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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Tuesday, 9th April, 2013 at The Assembly Room - Town Hall,
Macclesfield SK10 1EA

PRESENT

Councillor P Whiteley (Chairman)

Councillors C Andrew, Rhoda Bailey, W S Davies and M Parsons

OFFICERS IN ATTENDANCE

Sarah Baxter, Democratic Services Officer

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Jim Hopper, Licensing Officer

84 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

85 APOLOGIES FOR ABSENCE

There were no apologies for absence.

86 DECLARATIONS OF INTEREST

There were no declarations of interest.

87 APPLICATION FOR THE RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE - SCHEDULE 3, LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 - S T LOUNGE GENTLEMENS CLUB & CHAMPAGNE BAR, 16 GROVE STREET, WILMSLOW, CHESHIRE SK9 1DR

The General Licensing Sub-Committee considered an application by Van Leisure Ltd for the renewal of a Sexual Entertainment Venue Licence for ST Lounge Gentlemen's Club & Champagne Bar, 16 Grove Street, Wilmslow, Cheshire under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act').

The Sub-Committee heard in person from the applicant, the applicant's legal representative and two witnesses for the applicant, and from a number of objectors and representatives of objectors, including a legal representative for Make Wilmslow Matter.

RESOLVED

After a full hearing of the application and in accordance with the rules of procedure, after having taken into consideration:

The provisions of Schedule 3 of the 1982 Act

Home Office Guidance relating to sexual entertainment venues

Cheshire East Borough Council's policy on the licensing of sexual entertainment venues and

All the evidence presented to the Sub-Committee, including the submissions of each of the parties to the hearing and the written objections within the report and the late representations

The case law referred to.

The decision of the Sub-Committee was:

1. The relevant locality for the purposes of this application was 150 metres radius of the Premises
2. To refuse the application for a renewal of a twelve month sexual entertainment venue licence on the grounds that it would be inappropriate having regard (i) to the character of the relevant locality and (ii) the use to which any premises in the vicinity are put

for the following reasons:

The relevant locality included a quality shopping and commercial area, including the pedestrianised Grove Street which was used by a wide range of people including children and young people, families and older people as well as a significant number of residential properties in streets adjacent to Grove Street. The relevant locality also included St Teresa's Catholic Church and Wilmslow Prep School

Within the vicinity there were further sensitive premises, which included residential premises, Wilmslow High School, The Leisure Centre, St Bartholomew's Church, Wilmslow Methodist Church and the United Reformed Church

The change that had taken place during the last twelve months was that ST Lounge was more prominent due to the adverse publicity it had received and as a result people had changed their attitudes and habits and were now tending to avoid walking past it, particularly in the evening when they felt uncomfortable. Evidence was also accepted that they felt uncomfortable in the daytime. The public concern had become more widespread during the last 12 months

An example of the community concern was the objection from Wilmslow Town Council which unanimously made a recommendation to Cheshire East Council that the appropriate number of sexual entertainment venues in this locality should be nil, although Cheshire East Council had not given consideration to such a restriction.

The objections received from a 13 year old and the mother of a 15 year old showed that concerns arose from a wide age range in the community.

The matters which added to the raised awareness and which raised community concern included the following:

- o An A-Board with an ambiguous image on it, left outside when the premises are closed
- o “House rules” flyers found on the pavement outside
- o The website linked to the club
- o The promotion of ST Lounge outside Wilmslow conflicts with the promotion of Wilmslow as a quality shopping destination

Many of the sensitive premises in the vicinity held evening activities and people, including young people, who lived in Grove Avenue and in nearby roads had to walk through the pedestrianised Grove Street and past ST Lounge to attend any activity at the Leisure Centre or either St Teresa’s or St Bartholomew’s Churches. The alternatives were a much longer walking route or a car journey.

The meeting commenced at 10.00 am and concluded at 6.15 pm

Councillor P Whiteley (Chairman)

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ST LOUNGE, 16 GROVE STREET, WILMSLOW**DECISION NOTICE**

The General Licensing Sub-Committee considered an application for the renewal of a sexual entertainment venue licence in relation to premises known as ST Lounge Gentlemen's Club and Champagne Bar, 16 Grove Street, Wilmslow under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act').

