



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (6)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** held on **Tuesday 26th February, 2019**, Rooms 18.1, 8.2, and 18.3, 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Melvyn Caplan (Chairman), Jim Glen and Shamim Talukder

Also Present: Councillor Margot Bright

1 MEMBERSHIP

1.1 There were no changes to the membership.

2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1 SOPHISTICATS, 3-7 BREWER STREET, LONDON, W1F 0RD

LICENSING SUB-COMMITTEE No. 6

Tuesday 26th February 2019

Membership: Councillor Melvyn Caplan (Chairman), Councillor Jim Glen and Councillor Shamim Talukder

Legal Adviser: Barry Panto
Committee Officer: Tristan Fieldsend
Presenting Officers: Angela Seaward
Daisy Gadd

Objections: The Licensing Authority, three anonymous objections and Mr Simon Warr

Present: Ms Sarah Le Fevre (Counsel, representing the Applicant), Mr Jack Spiegler and Mr Thomas O'Maoleoin (Solicitors, representing the Applicant), Mr John McKeown (on behalf of the Applicant company), Ms Carmen Alonso (Designated Premises Supervisor), Mr Philip Kolvin QC (Counsel,

representing Mr Simon Warr), Ms Lana Tricker (Solicitor, representing Mr Simon Warr), Mr Simon Warr (Objector), and Mr Steve Rowe and Mr James Hayes (Licensing Authority)

Sophisticats, 3-7 Brewer Street, London, W1D 0RD 18/11064/LISEVR	
1.	Renewal of a Sexual Entertainment Venue Premises Licence
	The application was to renew the sexual entertainment venue premises licence made by Devine Restaurants Ltd. It was noted that the licence had since been transferred to John McKeown Clubs Ltd.
	Amendments to application advised at hearing: None
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee considered an application by Devine Restaurants Ltd for a renewal of a sexual entertainment venue premises licence in respect of Sophisticats, 3-7 Brewer Street, London, W1F 0RD. The licence had since been transferred to John McKeown Clubs Ltd.</p> <p>The Licensing Officer provided an outline of the application to the Sub-Committee and advised that on 6 December 2018, the Licensing Service had received an application to transfer the SEV Premises Licence from Devine Restaurants Ltd to John McKeown Clubs Ltd. The consultation period for the transfer application had now ended and no objections had been received.</p> <p>The Licensing officer also informed the Sub-Committee that five objections had been received to the application for the renewal of the SEV licence. One of the objections (from Simon Warr) had been received outside of the statutory 28-day consultation period and this consisted of additional documents and witness statements.</p> <p>The Chairman advised that before the Sub-Committee could consider the application it was important to hear from Mr Warr, who had submitted the late objection, and the applicant on whether the late submission should form part of the evidence before it.</p> <p>Mr Kolvin, representing Mr Warr, provided a background to the objection and the reasons why it should be considered a significant piece of evidence. It was explained that Mr Warr operated the SEV premises called Platinum Lace. In October 2018, Mr Warr had received an anonymous objection to the renewal of his SEV licence consisting of serious allegations against the premises and him personally. It was the third time such objections had been received and the non-renewal of the licence would be catastrophic to his business. To understand why such persistent objections were being received Mr Warr employed a former Police Officer to conduct an investigation into who was making the objections</p>

and their motivations. By the 31 December 2018 the investigation, which formed part of the late submission, had been finalised and collated and was ready to be presented to the Council in an acceptable format. Mr Kolvin advised that unfortunately the Council had not supplied this submission to the applicant until 13 February 2019, which was why they had received it at such a late stage.

Mr Kolvin recognised that the Local Government (Miscellaneous Provisions) Act 1982 stated that objections had to be submitted no later than 28 days after the date of the application. However, the Sub-Committee's attention was drawn to a House of Lords judgement entitled '*Belfast City Council v. Miss Behavin' Ltd*'. The judgement stated that "if a council received significant relevant information in a late objection, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable." Mr Kolvin then highlighted the following passage from the judgement "It may very well be right to disregard a late objection if it was intentionally last minute, or if it was received so late that taking it into account would lead to unfairness to the applicant (because he would not have had the chance to consider it) or to unacceptable disruption to the council's business." Applying this judgement to the late objection, Mr Kolvin advised that the late submission was not intentional as it was submitted on time on 31 December 2018 and therefore it could not be considered to lead to unfairness to the applicant and would not disrupt Council business. The House of Lords judgement stated that such a late objection should therefore be governed by administrative law principles.

The Sub-Committee was advised by Mr Kolvin that the material submitted concerned the honesty and integrity of the applicant and whether the Premises complied with licensing provisions and criminal law. Using an administrative law approach, even though the applicant had only recently received the material it had been submitted on time and it would be fair and reasonable for the material to be taken into account and a decision reached.

