

LICENSING AND REGISTRATION SUB COMMITTEE

Tuesday 12 July 2011

COUNCILLORS PRESENT: Councillors Brundin, Clarkson and Coulter.

In Attendance

The following people were present at the meeting:-

On behalf of the Applicant

Alistair Thompson (Owner of the premises)
Gerald Gouriet QC (Counsel for the Applicant)
Craig Baylis (Solicitor for the Applicant)

Interested Parties

Jon Payne (Solicitor for the Christian Legal Centre and St Ebbes Parochial Church Council)
Libby Blaxall, Antoinette Okoiye, Cara Foster, Charlotte Hovell, Jannine Nicholas (Christian Legal Centre)
Dr Jonathan West
Barbara Hudson
Catriona Watson
Margaret Madden (SENDRA)
Matthew Pope
Annabelle Heywood
Rebecca Williams
Ruth Underwood
Councillor Oscar Van Nooijen

1. ELECTION OF CHAIR

Two of the members of the Sub Committee were reserve members, and because of this, it was agreed to elect a Chair for the meeting tonight.

The Chair and Vice Chair of the Sub Committee for the Council year 2011/2012 would be elected at the next meeting.

Resolved to elect Councillor Mary Clarkson as Chair for this meeting.

2. APOLOGIES FOR ABSENCE

None given.

3. DECLARATIONS OF INTEREST

None made

4. SEXUAL ENTERTAINMENT VENUE LICENCE - THE COVEN, OXPENS ROAD

The Head of Environmental Development submitted a report (previously circulated, now appended) concerning an application for a Sexual Entertainment Venue Licence (SEV) for the premises currently known as The Coven, Oxpens Road, Oxford.

Mr Gerald Gouriet QC (Counsel for the Applicant) made an application to formally amend the start time of the proposed sexual entertainment from 21.00hrs to 23.00hrs.

Allan Hibberd (Licensing Officer) introduced the report and drew attention to the amended start time of 23.00hrs for sexual entertainment. The following representations were then made:-

For the Applicant

Mr Gouriet presented the case for the Applicant, as follows:-

Hours of operation.

The proposed hours for sexual entertainment would be 23.00hours to 05.00hours the following day, Monday to Saturday. It was hoped that this would avoid an overlap of hours of operation with other facilities in the area.

Crime and disorder

The club ran as The Lodge in Pennyfarthing Place for 18 months. It was significant that Thames Valley Police had not made an objection to the current application, and that they had done so in full knowledge of how The Lodge was run.

Many of the letters of objection to the current application referred to problems presently experienced at The Coven premises. These included noise, drug use, drunken anti-social behaviour and the unsightly nature of the premises at present. However, the current application would lead to an improvement in the area, should it be granted. It was generally acknowledged that lap dancing clubs caused the Police less concern than standard nightclubs. Fears of nuisance and crime and disorder had been raised, but it was important to remember that the licence was for one year and could be refused in the future if those fears were realised.

Customer Profile

At present there was a problem with queues at The Coven. This would not happen should the licence be granted. It should be noted that the customer profile at a lap dancing club was markedly different from that of a nightclub. Patrons of a lap dancing club did not queue to get in, the entertainment was client specific, and people arrived and left at different times during the evening. Nor would there be an issue with noisy music. A lap dancing club had a more exclusive clientele, drinks were quite costly, and music was not loud in order to allow audible conversation.

Appearance and location of the Premises

Should the licence be granted, a considerable sum of money (£100,000) would be spent upon improving the appearance of the building.

The Sub Committee was invited to impose a condition requiring that the premises be neutral in appearance, with no indication that the premises was a lap dancing club. The Sub Committee had control over the appearance of the club.

The Applicant had tried hard to find an appropriate site for the venue. It was submitted that it would be hard to find a better site than this one, which had a coach park next to it and a garage and warehouses close by. Whilst some coaches might drop off some tourists nearby, many did not, as many coaches simply parked there. In any case, it was intended that the premises would be anonymous.