The Sub-Committee heard in person from the applicant, the applicant's legal representative and two witnesses for the applicant, and from a number of objectors and representatives of objectors, including a legal representative for Make Wilmslow Matter.

The Sub-Committee was requested to consider a preliminary issue in relation to the discretion to consider late representations. The Sub-Committee heard that the Licensing Section had received three 'late representations' i.e. objections which were received outside the statutory twenty-eight day consultation period. Details of the representations had been made available to the applicant. The Sub-Committee were advised that case law provides authority for the assertion that the decision-making body has discretion to take late representations into consideration when determining an application under Schedule 3 of the 1982 Act. The parties to the hearing were invited to make submissions in relation to the consideration of the late representations. The Sub-Committee noted the content of these late representations and determined to take two into consideration when making its decision. It determined not to take one late representation into consideration since it had arrived only a few days prior to the hearing and the representation had relevance to planning issues rather than the licensing issues.

The Sub-Committee heard from the Licensing Officer that the Applicant has held a Sexual Entertainment Venue Licence for one year. Prior to that a Premises Licence under the Licensing Act 2003 had been in place. The application is for an annual renewal with the existing conditions to remain. The Sub-Committee heard that there are no Police representations. 390 letters of objection, a petition with approximately 930 signatures and 2 letters of support were received within the 28 day consultation period. Four representations had been queried by the person purported to have sent it in as not being their representation.

The Sub-Committee heard from the applicant's representative. He submitted that the management of the premises during the previous year has been effective and it was contended that there had been no complaints since the premises had been operating.

The applicant's representative made submissions in relation to the content of the objections. *R v Liverpool Crown Court, ex parte Luxury Leisure* was referred to as authority for the proposition that it is not the number of objections which should be

considered but what they say is what matters and he submitted that many of the objections amounted largely to moral arguments.

Human Rights were referred to by the applicant, contending that rights attached to the existing licence, although it was accepted that the residents' human rights may also be considered.

The applicant's representative contended that new businesses were not deterred by the presence of the premises, since two had been opened during the last year, including a children's shoe shop next door. It was also contended that the reopened shops did not change the character of the area and that to enable the Sub-Committee to determine not to renew the licence there should be a change in the character of the area. He referred to the case of *R v Birmingham City Council ex parte Sheptonhurst Limited* for this contention.

It was accepted that the same legal considerations do apply to a renewal but that the good conduct of the premises would suggest that a renewal should be granted even in the face of a number of objections.

The applicant's representative contended that this Sub-Committee does not have the power to make the determination on appropriate numbers of Sexual Entertainment Venues in a locality.

The applicants accepted that they advertise flyering on their website, but it is not done in the vicinity of the premises and there is no breach of conditions.

It was accepted by the Sub-Committee that any information from the Wilmslow.Co.Uk website would be disregarded as part of this hearing.

The objections were referred to. The applicant contended that there was no evidence that the premises and other uses, such as betting shops shows the area is in decline and that they blight an area. There is also no evidence to back up the contention that crime is increasing and that two empty shops had now been taken up by retail traders. It was contended that since ST Lounge is closed during the day there is little effect on any of the day time activities in the area and since the police have no objection there would appear to be no foundation that crime is an issue. It was contended that nothing had changed since the original licence was granted therefore the renewal should be granted.

Mr Knowles, the DPS gave evidence. He referred to one representation by an ex-member of staff, who he said left with a grudge. Mr Knowles indicated that the police had undertaken a drugs swab with no results. (Although this was later challenged and it was accepted that a trace for cocaine had been found in one ladies' cubicle, although the police had raised no issue concerning this). He confirmed all staff are offered a chaperone to their car, but they have a choice to take it. With regard to the member of staff being attacked, The Sub-Committee were told she had left in a taxi with a friend, who had been a staff guest at the club and who attacked her on

Racecourse Road. It was confirmed by the Licensing Officer that the Police had indicated that there was no sexual element to the attack and had not suggested that there had been any breach of conditions. Mr Knowles confirmed that he operated the premises within the time conditions of the licence and that drunkenness was not an issue at the premises. He confirmed that any flyering is done away from the area.

