with reasons within seven days

3.1 Refusal of Licences

The Local Government (Miscellaneous Provisions) Act 1982 provides mandatory and discretionary grounds for refusal of a licence.

3.1.1 Mandatory Grounds

A licence **must not** be granted to:

- a) A person under the age of 18;
- b) A person who has had a similar licence revoked within the previous 12 months;
- c) A person, other than a body corporate who is not resident in the United Kingdom, or was not so resident throughout the period of six months immediately preceding the date when the application was made;

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- d) To a body corporate who is not incorporated in the United Kingdom;
- e) To a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.1.2 Discretionary Grounds

A licence may be refused on the following grounds:

- a) The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason [see paragraph 3.2](#);
- b) If the licence were to be granted, renewed or transferred the business to which it relates would be managed by, or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such licence if he made the application himself;
- c) That the number of sex establishments in the relevant locality at the time of the application is made is equal to or exceeds the number which the authority considers appropriate for that locality [see paragraph 3.3](#);
- d) That the grant or renewal of the licence would be inappropriate having regard
 - o To the character of the relevant locality [see paragraph 3.4](#); or
 - o To the use to which any premises in the vicinity are put; or
 - o To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made

3.2 **Suitability of applicants.**

The Council will need to be satisfied that the applicants for a sex establishment licence are suitable to operate the business by ensuring:

- a) that the operator is honest

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- b) That the operator is qualified by experience **and/or knowledge** to run the type of sex establishment

That the operator understands the general conditions and will comply with them

- c) That the operator is proposing a management structure which will deliver compliance with operating conditions, for example through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and **in the case of a sexual entertainment venue**, policies for the welfare of performers
- d) **If the application is for a sexual entertainment venue**, that the operator can be relied upon to act in the best interests of the performers e.g. in how they are remunerated, the facilities provided, how they are protected and how and by whom their physical and psychological welfare is monitored
- e) That the applicant can be relied upon to protect the public e.g. transparent charging and freedom from solicitation
- f) That the operator can show **either** a track record of management of compliant premises, or that he/she **has an understanding of the rules governing the type of licence applied for** ~~will employ individuals who have such a track record.~~

All applications will be considered but they are unlikely to be granted if any of the following apply:

- a) The applicant has a criminal record. Offences that will be considered particularly relevant include convictions for:
- Dishonesty
 - Violence
 - Sexual offences
 - Drugs
 - People trafficking
- b) The applicant has previously been involved in running an unlicensed sex establishment;

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- c) If the licence were to be granted, the business to which it relates would be managed by or run for the benefit of a person other than the applicant who would be refused the grant of such a licence if they made it themselves

3.3 Number of Sex Establishments

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 is appropriate for that locality. The Council is able to determine that the appropriate number for a locality is nil.

Blackpool Council has determined that in the Bloomfield, Claremont, Foxhall and Talbot Wards:

- The number of sex shops shall be two.
- The number of sex cinemas shall be nil.
- The number of sexual entertainment venues shall be 4.

In all other wards the number shall be nil for all categories of sex establishments

3.4 Location of licensed premises

In considering whether the grant or renewal of a licence would be inappropriate having regard to the character of the relevant locality or to the use of which any premises in the vicinity are put, the Licensing Authority will consider whether the grant of the application would be inappropriate having regard to its proximity to:

- Residential areas,
- Premises which are sensitive because they are frequented by children, young persons or families including, but not limited to educational establishments and leisure facilities such as parks, libraries or swimming pools.
- Shops used by or directed at families or children
- Premises sensitive for religious purposes for example, churches, mosques and temples.
- Places and/or buildings of historical/cultural interest and tourist attractions.
- The Promenade

3.5 Conditions

The Council recognises that all applications should be considered on an individual basis and any condition attached to such a licence will be tailored to each individual premises.

The conditions that may be attached to a sex shop licence are shown in Appendix A and conditions that may be attached to a sexual entertainment venue are shown in Appendix B.

3.6 Duration of licence

Licences will be granted for one year unless a shorter period is specifically stated.

3.7 Revocation of licences

The Council may revoke a licence on any of the grounds contained within the Act which include (please note this list is not exhaustive):

- the licence holder no longer being fit and proper
- Poor operation of the premises

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The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before the Public Protection Sub Committee.

3.8 Appeals

There is a right of appeal against the refusal to grant, renew, vary or transfer a licence, the imposition of conditions on a licence and the revocation of a licence.

Appeals must be made to the Magistrates' Court within 21 days starting from the date the aggrieved party is notified of the decision.

It is important to note that appeals only lie against the mandatory refusals on the basis that the mandatory ground does not apply to the applicant/licence holder. Further no appeal lies against the Licensing Authority's decision made on the discretionary grounds namely:

- That it is inappropriate to grant or renew a licence on the grounds of the character of the locality or the number of premises in it; or
- The use of the premises in the vicinity or the layout, character or condition of the premises.

4. Complaints and Enforcement

4.1 Complaints

Where possible and appropriate the council will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.

4.2 Enforcement

The Council is responsible for the administration and enforcement of the licensing regime and will have regard to the Quality Standards Enforcement Concordat. The Council will carry out its regulatory functions in a fair, open and consistent manner.

