

Licensing Committee



Forest Heath
District Council

Minutes of a meeting of the **Licensing Committee** held on
Monday 19 January 2015 at **6.00 pm** at the **Council Chamber, District
Offices**, College Heath Road, Mildenhall IP28 7EY

Present: **Councillors**

Chairman Michael Anderson
Vice Chairman Carol Lynch

David Bimson
Bill Bishop
Simon Cole
Roger Dicker

John McGhee
Nigel Roman
Bill Sadler
Eddie Stewart

1. **Chairman's Announcement**

Prior to the commencement of the meeting, the Chairman asked all individuals present not to cause a disturbance or interrupt the meeting. He advised that, if necessary, anyone making a disturbance may be asked to leave the Council Chamber.

2. **Apologies for Absence**

There were no apologies for absence.

3. **Substitutes**

There were no substitutes at the meeting.

4. **Public Participation**

The Chairman had been advised that Mrs Sara Beckett wished to speak at the meeting, however, Mrs Beckett explained that she actually wished to address the meeting in respect of the representation she had made with regard to Heaven Awaits' application (Report No. LIC/FH/15/001) and this would be undertaken as part of the hearing process with regard to the consideration of this item later on the agenda.

5. **Minutes**

The minutes of the meeting held on 10 November 2014 were unanimously accepted by the Committee as an accurate record, subject to it being noted that Councillor Rachel Hood was in fact Mayor of Newmarket Town Council (and not Deputy Mayor), and were signed by the Chairman.

6. **Exclusion of the Press and Public**

The Chairman agreed for this item to be brought forward on the agenda so that the application for a combined Hackney Carriage/Private Hire driver's licence (Report No. LIC/FH/15/002) could be considered prior to Heaven Awaits' renewal application hearing.

With 6 voting for the motion and with 4 abstentions, it was

RESOLVED:

That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as prescribed in Part 1 of Schedule 12A of the Local Government Act 1972 and indicated against each item.

7. **Application for the Grant of a Combined Hackney Carriage/Private Hire Driver's Licence (para 1) (Report No. LIC/FH/15/002)**

The Committee was asked to consider an application for a Combined Hackney Carriage/Private Hire Driver's Licence under the provisions of Section 51 of the Local Government (Miscellaneous Provisions) Act 1976.

The driver attended the meeting to present his case and answered Members' questions.

The driver and the Licensing Officer left the meeting prior to the Committee's deliberations.

It was proposed and duly seconded that the application be approved and the license be granted. Upon this being put to the vote and with 7 voting for the motion and with 3 abstentions, it was

RESOLVED:

That the application for a Combined Hackney Carriage/Private Hire Driver's Licence be granted.

The driver and the Licensing Officer then re-joined the meeting in order to be advised by the Lawyer of the Committee's decision. The Chairman wished the driver well but stressed that the Committee would have concerns should he appear before them again. Following which the driver left the meeting.

On conclusion of this item the press, public and all other parties were invited to re-join the meeting.

8. **Application for the Renewal of a Sex Establishment Licence (Sexual Entertainment Venue - Heaven Awaits Ltd) (Report No. LIC/FH/15/001)**

The Lawyer welcomed all present to the Hearing, reported that no declarations of interest had been received and introductions to the Panel were made by the Chairman.

The Lawyer outlined the procedure for the conduct of Sex Establishment Licensing Hearings which was attached as Attachment 1 to Report No LIC/FH/15/001.

The following parties were present at the Hearing:

(a) Applicant

- (i) Ms Helen Cardy, Poppleston Allen, Solicitor to the Applicant
- (ii) Mr Mitchell Clarke, Director, Heaven Awaits Ltd, 109-111 High Street, Newmarket
- (iii) Mr Philip Kolvin QC, Barrister to the Applicant
- (iv) Mr Jason Newell, Director, Heaven Awaits Ltd, 109-111 High Street, Newmarket
- (v) Mr Mathew Rolfe, Director, Heaven Awaits Ltd, 109-111 High Street, Newmarket

(b) Interested Parties

- (i) Mr Andrew Appleby, local resident
- (ii) Mrs Sara Beckett, local resident
- (iii) Mr David Dadds, Solicitor to Newmarket Town Council
- (iv) Mr Gerald Gouriet QC, Barrister to Newmarket Town Council
- (v) Mr Robin Hardy, local resident
- (vi) Councillor Warwick Hirst, Newmarket Town Council
- (vii) Councillor Rachel Hood, Mayor, Newmarket Town Council

The Business Regulation and Licensing Manager presented the report which explained that an application had been received for the renewal of a Sex Establishment Licence for the Sexual Entertainment Venue Heaven Awaits Ltd, 109-111 High Street, Newmarket. The premises had been trading since April 2006 and had held a Sexual Entertainment Venue licence since 1 October 2012. A copy of the application was attached at Appendix 1.

The application was to licence the premises for use as a sexual entertainment venue during the following hours (as per the current premises licence with no proposed changes):-

Monday to Wednesday: 10.00am to 02.00am
Thursday to Saturday: 10.00am to 03.20am
Sunday: 12.00pm to 03.00am

The application had been served on the Licensing Authority and the Police, neither of which had made representations. However, following the advertisement of the application 10 representations had been received from interested parties objecting to the application and these were attached at Appendices 3 - 12.

Also attached as Appendix 13 was a late representation received after the deadline for responses. The Officer also advised that since publication of the agenda a further two late representations had been received. It would,

therefore, be a matter for the Committee to determine if they were to include these three representations as part of the Hearing.

