



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (6)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** held on **Thursday 27th August, 2020**, This is a Virtual Meeting.

Members Present: Councillors Susie Burbridge, Murad Gassanly and Aicha Less

1 MEMBERSHIP

1.1 There were no changes to the membership.

2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1 GROUND FLOOR AND BASEMENT, 37 DUKE STREET, LONDON, W1U 1LN

WCC LICENSING SUB-COMMITTEE NO. 6

Thursday 27th August 2020

Membership: Councillor Murad Gassanly (Chairman), Councillor Susie Burbridge and Councillor Aicha Less

Officer Support: Legal Officer: Barry Panto
Policy Officer: Aaron Hardy
Committee Officer: Tristan Fieldsend
Presenting Officer: Michelle Steward

Application for a New Premises Licence [20/02859/LIPN]

Application for a New Sexual Entertainment Venue Licence [20/02836/LISEVN]

Full Decision

Premises

Blush
Ground Floor Entrance and Basement
37 Duke Street
London, W1U 1LN

Applicant

Electshow Limited (Wahid Mekhael in attendance)
Represented by Craig Baylis, BCLP Law

Cumulative Impact Area?

No

Ward

Marylebone High Street

Summary of Application

According to the application form, the premises intend to trade as a lap dancing club (perhaps more appropriately referred to as a table dancing, pole dancing or striptease club). A separate application has been made for a Sexual Entertainment Venue (SEV) licence for the premises.

The SEV application states that the applicants have significant experience of operating a venue of this type at the Mayfair Club in Dover Street. The Mayfair Club has now closed, and it appears that the applicants are seeking to transfer the SEV operation from those premises to 37 Duke Street. The proposed conditions set out in the Operating Schedule for the Premises Licence are very similar to the conditions on the licence for the Mayfair Club.

There is an existing premises licence for 37 Duke Street (licence number 19/11489/LIPV). That licence is also held by Electshow Limited and permits the premises to be used as a nightclub. The differences between the hours on the existing Premises Licence and the hours for the new application are set out below. It will be noticed that the terminal hours are the same from Monday to Saturday, but the commencement hours are much later.

Although the application states that the applicants intend to trade as a lap dancing club, proposed conditions also suggest that the applicants might want to continue operating as a nightclub on some days of the week. The existing licence is conditioned to operate as a nightclub. Many of the conditions on the existing licence have not been replicated as part of the new application, but Environmental Health have suggested additional conditions to reflect the fact that the premises might well continue to operate as a nightclub on some days of the week.

Proposed Activities and Hours for the Premises Licence

[Retail Sale of Alcohol \[On sales\]](#)

Hours now sought

Monday to Saturday: 20.00 to 06.00 on the following day
Sunday: 20.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has (which includes Off Sales)

Monday to Saturday: 10.00 to 06.00 on the following day
Sunday: 12.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

[Late Night Refreshment \[Indoors\]](#)

Hours now sought

Monday to Saturday: 23.00 to 05.00 on the following day
Sunday: 23.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has

Monday to Saturday: 23.00 to 05.00 on the following day
Sunday: 23.00 to 03.00 on the following day [2.5 hours less]

New Year's Eve extension to the start of permitted hours on New Year's Day.

[Exhibition of Films, Performance of Live Music, Performance of Dance and Playing of Recorded Music \[Indoors\]](#)

Hours now sought

Monday to Saturday: 20.00 to 06.00 on the following day
Sunday: 20.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has

Monday to Saturday: 09.00 to 06.00 on the following day
Sunday: 09.00 to 03.00 on the following day [2.5 hours less]

New Year's Eve extension to the start of permitted hours on New Year's Day.

The exhibition of Films is new and the existing licence also has unrestricted recorded music and private entertainment.

Hours premises are open to the public

Hours now sought

Monday to Saturday: 20.00 to 06.00 on the following day
Sunday: 20.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has (which includes Off Sales)

Monday to Saturday: 09.00 to 06.00 on the following day
Sunday: 09.00 to 03.00 on the following day [2.5 hours less]

New Year's Eve extension to the start of permitted hours on New Year's Day.

Proposed Hours for the SEV Licence

Monday to Saturday: 21.00 to 06.00 on the following day
Sunday: Not Applicable

Differences between the current Premises Licence and the application for a New Premises Licence

- As indicated above, the commencement hours are less. The premises will not open until 20.00 hours.
- After 3 am, the sale of alcohol at the premises under the current licence must be ancillary to a table meal. That will continue to apply when the premises operate as a night club after 3 am. If the premises operate as an SEV after 3 am, there will be no requirement for the alcohol to be ancillary to any food. However, if a condition proposed by EH is agreed or imposed, the sale of alcohol would have to be ancillary to the provision of striptease entertainment.
- The current licence does not permit access to the general public as there is a condition that provides that alcohol may only be sold for consumption by members of the private club and their bona fide guests (not exceeding (4)

guests per member). During the hearing, the applicant confirmed that it would agree to a similar condition being placed on the new licence.

Representations Received in response to both applications

- Environmental Health (Anil Drayan)
- Metropolitan Police (PC Reaz Guerra, represented at the hearing by PC Bryan Lewis)
- Marylebone Association (Guy Austin was not available to attend the hearing but Julie Redmond attended in his place) – Represented by Richard Brown, Citizen's Advice Bureau Licensing Project
- 31-37 Dukeson Properties Limited – Represented by Philip Kolvin Q.C.
- Selfridges Retail Limited - Represented by Philip Kolvin Q.C.
- New West End Company - 3rd Floor, Heddon House, 149-151 Regent Street, London W1B 4JD – represented by their CEO, Jace Tyrrell
- James Ashton (21 Duke Street, London, W1D 1DJ) – Did not attend the hearing
- Ms Saffron Miller (101 Wigmore Street, London, W1U 1QU) – Did not attend the hearing
- Mehran Charania, Director, Ready Steady Store Limited, 3rd Floor, 37 Duke Street, London W1U 1LN – Did not attend the hearing

Additional Representations received but only in relation to the SEV application

- Licensing Authority (Angela Seaward, represented at the hearing by Karyn Abbott)
- Councillor Karen Scarborough – Did not attend the hearing
- 35 anonymous objections – two of whom did attend the hearing, being described as objectors 6 and 28

Summary of issues raised by the Objectors in their representation

- Running a strip club, comes with a crowd of individuals who will lower the standards of the prestigious street and could potentially cause serious issues.
- The change in business model from nightclub to lap dancing will have a massive impact on the ability of the management to adhere to the Licencing Principles of Westminster.
- A lap dancing club is likely to attract potentially rowdy customers. The very late hours and Marylebone location imply that young men who are likely to have been drinking and or taking drugs elsewhere will travel in taxis, in groups, in order to partake of the adult entertainment. The atmosphere generated by the titillation anticipated will often cause greater exuberance amongst these young men. Consequently, on arrival they are entirely likely to be causing a public noise nuisance and will endanger law and order.
- It should also be borne in mind that sexual entertainment venues such as being proposed have a reputation for attracting 'pimps' offering girls to departing customers. We have no evidence of such happening at the Mayfair

Club, but we believe that the possibility should be recognised and that for a quiet neighbourhood in Marylebone this would be totally unacceptable.