Discretionary Grounds for Refusal

Mr Gouriet pointed out that moral objections, however deeply felt, were not grounds for a refusal of a licence.

He also reminded the Sub Committee that, when the Council adopted the licensing provisions, it did not state that "nil" was the appropriate number of lap dancing clubs within Oxford.

It was important to examine the proximity of the proposed premises to other premises, not only in terms of distance but also in terms of hours of operation. It was submitted that there was no overlap of hours for many of the premises in the area. The Ice Rink closed for public skating at 10pm. The Oxford and Cherwell College would be closed between 4.30 and 8pm during weekdays from September. The proposed lap dancing club would not commence sexual entertainment until 11pm.

It had been suggested that the club would have an impact on the area if it was developed in the future, however it was important and necessary to look at the character of the area as it was now, not as it might be some years hence. Planning considerations did not apply.

Letters of support

Some letters of support had also been received. These should not be ignored. Some people, including women (one had written in support) enjoyed lap dancing. Many of the letters of support commented on how well run the venue had been in Pennyfarthing Place.

Other conditions

It was intended that a staff smoking area would be provided at the side/rear of the premises.

The Sub Committee was invited to impose a condition limiting the number of customers permitted in the public smoking area at any one time should not exceed 6.

The SEV licence for The Lodge had expired on 11th June 2011. This had a number of conditions attached to it. The Applicant was happy for all those conditions to transfer over to any new SEV licence for The Coven. It was understood that the previous licence included the "3 foot rule". The Applicant was happy to have this or a "no touching" rule instead.

Daniel Smith (Legal Advisor, Oxford City Council) clarified that The Coven premises would have conditions already attached to its premises licence as a night club. These would continue to apply. The Applicant appeared to be offering to comply with the existing conditions for The Lodge as well. Conditions concerning smoking and hours of operation had also been offered during the hearing.

Answers to Questions

The following information was provided in answer to questions:-

- All staff would be aged 18 or over;
- The capacity of The Coven was 500 people. However, with the proposed change to a SEV, it was anticipated that approximately 120 clients would attend at any one time. There had never been a queue at The Lodge, because that had tended to attract a few customers who spent a lot, as opposed to many customers who spent rather less;
- The Ice Rink operated some private hire operations after 10pm, but these were not public sessions;
- To define "near" it was advisable to look at the hours of operation of other premises as well as their proximity;
- It was intended to call the new premises "The Lodge", and it was felt that this would appear innocuous to tourists. However, if this was an issue, the Applicant would be happy to agree a change of name in consultation with appropriate City Council officers;
- The premises would simply appear as a building with its name upon it. There would be nothing externally to identify it as a SEV.

Interested parties objecting to the application.

The following people spoke in objection to the application.

Jon Payne, on behalf of the Parochial Church Council of St Ebbes and the Christian Legal Centre, presented his case as follows:-

Crime and Disorder

It was submitted that not too much should be drawn from the fact that the Police had not submitted an objection to the application. Regarding crime and disorder issues, the Police had limited involvement with this sort of premises.

Locality

Mr Payne submitted that the Council had looked at the locality, not in terms of licensing, but in its other policies, including the Development Framework. As a result, he suggested that the locality in which the proposed premises were placed should be the whole of the City Centre. When considering this application, the Sub Committee should take into consideration *all* facilities within the City Centre.

Mr Payne suggested that there should be no lap dancing clubs at all within the City Centre.

Appearance of premises

The Applicant had stated that the premises known as The Coven were extremely unsightly, and that a considerable sum of money needed to be spent upon them. That alone would provide grounds for refusal.

Name of premises

The Applicant would be free to call the premises any name of his choosing, unless the Sub Committee deemed otherwise.

Potential future development of the locality.

The proposed location was both unsuitable and inappropriate for a SEV application, bearing in mind not only the current use of the area but its potential future use.