In addition, the Officer explained that an unknown person had, earlier that day, handed in three separate petitions collectively containing approximately 166 signatures. However, none of the petitions fully complied with the Council's policy for petitions (in that they contained incomplete names and addresses) and they had, therefore, not been made available to any parties involved nor had consent been obtained to do so.

The Business Regulation and Licensing Manager explained that in addition to the consideration of the renewal application the Committee was also requested to again consider the premises signage. The current and main external sign did not comply with the Council's standard conditions for sex establishments; in that the sign was larger than permitted. A dispensation had been granted by the Council as part of the licence's renewal in 2013 and the applicant was again requesting this dispensation as part of the application before the Committee.

Lastly, the Officer made reference to Page 23 of the agenda which set out Part B of the application form. Under 'Operation of the venue and other relevant information' the applicant had written: "*The only articles sold are dances for the dancers, brought by the customer, no other articles are sold.*" The Officer clarified with the applicant that this sentence contained a typographical error and it should in fact read: "*The only articles sold are dances **from** the dancers...*".

The Chairman agreed for the three late representations to be considered as part of the Hearing and the two that had not been included as part of the agenda papers were then tabled to the meeting for reference.

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

Mr Philip Kolvin QC, Barrister to the Applicant, advised the Committee that Heaven had been successfully trading since 2006 and the owners were all local, family men. Members were reminded that the application before them was simply seeking approval for the times as granted 12 months ago, with no changes.

The Committee was advised that the Applicant had specifically contacted the local police to confirm that they had no objection to their renewal application and they had raised no issues. He reminded those present that morals were not an adequate reason for objection and argued that the representations made against the application were from a very small percentage of Newmarket's total population.

Lastly, Mr Kolvin made reference to the objection from Newmarket Town Council. He explained that the Applicant had twice requested to meet with the Town Council but had been refused on each occasion.

Mr Gerald Gouriet QC, Barrister to Newmarket Town Council, then addressed the meeting. He stressed that the Town Council was not objecting to the

existence of Heaven, but simply to the location of the premises which was considered entirely inappropriate.

Reference was made to examples of case law that had been circulated to the Committee Members by the Solicitor to Newmarket Town Council. Mr Gouriet stressed that these demonstrated that Licensing Authorities were entitled to come to a different decision to that which was made before when considering annual renewals for sex establishments.

Attention was drawn to the District Council's Sex Establishment Licensing Policy, which stated that:

"6.3 The Council would 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."*

Mr Gouriet argued that (b) – (g) all applied in this case and that the Applicant had not demonstrated any exceptional circumstances as to why the Council should depart from their own Policy.

Mrs Sara Beckett, a Newmarket resident, then addressed the Committee with reference to her representation which was attached as Appendix 10. Similarly to the submission made on behalf of Newmarket Town Council; Mrs Beckett also spoke upon the items (a) – (g) as set out in Paragraph 6.3 of the Council's Sex Establishment Licensing Policy and asserted that the application was in clear conflict with these.

Mrs Beckett also enquired as to whether any of the Committee Members had visited Heaven as a patron and made reference to the premises' NNDR payments. However, the Lawyer interjected at this point and reminded Mrs Beckett that she was only able to speak on the items she had raised within her formal submission and these additional matters were irrelevant to the Hearing and should be disregarded by the Committee.

Mr Robin Hardy, a Newmarket resident, then addressed the Committee with reference to his representation which was attached as Appendix 12. He spoke on what he perceived to be a non-compliance by the Applicant with regard to the requirement for the registered door supervisors to be easily identifiable at all times by use of high visibility clothing.

He echoed the comments made by Newmarket Town Council and Mrs Beckett; as he too considered Heaven to be in an inappropriate location.

Lastly, Mr Andrew Appleby, briefly spoke on his late representation which had been tabled to the meeting and which supported the application.

For the benefit of all parties present, the Lawyer asked the Business Regulation and Licensing Manager to clarify the situation with regard to the two premises which operated from the same address of 109-111 High Street,

Newmarket. He explained that both were owned and operated by the Applicant; Heaven was in the basement and the nightclub Innocence was in the upper floors of the building. The renewal application before Members purely concerned Heaven.

The applicant was then invited to sum up and have right of reply to the objections raised.

Mr Kolvin, highlighted that if the renewal was not granted then the entire business (including Innocence nightclub) would fail. He stressed that Heaven was a successful, well run business which provided employment for over 30, mainly local, people and supported the various Newmarket night-time economy initiatives such as; Pubwatch, the SOS Bus and the Taxi Marshalls scheme.

Lastly, he stated that there had been no evidence produced to demonstrate why the Committee should deviate from the view they took last year when Heaven's licence was renewed.

After hearing the submissions and asking questions of the parties present, the Committee then retired to another room to give further consideration to the application.

It was proposed by Councillor S Cole, seconded by Councillor B Sadler and with the vote being unanimous, it was

RESOLVED:

That the application for the renewal of the Sex Establishment Licence for the Sexual Entertainment Venue Heaven Awaits Ltd, 109-111 High Street, Newmarket be **APPROVED** incorporating the standard conditions and the **CURRENT SIGNAGE BE ALLOWED TO REMAIN** in accordance with Condition 20(iii).

The Committee considered all representations received both in writing and orally.

Particular consideration was given to Policy 6.3 of the Sex Establishment Licensing Policy which states that a licence would not normally be granted if other premises as listed in paragraphs a) to g) of that policy were in the vicinity of the premises.

The Committee considered that there had been no change to the character of the vicinity in the last 12 months and was not persuaded that there were sufficient reasons, if any, for departing from the Committee's previous decision.

9. Urgent Business

There were no items of Urgent Business raised.

The meeting concluded at 8.36 pm

Signed by:

Chairman