- The freehold owner of the premises has expressed concern that the new application does not contain a large number of conditions that appear on the current licence and also that the new application will allow alcohol to be sold without the consumption of that alcohol being ancillary to any food. In addition, the freehold owner has objected to the use of its premises for the purposes of a Sexual Entertainment Venue.
- Selfridges support the detailed views expressed by the freehold owner.
- The freehold owner, Selfridges, The Marylebone Association and the New West End Company all assert that it would not be appropriate for an SEV to be situated in this specific locality based on a number of factors, including the significant residential population nearby, the status of Selfridges itself as a world famous shopping destination that attracts visitors and families, and the suggestion that Duke Street is an iconic retail destination,

Policy Position

This application is effectively for a part change of use of the premises from use as a night club to use as a table dancing club, including striptease. However, it became apparent that the applicant was only seeking to use the premises for sexual entertainment on up to three days per week.

The element of nude entertainment also requires the premises to have an SEV licence as well as a premises licence and that gives rise to further issues under the Local Government (Miscellaneous Provisions) Act 1982 as to whether the table dancing club is appropriate in the specific area.

As the premises are not situated in a cumulative impact area, there is no policy presumption to refuse the application for the Premises Licence which must therefore be determined on merit. The hours sought for the premises licence are actually less than the hours on the current licence, though the terminal hour is identical on a Monday to Saturday.

The only grounds for refusing an SEV application are set out in Schedule 3 to the 1982 Act as follows:

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- (c) that the number of sex establishments, or 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;
- (d) that the grant or renewal of the licence would be inappropriate, having regard

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

An applicant whose application for the grant of a licence is refused on either ground specified in paragraph (c) or (d) above shall not have the right to appeal to the magistrates' court.

The only potential ground for refusal that may be applicable to this application is the ground set out in paragraph (d) and this is addressed in section 2.4 of the Council's SEV Statement of Licensing Policy 2012. Relevant factors include whether the area is predominantly residential; whether the area is one of historic importance or iconic in nature; and whether the area is one that involves family entertainment or leisure. Other issues identified in policy include the visual impact of the premises (which may be mitigated by appropriate conditions); the potential presence of unsupervised children within the general locality; and the uses of other premises in the vicinity, such as premises used for religious worship, schools and youth clubs etc.

The Licensing Sub-Committee has a very wide discretion when determining SEV applications but must ignore any moral objections. Any opposition to an application for an SEV licence must be based on one or more of the statutory grounds set out above.

DECISION

Mr Baylis made his presentation on behalf of the applicant company. He stated that the new application for a Premises Licence was a mirror of the existing premises licence (though it was noted that the original conditions proposed as part of the Operating Schedule did not mirror the current licence but had largely been copied from the premises licence for the Mayfair Club in Dover Street). However, he also said that his presentation was going to concentrate on the application for the new Sexual Entertainment Venue licence.

Mr Baylis explained that his client was also the owner and operator of the Mayfair Club who had many years of experience in running that Sexual Entertainment Venue. That Club had closed in December 2019 when the lease came to an end and he was now seeking to relocate that use to his premises at 37 Duke Street. No one would know that the premises would be operating as a Sexual Entertainment Venue as there would be no advertising of the use outside the premises. He stated that the premises in Dover Street had not caused any problems and yet they had operated immediately next door to Café Nero and opposite a Café Concerto. He asserted that premises should not be assumed to cause a problem simply because they operated as a Sexual Entertainment Venue.

Mr Baylis stated that his client did not want to operate the premises as a Sexual Entertainment Venue all the time. The intention was to operate it as a Sexual Entertainment Venue for two or three nights a week, probably between Thursday night and Saturday night. He indicated that he accepted that the conditions on the current premises licence that applied to the existing nightclub use should also apply to the nightclub use that would continue under the new licence, as proposed by Mr

Drayan on behalf of the Council's Environmental Health Service. He added that the capacity for the premises would reduce to no more than 50 persons when it was being used for sexual entertainment.

With regard to policy, he asserted that the Commercial Activity Zone (CAZ north) referred to in the Statement of Licensing Policy for Sexual Entertainment Venues clearly included substantial retail areas, including the whole of Oxford Street. The Council had identified that this area was suitable for up to 25 Sexual Entertainment Venues. He suggested that there was no crossover between the hours that most retail premises closed and the proposed opening hours for the venue at 37 Duke Street. He stated that Selfridges closed at 9 pm and the proposed Sexual Entertainment Venue would not operate until 9 pm at the earliest. Moreover, there would be no change to the external appearance of the premises, no change in the hours of operation and, in answer to a question from the Chairman, he stated that the change to the activity taking place in the basement would not have any impact at all.

Mr Drayan then presented the evidence of behalf of the Environmental Health Service. He explained why he had proposed a new set of conditions for the new Premises Licence that had been based on the conditions for the existing Premises Licence. He had done this in response to the indication that the intended use of the premises would continue to be a nightclub as well as a Sexual Entertainment Venue. Mr Drayan also indicated that, in his experience, Sexual Entertainment Venues tend to have less impact than a nightclub. He said that he had visited the area and noted that no residential premises appeared to have any direct line of sight to 37 Duke Street. In view of the fact that the applicant had now accepted his proposed set of conditions for the Premises, he explained that he was only maintaining his representation so as to ensure that the members would be able to determine the key policy issues arising in relation to both applications.