Specifically, the Council is committed to:

- (a) be proportionate – to only intervene when necessary and remedies will be appropriate to the risk posed;

- (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
- (c) be consistent – to implement rules and standards fairly;
- (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
- (e) target its regulatory action at cases in which action is needed.

The Council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the conditions attached to the licence.

However, proportionate but firm action will be taken against those who commit offences or consistently break the law or breach the conditions of the licence.

The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been created that explains how the Council will undertake its role and how the principles of effective enforcement will be achieved.

This policy is freely available from the licensing section, as are details of the corporate complaints procedures, both of which can also be viewed on the Council's website: www.blackpoolcouncil.gov.uk

5. Cancellation of licences

The licence-holder may surrender the licence at any time and may request the Council in writing to cancel the licence.

In the event of the death of a licence-holder, the licence will be deemed to have been granted to his personal representatives and will remain in force for 3 months from the date of death, unless previously revoked.

Where the Council are satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period in which the licence remains in force.

Appendix A

Standard conditions for sex shops

Exhibition of licence

1. The licence or a clear copy shall be conspicuously exhibited at all times to the satisfaction of the Council in the premises, in such a position that it can be easily seen by all persons using the premises. The licence shall be adequately protected against theft, vandalism or defacement.

Times of opening

2. The premises shall not be open to the public before 9.00 am and shall not be kept open after 11.00 pm on any one day.
3. The premises shall not open on Christmas Day.

Conduct of premises

4. The licensee shall maintain good order in the premises
5. No person under the age of 18 shall be admitted to the premises or be employed in the business of the sex establishment
6. no poster, photograph, sketch or painting or any form of advertisement or display shall be displayed by or on behalf of the licensee on, outside, or within the premises in a position where it is visible to the public if the Council regards it as unsuitable for exhibition to the public. If the licensee is notified in writing that the Council objects under this rule to a poster, photograph, sketch, painting, advertisement or display such poster, photograph, sketch, painting, advertisement or display shall be removed or completely obscured from sight.
7. The whole of the exterior of the premises shall be of a material or covered by a material which will render the interior of the premises invisible to passers-by.

Change of use

8. No change of use of any portion of the premises from that approved by the Council shall be made until the Council's consent has been obtained thereto
9. No change of use of any portion of the premises from a sex cinema to a sex shop or from a sex shop to a sex cinema shall be effected without the consent of the Council
10. No part of the premises shall be used as a sex encounter establishment or be used in conjunction with any premises so used (whether licensed or not) without the consent of the Council

Sex Establishment Policy 2016

Goods available

11. All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show to persons who are inside the sex shop the respective prices being charged.
12. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase and a notice to this effect shall be displayed prominently within the sex establishment
13. No film or video work shall without the consent of the Council be exhibited, sold or supplied on or from the premises unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licence holder by the Council and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video work so certified.

Appendix B

Standard conditions for sexual entertainment venues

External Appearance

1. There shall be no advertisement or promotional material used by the premises that is unsuitable to be viewed by children. Any exterior signage shall be discreet and shall not display any imagery that suggests or indicates relevant entertainment takes place at the premises. Any external displays or advertising may only be displayed with the prior approval of the Licensing Service, Blackpool Council.
2. Windows and openings to the licensed premises, other than entrances, shall not be obscured otherwise than with the consent of the Council but shall have suspended immediately behind them, plain light coloured screens or blinds of a type and design approved by the Council.
3. 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 or Public Protection Sub Committee.
4. No advertisements or other notices or items shall be displayed so as to be visible from the exterior of the premises, subject to conditions 1 and 3.
5. The Council shall approve the design of the front elevation of the premises which shall include reference to the name of the premises, its postal address, opening hours, website address and any security grilles/shutters.
6. As a general rule the name of the premises shall be of an un-contentious nature and light colours used throughout to the Council's approval
7. The exterior and entrance to the licensed premises shall be suitably screened so as to prevent any part of the interior being visible from outside the shop.
8. There shall be a solid outer and inner door fitted with automatic closures with such devices being maintained in good working order.
9. On the external facing of the inner door, there shall be displayed a warning notice as supplied by the local authority.

Sex Establishment Policy 2016

Control of entry to the premises

10. No person under the age of 18 shall be on the licensed premises.
11. The Challenge 25 proof of age scheme shall be operated at the premises whereby any person suspected of being under 25 years of age shall be required to produce identification proving they are over 18 years of age. The only acceptable forms of identification are recognised photographic identification cards, such as driving licence or passport
12. The premises shall maintain a refusals log whereby on any occasion a person is refused entry details shall be recorded. The log must be made available on request by Lancashire Constabulary or an authorised officer of the Council.
13. The price for entrance and any compulsory purchases within the venue should be clearly displayed

Performances of sexual entertainment

14. No person under the age of 18 shall be on licensed premises.
15. All areas within the premises shall display signs advising clients of the club rules and conditions of the licence regarding improper performances
16. There shall be no physical contact between performers and customers at any time, before, during or after the performance, with the exception of leading a customer by the hand to and from an area permitted for performances of sexual entertainment.
17. No performances shall include any sex act with any other performers, patrons, employees, contractors, or with the use of any objects.
18. Full nudity is not permitted. Performers and employees must at all times wear at least a G string or similar clothing covering the genitalia.
19. Customers must remain seated for the duration of the performance.
20. Any person connected with or employed by the business who can be observed from outside the premises must be fully dressed. Scantily clad individuals must not exhibit in the entrance way or in the area surrounding the premises. (Scantily clad means that there is partial nudity or underwear is visible)
21. No fastening or lock of any description shall be fitted upon any booth or cubicle or other area within the premises except within the toilets or within the performers dressing rooms and staff areas.

