

## LICENSING COMMITTEE

21 July 2015

### Present:

Councillor Greg Sheldon (Chair)

Councillors Laws, Branston, Brimble, Crew, Hannan, Harvey, Henson, Holland, Pearson and Spackman

### Apologies:

Councillors Choules and Shiel

### Also present:

Assistant Director Environment, Corporate Manager - Legal, Environmental Health and Licensing Manager, Litigation Solicitor and Democratic Services Officer (Committees) (HB)

### Also in Attendance:

Portfolio Holder for Health and Place – Councillor Owen

## 12 **Declarations of Interest**

No declarations of interest were made by Members.

## **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

## 13 **Application for the renewal of a Sex Entertainment Venue Licence, Eden Lounge, 162-163 Fore Street, Exeter**

The Chair asked for introductions of those present and the Corporate Manager - Legal explained the Council's procedure for the consideration of the application.

Kyriacos Kimitri, the Managing Director of the Applicant company was not in attendance. The Applicant was represented by David Campbell (DC) who was accompanied by Dianne Scullion, the Designated Premises Supervisor for the Eden Lounge.

The Assistant Director Environment presented the report on the application by Valley Wood Resources Ltd (the Applicant) in respect of the premises Eden Lounge at 162-163 Fore Street, Exeter for the renewal of a licence for a sexual entertainment venue (SEV) under the provisions of the above legislation.

The Assistant Director Environment explained that the Council had adopted its current policy on sex establishments on 23 July 2013, and that the policy stated that there was no locality within Exeter in which it would be appropriate to licence a sexual entertainment venue or a sex cinema, and accordingly the appropriate number of these categories of sex establishments for each and every locality in Exeter is nil. However, in considering the original licence for these premises in February 2014, the Licensing Committee had found an exception to the policy. He

further explained that in considering the renewal of the application, Members should have regard to the European Convention on Human Rights, in particular Article 8 (right to a private and family life) Article 10 (right to freedom of expression including artistic expression) and Article 1 (the right of peaceful enjoyment of possessions).

In response to Members' questions, the Assistant Director Environment explained who the responsible authorities were.

The Environmental Health and Licensing Manager advised that two full inspections of Eden Lounge had been undertaken since the licence was granted on 26 February 2014 together with a number of ad hoc compliance checks which included an examination of conditions external to the premises.

The recommendation was for the Licensing Committee to determine the application.

Two objectors, Moira Macdonald (MM) on behalf of Fawcett Devon and Josephine Sutcliffe (JS), attended the meeting and spoke on this matter.

MM raised the following objections on behalf of Fawcett Devon. She stated that the application had been advertised on two occasions. The first advert had not complied with the Council's requirements and as a result the proposal to renew the licence had not adequately come to the attention of the public.

Fawcett Devon, with the assistance of the Exeter Labour and Green Parties had raised a petition of some 104 signatures, both during the initial advertisement period and after. The petition had also been made available at the International Women's Day at the Mosque. The petition requested Councillors to reject the licence application to run a Sexual Entertainment Venue in Exeter. The petition was tabled.

MM referred to a number of instances where posters and fliers advertising activities at Eden Lounge were not specific and did not show the precise nature of the events and also to apparent discrepancies in the timings of opening hours. Some advertisements also suggested that the internal layout of the Eden Lounge did not accord with the layout agreed by way of condition imposed by the Licensing Committee previously. These errors, she maintained, could be indicative of other lapses and therefore brought into question whether the management of the premises was fit and proper.

MM identified a further problem in respect of the entrance and exit to Eden Lounge. It was MM's view that the doorway was insufficiently separated from the entrance to the EX4 bar and also shared its smoking area with that bar. Female patrons of that bar, who used the smoking area, could therefore be subjected to unwanted attention from patrons of Eden Lounge. Similarly, as the pavement outside these premises was narrow, female passers-by could be subjected to similar unwanted attention. She referred to a publication – "Sex Licensing" by Philip Kolvin QC, which stated that a Licensing Authority, in determining applications for Sex Entertainment Premises, should have regard to equality issues and that this should include an appreciation that the perceptions of men and women (and children) when using a City Centre differ and, that women particularly, may feel vulnerable in certain spaces. Further, in this context, permission for a sex entertainment venue could be considered to be discriminatory.

Responding to the Chair, DC advised that he did not wish to question MM.

Responding to Members' queries, MM accepted that individuals making inappropriate remarks to passers-by whilst smoking in defined areas were likely to occur at other premises in the city centre. However, she had been told by a number of people that they felt that such a problem was more likely to emanate from outside Eden Lounge and this was evidenced by Police advice during the Reclaim the Night march that the walkers should use the other side of the street. She remarked that part of the purpose of the March was to highlight specific problems experienced by women and, in this respect, this part of the city centre had been targeted to raise the profile of these problems.

Responding to another Member, who had queried why MM had questioned whether the management was fit and proper, she re-iterated that this was because she considered that the application of the agreed conditions lacked rigour.

MM stated that, in her opinion, the area outside the Eden Lounge exuded a particularly unpleasant atmosphere, which was not evident in other premises in the city centre.