PC Bryan Lewis then made his submission on behalf of the Metropolitan Police. He indicated that he was familiar with the applicant's premises in Duke Street and also the former Mayfair Club in Dover Street. In his experience he said that neither of them had been regarded as problem premises. He also indicated that he agreed with the alternative conditions proposed by Environmental Health. He also explained that the objection was maintained so that the members could reach a view regarding the appropriateness of the locality for a Sexual Entertainment Venue licence.

Karyn Abbott then made her submission on behalf of the Licensing Authority. It was noted that the licensing authority had only objected to the application for the use of the premises as a Sexual Entertainment Venue. She identified the main policy issues as set out in the written submission that had been made by her colleague, Angela Seaward (at pages 47 to 52 of the report). Ms Abbott noted that there were no other Sexual Entertainment Venues within a 200-metre radius of the application premises. There were no schools within that area and just one faith group. She also referenced section 2.5.1 of the policy statement which indicated that, where a premises is licensed under the Licensing Act 2003 for hours beyond the Council's core hours, the Council will have regard to those hours and generally grant a Sexual Entertainment Venue licence to the hours authorised for other licensable activities.

Philip Kolvin Q.C. then presented his submissions on behalf of both Selfridges Retail Limited and 31 to 37 Dukeson Properties Limited. He explained that the objectives under the Licensing Act 2003 didn't deal with a whole range of concerns that communities might have about sex establishments. New legislation was introduced in 2009 which gave licensing authorities wider powers to refuse a sex establishment licence on the simple ground that the sex establishment was in the wrong place. The question is whether the sex establishment is appropriate in the light of the character of the locality and the nature of nearby uses. This gives a wide discretion.

Mr Kolvin referred to the Council's Statement of Licensing Policy for Sexual Entertainment Venues, published in 2012, and specifically paragraph 2.4.6 which refers to whether the character of the locality is predominantly residential, high profile retail, of historic importance or iconic in nature, or one of family entertainment or leisure. He said that this application was a paradigm of the approach adopted by the Council in its policy statement.

Mr Kolvin stated that Selfridges is an iconic retail store which acts as a magnet for visitors from London, the UK and a much wider area and it is directly opposite the application site. He explained that Selfridges had spent 5 years and £300 million on a major redevelopment of the Duke Street façade. There was a new customer entrance, a top end restaurant (the brasserie of light), an additional fourth floor restaurant, a huge 20,000 square foot toy store to widen the appeal of the shop to children, and a cinema to provide a further complimentary family-oriented use up until late at night.

Mr Kolvin's other client was 31 to 37 Dukeson Properties Limited, which is an associated company of Selfridges. It owns the building in which the applicant's premises are situated. It houses offices, including a law firm, and a further education company. Reference was also made to the redevelopment of the former French Connection store for high quality boutique retail and shared working space. The intention was to help to draw customers down Duke Street and make it a family-oriented destination of the highest calibre. The ambition was to create an active frontage and customer space that stretches from Oxford Street to Wigmore Street that enhances the customer journey and experience at all points along the street.

Further regeneration efforts were also being made in partnership with other landowners such as Grosvenor and Portman. These efforts were designed to serve the large residential population in the immediate vicinity. He suggested that the proposal for a new lap dancing club was inimical to the character of the area as it is now and as it is becoming and also to the uses in the area. He said that the application fails the Council's policies at LO1 and LO2 in section 2.4 of the statement of licensing policy.

In terms of the hours of operation, Selfridges trades until 11 pm on occasions and often until 10 pm. The Brasserie of Light trades until Midnight as does the cinema. Contrary to what had been said by Mr Baylis, there was a clear crossover with the hours proposed for the applicant's premises where the proposal was to operate from 8 pm with the Sexual Entertainment Venue operating from 9 pm.

Mr Kolvin then proceeded to criticise the application for the Sexual Entertainment Venue licence. He said that it appeared to have been a hastily thought through

proposal. The plans included booths even though the applicant had indicated that there would not be any booths and there were no operational policies. Despite these concerns being raised directly with the applicant some months ago, there had been no response and no further explanation or detail had been provided, despite the fact that the application was being made in a highly sensitive location.

The applicant had originally indicated that the intention was to operate as a lap dancing club, but it was now apparent that they were only seeking to do that for two or three days a week and that they were going to continue operating as a nightclub for four days a week. However, they had jettisoned many of the conditions on their existing licence that applied to the operation of the existing nightclub and the conditions proposed by the applicant for the new licence had simply been cut and pasted from the premises licence for the Mayfair Club. The alternative set of conditions that had now been agreed had been drafted by the Environmental Health Service.

Richard Brown made his submissions on behalf of the Marylebone Association and indicated that he endorsed the comments made by Mr Kolvin. He referenced the written submissions against the applications in the report (page 74 in relation to the Sexual Entertainment Venue application and page 105 in relation to the Premises Licence application) and stressed that objections had generally come from a very wide section of the local community. He asserted that these objections amounted to a clear, cogent and unequivocal view of the community to the effect that both applications should be refused.

Mr Brown questioned whether the applicant had actually assessed the suitability of the area itself and also complained that there had been no engagement with anyone. He did not agree with the assertion by Mr Baylis that the application for the new Premises Licence was a mirror of the existing Premises Licence. He asserted that the Council's policy itself made it clear that the specific area was inappropriate for a Sexual Entertainment Venue licence and said that the nature of the area clearly pointed to a refusal of the application.

Mr Brown made specific reference to paragraph 2.1.11 of the Council's Statement of Licensing policy in respect of Sexual Entertainment Venues. This states that the Council will apply the policy strictly where applications are made for licences for premises at locations where sexual entertainment has not previously been provided, irrespective of the status of the applicant, and anticipates that over a period of time all sexual entertainment venues will be located in accordance with this policy.

Mr Brown had intended to call on Guy Austin to make his own representations on behalf of the Marylebone Association, but he was not available. However, he did ask if Julie Redmond could make submissions in his place. Ms Redmond expressed her concerns about the applications and stated that she represented nearly 3000 families that live in the Marylebone Area. She described the area as a family village area and described the uses that she and her family made of the more immediate area, including visiting Portman Square, eating out in St Christopher's Place and James Street and visiting the toy store in Selfridges. She made it clear that they were not prudish but felt uncomfortable about having such a premises in their immediate locality.