Sex Establishment Policy 2016

22. At all times during a performance, performers shall have unrestricted access to a dressing room.
23. Patrons or members of the audience shall not take photographs or record digital images of performers by any means.
24. Exit routes for performers must be kept clear.

Protection of performers

25. There shall be a written code of conduct for performers. All performers shall be required to certify their agreement to comply with the code and a record shall be kept on the premises and be made available upon request by the police or an authorised officer of the Council. The code shall include the following:
 - The licence conditions relating to performances of sexual entertainment.
 - House rules.
 - Internal disciplinary procedure and details of any financial penalties that may be imposed. This should include a system to ensure that performers suffering a genuine sickness or domestic emergency are not made subject to unfair punitive financial penalties.
 - Drugs monitoring.
 - No contact with customers outside the club.
 - The arrangements for breaks and smoking facilities provided.
 - Copies of approved forms of ID supplied by each performer i.e. passport, photo card driving licence or PASS card.
26. Performers shall be provided with secure and private changing facilities
27. Means to secure personal property shall be provided for the performers
28. Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking area. If no smoking area is provided a maximum of 3 performers may be permitted to take a break at any one time.
29. The licence holder shall implement a written policy to ensure the safety of performers when leaving the premises following any period of work
30. All fees and charges for performers shall be stated in writing and prominently displayed in the changing area.

Sex Establishment Policy 2016

Management

31. All performers shall be required to provide valid photographic identification prior to first employment at the premises. Acceptable forms of identification are recognised photographic identification cards such as driving licence or passport. Records shall be kept detailing the identification produced and must be made available to an authorised officer on request
32. All performers and staff should be eligible to work in the UK and proof of eligibility records shall be kept on the premises.
33. All performers who engage in an evening of work at the premises shall sign a document to confirm the start and finish time of the shift. The document should be dated and contain the performer's true name as well as the stage name. These records shall be kept for a minimum period of six months and shall be produced on request by an authorised officer.
34. Employment records for performers and staff shall be kept for a minimum of six months following the cessation of their employment.
35. Accurate payment and remuneration records shall be maintained and shall be made available upon request to the Police or an authorised officer of the Council.
36. Where the licence holder is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for in the management of the body is to be notified in writing to the council within fourteen days of such change and such written details as the council may require in respect of any new director secretary or manager are to be furnished within fourteen days of a request in writing from the council.
37. The name of the person who has been approved by the Council as being responsible for the day to day management of the licensed premises shall be prominently displayed within the licensed premises.
38. No person under the age of 18 shall be admitted to the licensed premises or employed by the licensee to work at the licensed premises.
39. The licensee shall ensure that no part of the licensed premises shall be used by prostitutes (male or female) for soliciting or for any immoral purposes.
40. Neither the licence holder nor any employee or other person shall seek to obtain custom for the licensed premises by means of personal solicitation, by means of flyers, handouts or any like thing, outside or in the vicinity of the licensed premises.

Exhibition of the licence

41. The copy of the licence and these conditions shall be displayed in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in a conspicuous position at the premises for the customers to see.

Sex Establishment Policy 2016

CCTV

42. CCTV shall cover all public areas of the premises including all areas where performances of sexual entertainment are conducted.

Maintenance and Repair

43. The licence holder shall maintain the licensed premises in good order, repair and state of cleanliness at all times.
44. Should an authorised officer take issue with the condition of any parts of the premises internal or external, notice will be given in writing and must be rectified within a period of 28days from the date of the notice. Any appeal against such notice must be made in writing to the licensing service within 14days of issue. The appeal will be determined by the Public Protection Sub Committee.
45. The licence holder shall take appropriate measures to ensure that refuse from the premises are kept secure from public accessibility pending removal from site.
46. The licence holder shall comply with any fire prevention and safety measures that may be required by the Fire Authority or suitably competent local authority officer.

General

47. No part of the premises shall be let

Sex Establishment Policy 2016

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WITNESS STATEMENT OF DAVID MOSELEY

1. My name is David Moseley and I am the director of Pool Construction Ltd. I make this statement in support of the application made for a transfer of the SEV Licence for Eden One, 15-17 Queen Street, Blackpool, FY1 1PE; and in response to the representation received against this.

