

TO: Copy to recipients of Licensing & Regulatory Sub-Committee papers

Our reference HMH
Your reference N/A
Contact Helen Hardinge
Email democratic.services@westsuffolk.gov.uk

29 January 2024

Dear Councillor

Licensing and Regulatory Sub-Committee - Wednesday 31 January 2024

I am now able to enclose, for consideration at the Wednesday 31 January 2024 meeting of Licensing and Regulatory Sub-Committee, the attached supplementary paper which sets out **the minutes of the Sub-Committee on 11 October 2022** and which relates to the following agenda item:

Agenda No	Item
5.	<u>Application for the Renewal of a Sex Establishment Licence (Sexual Entertainment Venue - Heaven Awaits Ltd) (Pages 1 - 6)</u>

Report No: **LSC/WS/24/001**

Yours sincerely

Helen Hardinge
Democratic Services Officer
Human Resources, Governance and Regulatory

Jennifer Eves • Director (Human Resources, Governance and Regulatory)
Tel 01284 757015 • **Fax** 01284 757110
Email democratic.services@westsuffolk.gov.uk

West Suffolk
Council

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Licensing and Regulatory Sub-Committee

Minutes of a meeting of the **Licensing and Regulatory Sub-Committee** held on **Tuesday 11 October 2022** at **10.00 am** in **Conference Chamber West, West Suffolk House**, Western Way, Bury St Edmunds IP33 3YU

Present **Councillors**

Carol Bull
Roger Dicker
Pat Hanlon

22. **Election of Chair**

It was proposed, seconded and

Resolved:

That Councillor Pat Hanlon be elected Chair for this sub-committee meeting.

23. **Apologies for absence**

No apologies for absence were received.

24. **Substitutes**

No substitutions were declared.

25. **Declarations of interest**

Members' declarations of interest are recorded under the item to which the declaration relates.

26. **Application for the Renewal of a Sex Establishment Licence (Sexual Entertainment Venue - Heaven Awaits Ltd) (Report number: LSC/WS/22/013)**

The Lawyer (Litigation/Licensing) welcomed all present to the Hearing, reported that no declarations of interest had been received and introductions to all parties were made. He also drew attention to the procedure for the conduct of the Hearing as attached to the agenda.

The following parties were present at the Hearing:

a. Applicant

- i. Gokul Swani (applicant/Director, Newmarket Entertainment Limited, 109 High Street, Newmarket)
- ii. Gary Grant (barrister representing the applicant)
- iii. Emily Harvard (solicitor representing the applicant)

Witnesses for the applicant

- iv. Kyla Clarke
- v. Shani Cooper
- vi. Michelle Easterbrook
- vii. Becky Hall
- viii. Takisha Mulvey
- ix. Bruno Tavares
- x. Luke Watson

b. Interested parties

- i. Councillor Rachel Hood, representative of Newmarket Town Council
- ii. Sara Beckett, third party representative

Prior to the start of the Hearing, the applicant had agreed for a paper providing 'a brief introduction to the historical importance of Newmarket High Street' submitted by Councillor Hood on behalf of Newmarket Town Council, to be circulated to the Sub-Committee.

The Food Safety and Licensing Manager presented the report which explained that an application had been received from Newmarket Entertainment Limited for the renewal of a sex establishment licence for the sexual entertainment venue, Heaven, 109 High Street, Newmarket. The premises had been trading since April 2006 and had held a Sexual Entertainment Venue (SEV) licence since 1 October 2012. Any SEV licence granted was held for a period of one year and was renewable annually. A copy of the application was attached at Appendix A to Report number: LSC/WS/22/013.

The application was to licence the premises for use as a sexual entertainment venue during the following hours, which were in accordance with the current premises licence granted under the Licensing Act 2003. No changes had been proposed:

Monday to Wednesday: 7.00pm to 02.00am
Thursday to Saturday: 7.00pm to 03.20am
Sunday: 7.00pm to 03.00am

The Sub-Committee noted that the Cumulative Impact Policy, mentioned in the objection from Newmarket Town Council, should only be considered in relation to applications made under the Licensing Act 2003 and was not applicable for this renewal, which was to be considered under different legislation, as detailed in the report.

Four representations had been received following the advertisement and consultation held on this application, one from Newmarket Town Council and three others from third parties, and these were attached to the report.

Following the publication of the agenda and report for the Hearing, a supplementary document pack had been received from the applicant and this had been subsequently distributed and published prior to the Hearing for consideration by the Sub-Committee.

The Sub-Committee then heard the individual submissions from each of the parties present.

Speaking on behalf of the applicant, Gary Grant (barrister) drew attention to the following:

- That the venue, which offered a lawful form of adult entertainment, attracted a significant number of customers (both local and visitors from outside Newmarket) per year and was an integral contributor to the night-time economy of Newmarket. Many other businesses such as the adjoining nightclub, pubs, restaurants and taxi operators in the locality thrived off the back of the success of Heaven. Heaven was a member of the Newmarket Business Improvement District (BID) and the BID had supported the renewal of the licence. It was therefore considered to be situated in an ideal, discrete location and its viability, together with many other businesses that greatly depended on Heaven's success, would suffer significantly, if it were to close or be relocated.
- That Heaven had held an SEV licence since October 2012 and every year since then it had been renewed for another year. No significant changes had been made to the application since then.
- That the entrance and fascia to the venue was very discrete with no advertising provided.
- That only four objections had been received, and notably that none had been received from any responsible authority or business.
- Responding to specific concerns of those that had objected to the application, which had made reference to section 6.3 (see below) of the Council's Sex Establishment Licensing Policy, it was stated that:
 - Children and worshippers were highly unlikely to walk past the premises when it was open from 9pm.
 - Extensive consultation had been carried out in 2017 when the Council formulated its Sex Establishment Licensing Policy, where it was established that, subject to conditions, the current location on the High Street for Heaven was appropriate and was a legitimate addition to the retail and leisure industry in this locality.
 - The adjacent property, which was under the ownership of West Suffolk Council for use as temporary accommodation for the homeless and was considered to be a 'red herring' as this property had largely been in residential use for many decades.