In response to a Member, MM stated that it would not be appropriate to negotiate any changes to the Licence Conditions as it was not possible to compromise opposition to Eden Lounge.

The Corporate Manager - Legal advised that company checks had been made that morning and confirmed the status of Valley Wood Resources Ltd. as being "Active".

Responding to a question from a Councillor, the Corporate Manager - Legal stated that whilst the previous Committee had not been obliged to provide reasons for its decision to the applicants' previous application for an SEV license, the committee had nonetheless given the following reasons "*the Premises had previously been operated without complaint and there was no evidence to show that it had a negative impact on the city centre in terms of the character of the locality.*"

JS made the following comments. She is a resident of Exeter and is over 60 years of age and is a trustee and volunteer at the Devon Rape Crisis Service. In this role, she worked with women victims of sexual violence and rape. Whilst their experiences could not be directly linked to these premises, she asserted that its existence created an inappropriate culture and atmosphere in the City that demeaned women and contributed, in some cases, to increasing tension and fear of attacks and abuse against women. Although she could not provide statistics and could not make a direct link to Eden Lounge, the Rape Crisis Centre had witnessed an increase in the number of sexual crime over recent months. In this respect, she acknowledged that such figures could also be correlated to other late night premises in the City.

Responding to the Chair, DC advised that he did not wish to question JS.

DC provided the Committee with a full transcript of the representations he was making on behalf of the applicant. The document was not exhaustive and it was presented alongside additional oral submissions. The document set out the background and legal issues to the application with reference to the City Council's Sex Establishment Licensing Policy and the decision of the Licensing Committee on 26 February 2014 to approve an application for these premises to operate as an SEV as an exception to that policy.

DC made reference to leading case law and to the decision of Leeds City Council when a SEV application had been refused and the refusal upheld. In this instance,

however, the licence that had been granted was later refused on renewal after a change in the policy of the Council.

He stated that the objections did not provide sufficient reasons for the Committee to refuse the renewal of the licence. He stated that there was no evidence that the premises were linked to crime directly or indirectly and that there was also no evidence that, since the licence had been granted, the character of the locality had suffered as a result of the premises. It had operated for the past year without complaint and there was no evidence to show that it had a negative impact on the City Centre in terms of the locality of the area. Further, no mandatory grounds for refusal allowed by statute applied.

DC stated that although a number of objections had related to crime, no representations had been made by the Devon and Cornwall Constabulary in this respect. He stated that the moral and political objections, though made with the best intentions, had no place in the determination process of the Committee and they carried no weight in the determination to be made. He submitted a letter of support for the management of the premises and the conditions therein from those employees engaged as dancers; the letter was signed by 13 female employees.

He set out his rebuttals to each of the objections received to the application, listed I to XVI. In conclusion, he stated that Eden Lounge was well run, legally and regulatory compliant and with a track record of co-operation with the Authorities, It had operated without complaint and there was no evidence of crime or anti-social behaviour. There was no change in the circumstances concerning the premises since the licence had being granted in 2014 as a departure from the Council's policy.

DC responded to questions from Councillors. A Member suggested that the absence of complaints from the Police did not necessarily indicate a lack of either public concern or the existence of problems. Responding, DC stated that the Police, who had a duty to raise concerns, had not done so. The Corporate Manager - Legal directed Members attention to paragraph 4.13 of the report which stated "*..... the Devon and Cornwall ;Police have said that they have no concerns regarding the running of the Eden Lounge since the original licence was issued and that no instances of sexual assault or abuse have been directly linked to the Eden Lounge.*"

To another Member, who referred to the consultation process undertaken prior to the adoption of the policy, DC stated that even though the consultation process had shown significant opposition to SEV's being located in Exeter, the Licensing Committee in February 2014 had reached its decision in a balanced manner after due consideration of all relevant issues.

DC responded to a letter of objection (which was included in the committee report), which he indicated he had not received prior to the meeting as part of the circulated papers. It related to the congregation of the near-by Mint Methodist Church and to the impact on the congregation attending Sunday services. DC stated that the representation had not shown that there was a negative impact on the character of the locality or that the presence of Eden Lounge had impinged on the congregation attending Church services.

He tabled a petition supporting the renewal of the licence signed by some 400 women.

The Chair invited the objectors to respond to the representations made on behalf of the applicant.

JS asked if the 400 signatories to the letter of support for the renewal were from residents of Exeter. DC stated that the addresses were on the representation. JS also stated that the response of DC to the objection in respect of the Methodist Church indicated an ignorance of the true nature of the services provided by the Church. In fact it provided classes and a facility for community groups every day of the week and usually remained open up to 9.30pm. DC apologised if he had conveyed a lack of understanding and pointed out the general contribution of Eden Lounge to the night-time economy and, particularly, that no evidence had been provided that patrons of Eden Lounge undermined the ability of the Church congregation to attend services.

The Corporate Manager - Legal Services invited the Environmental Health and Licensing Manager to put forward conditions he considered appropriate in the event the Committee was minded to approve the application. The Environmental Health and Licensing Manager advised that should the Committee be minded to approve the application, the Licensing Authority would require the imposition of the standard conditions as set out in Appendix 3 of the Council's Sex Establishment Licensing Policy. DC advised that Eden lounge had followed all conditions since the grant of the Licence in February 2014.