Background

2. I would firstly wish to give the Committee some background in relation to me, the premises and my relationship with Mr Newton of AA Recreation who has made the representation against this application.
3. I own the freehold of the building in which Eden One is (and has long been) located.
4. I have never operated the premises as Eden One, or indeed as an SEV at all. For the last 11 years, I have leased the premises to tenants who manage and operate the business. This arrangement has never caused any problems, I've always vetted my tenants carefully and they've always operated it well.
5. I had one particular tenant who traded Eden One for a number of years until 2020 when their lease came to an end.
6. As this lease came to an end, I was approached by Mr Newton who wanted to take a lease of the premises and continue to trade it as an SEV. Unbeknownst to me, Mr Newton also entered into discussion directly with my former tenant to obtain a consent to transfer from them in respect of the SEV licence, and subsequently took a transfer of it.
7. This was not a problem at the time, as I was keen to grant a lease to Mr Newton and so far as I was aware he was keen to take one.

8. However, unfortunately, our negotiations with regards to this lease were not fruitful. There were certain commercial terms which from my point of view had to be included within any lease I was to grant, in order to protect my position. Mr Newton was not willing to accept some of these terms and as a result he walked away from the lease negotiations. I have no personal problems whatsoever with him having done this, if the lease would not have been a desirable arrangement for him there was no obligation on him to enter into it. However, Mr Newton appears to be aggrieved that I would not agree to a lease without the terms being acceptable to him.
9. As such, unfortunately it appears that the relationship has become rather acrimonious.
10. However, I wish to make it clear that whilst Mr Newton's company holds the SEV licence currently because he had a prospective interest in the property during the lease negotiations, Mr Newton does not have (nor has he ever had) any legal interest in or right of occupation in respect of the premises which would allow him in practice to trade under this SEV. I am the legal owner of the building.

Representation

11. I provide this background in order to give the Committee some context as to why Mr Newton's company currently holds the licence, pending the outcome of this transfer application, and hopefully to shed some light on why the representation against it has been made.
12. Mr Newton has made a number of allegations against me within the representation, which are spurious and do not merit detailed examination.
13. However, I would make a couple of brief points in relation to these comments.
14. Strangely, Mr Newton makes reference to my operation in an entirely unrelated business. I own this building which houses a licensed premises, but I have also been in the health and social care business for over 40 years. Mr Newton mentions a fine for a fire safety issue in one of my premises some 9 years ago. That fine was issued by a Magistrates Court and was overturned later the same year.
15. I cannot comment on the other incident he mentions because this is the subject of ongoing proceedings.

16. Secondly, Mr Newton mentions two review applications, the outcome of which was that addition conditions were added to the premises licence for the site. Unfortunately, there was a strained relationship with the Licensing Sergeant involved at the time, in relation to which we received an apology from the Chief of Police at the time in respect of her conduct.
17. However, following the stress of these proceedings, I decided that I no longer wished to be directly involved in the running of licensed premises. As I have said above, from then on I leased the premises to operator tenants. I would highlight that those tenants, under me as landlord and subject to my lease, have traded the premises for this time without any issues, and have had their SEV licence renewed year on year.
18. Indeed, one of the provisions that I was insistent must be included in the lease to Mr Newton was an obligation to adhere to all provisions, conditions and restrictions of the SEV licence. I insist on this in any leases I grant to ensure that the premises I own are well operated. It is notable that this was a key point that Mr Newton would not agree to during our negotiations.

Application and Proposal

19. As such, Mr Newton's attempt to discredit my character seems a rather sad and absurd one.
20. He also attempts to suggest that I should not be granted this transfer because I don't have relevant experience running as SEV. I do not claim, nor have I ever claimed, to have this. However, I will not personally be running this premises on a day to day basis.
21. I have not been doing so for the past 11 years and it has operated perfectly well during that time. What I will be doing is what I have always done – ensuring that my tenants are obliged to trade responsibly and in accordance with all requirements of Blackpool Council, and retaining oversight so that I know that this continues to be the case.
22. However, in this instance, I have applied for the SEV to be transferred into my company's name as a result of the turmoil that has been caused by the transfer of the licence from my former tenants to Mr Newton. The fact that I have not had control of

this licence has lead me to a position where someone who has no legal right or interest in respect of my property holds a valuable licence in respect of it, and is attempting through these proceedings to keep it and retain it.

23. As such, going forward I will hold the licence to maintain overall control, and I understand that this means that I will take overall responsibility for what goes on under the licence. I'm comfortable with that provided that, from a practical perspective, my tenant signs up to obligations in their lease requiring them to adhere to the licence and trade responsibly in all respects. No lease will therefore be granted without these provisions.
24. I am currently in conversation with a potential tenant for the premises who intends to operate it as an SEV going forward. I cannot say that this individual is a tenant as yet, because this individual needs the reassurance that this SEV is in place and held by me before they can proceed formally to take a lease.
25. However, I am happy to confirm who my intended tenant is and what they propose to do at the premises. His name is Rafael Marcin Souski.
26. Mr Souski will be a familiar name to your Licensing Team. He has worked in the hospitality industry within Blackpool for several years, and has managed and run bars, restaurants and hotels in the town since 2009.
27. At present he operates four large hotels and two bars in Blackpool; as well as recently opened Shadow Bar.
28. He has an excellent track record, with no history of enforcement action at any of his premises. Your responsible authorities are often very complimentary of the way in which his premises run.
29. Mr Souski will be partnering with another individual who will be familiar to your Licensing Team, Mr Arkadiusz Marczak. Mr Marczak has over a decade of experience working as security within the hospitality industry and again has an impeccable record for his operation of licensed premises.
30. These individuals have not owned/run their own SEV before, but have worked in them and have significant experience in the hospitality industry. They fully

understand how these premises should be run and have the skills and experience to deliver this.