The Sub Committee was invited to consider that the application had more affinity to the planning regime rather than the four licensing objectives. It was necessary to ask if the application was appropriate for the character of the area.

Other interested parties.

The following people also presented objections:-

Matthew Pope

Mr Pope reiterated the points made in his written submission. He advised the Sub Committee that he had found leaflets and flyers advertising The Lodge in the area, which he found unsuitable and inappropriate. This would not present a good impression to tourists should the same thing happen at the new premises. He was also concerned about sexually stimulated people walking through the area after leaving the club. He would not permit his wife and children to walk past the new premises should the application be granted, nor would they do so as a family returning from visits to London by train, and this would have a detrimental effect on their family life.

Councillor Oscar van Nooijen (Hinksey Park Ward)

Councillor Van Nooijen suggested that the Sub Committee should not be swayed by any moral considerations when thinking about this application.

However, the Sub Committee should think about crime, nuisance, disorder and fears of the same. It should also consider the future development of the area, which had been earmarked potentially for housing and a primary school. It

should also be noted that Oxpens Meadow was a well used public open space. The application was on the borders of St Thomas and St Ebbes neighbourhoods, both of which contained local facilities such as shops and schools. He felt that these matters should be taken into account when determining the application.

At this point, the Sub Committee withdrew to deliberate and make its decision in private, accompanied by the Committee Clerk and Legal Advisor.

The Sub Committee then returned and Councillor Clarkson announced that the Sub Committee was not yet in a position to announce its decision, but would do so in writing within five working days, in accordance with paragraph 26 of the Sub Committee hearing procedures.

The decision, subsequently released on 18th July 2011, was as follows:

Having considered all representations, both written and oral, the Sub Committee RESOLVED to GRANT the application as amended for the reasons set out in the Decision Notice appended to these minutes, and subject to the conditions set out of the Decision Notice.

5. MINUTES

Resolved to confirm as a correct record the minutes of the meeting held on 29th March 2011.

6. MATTERS EXEMPT FROM PUBLICATION.

None

The meeting started at 5.00 pm and ended at 6.45 pm

Oxford City Council

Local Government (Miscellaneous Provisions) Act 1982

Hearing under paragraph 10 of Schedule 3 of the Act In respect of an Application for Grant of a Sexual Entertainment Venue Licence

Applicant: Alistair Lockwood Thompson

Premises: The Coven, Oxpens Road, Oxford. OX1 1RX

Date of Hearing: 12th July 2011

Hearing before the Licensing and Registration Sub Committee.

Sub Committee Members: Councillors Clarkson (Chair), Brundin and Coulter.

The Sub Committee heard from:

- Allan Hibberd (Licensing Officer)
- Gerald Gouriet QC (Counsel for Applicant)
- Alistair Lockwood Thompson (Applicant)
- Jon Payne (Solicitor for St Ebbe's Church & Christian Legal Centre)
- and a number of objectors to the application

(As set out in the minutes to the meeting)

The Sub Committee considered a report submitted by the Head of Environmental Development. In addition to the report the Sub Committee also received additional material in the form of a written submission from Mr Payne and a set of plans from the Applicant showing the proposed layout of the premises.

Mr Gouriet indicated that the Applicant wished to amend his application so that the start of sexual entertainment would be 23.00 rather than 21.00 as shown in the report. The Sub Committee noted the amendment.

Decision and reasons of the Licensing Registration Sub Committee

1. The Sub Committee examined all the documents submitted and considered all the representations made at the hearing. It had particular regard to the written objections concerning the location of the premises and the Council resolution of 19/04/2010 (The Resolution)

concerning generally inappropriate locations for sexual entertainment venues.