Jace Tyrrell then spoke on behalf of the New West End Company which he described as a Business Improvement District representing 600 retail, hospitality, entertainment and property businesses. He referenced the development of the Council's City Plan, which was seeking to promote complimentary uses to the core retail area, and also referenced the West End International Centre defined in the London Plan adopted by the GLA. This was promoting high quality, international businesses operating in the area. His view was that the operation of any Sexual Entertainment Venue was totally inappropriate in the area in respect of which the licensing applications had been made. He further mentioned an emerging vision for the Oxford Street district that was backed by significant public and private sector investment. The ambition was to make sure that the streets become a global exemplar of retail and leisure. In that context, the Sexual Entertainment Venue proposed was not appropriate at all. He also made the point that many retailers in that area were now seeking to open beyond 9 pm so there would be a potential crossover with the proposed opening hours for the Sexual Entertainment Venue.

Two anonymous objectors to the application for the Sexual Entertainment Venue licence were then given the opportunity to make their representations. They were respectively referred to as objector 6 and objector 28. Objector 6 stated that he was a resident of the Phoenix block of flats (located on Barratt Street and Bird Street, just a few metres from the applicant's premises) and was also an unpaid Director of the Management Company for that block. In that capacity, he spoke on behalf of 64 flats and 100 residents of those flats. He said that he did not have a big problem with the existing nightclub in Duke Street, apart from the fact that there were some noise problems during the early hours. However, he strongly objected to the premises being used as a Sexual Entertainment Venue. The local residents lived in the area on a 24-hour basis so they could be impacted whatever time the premises opened and closed. He was concerned about the people who might be attracted to that type of entertainment and the potential for prostitution and noise and nuisance.

Objector 28 explained that he was a tenant of the building in which the applicant's premises were situated. He worked for an educational company which used the building for office purposes. Students would visit the premises from the UK and around the world. When they acquired the office space, they chose it because of the nature of the area. He indicted that he would not have chosen the property if he had known that there was a Sexual Entertainment Venue operating within it. He strongly asserted that the operation of such a premises would fundamentally change the nature of the area.

A detailed discussion followed about the conditions that would apply to both the Premises Licence and the Sexual Entertainment Venue licence in the event of the applications being granted. It was confirmed that the alternative conditions proposed by Environmental Health would apply in their entirety to the Premises Licence. In response to a question posed by Mr Panto, the legal adviser to the Licensing Sub-Committee, it was also acknowledged that any conditions relating to relevant entertainment that differed to the standard conditions for Sexual Entertainment Venues should also be included on the Sexual Entertainment Venue licence rather than the Premises Licence. It was further confirmed that club membership conditions would apply to the use of the premises as a nightclub but would not apply to the use of the premises as a Sexual Entertainment Venue. A question arose about the

potential for queuing outside the premises and Mr Baylis confirmed that no such queuing would be required or allowed.

Mr Kolvin commented that the situation regarding the conditions was very muddled and questioned whether the alternative conditions proposed by Environmental Health did actually incorporate all of the conditions that applied to the existing nightclub licence.

In closing, Mr Kolvin stated that he wanted to deal with some of the process matters. He stated that the plan submitted was total inadequate and did not comply with law or Council policy. There were other important questions. Was this premises a nightclub or a Sexual Entertainment Venue? What is the layout? What are the premises operation plans? What precisely are the conditions? The most basic questions had not been answered. However, the most important point was about the character of the locality and the neighbouring uses. The proposed use was totally contrary to the aspirations of the local community. He mentioned that the Licensing Sub-Committee had heard from residents, a residents' association, retailers, business occupiers and from landowners. The collective view was that the proposed use of the premises jarred with their aspirations. He urged the Licensing Sub-Committee to reject both applications.

Mr Brown urged the members to have careful regard to the views of the experts, whom he described as the residents and businesses and others who had collectively expressed strong views about the proposed applications. He also urged the Licensing Sub-Committee to reject both applications.

Mr Drayan clarified some of the points that had been raised about the conditions that he had proposed which he said were slightly tighter than the existing conditions.

Mr Baylis said that he entirely understood the knee-jerk reaction of residents and others who had objected to the operation of a Sexual Entertainment Venue. There is still a misperception about how the industry works. It is very well regulated and Sexual Entertainment Venues do not create problems in practice. They do not regularly give rise to prostitution or noise or nuisance or disturbance. He referred back to the evidence presented by both the Environmental Health Service and the Police in that regard and the assertion made that Sexual Entertainment Venues tend to have less impact than a nightclub.

Mr Baylis also commented on the references that had been made by those who were legally represented to what he described as small aspects of the application, such as plans not being appropriate and conditions not being rightly worded. He said that plans and conditions can be discussed and amended. Any suggestion that the application had not been properly prepared simply because it had been decided to use existing conditions was superfluous. What he had not heard from the legally represented objectors is how granting the application will actually change the character of the locality. Externally, the premise was a door in a wall. If one walked past the premises it would not be apparent that the premises was being used as a nightclub. The situation would be exactly the same if the premises was being used for sexual entertainment. There will be no external advertisements. Mr Baylis posed the question as to whether it could seriously be suggested that the operation of a 50

capacity sexual entertainment venue would actually have any impact on the local residents or the high-class retail developments being carried on. He did not think so.

Analysis

The members of the Licensing Sub-Committee carefully considered all of the evidence and submissions made by the parties attending the virtual hearing but also had regard to all of the written evidence and submissions contained in both reports, including the evidence of those who were not able to attend the hearing. In reaching its decision, the members of the Licensing Sub-Committee also had full regard to the Human Rights Act implications and the Public Sector Equality Duty as set out in the reports. No specific points were raised about those matters at the hearing, but the Sub-Committee was satisfied that the decision was taken in accordance with its duties under section 149 of the Equality Act 2010.

A number of questions had been raised during the hearing regarding the detail set out in the applications for both the new Premises Licence and the new Sexual Entertainment Venue licence. Questions were posed about the suitability of the basement plan and the appropriateness of the conditions. It was suggested that there was insufficient clarity regarding the actual use of the premises on a day-to-day basis and there were no operational plans. Many of those objecting stated that there had been no proper assessment of the area and no engagement with the local community, whether residential or business in nature. Mr Baylis had argued that these were matters that developed throughout the licensing process. He said that plans could be altered, and conditions amended or imposed.