31. They intend to trade the premises as a high end bar and gentlemen's club, and assuming this transfer is granted so that they have the comfort of this licence, will look to refurbish and rebrand the premises, whilst ensuring that all conditions attached to the SEV licence are adhered to (as well as any further conditions that the Committee may deem necessary).
32. They will implement all necessary policies and procedures to ensure that the premises trades smoothly as an SEV, as has long been the case with Eden One, whilst elevating the surroundings and the experience for customers.
33. As such, whilst I will not be responsible for the day to day running of the premises, I am happy that there will be an ownership and management structure in place which will ensure that the premises will trade entirely as it should.
34. Mr Souski will attend before you at Tuesday's hearing should you have any queries of him in relation to these proposals.

Conclusion

35. However, I would emphasise again that I understand that by granting this transfer I will take ultimate responsibility for the operation of the SEV at this premises.
36. I am absolutely qualified and able to do that in my capacity as Landlord. I will simply do this by ensuring that my tenant(s) is someone with the necessary practical experience to operate the premises responsibly. I will also ensure that they are obliged to do so, and take swift action to enforce these obligations should this ever become necessary.

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FAO: Ryan Ratcliffe
Licensing Enforcement Officer
Council Chamber
Town Hall
Talbot Road
Blackpool

Our ref: ROW/
Direct Dial: 07834 227351
Richard.Williams@keystonelaw.co.uk

24 May 2021

Dear Sirs,

Re: Transfer the Sexual Entertainment Venue (SEV) Licence for Eden, 15-17 Queen Street, Blackpool

We refer to the above application and the documentation which has been provided to us by the Council in advance of the hearing tomorrow night.

It would appear to us that the applicant has made a significant procedural error in relation to the advertising of this application, which would render the application invalid.

The applicant is Pool Construction Limited. However, the site notice and newspaper advert state that David Moseley is the applicant. Section 10 of the Local Government (Misc Provisions) Act 1982, Schedule 3 requires the applicant to give public notice of the application in a local newspaper and on site. The notice must be in such form as the appropriate authority may prescribe. The Council's SEV Policy at section 2.1 (b) states that the newspaper and site notice MUST state the name of the applicant (which it does not).

The requirement to advertise the name of the applicant is critical because it gives objectors an opportunity to object on the grounds that the applicant is unsuitable to hold a SEV. This issue is one of the discretionary grounds for refusal of an application to transfer a SEV under Schedule 3 s.12 (3)(a).

Failing to state the correct name of the applicant in the site notice and newspaper advert has denied objectors the opportunity to object to the suitability of the applicant (Pool Construction Limited) to hold a SEV licence.

We envisage that the applicant will argue that this procedural error can be overlooked by the Council in line with the ruling of His Honour Judge Blackett in *R (D&D Bar Services Limited) [2014]* (attached). Whilst we accept that minor errors on a notice of application (such as the font size) would not render an application such as this void, failure to advertise the name of the applicant is not a minor error that can be overlooked. This has denied objectors the opportunity to raise

objections to the applicant's suitability to hold the SEV licence. It is therefore a significant procedural error which cannot be overlooked.

As such, it is our view that the application is void due to this procedural defect and that the hearing tomorrow should be cancelled as a result as there is no valid transfer application to consider.

We await your response on this point.

Yours faithfully,

Keystone Law

Keystone Law Solicitors





Neutral Citation Number: [2014] EWHC 344 (Admin)

Case No: CO/16844/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 February 2014

Before :

HIS HONOUR JUDGE BLACKETT SITTING AS A JUDGE OF THE HIGH COURT

Between :

R (D&D Bar Services Limited)
- and -
Romford Magistrates Court
- and -
London Borough of Redbridge

Claimant

Defendant

Interested Party

Philip Kolvin QC and Jeremy Phillips (instructed by Dadds LLP) for the Claimant
David Matthias QC and Gary Grant (instructed by The Borough Solicitor) for the
Interested Party

Hearing date: 29 January 2014

Approved Judgment

His Honour Judge Blackett:

Introduction

1. This is a rolled up hearing at the outset of which I granted permission to apply for judicial review.
2. This is an application for permission to appeal by way of judicial review, the decision of District Judge Lucie sitting in North East London (Romford) Magistrates' Court on 7 November 2013. The basis of claim is that the public notice advertising a licensing review was defective in that it failed to specify the grounds for the review and its last three lines were printed in Font 14 instead of Font 16 as prescribed by Regulations. The Claimant submits that these two failures rendered the whole review process and appeal void and that process should be restarted *ab initio*.
3. The Claimant operates a nightclub named "Funky Mojoe" located at 159-161 High Road, South Woodford, London. The interested party is the London Borough of Redbridge (LBR) acting as the Licensing Authority. On 30 January 2013 the Head of Community Protection and Enforcement for LBR applied for the review of the Claimant's premises licences under the Licensing Act 2003, section 51. Notices were displayed asking for representations from any parties or responsible authorities to be made in writing and submitted to LBR between 31 January and 27 February 2013. Twenty two representations were received from the public.
4. On 27 March the Claimant's solicitor informed LBR that the notices had failed to comply with the requirement of the relevant Regulations. He was informed that the matter would be determined by the Licensing Sub Committee when they undertook the review. That review took place at a public hearing on 18 – 19 April 2013. The Licensing Sub Committee determined that nobody had been misled or disadvantaged by the failures on the notices and there was no reason to grant an adjournment. The

review hearing went ahead and the Licensing Sub Committee modified the conditions of the licences, particularly in relation to the terminal hours.