Ms Le Fevre, representing the applicant, considered that it was artificial to consider the admissibility of late material as a separate question from the relevancy of the material. The Sub-Committee was advised that relevancy was required as part of the consideration to ensure fairness to the decision makers and all relevant parties. Secondly, if late and potentially relevant material was to be admitted by the Sub-Committee the House of Lords judgement stated that "if such a late objection is to be taken into account by the council, then the applicant must be informed as to its contents in good time so as to be able to consider it and deal with it appropriately." Ms Le Fevre noted the letter from Ms Lana Tricker (representing Mr Warr) in the agenda papers acknowledging that the objection was late and as such, an adjournment of the Licensing Sub-Committee might have to be considered. The Sub-Committee was advised that the applicant had only received the late objection on 21 February 2019.

Ms Le Fevre expressed concern over the relevancy of the material contained within the late objection. The Sub-Committee was advised that it contained allegations and aspersions that were irrelevant and easily rebutted. The validity of several of the witness statements was questioned and it was doubted if they could properly assist the Sub-Committee in making its decision of whether to renew the licence. Therefore, the Sub-Committee was advised not to consider

the late objection, not only because the applicant had received it late but also because it contained information that could not be considered relevant.

At the request of the Chairman, the Council's Legal Adviser was asked to provide an overview of the legal advice he would be providing to the Sub-Committee. All parties were informed that the Sub-Committee would have to consider not only the lateness of the objection but also the relevance of the material submitted and what weight to allocate it. Ultimately, it was important to ensure that none of the parties were prejudiced in any way by the late submission and that all parties had a chance to consider the evidence and respond appropriately to it. It was noted that it was within the remit of the Sub-Committee to decide how it wanted to proceed.

The Sub-Committee carefully considered the submissions it had heard with regard to whether it should accept the late objection received. The House of Lords judgement was taken into account and it was a matter for the Sub-Committee to decide what the appropriate course of action was. It was considered that the nature of the late objection did raise several serious issues and it would therefore not be appropriate to exclude it. It could be only be through a Sub-Committee hearing that a decision could be taken on what weight to give these submissions. Therefore, it was in the Sub-Committee's view that to be fair to all parties the late objection would be accepted. It was recognised that the applicant strenuously denied the allegations contained within the objection and this was a conversation that should be properly had within a Licensing Sub-Committee. Paragraph 72 of the House of Lords judgement made it clear that if the late objection was not considered, taking into account the nature of the allegations made, the decision could potentially be liable to judicial review. It was therefore considered fair to all parties to adjourn the Sub-Committee meeting in order to provide the applicant with sufficient time to prepare a response to the allegations made. In the circumstances, the Sub-Committee was of the opinion that this was the correct decision to make and it was proper to reconvene the adjourned hearing for the week commencing 8 April 2019. The final date to be agreed between all parties.

2 SOPHISTICATS, 77 WELBECK STREET, LONDON, W1G 9BN

LICENSING SUB-COMMITTEE No. 6

Tuesday 26th February 2019

Membership: Councillor Melvyn Caplan (Chairman), Councillor Jim Glen and Councillor Shamim Talukder

Legal Adviser: Barry Panto
Committee Officer: Tristan Fieldsend
Presenting Officers: Angela Seaward
Daisy Gadd

Objections: The Licensing Authority, one anonymous objection and Mr Simon Warr

Present: Ms Sarah Le Fevre (Counsel, representing the Applicant), Mr Jack Spiegler and Mr Thomas O'Maoleoin (Solicitors, representing the Applicant), Mr John McKeown (on behalf of the Applicant company), Ms Carmen Alonso (Designated Premises Supervisor), Mr Philip Kolvin QC (Counsel, representing Mr Simon Warr), Ms Lana Tricker (Solicitor, representing Mr Simon Warr), Mr Simon Warr (Objector), and Mr Steve Rowe and Mr James Hayes (Licensing Authority)

Sophisticats, 77 Welbeck Street, London, W1G 9BN ("The Premises") 18/11062/LISEVR	
1.	Renewal of a Sexual Entertainment Venue Premises Licence
	The application was to renew the sexual entertainment venue premises licence made by Mondrealm Ltd. It was noted that the licence had since been transferred to John McKeown Clubs Ltd.
	Amendments to application advised at hearing: None
	Decision (including reasons if different from those set out in report): The Sub-Committee considered an application by Mondrealm Ltd for a renewal of a sexual entertainment venue premises licence in respect of Sophisticats, 77 Welbeck Street, London, W1G 9BN. The licence had since been transferred to John McKeown Clubs Ltd. The Licensing Officer provided an outline of the application to the Sub-Committee and advised that on 6 December 2018, the Licensing Service had received an application to transfer the SEV Premises Licence from Mondrealm Ltd to John McKeown Clubs Ltd. The consultation period for the transfer application had now ended and no objections had been received.

The Licensing officer also informed the Sub-Committee that four objections had been received to the application for the renewal of the SEV licence. One of the objections (from Simon Warr) had been received outside of the statutory 28-day consultation period and this consisted of additional documents and witness statements.

The Chairman advised that before the Sub-Committee could consider the application it was important to hear from Mr Warr, who had submitted the late objection, and the applicant on whether the late submission should form part of the evidence before it.