Whilst the Licensing Sub-Committee did accept the point that changes can be made throughout the licensing process, it was astounded by what it considered to be a totally inadequate application. There was no reason why an applicant could not cut and paste conditions from an existing licence if those conditions were appropriate for the new application being made. However, there was confusion right from the outset as the application forms did indicate that the premises were intended to be used as "lap dancing" club. It was not immediately obvious that the premises would continue to be used as a nightclub for at least four nights each week. However, that being the case, it was extraordinary that the applicant had simply jettisoned (to use the word proffered by Mr Kolvin) all of the conditions relating to that nightclub use that were included in the existing premises licence.

A number of objectors had pointed out that this was a significant set of applications that were obviously going to be controversial having regard to the very different nature of the area to the area in which the Mayfair Club had been situated. It did seem extraordinary to the Sub-Committee that there hadn't been more engagement with the local community in those circumstances and there wasn't any evidence to suggest that the applicant had actually carried out its own assessment of the suitability of the location, having regard to the Council's policy statements. In particular, the members refer to paragraph 2.1.11 of the Council's Statement of Licensing policy in respect of Sexual Entertainment Venues which was drawn to their attention by Mr Brown. This clearly states that the Council will apply the policy strictly where applications are made for licences for premises at locations where sexual

entertainment has not previously been provided, irrespective of the status of the applicant.

The members of the Licensing Sub-Committee do not think that it is appropriate for applications to be made which essentially require all the detailed work to be carried out when the hearing is being conducted. The applicant should present its application in detail with clear plans and a clear indication of exactly what is proposed and how the premises will be operated. The proposed conditions should be fit for purpose. Whilst it is always accepted and understood that some changes might be made to some of the conditions at a hearing, it is extraordinary to be confronted with a situation where the applicant agrees to substitute one set of conditions for an entirely different set of conditions proposed by the Environmental Health Service. That approach also makes it very difficult for anyone to make considered representations in advance of the hearing.

There was a lot of discussion about the conditions at the hearing and it was confirmed by the applicant that they were prepared to accept the conditions proposed by the Environmental Health Service in full. However, some of the objectors, including Mr Kolvin on behalf of Selfridges and Dukeson Properties and Mr Brown on behalf of the Marylebone Society, still questioned whether other conditions on the existing Premises Licence were also required.

In the final analysis, the Sub-Committee has not had to come to any conclusion with regard to the conditions because it has decided to refuse both applications on policy grounds. In accordance with the approach adopted by Mr Baylis, the main consideration for the members has been the application for the new Sexual Entertainment Venue licence on the basis that the applicant already has an existing premises licence for the same hours that it can continue to use when operating as a nightclub. In other words, the application for a new Premises Licence that makes any reference to licensable activities taking place in connection with the operation for a Sexual Entertainment Venue must fall if the application for the Sexual Entertainment Venue is itself refused.

The potential statutory grounds for refusing the application for the Sexual Entertainment Venue Licence are those set out in paragraph 12(3)(d) of Schedule 3 to the Local Government (Miscellaneous Proceedings) Act 1982 as amended in 2009, namely that the grant or of the licence would be inappropriate, having regard (i) to the character of the relevant locality; or (ii) to the use to which any premises in the vicinity are put; or (iii) to the layout, character or condition of the premises in respect of which the application is made.

The key policy considerations are those set out in section 2.4 of the Council's Statement of Licensing Policy in respect of Sexual Entertainment Venues, published in 2012, and especially policy statement LO1, LO2 and LO3. The relevant locality in this case is considered to be the immediate locality surrounding the premises, including the entire length of Duke Street, but also the slightly wider area which has been described as the Mayfair Village. That certainly includes the junctions of Duke Street with Oxford Street and Wigmore Street, Picton Place, Barrett Street, Bird Street, James Street and St Christopher's Place.

With regard to policy statements LO1 and LO2, it is clearly stated that, in considering whether granting a licence would be inappropriate, the council will specifically consider whether the character of the locality is predominately residential, high

profile retail, of historic importance or iconic in nature, or one of family entertainment or leisure. Paragraph 2.4.11 states that areas predominately characterised by general or family retail use may be inappropriate localities for sexual entertainment because of their use by children, either unsupervised or in a family context, and by adults wishing to avoid the characteristics of, or associated with, sexual entertainment venues. Paragraph 2.4.12 states that localities characterised as areas of historic importance, or iconic in nature, will be particularly attractive to, and used by, visitors, both adults and children. The council may consider it inappropriate for these localities, which in many cases will be of national and international significance, to be associated with sexual entertainment venues and their associated character, because of the effect that such an association would have on visitors and on the image of London and Westminster in particular.

The decision of the Licensing Sub-Committee has primarily been taken with regard to the characteristics of the area as described by all of those who have objected. The characteristic of the area can obviously also relate to the use of premises within that area, Selfridges being a prime example and especially as it is situated immediately opposite the subject premises. Less weight has been given to policy statement LO3 which is about the layout, character or condition of the proposed venue. That is because most of the objectors have not focused on that point. However, it is of some relevance as there was a lot of discussion about the accuracy of the plans submitted. Mr Kolvin specifically posed the question as to how the Licensing Sub-Committee can actually exercise its functions if the plans are meaningless. For example, he identified some potential concerns about the welfare arrangements for the performers. The Licensing Sub-Committee did accept the point made by Mr Baylis that plans can be amended but no amended plans had been submitted at the hearing and policy LO3 identifies that the considerations that will be taken into account include whether the layout of the premises promotes good management and appropriate supervision within the premises and whether the layout promotes public safety in respect of, amongst other things, facilities for performers. In the absence of amended plans, it was not possible to do that.

The Licensing Sub-Committee concluded that the relevant area for the purposes of the Sexual Entertainment Venue application, as described above, was very different to the area where the Mayfair Club was situated. Detailed representations were made against the application, expressing the concerns of a wide variety of different people and organisations. Whilst the Council has acknowledged that Sexual Entertainment Venues can only be situated within the CAZ (North) area identified in the policy statement, that does not mean that any part of that area is appropriate for such use and that is why the Council has the discretion to determine the appropriateness of any such use within the relevant vicinity identified. The evidence submitted by all those objecting is very clear. They have been able to tolerate the existing nightclub use of the premises, but they have serious concerns about any use that involves sexual entertainment as they all think that will be seriously detrimental to the area that they live and work in.