Mr Butterworth, a licensing consultant acting on behalf of the applicant, gave evidence. He gave evidence of his observations on two occasions in February and March 2013. He noted that no queue formed outside the venue, nor did he note any noise from the premises. He noted that there was no display of any sign which showed anything of a sexual nature. He observed that the majority of people left the premises by taxi and did not display signs of excessive intoxication. He noted there was a low level of visible routine police patrolling of Grove Street which he said indicated that these premises and this area are not perceived to be a hot spot for crime and disorder by the police. He did note that children had been seen in the area prior up to 21.26 on one of his observations but not after the premises were open. The venue is not overlooked by any schools, residential properties and places of worship. He noted that the footfall in Grove Street is low after 21.30. On the one evening observation he had undertaken 88 people had walked down Grove Street from 21.30 to 04.00 and he confirmed the majority of them had been men.

The Sub-Committee were given assurance that there were no 15 and 16 year olds in the premises. Younger clientele are not encouraged and a Challenge 25 policy is in operation, which applied to entry and serving drinks. It was accepted by the Applicant that the website may not be enhancing the reputation of the ST Lounge. The "shots for a pound" offer had been removed from the website, but had inadvertently remained on one page. Mr Knowles gave evidence that an A-Board is put out when the premises is open and it contains the outline of a woman, which does not breach any of the licence conditions. He confirmed that every person who comes in to the premises is given a leaflet to ensure they are aware of the rules and to make sure people are aware of what happens on the premises.

A 13 year old school boy gave evidence, as an objector that the premises make him feel uncomfortable walking across Wilmslow after school. During Saturday mornings he confirmed he had seen an A Board with the silhouette of a naked woman on it. He confirmed that he has to walk home from matches, weekly in the summer, when the ST Lounge is open. He also mentioned that the presence of door staff made him feel uncomfortable.

The following points were made on behalf of some objectors:

- One resident indicated that at 4am particularly in the summer there is noise from people walking in the area, which he believes have come from the ST Lounge.

- That the issue of a licence a year ago is not binding on this Sub-Committee because residents did not know of the change in the law at that time and had not picked up the advert over the Christmas period
- Grove Street is a main pedestrian thoroughfare and it is vital that everyone should feel comfortable walking past at all times. It links schools, churches and shops
- A resident had been given a card advertising the activities at the premises
- There are many residential properties within a short distance of the premises
- The premises are situated near churches and schools
- The premises put off new businesses from starting up in Wilmslow.
- Grove Street is essentially a shopping street and there is no commonality with the ST Lounge which is only open at night. The activity is inappropriate for a shopping street like Grove Street
- Allegations of contraventions of the conditions have been made
- Concern about the inconsistency of answers from the applicants
- The applicant's website has been giving misinformation
- The weight of objection should be taken into account by the Sub-Committee
- The location does raise the fear of crime and the fact that there are not many people around does cause fear since it is a no go area where people feel uncomfortable
- In a family shopping environment it is not in the right place since the shutters are down in the day and in the evening people are trying to avoid the area or accompanying their youngsters
- Proliferation concerns were an issue

The Sub-Committee were told that Make Wilmslow Matter is a loose organisation of residents who oppose the application. They submitted that the grant and the renewal of a licence are subject to the same requirements so that the Sub-Committee is entitled to have a fresh look at the licence. The locality does not need to change to make a different decision. The numbers of objectors has increased. Residents live nearby and there is a church within 100 yards and the council's policy says that it will not grant in areas of sensitive uses.