5. The Claimant appealed against this decision to the Romford Magistrates. District Judge Lucie heard the appeal and handed down his judgment on 7 November 2013. The Claimant repeated the submissions that the notices were defective and submitted that the review hearing by the Licensing Sub Committee was therefore invalid. District Judge Lucie rejected those submissions. In so doing he found as a matter of fact that the notices were defective, but the two errors were minor irregularities.

The legislative framework

6. Part 3 of the Licensing Act 2003 (the Act) is concerned with the review of premises licences. By section 51(3) the Secretary of State must by regulations under this section:
 - a. require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;
 - b. require the authority to advertise the application and invite representations about it to be made to the authority by responsible authorities and other persons;
 - c. prescribe the period during which representations may be made by the holder of the premises licence, and responsible authority or any other person;
 - d. require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.
7. S52 is concerned with the determination of an application for review. By sub section (1) this section applies where:

- a. the relevant licensing authority receives an application made in accordance with section 51,
 - b. the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and
 - c. the authority has complied with any requirement imposed on it under subsection (3)(b) or (3)(d) of that section.
8. Part 5 of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005/42 (the Regulations) is concerned with the advertisement of review by a licensing authority. Regulation 38 (1) specifies that the relevant licensing authority shall advertise an application for the review of a premises licence –
- a. by displaying prominently a notice
 - (i) which is
 - (aa) of a size equal or larger than A4
 - (bb) of a pale blue colour; and
 - (cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16
9. Regulation 39 specifies that notices referred to in regulation 38 shall state
- a. the address of the premises about which an application for a review has been made,
 - b. the dates between which responsible authorities and any other person may make representations to the relevant licensing authority,
 - c. the grounds of the application for review,
 - d. the postal address and, where relevant, the worldwide web address where the register of the relevant licensing authority is kept and where and when the grounds for the review may be inspected; and

- e. that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

The parties' submissions

10. Mr Kolvin QC for the Claimant submitted that this case raises a matter of great importance under the Licensing Act 2003. He submitted that where there has been a substantive breach of the notification and advertisement requirements of the Act in relation to applications for review (the substance of this case) or other authorisations, the licensing authority does not have jurisdiction to waive the breach and proceed to a hearing. It must, he says, as a matter of statutory interpretation start the whole procedure again.
11. Mr Kolvin submitted that the Licensing Act 2003 was radical legislation which took a patchwork of licensing controls and placed it in the hands of the local authorities, and made it their duty to promote licensing objectives (crime and disorder, public nuisance, protection of children, public safety) in their decision making. The key part of the legislative purpose was to provide for greater local involvement in the licensing process and decision making. The Act originally created the concept of "interested parties" but that has been extended to "other persons" by the Police Reform and Social Responsibility Act 2011. Notices announcing a review of a licence are important in that they ensure those other persons are informed of licensing reviews and decisions.
12. In this case, it is agreed that the notice advertising the review of the Claimant's licence did not comply with two of the requirements of the Regulations in that (1) it did not specify the grounds for review (it listed two of the licensing objectives without any further explanation) and (2) three lines at the bottom giving details of how the application for review could be inspected at the LBR's offices were printed in 14 and not 16 font

(the rest of the notice was in the correct font and contained the correct information).

13. Mr Kolvin submitted that the decision maker should approach these defects under a two-stage test. First there must be an exercise in construction of the statutory framework. The question is, did Parliament intend non compliance with the requirements in the Act and Regulations to be fatal? If the answer is yes, then that is the end of the matter. The whole process is void and must start again. If the answer is no, then the decision maker must go on to determine the imputed intention of Parliament. If the imputed intention was that non compliance was not fatal then the decision maker should go on to consider whether there had been substantial compliance taking account of whether there had been any prejudice and the overall balance of justice.

14. Mr Kolvin also said that there is no “slip rule” in the 2003 Act and its absence was deliberate. The matter was raised during the passage through Parliament of the Gambling Act 2005 which does contain a slip rule, but none was inserted in the 2003 Act. The wording of the Act in relation to notices is mandatory: if the three requirements of s52(1) are not complied with, then there can be no hearing to determine a licensing matter. In this case Mr Kolvin submitted that s 52(1) (c) required the LBR to comply with the requirement of s51(3)(b) which required the LBR to advertise the application. Regulation 39(c) specifies that the notice shall contain the grounds of the application for review and Regulation 38(1)(a)(i)(cc) requires the notice to be printed legibly in black ink or typed in black in a font of a size equal to or larger than 16. The terms of the Regulations are mandatory – they specify that the authority shall comply with the requirements. The agreed failures to comply with those requirements demonstrate that the advertisement is not valid, so the LBR did not comply with s51(3)(b). In those circumstances s52(1)(c) was not satisfied so s51 did not apply: the hearing which was held was invalid, the decision it reached was void and should be quashed and the review process should start again.