Mr Kolvin, representing Mr Warr, provided a background to the objection and the reasons why it should be considered a significant piece of evidence. It was explained that Mr Warr operated the SEV premises called Platinum Lace. In October 2018, Mr Warr had received an anonymous objection to the renewal of his SEV licence consisting of serious allegations against the premises and him personally. It was the third time such objections had been received and the non-renewal of the licence would be catastrophic to his business. To understand why such persistent objections were being received Mr Warr employed a former Police Officer to conduct an investigation into who was making the objections and their motivations. By the 31 December 2018 the investigation, which formed part of the late submission, had been finalised and collated and was ready to be presented to the Council in an acceptable format. Mr Kolvin advised that unfortunately the Council had not supplied this submission to the applicant until 13 February 2019, which was why they had received it at such a late stage.

Mr Kolvin recognised that the Local Government (Miscellaneous Provisions) Act 1982 stated that objections had to be submitted no later than 28 days after the date of the application. However, the Sub-Committee's attention was drawn to a House of Lords judgement entitled '*Belfast City Council v. Miss Behavin' Ltd*'. The judgement stated that "if a council received significant relevant information in a late objection, there could be circumstances in which its failure to take that information into account would itself be judicially reviewable." Mr Kolvin then highlighted the following passage from the judgement "It may very well be right to disregard a late objection if it was intentionally last minute, or if it was received so late that taking it into account would lead to unfairness to the applicant (because he would not have had the chance to consider it) or to unacceptable disruption to the council's business." Applying this judgement to the late objection, Mr Kolvin advised that the late submission was not intentional as it was submitted on time on 31 December 2018 and therefore it could not be considered to lead to unfairness to the applicant and would not disrupt Council business. The House of Lords judgement stated that such a late objection should therefore be governed by administrative law principles.

The Sub-Committee was advised by Mr Kolvin that the material submitted concerned the honesty and integrity of the applicant and whether the Premises complied with licensing provisions and criminal law. Using an administrative law approach, even though the applicant had only recently received the material it had been submitted on time and it would be fair and reasonable for the material to be taken into account and a decision reached.

Ms Le Fevre, representing the applicant, considered that it was artificial to consider the admissibility of late material as a separate question from the relevancy of the material. The Sub-Committee was advised that relevancy was required as part of the consideration to ensure fairness to the decision makers and all relevant parties. Secondly, if late and potentially relevant material was to be admitted by the Sub-Committee the House of Lords judgement stated that “if such a late objection is to be taken into account by the council, then the applicant must be informed as to its contents in good time so as to be able to consider it and deal with it appropriately.” Ms Le Fevre noted the letter from Ms Lana Tricker (representing Mr Warr) in the agenda papers acknowledging that the objection was late and as such, an adjournment of the Licensing Sub-Committee might have to be considered. The Sub-Committee was advised that the applicant had only received the late objection on 21 February 2019.

Ms Le Fevre expressed concern over the relevancy of the material contained within the late objection. The Sub-Committee was advised that it contained allegations and aspersions that were irrelevant and easily rebutted. The validity of several of the witness statements was questioned and it was doubted if they could properly assist the Sub-Committee in making its decision of whether to renew the licence. Therefore, the Sub-Committee was advised not to consider the late objection, not only because the applicant had received it late but also because it contained information that could not be considered relevant.

At the request of the Chairman, the Council’s Legal Adviser was asked to provide an overview of the legal advice he would be providing to the Sub-Committee. All parties were informed that the Sub-Committee would have to consider not only the lateness of the objection but also the relevance of the material submitted and what weight to allocate it. Ultimately, it was important to ensure that none of the parties were prejudiced in any way by the late submission and that all parties had a chance to consider the evidence and respond appropriately to it. It was noted that it was within the remit of the Sub-Committee to decide how it wanted to proceed.

The Sub-Committee carefully considered the submissions it had heard with regard to whether it should accept the late objection received. The House of Lords judgement was taken into account and it was a matter for the Sub-Committee to decide what the appropriate course of action was. It was considered that the nature of the late objection did raise several serious issues and it would therefore not be appropriate to exclude it. It could be only be through a Sub-Committee hearing that a decision could be taken on what weight to give these submissions. Therefore, it was in the Sub-Committee’s view that to be fair to all parties the late objection would be accepted. It was recognised that the applicant strenuously denied the allegations contained within the objection and this was a conversation that should be properly had within a Licensing Sub-Committee hearing. Paragraph 72 of the House of Lords judgement made it clear that if the late objection was not considered, taking into account the nature of the allegations made, the decision could potentially be liable to judicial review. It was therefore considered fair to all parties to adjourn the Sub-Committee meeting in order to provide the applicant with sufficient time to prepare a response to the allegations made. In the circumstances, the Sub-Committee was of the opinion that this was the correct decision to make and it was proper to

	reconvene the adjourned hearing for the week commencing 8 April 2019. The final date to be agreed between all parties.
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The Meeting ended at 11.43 am

CHAIRMAN: _____

DATE _____