The objections do not necessarily mean that there is any suggestion that the applicants are not capable of running the premises properly, though the absence of detailed operating proposals did not help in that regard. It is accepted that there were no major problems associated with the Mayfair Club and that there have been no major problems with the running of the existing nightclub, though evidence has been given that some residents have been troubled by noise during the early hours of the morning. The refusal of the Sexual Entertainment Venue application is not based on

any suggestion that the applicant is not suitable to hold a Sexual Entertainment Venue licence.

The application for the Sexual Entertainment Venue licensed is refused on the basis that the Licensing Sub-Committee accepted all of the submissions made by those objecting to the application. It agreed with Mr Kolvin's conclusions that this proposal for a new lap dancing club was inimical to the character of the area as it is now and as it is becoming and also to the uses in the area. The grant of the licence would, therefore, be inappropriate having regard to the character of the relevant locality and the use to which any premises in the vicinity are put. Whilst the Licensing Sub-Committee did have serious concerns about the plans submitted it did not consider that it was appropriate to refuse the application on the ground relating to the layout of the premises.

Having refused the application for the Sexual Entertainment Venue licence, the members decided that there was no alternative but to also refuse the application for the Premises Licence. If the premises could not operate as a Sexual Entertainment Venue, the Premises Licence as drafted was not fit for purpose and would not, therefore promote the licensing objectives under the Licensing Act 2003. This also reflects the criticism that the Licensing Sub-Committee has made about the way in which this application has been handled. The first set of conditions proposed had jettisoned all the conditions relating to nightclub use. The second set had been drafted by Environmental Health, but the objectors still had issues as to whether the amended version covered all the concerns about the running of a nightclub. In addition, there was great deal of uncertainty as to when the premises might or might not be used for sexual entertainment. The Licensing Sub-Committee was not in the business of itself having to determine alternative conditions that might be fit for purpose, though it acknowledged the attempt by Mr Drayan to do that for the benefit of the applicant. The applicant could, of course, continue to make use of the existing Premises Licence that was fit for purpose if the premises was going to continue operating as a night club.

2 BLUSH, GROUND FLOOR ENTRANCE AND BASEMENT, 37 DUKE STREET, LONDON, W1U 1LN

WCC LICENSING SUB-COMMITTEE NO. 6

Thursday 27th August 2020

Membership: Councillor Murad Gassanly (Chairman), Councillor Susie Burbridge and Councillor Aicha Less

Officer Support: Legal Officer: Barry Panto
Policy Officer: Aaron Hardy
Committee Officer: Tristan Fieldsend
Presenting Officer: Michelle Steward

Application for a New Premises Licence [20/02859/LIPN]

Application for a New Sexual Entertainment Venue Licence [20/02836/LISEVN]

Full Decision

Premises

Blush
Ground Floor Entrance and Basement
37 Duke Street
London, W1U 1LN

Applicant

Electshow Limited (Wahid Mekhael in attendance)
Represented by Craig Baylis, BCLP Law

Cumulative Impact Area?

No

Ward

Marylebone High Street

Summary of Application

According to the application form, the premises intend to trade as a lap dancing club (perhaps more appropriately referred to as a table dancing. pole dancing or

striptease club). A separate application has been made for a Sexual Entertainment Venue (SEV) licence for the premises.

The SEV application states that the applicants have significant experience of operating a venue of this type at the Mayfair Club in Dover Street. The Mayfair Club has now closed, and it appears that the applicants are seeking to transfer the SEV operation from those premises to 37 Duke Street. The proposed conditions set out in the Operating Schedule for the Premises Licence are very similar to the conditions on the licence for the Mayfair Club.

There is an existing premises licence for 37 Duke Street (licence number 19/11489/LIPV). That licence is also held by Electshow Limited and permits the premises to be used as a nightclub. The differences between the hours on the existing Premises Licence and the hours for the new application are set out below. It will be noticed that the terminal hours are the same from Monday to Saturday, but the commencement hours are much later.

Although the application states that the applicants intend to trade as a lap dancing club, proposed conditions also suggest that the applicants might want to continue operating as a nightclub on some days of the week. The existing licence is conditioned to operate as a nightclub. Many of the conditions on the existing licence have not been replicated as part of the new application, but Environmental Health have suggested additional conditions to reflect the fact that the premises might well continue to operate as a nightclub on some days of the week.

Proposed Activities and Hours for the Premises Licence

[Retail Sale of Alcohol \[On sales\]](#)

Hours now sought

Monday to Saturday: 20.00 to 06.00 on the following day
Sunday: 20.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has (which includes Off Sales)

Monday to Saturday: 10.00 to 06.00 on the following day
Sunday: 12.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

[Late Night Refreshment \[Indoors\]](#)

Hours now sought

Monday to Saturday: 23.00 to 05.00 on the following day
Sunday: 23.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has

Monday to Saturday: 23.00 to 05.00 on the following day
Sunday: 23.00 to 03.00 on the following day [2.5 hours less]

New Year's Eve extension to the start of permitted hours on New Year's Day.
[Exhibition of Films, Performance of Live Music, Performance of Dance and Playing of Recorded Music \[Indoors\]](#)

Hours now sought

Monday to Saturday: 20.00 to 06.00 on the following day
Sunday: 20.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has

Monday to Saturday: 09.00 to 06.00 on the following day
Sunday: 09.00 to 03.00 on the following day [2.5 hours less]

New Year's Eve extension to the start of permitted hours on New Year's Day.

The exhibition of Films is new and the existing licence also has unrestricted recorded music and private entertainment.

[Hours premises are open to the public](#)

Hours now sought

Monday to Saturday: 20.00 to 06.00 on the following day
Sunday: 20.00 to 00.30 on the following day

New Year's Eve extension to the start of permitted hours on New Year's Day.

Compared to what the applicant currently has (which includes Off Sales)

Monday to Saturday: 09.00 to 06.00 on the following day
Sunday: 09.00 to 03.00 on the following day [2.5 hours less]

New Year's Eve extension to the start of permitted hours on New Year's Day.