Make Wilmslow Matter firstly submitted that the Sub-Committee should determine that the appropriate number of sexual entertainment venues for the locality of

Wilmslow Town Centre is nil. This contention was put forward on the basis of the competing and sensitive uses i.e. surrounding schools, residential accommodation, shopping, places-of-worship and leisure facilities. It is sandwiched in between all these competing uses. The objectors had submitted a map to show all the competing uses in the surrounding area. The objectors also put forward the following contention: that the grant of the licence would be inappropriate due to the characteristics of the locality and to the uses to which premises in the vicinity are put. Reference was made by objectors to the application of paragraph 3.8 of the Council's policy:

"Whilst each application will be determined on its own individual merits the grant of a licence will generally be considered inappropriate where the characteristics of the locality include the following sensitive uses:

- (a) An area predominantly comprising residential accommodation*
- (b) Parks and children's play areas*
- (c) Schools and youth centres*
- (d) Places of worship; and*
- (e) Community facilities"*

The Sheptonhurst case was referred to for the contention that the sub-committee needs to acknowledge that a licence has been granted previously, but that a committee which granted a licence one year can make a different decision a year later. The Committee are entitled to have a fresh look at the matter and it must give its reasons for refusal.

An organiser of Make Wilmslow Matter, who lives nearby gave evidence. She referred to plans identifying 100 metre and 200 metres radius from the premises. She contended that Grove Street is an upmarket pedestrianised shopping area. The premises are surrounded by residential areas and Grove Street is a hub for that. Residents now feel uncomfortable going through the area after dark. She gave evidence of elderly accommodation within walking distance. She pointed out the cricket field adjacent to the Leisure Centre which is within the 1-200 metres radius. Wilmslow Prep and Wilmslow High Schools have objected. They have evening activities, as does the Leisure Centre.

The proximity of churches, including St Teresa's, St Bartholomew's and the Methodist Church and the URC church was highlighted and it was suggested that the location of the premises was inappropriate as a result. These facilities are used at all times of the day. Young people do congregate outside the Leisure Centre, Subway, Tescos and Pizza Express, within the locality. Young people also skateboard in the area. There are various restaurants and fish and chip shops and

Blockbusters which young people frequent. She indicated that she felt uncomfortable walking down the road when there might be a stag group in the area.

She gave evidence that the locality of the area is our local little high street and the locality of Wilmslow is around this pedestrianised shopping street frequented by families.

A person whose sister is a local resident gave evidence that her sister goes to the theatre by train and the premises have impacted on her a lot when coming home from the station late at night. She now takes a taxi, since she feels unable to walk via Grove Street.

A mother of two older teenage daughters gave evidence of her concern when her daughters are in Wilmslow in the evening. They do not want to use the bank ATMs on Grove Street after 22.00 and she feels she has to pick them up so they do not have to walk home. She confirmed that as a lone female she does not walk down Grove Street in the evening.

A local resident gave evidence that around 12 months ago (he agreed that he could not be precise about the date) he was given a publicity flyer outside ST lounge and there is sometimes noise and disturbance from people coming down Hawthorn Lane at 4am

Excerpts were read out from the submitted letters. The point was made that people are choosing to divert because the premises is on Grove Street and it was questioned why they should feel they have to do so. It was clear from Mr Butterworth's statement that the majority of people walking down Grove Street in the evening are men.

The Sub-Committee was mindful of the provisions of paragraph 4.19 of the Home Office Guidance, namely that when considering an application for a sexual entertainment venue licence made by an existing operator, local authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression). It was further noted that paragraph 4.21 of the Guidance recommends that local authorities consider whether any interference with the applicant's rights under Article 10, or Article 1, Protocol 1 of the ECHR is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, or, in the case of Article 1, Protocol 1, can be justified in the general interest.

The Sub-Committee noted that the Police had made no representations.

The Sub-Committee were mindful that the majority of the objections centred on the character of the area and the uses to which premises in the areas are put, in particular reference was made to the school on Grove Avenue, 4 local churches and

to the fact that Grove Street is a shopping Street often frequented by families, whilst the adjoining streets contain residential accommodation. The Sub-Committee was mindful of its policy in relation to the licensing of sexual entertainment venues and noted paragraph 3.8 of the policy

In making its decision, the Sub-Committee was mindful that it may not apply its policy in such a way as to fetter its discretion and that each application must be considered on its own merits. The Sub-Committee was also aware that (as in paragraph 3.23 of the Home Office Guidance) objections should not be based on moral grounds/values and that its decision should not be based on such grounds.