As part of his submission, Gary Grant called upon witnesses, Michelle Easterbrook and Kyla Clarke, employees of Heaven. They gave accounts of their positive experiences of working at the venue and the detrimental financial impacts that would be caused to them should their employment be terminated as a result of the SEV licence not being renewed. Emphasis was

then placed on the negative impact caused to the viability of the adjoining nightclub and art gallery which shared the same building (and therefore premises costs) as it was considered this could result in further job losses.

Having been invited to put questions to the applicant by the Sub-Committee and Licensing Officers, Councillor Rachel Hood was then asked to make her representation on behalf of Newmarket Town Council.

As previously raised separately to the Hearing with appropriate officers, Councillor Hood firstly expressed concern that Councillor Roger Dicker had been appointed to the Sub-Committee to consider the application. The Sub-Committee had previously been made aware of Councillor Hood's concerns and the Lawyer (Litigation/Licensing) reiterated that the Hearing was not the forum in which to discuss the matter.

Councillor Hood explained that Newmarket Town Council's principal concern was the location of the SEV premises. She specifically drew the Sub-Committee's attention to the Council's Sex Establishment Licensing Policy, which stated under section 6.3:

'West Suffolk Council will not normally grant a licence where any premises within the vicinity are used for the following:

- (a) school;*
- (b) place of worship;*
- (c) family leisure;*
- (d) domestic residential buildings;*
- (e) important historic buildings;*
- (f) youth facilities;*
- (g) important public and cultural facilities.'*

Councillor Hood reiterated the view of the Town Council in respect of the proximity of the venue to a children's play area; to nearby places of worship; and to a building owned by West Suffolk Council which was currently providing housing for vulnerable persons. Attention was also drawn to the supplementary document circulated immediately prior to the Hearing by Councillor Hood, and the detrimental impact the venue had on the historical importance of the High Street and the conservation area in which it sat.

Councillor Hood added that the Town Council did not wish Heaven to close; however, it should be providing its service from a different location that would not cause a harmful effect to the character and appearance of the High Street. She felt that by renewing the SEV licence, the Council was contravening section 6 of its own Sex Establishment Licensing Policy.

Sara Beckett, a third party, had submitted a written representation and was invited to speak. Her concerns were largely similar to those of Newmarket Town Council, including that the historic core of Newmarket should be protected, and the Council was contravening section 6 of its Sex Establishment Licensing Policy. Concern was also expressed regarding the constitution of the Sub-Committee and that it could appear that this was a 'rubber-stamping' exercise without full consideration being given to the merits of the application.

The applicant was then invited to sum up and have right of reply to the objections raised, following which, at 11am, the Sub-Committee, accompanied by the Lawyer (Litigation/Licensing) and Democratic Services Officer, retired to the Mayor's Parlour to consider the merits of the application in private.

At 11.43am, the Sub-Committee, Lawyer (Litigation/Licensing) and Democratic Services Officer returned to the Conference Chamber West, where the following decision was announced.

With the vote being unanimous, it was

Resolved:

That the renewal of the Sex Establishment Licence for the Sexual Entertainment Venue, Heaven, 109 High Street, Newmarket, be granted as applied for, incorporating the standard conditions.

Reasons for decision:

Although not specially raised before the Sub-Committee, it nevertheless confirmed that two members of the Sub-Committee had not previously dealt with any application to renew the licence for the current premises. The Sub-Committee was at pains not to close its mind to permissible outcomes, considered all issues in good faith without the presence or appearance of bias or pre-determination, had regard to all relevant considerations and acted in accordance with the law; this to avoid any perception of bias and 'rubber-stamping'.

Whilst hearing representations regarding the ramifications for those employees who might be affected should the application be refused, the Sub-Committee, however, concentrated on such legal criteria as set out within Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act") and the Council's Sex Establishment Licensing Policy ("the Policy").

Having regard to location of the premises and relevant representations made, particular regard was given to Part 6 of the Policy ("Location of Licensed Premises") and, in particular, the test as set out to determine vicinity at paragraph 6.3.3 and thereafter in the Policy.

Consideration was given to Appendix D of the Policy – Refusals and Revocation of Licences, particularly, the grounds for refusal as set out within paragraph 3 (d) that the grant or renewal of the licence would be inappropriate having regard to:

- i. the character of the relevant locality;
- ii. the use to which any premises in the vicinity are put; or
- iii. the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Taking the above into account, the Sub-Committee was not of the view that any sensitive premises referred to within the objections were adversely affected or influenced by the licensed premises.

Accordingly, having considered all relevant facts, with due regard to the application, the representations received and the Council's Sex Establishment Licensing Policy, the Sub-Committee unanimously resolved to grant the renewal of the licence as applied for incorporating the standard conditions.

The meeting concluded at 11.49 am

Signed by:

Chair