Proposed Hours for the SEV Licence

Monday to Saturday: 21.00 to 06.00 on the following day

Sunday: Not Applicable

Differences between the current Premises Licence and the application for a New Premises Licence

- As indicated above, the commencement hours are less. The premises will not open until 20.00 hours.
- After 3 am, the sale of alcohol at the premises under the current licence must be ancillary to a table meal. That will continue to apply when the premises operate as a night club after 3 am. If the premises operate as an SEV after 3 am, there will be no requirement for the alcohol to be ancillary to any food. However, if a condition proposed by EH is agreed or imposed, the sale of alcohol would have to be ancillary to the provision of striptease entertainment.
- The current licence does not permit access to the general public as there is a condition that provides that alcohol may only be sold for consumption by members of the private club and their bona fide guests (not exceeding (4) guests per member). During the hearing, the applicant confirmed that it would agree to a similar condition being placed on the new licence.

Representations Received in response to both applications

- Environmental Health (Anil Drayan)
- Metropolitan Police (PC Reaz Guerra, represented at the hearing by PC Bryan Lewis)
- Marylebone Association (Guy Austin was not available to attend the hearing but Julie Redmond attended in his place) – Represented by Richard Brown, Citizen's Advice Bureau Licensing Project
- 31-37 Dukeson Properties Limited – Represented by Philip Kolvin Q.C.
- Selfridges Retail Limited - Represented by Philip Kolvin Q.C.
- New West End Company - 3rd Floor, Heddon House, 149-151 Regent Street, London W1B 4JD – represented by their CEO, Jace Tyrrell
- James Ashton (21 Duke Street, London, W1D 1DJ) – Did not attend the hearing
- Ms Saffron Miller (101 Wigmore Street, London, W1U 1QU) – Did not attend the hearing
- Mehran Charania, Director, Ready Steady Store Limited, 3rd Floor, 37 Duke Street, London W1U 1LN – Did not attend the hearing

Additional Representations received but only in relation to the SEV application

- Licensing Authority (Angela Seaward, represented at the hearing by Karyn Abbott)
- Councillor Karen Scarborough – Did not attend the hearing
- 35 anonymous objections – two of whom did attend the hearing, being described as objectors 6 and 28

Summary of issues raised by the Objectors in their representation

- Running a strip club, comes with a crowd of individuals who will lower the standards of the prestigious street and could potentially cause serious issues.
- The change in business model from nightclub to lap dancing will have a massive impact on the ability of the management to adhere to the Licencing Principles of Westminster.
- A lap dancing club is likely to attract potentially rowdy customers. The very late hours and Marylebone location imply that young men who are likely to have been drinking and or taking drugs elsewhere will travel in taxis, in groups, in order to partake of the adult entertainment. The atmosphere generated by the titillation anticipated will often cause greater exuberance amongst these young men. Consequently, on arrival they are entirely likely to be causing a public noise nuisance and will endanger law and order.
- It should also be borne in mind that sexual entertainment venues such as being proposed have a reputation for attracting 'pimps' offering girls to departing customers. We have no evidence of such happening at the Mayfair Club, but we believe that the possibility should be recognised and that for a quiet neighbourhood in Marylebone this would be totally unacceptable.
- The freehold owner of the premises has expressed concern that the new application does not contain a large number of conditions that appear on the current licence and also that the new application will allow alcohol to be sold without the consumption of that alcohol being ancillary to any food. In addition, the freehold owner has objected to the use of its premises for the purposes of a Sexual Entertainment Venue.
- Selfridges support the detailed views expressed by the freehold owner.
- The freehold owner, Selfridges, The Marylebone Association and the New West End Company all assert that it would not be appropriate for an SEV to be situated in this specific locality based on a number of factors, including the significant residential population nearby, the status of Selfridges itself as a world famous shopping destination that attracts visitors and families, and the suggestion that Duke Street is an iconic retail destination,

Policy Position

This application is effectively for a part change of use of the premises from use as a night club to use as a table dancing club, including striptease. However, it became apparent that the applicant was only seeking to use the premises for sexual entertainment on up to three days per week.

The element of nude entertainment also requires the premises to have an SEV licence as well as a premises licence and that gives rise to further issues under the Local Government (Miscellaneous Provisions) Act 1982 as to whether the table dancing club is appropriate in the specific area.

As the premises are not situated in a cumulative impact area, there is no policy presumption to refuse the application for the Premises Licence which must therefore be determined on merit. The hours sought for the premises licence are actually less

than the hours on the current licence, though the terminal hour is identical on a Monday to Saturday.

The only grounds for refusing an SEV application are set out in Schedule 3 to the 1982 Act as follows:

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- (c) that the number of sex establishments, or 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;
- (d) that the grant or renewal of the licence would be inappropriate, having regard
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

An applicant whose application for the grant of a licence is refused on either ground specified in paragraph (c) or (d) above shall not have the right to appeal to the magistrates' court.

The only potential ground for refusal that may be applicable to this application is the ground set out in paragraph (d) and this is addressed in section 2.4 of the Council's SEV Statement of Licensing Policy 2012. Relevant factors include whether the area is predominantly residential; whether the area is one of historic importance or iconic in nature; and whether the area is one that involves family entertainment or leisure. Other issues identified in policy include the visual impact of the premises (which may be mitigated by appropriate conditions); the potential presence of unsupervised children within the general locality; and the uses of other premises in the vicinity, such as premises used for religious worship, schools and youth clubs etc.

The Licensing Sub-Committee has a very wide discretion when determining SEV applications but must ignore any moral objections. Any opposition to an application for an SEV licence must be based on one or more of the statutory grounds set out above.

DECISION

Mr Baylis made his presentation on behalf of the applicant company. He stated that the new application for a Premises Licence was a mirror of the existing premises licence (though it was noted that the original conditions proposed as part of the Operating Schedule did not mirror the current licence but had largely been copied from the premises licence for the Mayfair Club in Dover Street). However, he also said that his presentation was going to concentrate on the application for the new Sexual Entertainment Venue licence.

Mr Baylis explained that his client was also the owner and operator of the Mayfair Club who had many years of experience in running that Sexual Entertainment Venue. That Club had closed in December 2019 when the lease came to an end and he was now seeking to relocate that use to his premises at 37 Duke Street. No one would know that the premises would be operating as a Sexual Entertainment Venue as there would be no advertising of the use outside the premises. He stated that the premises in Dover Street had not caused any problems and yet they had operated immediately next door to Café Nero and opposite a Café Concerto. He asserted that premises should not be assumed to cause a problem simply because they operated as a Sexual Entertainment Venue.