2. The Sub Committee noted that government guidance and case law made clear that moral objections to sexual entertainment were not relevant to consideration of the Application. With this in mind the Sub Committee disregarded any passages within the representations received which expressed moral concerns.
3. The Resolution states that “*sexual entertainment venues are not generally appropriate near or in locations / or areas containing any of the following:*
 - *Historic buildings or tourist attractions,*
 - *Schools, play areas, nurseries, children’s centres or similar premises,*
 - *Shopping complexes,*
 - *Residential areas,*
 - *Places of worship, ”*
4. The Sub Committee noted that relevant locality is not defined in The Resolution nor in the applicable legislation or government guidance. Without a full assessment of the entire area The Sub Committee felt that it had insufficient information to allow it to define the dimensions of an exact area as the relevant locality, nor to reach a decision on the appropriate number of sex establishments in such an area.
5. However, for the purposes of deciding the Application the Sub Committee found that the relevant area in this case is the area near to the proposed premises. It further found that the only buildings sufficiently near the proposed premises to engage The Resolution, and which could fall within the categories set out, are the Oxford Ice Rink and Oxford and Cherwell Valley College. Neither fall squarely within any of the categories in the Resolution but the College is similar to a school and the Ice Rink does attract many children and tourists.
6. Despite the location of the College and Ice Rink the Sub Committee were satisfied that with the amended hours of operation at the proposed premises the College would be closed and public skating sessions over well before any sexual entertainment began. There was evidence that private skating sessions took place after 23.00 but the Sub Committee found the risk of these sessions bringing children or vulnerable people into contact with the Premises was very low.

7. The Sub Committee noted the representations concerning proximity of the proposed premises to residential and shopping areas but found that whilst the premises are between the residential areas of St Ebbes and St Thomas's they could not reasonably be considered to be in or sufficiently near them to engage The Resolution. Nor are they sufficiently near the Westgate shopping centre.
8. The Sub Committee also considered the representations concerning incompatibility of the proposed premises with planning policy aspirations for the West end of Oxford City. However, the Sub Committee had to base their view on the character of the relevant locality and nearby premises at the time of application and not as it may develop in the future. If granted any licence would in any event require annual renewal which would take into account the character of the locality at the relevant time.
9. The Sub Committee noted the Applicant had the benefit a good track record in operating a sexual entertainment venue (SEV) at a similar Oxford premises and that Thames Valley Police did not object to the application. It was significant that the Applicant appeared willing and, from his track record, able to operate premises discretely, anonymously and with no external indication as to the nature of entertainment taking place. Given the location of the Ice Rink, the College and coach parking area the Sub Committee found it particularly important that any SEV in the proposed location have no external indication of the type of premises or entertainment being carried on.
10. In considering The Resolution the Sub Committee focused on the harm it seeks to address or objectives it aims to achieve. In the absence of any specific detail in The Resolution on these points the Sub Committee found that among the primary concerns should be the welfare of children and the prevention of nuisance and crime. With appropriate conditions the Sub Committee felt that the premises could operate without aggravating these aims.
11. Taking all these factors into account the Sub Committee found that whilst The Resolution was engaged at a low level in relation to the Ice Rink and College there were good reasons to believe the premises would not be inappropriate in the proposed location and an exception to the general position should be made in this case.
12. The Sub Committee found that in order to ensure the proper running of the premises it is necessary to attach conditions to the licence. The Licensing Authorities Standard Conditions for Sexual Entertainment Venues should apply together with all conditions on the Applicant's existing premises licence at The Lodge so far as they relate to the carrying on of sexual entertainment, also the additional conditions offered by the Applicant during the hearing. These conditions should be combined in one clear schedule avoiding any duplication.

13. The Sub Committee had regard to the Human Rights Act 1998 and European Convention on Human Rights as well as its duty under the Crime and Disorder Act 1998. However, it found that it had heard no evidence that any persons human rights would be infringed by granting the application nor sufficient to convince it that any significant crime and disorder would be caused by the grant.

Decision: The Application as amended is **granted** subject to the conditions set out on the attached Schedule.

Signed:

Mary Clarkson

Councillor Mary Clarkson (Chair)

(Date of Decision Notice: 18th July 2011)

Note:

- Any statutory rights of appeal against this decision are set out in paragraph 27 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.