15. Mr Kolvin submitted that District Judge Lucie erred when he relied on the line of authorities including R (Jeyeanthan) v Secretary of State [2001] 1 WLR 354 which require the Court to consider what consequences should flow from the breaches. He submitted that this line of cases deals with situations where the statute makes a requirement and does not set out the consequences of breach. Where the consequence of breach is set out, it is the duty of the public authority to observe it. A public authority cannot second guess the will of Parliament. Here the statute is perfectly clear that the jurisdiction to hold a review hearing and exercise regulatory powers is reserved for cases where there has been procedural compliance. The merits of the case are irrelevant: if there is no procedural compliance there is no jurisdiction to hold a hearing. Mr Kolvin referred to a number of authorities to support his contention that the courts have quashed administrative actions on jurisdictional grounds based solely on a construction of statute without engaging in a wider balancing exercise on merits.
16. Mr Kolvin submitted that the case does not get past the first stage. The intention of Parliament is clear from the words used in s52 of the Act – the section applies only if the three requirements are fulfilled. If any are not then there is no jurisdiction to hold a hearing. Nevertheless, he submitted, if the Court was against him and moved on to the second stage, the failure to provide grounds in the notice meant the issue was not substantial compliance because there had been no compliance with Regulation 39(c). He relied on London and Clydeside Estates Ltd v Aberdeen District Council [1980] 1WLR 182. Lord Hailsham said: “a total failure to comply with a significant part of a requirement cannot in any circumstances be regarded as substantial compliance with the total requirement in such a way as to bring the respondents contention into effect.”
17. Mr Matthias QC for the Interested Party submitted that the Claimant was wrong in his approach. It would be extraordinary if Parliament intended the whole review to be a nullity solely because there were some errors in a notice. The legislation does not disclose an intention to render the review

process invalid because of a minor and inconsequential error. It is only where legislation specifies what will happen if there is a breach or failure (a stage 1 case) that the issue can be resolved by applying the legislation. Were it does not so specify (a stage 2 case) the intention of Parliament must be imputed. In this case the legislation does not specify the consequences of a breach of the Regulations, therefore there is a need to impute Parliament's intention from the wording of ss 51 and 52 of the Act. At the time the Act was passed, Parliament did not know precisely what would be within the Regulations, but it is safe to conclude that Parliament would not have intended the review process to be invalidated because of a failure to comply to the letter with every detail of Regulations which had not yet been written. The words "this section applies" is not determinative – it is not a clear enough form of words to discern an express intention of Parliament to say what happens in the event of a breach of Regulations.

18. Mr Matthias submitted that against this background District Judge Lucie's approach was correct. It is important to look at the consequences of any breach or failure and then impute what Parliament intended. He referred to a number of cases where legislation did not specify the consequences of failure and that exercise was undertaken.

Discussion

19. Mr Kolvin suggested that Regulations which are mandatory make compliance easier, so that there can be no doubt that unless they are complied with to the absolute letter, then the process is invalid. That may be so, but in my view it could never have been the intention of Parliament that minor errors on a notice or advertisement for a licensing review should make any subsequent consideration of the licence void. Such an approach would lead to absurd consequences. It is clear that there must be substantial compliance with Regulations 38(1) (a) and 39 but the process should not be frustrated by minor errors. Mr Kolvin's suggestion that there has been a total failure to comply with a significant part of a requirement does not reflect the reality of what occurred. District Judge Lucie considered the errors in the notice to be "minor irregularities." In

the context of this case that is an entirely reasonable conclusion with which I agree and he was right to follow the approach in R v Soneji [2006] 1 AC 340 (HL) and R v Secretary of State for the Home Department ex parte Jeyeanthan [2000] 1 WLR 354. At paragraph 26 of his judgment he said:

“It appears to me that it would not be in the overall interests of justice to quash the decision of the committee as a result of the irregularities. Had any party been able to show substantial prejudice or injustice then the decision may have been different. This is not a case, in my judgement, where non-compliance anywhere near approaches the degree or status that would go to the jurisdiction of the committee.”

20. I agree entirely with the District Judge’s approach.

Conclusion

21. I completely disagree with Mr Kolvin’s submission that this case raises a matter of great importance under the Licensing Act 2003. It is, like so many other licensing cases, one which turns on its facts. It is a case which has been handled impeccably by the Licensing Sub Committee and the District Judge on appeal. The submission from the Claimant that the process should be invalidated solely because of two minor errors on a notice is entirely without merit.
22. For the reasons I have given, this claim is dismissed.

Costs

23. I invite the parties to make submissions as to costs. This can be done in writing or at the request of either party at a further short hearing to be arranged in the usual way.