The Corporate Manager - Legal summarised the relevant aspects of the Council's Sex Establishment Licensing Policy which was adopted by the Council on 23 July 2013 as follows:

1. *Paragraph 1.3 of the policy makes clear that the Council, "will not exercise its duties in accordance with any moral standing ..."*
2. *Paragraph 1 of Policy 7 states that, "There is no locality in Exeter in which it would be appropriate to license an SEV or sex cinema. Accordingly the appropriate number of these categories of sex establishment for each and every locality within Exeter is Nil."*

The Corporate Manager - Legal then advised that there was no suggestion that the mandatory grounds for refusing an application applied. So if members were minded to refuse the application they could only rely on the discretionary grounds which were set out in paragraph 12(c) and (d)(1)(ii) of the Local Government (Miscellaneous Provisions) Act 1982 as follows:

- That the number of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality.
- That the grant or renewal of the license would be inappropriate having regard to:
  - the character of the relevant locality;
  - the use to which any premises in the vicinity are put.

She advised that Members might therefore wish to have regard to the detail of the application relating to the above discretionary grounds, which were set out in the following paragraphs of the Policy:

Policy 7: The Number of Sex Establishments;  
Policy 8: Character of Locality -  
Policy 9: Vicinity

The Corporate Manager - Legal advised Members that case law suggests that the provision for annual renewal of licences means that the Committee is entitled to have “a fresh look” at the matter each year. If there was no change in the circumstances since the previous decision but the Council wished to depart from that earlier decision, then the Committee must give its reasons for doing so. If those reasons were rational, i.e. relevant to the grounds for refusal, then the Courts were unlikely to interfere with that decision.

The Committee was also advised to give due weight to the fact that a licence was granted in the previous year and that the circumstances were such that little had changed.

Members expressed their surprise that the Committee in February 2014 had granted a licence, given that the Council’s policy, adopted on 23 July 2013 was that there was no locality within Exeter in which it would be appropriate to licence a SEV and that, accordingly, the appropriate number of these categories within Exeter was nil. One Member felt that it would be reasonable to consider that the presence of these premises in this area infringed the Human Rights of some members of the public.

The Committee retired to make its decision in the presence of the Corporate Manager - Legal, Litigation Solicitor (as an observer) and Democratic Service Officer (Committees). Councillor Owen, the Portfolio Holder for Health and Place, also remained as an observer.

**RESOLVED** that:-

Members refused the application for an SEV licence in respect of the Eden lounge for the following reasons:

- (1) the Council’s Sex Establishment Licensing Policy adopted on 23 July 2013 makes clear that there is no locality within Exeter in which it would be appropriate to licence a Sex Entertainment Venue (SEV). In particular, the Committee considers that the presence of the Eden Lounge in this locality is incompatible with the broad aims contained in the Core Strategy to provide and enhance retail, cultural and tourist facilities in the City Centre that add to economic growth, that build social cohesion and that promote vitality and viability;
- (2) the Committee consider that the character of the locality is mixed but, in their view, the character of the locality is significantly:
  - Late Night Entertainment and Shopping;
  - Religious;
  - Residential; and
  - Family Leisure.

Whilst the Committee was mindful that there were no complaints from the Police or others about how the premises were run, it was the Committee’s view that there is an active Methodist Church in the locality which offers evening activities and outreach services and is normally open until 9.30pm Monday to Friday and therefore a sex establishment is an unsuitable use in that locality; and

- (3) the Committee considered that the previous Committee had defined “vicinity” too narrowly when approving the application as an exception to the Council’s policy. The Committee considers the Eden Lounge to be in the vicinity of:

- a place of worship;
- important historic buildings; and
- important cultural facilities.

Examples include the Methodist Church, the Cathedral, the Corn Exchange, the Bike Shed Theatre and the Picture House all of which were identified by the Committee as being in the vicinity. The Committee was mindful of the existence of the well used walkways linking Fore Street to these various destinations in the vicinity.

**14 Review of Gambling Act - Draft policy to be used as Consultation Document**

The Assistant Director Environment presented the report setting out the proposal to review the Gambling Act Policy. It had been written in 2012 and came into effect in January 2013. There was a legal requirement to review such policy statements every three years. The current policy had to be reviewed by 2016, so it was relevant to commence consultation work on a draft policy document. All Members were entitled to comment on the draft policy and the final Statement of Licensing Policy to go to Council.

**RESOLVED** that the Draft Gambling Act Policy be agreed for public consultation, to follow the suggested timetable below:-

21 July 2015	Proposed revision of Gambling Act Policy to be circulated for consultation.
16 October 2015	Consultation period ends
3 November 2015	Gambling Act Policy (amended as necessary) to Licensing Committee with recommendation for approval to Council.
1 December 2015	Licensing Policy to Executive
15 December 2015	Licensing Policy to Council for approval

The meeting commenced at 5.30 pm and closed at 8.35 pm

Chair