The Sub-Committee considered the case of *R v Birmingham City Council ex parte Sheptonhurst Limited* and noted the conclusion of Lord Justice O'Connor:

"In a case where there has been no change of circumstances, if the licensing authority refuses to renew on the ground that it would be appropriate having regard to the character of the relevant locality, it must give its reasons for refusal; If their reasons given are rational, that is to say properly relevant to the ground for refusal, then the court cannot interfere. I believe this to be the true protection for a licence holder applying for renewal against a wayward and irrational exercise of discretion. The fact that in previous years the licensing authority did not choose to invoke those reasons for refusing to grant or renew the licence does not make the reasons irrational."

The Sub-Committee considered the extent of the 'relevant locality' in respect of this particular premises and determined that the 'relevant locality' is a radius of 150 metres from the premises, since this covers the area centred on the pedestrianised shopping area in Wilmslow Centre.

The Sub-Committee further addressed the character of the relevant locality and the use to which premises in the vicinity are put. It noted that the locality is predominantly a mixed shopping and commercial area, with a number of residential properties within the relevant locality. St Teresa's Church is the nearest place of worship within the relevant locality. There is one school in Grove Avenue within the relevant locality. The Sub-Committee noted that within the vicinity of the premises there is a Leisure Centre, three further churches and one further school. The evidence was that many of these have evening activities to and from which people walk, taking routes which pass through Grove Street.

The Sub-Committee took into consideration the fact that the applicant had held a sexual entertainment venue licence for a year and a premises licence prior to that. It also gave careful consideration to the character of the relevant locality and to the use to which premises are put in the vicinity and determined that the renewal of the licence would be inappropriate.

Having taken into consideration:

- The provisions of Schedule 3 of the 1982 Act
- Home Office Guidance relating to sexual entertainment venues
- Cheshire East Borough Council's policy on the licensing of sexual entertainment venues and
- All the evidence presented to the Sub-Committee, including the submissions of each of the parties to the hearing and the written objections within the report and the late representations
- The case law referred to

The decision of the Sub-Committee was:

- 1. The relevant locality for the purposes of this application is 150 metres radius of the Premises**
- 2. To refuse the application for a renewal of a twelve month sexual entertainment venue licence on the ground that it would be inappropriate having regard (i) to the character of the relevant locality and (ii) the use to which any premises in the vicinity are put**

for the following reasons:

- **The relevant locality includes a quality shopping and commercial area, including the pedestrianised Grove Street which is used by a wide range of people including children and young people, families and older people as well as a significant number of residential properties in streets adjacent to Grove Street. The relevant locality also includes St Teresa's Catholic Church and Wilmslow Prep School**
- **Within the vicinity there are further sensitive premises, which include residential premises, Wilmslow High School, The Leisure Centre, St Bartholomew's Church, Wilmslow Methodist Church and the United Reformed Church**
- **The change that has taken place during the last twelve months is that ST Lounge is more prominent due to the adverse publicity it has received and as a result people have changed their attitudes and habits and are now tending to avoid walking past it, particularly in the evening when they felt uncomfortable. Evidence was also accepted that they felt uncomfortable in the daytime. The public concern had become more widespread during the last 12 months**
- **An example of the community concern is the objection from Wilmslow Town Council which unanimously made a recommendation to Cheshire East Council that the appropriate number of sexual**

entertainment venues in this locality should be nil, although Cheshire East Council had not given consideration to such a restriction

- The objections received from a 13 year old and the mother of a 15 year old showed that concerns arose from a wide age range in the community
- The matters which added to the raised awareness and which raised community concern included the following:
 - An A-Board with an ambiguous image on it, left outside when the premises are closed
 - “House rules” flyers found on the pavement outside
 - The website linked to the club
 - The promotion of ST Lounge outside Wilmslow conflicts with the promotion of Wilmslow as a quality shopping destination
- Many of the sensitive premises in the vicinity hold evening activities and people, including young people, who live in Grove Avenue and in nearby roads must walk through the pedestrianised Grove Street and past ST Lounge to attend any activity at the Leisure Centre or either St Teresa’s or St Bartholomew’s Churches. The alternatives are a much longer walking route or a car journey.

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