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IN THE MATTER OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

AND

**IN THE MATTER OF THE TRANSFER SEXUAL ENTERTAINMENT VENUE (SEV) LICENCE
EDEN, 15-17 QUEEN STREET, BLACKPOOL**

OPINION

1. Those instructing represent Pool Construction Limited (sole director, Mr David Moseley), who has made an application to transfer the SEV licence for the above named premises from the current licence holder, Mr Newton.

2. Mr Newton was a prospective new tenant of the premises, and he and Mr Moseley, the landlord of the building were in negotiations in relation to a new lease. Those negotiations ended, and Mr Newton, the current licence holder will not be taking occupation of the building. However, as the negotiations have ceased, Mr Newton is not willing to provide consent, and is essentially holding Mr Moseley to commercial ransom. Mr Moseley requests that the licence be transferred to him as the landlord of the building, hence the application.

3. On 24 May, Mr Richard Williams of Keystone Law sent a letter to the Council on behalf of Mr Newton, who is the sole objector in this case. Clearly, Mr Newton's objection is designed to frustrate Mr Moseley, in furtherance of the commercial rivalry.

4. The letter from Keystone Law stated as follows:

“It would appear to us that the applicant has made a significant procedural error in relation to the advertising of this application, which would render the application invalid.

The applicant is Pool Construction Limited. However, the site notice and newspaper advert state that David Moseley is the applicant. Section 10 of the Local Government (Misc Provisions) Act 1982, Schedule 3 requires the applicant to give public notice of the application in a local newspaper and on site. The notice must be in such form as the appropriate authority may prescribe. The Council's SEV Policy at section 2.1 (b) states that the newspaper and site notice MUST state the name of the applicant (which it does not)."

5. This legal challenge is without foundation and should be disregarded by the Council in considering this application for a transfer of the SEV licence. There is ample caselaw to confirm the correct approach in such situations.

6. The letter from Keystone Law has identified *D&D Bar Services Ltd v Romford Magistrates' Court and London Borough of Redbridge* (aka "Funky Mojoes"), which is only one of such cases.

The Learned Judge in that case said:

"It could never have been in the intention of Parliament that minor errors on a notice or advertisement for a licensing review should make any subsequent consideration of the licence void. Such an approach would lead to absurd consequences."

"The process should not be frustrated by minor errors."

The issue in the current case is certainly minor, and not substantial.

7. *R v Secretary of State for the Home Department (ex parte Jeyanathan)* [2000] 1 WLR 354 and *R v Soneji* [2005] 4 All ER 3212006 1 AC 340, were specifically endorsed in *Funky Mojoe*

In the House of Lords in *Soneji*; Lord Steyn stated:

"In such cases, though language like 'mandatory,' 'directory,' 'void,' 'voidable,' 'nullity,' and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the courts, in deciding the consequences of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Procrustes invented by lawyers for the purposes of convenient exposition."

8. In *R (TC Projects Ltd) v Newcastle Justices* 2007 EWHC 1018 (Admin) Gibbs J ruled that the licensing authority must decide what the consequences of any failure to comply with any administrative requirement ought to be, on the basis of justice and proportionality in all the facts and circumstances of the case. Even where legislation uses language such as “must” or “shall”, this does not necessarily mean that the breach is fatal. The Authority will wish to take into account a number of considerations, including:

- (1) Has the purpose of the legislation been substantially achieved, even if not fully achieved?
- (2) Has a member of the public identifiably been discouraged from exercising a right to object?
- (3) Even if a member of the public has been deprived of an opportunity to make a representation, was the same objection effectively made by others, so that the Authority was in any event able to take it into account?
- (4) Was the breach deliberate or culpable?

9. In the current case, it is obvious that the administrative issue of the differing names on the application and notice, even if it could be described as an error, which is arguable, is not remotely prejudicial to the application or to any person who might wish to make a representation. Mr Moseley is the sole director of the company, and identifying the company is the same as identifying him. The public have not been misled in any way. Nobody would be deterred or encouraged in making a representation because of the details on the Notice.

10. In any event, Mr Newton, who is the person complaining of prejudice, is the person who has made a full objection, and was not remotely deterred or confused by the details on the Notice. In fact it is abundantly clear that Mr Newton knew exactly who the applicant was, given that his representation refers to ‘APPLICANT DETAILS – David Moseley on behalf of Pool Construction Ltd’. Indeed, he did not raise it as a concern at all, until he retained legal advisers, who have clearly raised it for the first time as a legal technicality, and not as a practical problem that has caused any identifiable disadvantage to anyone. It is notable that Mr Newton’s legal advisers are not alleging any actual prejudice.

11. In all the circumstances, the application and the notice amount to the same thing, and identify the person against whom any person might wish to lodge a representation, if they were minded to do so. The only person who is minded to do so is Mr Newton, in the course of pursuing his own agenda against Mr Moseley, and he clearly was not confused or deterred in his objectives by anything written on the application or notice. This is not only indicative of how any person might have reacted to the application and notice, but is also confirmation that the issues raised by Mr Newton will be before the Committee, and they will have an opportunity to consider them on their merits, and so no prejudice has been caused in any conceivable way.

12. I will be glad to be of further assistance, should it be required.

**Sarah Clover
Kings Chambers
Birmingham
6 June 2021**