Mr Baylis stated that his client did not want to operate the premises as a Sexual Entertainment Venue all the time. The intention was to operate it as a Sexual Entertainment Venue for two or three nights a week, probably between Thursday night and Saturday night. He indicated that he accepted that the conditions on the current premises licence that applied to the existing nightclub use should also apply to the nightclub use that would continue under the new licence, as proposed by Mr Drayan on behalf of the Council's Environmental Health Service. He added that the capacity for the premises would reduce to no more than 50 persons when it was being used for sexual entertainment.

With regard to policy, he asserted that the Commercial Activity Zone (CAZ north) referred to in the Statement of Licensing Policy for Sexual Entertainment Venues clearly included substantial retail areas, including the whole of Oxford Street. The Council had identified that this area was suitable for up to 25 Sexual Entertainment Venues. He suggested that there was no crossover between the hours that most retail premises closed and the proposed opening hours for the venue at 37 Duke Street. He stated that Selfridges closed at 9 pm and the proposed Sexual Entertainment Venue would not operate until 9 pm at the earliest. Moreover, there would be no change to the external appearance of the premises, no change in the hours of operation and, in answer to a question from the Chairman, he stated that

the change to the activity taking place in the basement would not have any impact at all.

Mr Drayan then presented the evidence of behalf of the Environmental Health Service. He explained why he had proposed a new set of conditions for the new Premises Licence that had been based on the conditions for the existing Premises Licence. He had done this in response to the indication that the intended use of the premises would continue to be a nightclub as well as a Sexual Entertainment Venue. Mr Drayan also indicated that, in his experience, Sexual Entertainment Venues tend to have less impact than a nightclub. He said that he had visited the area and noted that no residential premises appeared to have any direct line of sight to 37 Duke Street. In view of the fact that the applicant had now accepted his proposed set of conditions for the Premises, he explained that he was only maintaining his representation so as to ensure that the members would be able to determine the key policy issues arising in relation to both applications.

PC Bryan Lewis then made his submission on behalf of the Metropolitan Police. He indicated that he was familiar with the applicant's premises in Duke Street and also the former Mayfair Club in Dover Street. In his experience he said that neither of them had been regarded as problem premises. He also indicated that he agreed with the alternative conditions proposed by Environmental Health. He also explained that the objection was maintained so that the members could reach a view regarding the appropriateness of the locality for a Sexual Entertainment Venue licence.

Karyn Abbott then made her submission on behalf of the Licensing Authority. It was noted that the licensing authority had only objected to the application for the use of the premises as a Sexual Entertainment Venue. She identified the main policy issues as set out in the written submission that had been made by her colleague, Angela Seaward (at pages 47 to 52 of the report). Ms Abbott noted that there were no other Sexual Entertainment Venues within a 200-metre radius of the application premises. There were no schools within that area and just one faith group. She also referenced section 2.5.1 of the policy statement which indicated that, where a premises is licensed under the Licensing Act 2003 for hours beyond the Council's core hours, the Council will have regard to those hours and generally grant a Sexual Entertainment Venue licence to the hours authorised for other licensable activities.

Philip Kolvin Q.C. then presented his submissions on behalf of both Selfridges Retail Limited and 31 to 37 Dukeson Properties Limited. He explained that the objectives under the Licensing Act 2003 didn't deal with a whole range of concerns that communities might have about sex establishments. New legislation was introduced in 2009 which gave licensing authorities wider powers to refuse a sex establishment licence on the simple ground that the sex establishment was in the wrong place. The question is whether the sex establishment is appropriate in the light of the character of the locality and the nature of nearby uses. This gives a wide discretion.

Mr Kolvin referred to the Council's Statement of Licensing Policy for Sexual Entertainment Venues, published in 2012, and specifically paragraph 2.4.6 which refers to whether the character of the locality is predominantly residential, high profile retail, of historic importance or iconic in nature, or one of family entertainment or leisure. He said that this application was a paradigm of the approach adopted by the Council in its policy statement.

Mr Kolvin stated that Selfridges is an iconic retail store which acts as a magnet for visitors from London, the UK and a much wider area and it is directly opposite the application site. He explained that Selfridges had spent 5 years and £300 million on a major redevelopment of the Duke Street façade. There was a new customer entrance, a top end restaurant (the brasserie of light), an additional fourth floor restaurant, a huge 20,000 square foot toy store to widen the appeal of the shop to children, and a cinema to provide a further complimentary family-oriented use up until late at night.

Mr Kolvin's other client was 31 to 37 Dukeson Properties Limited, which is an associated company of Selfridges. It owns the building in which the applicant's premises are situated. It houses offices, including a law firm, and a further education company. Reference was also made to the redevelopment of the former French Connection store for high quality boutique retail and shared working space. The intention was to help to draw customers down Duke Street and make it a family-oriented destination of the highest calibre. The ambition was to create an active frontage and customer space that stretches from Oxford Street to Wigmore Street that enhances the customer journey and experience at all points along the street.

Further regeneration efforts were also being made in partnership with other landowners such as Grosvenor and Portman. These efforts were designed to serve the large residential population in the immediate vicinity. He suggested that the proposal for a new lap dancing club was inimical to the character of the area as it is now and as it is becoming and also to the uses in the area. He said that the application fails the Council's policies at LO1 and LO2 in section 2.4 of the statement of licensing policy.

In terms of the hours of operation, Selfridges trades until 11 pm on occasions and often until 10 pm. The Brasserie of Light trades until Midnight as does the cinema. Contrary to what had been said by Mr Baylis, there was a clear crossover with the hours proposed for the applicant's premises where the proposal was to operate from 8 pm with the Sexual Entertainment Venue operating from 9 pm.

Mr Kolvin then proceeded to criticise the application for the Sexual Entertainment Venue licence. He said that it appeared to have been a hastily thought through proposal. The plans included booths even though the applicant had indicated that there would not be any booths and there were no operational policies. Despite these concerns being raised directly with the applicant some months ago, there had been no response and no further explanation or detail had been provided, despite the fact that the application was being made in a highly sensitive location.

The applicant had originally indicated that the intention was to operate as a lap dancing club, but it was now apparent that they were only seeking to do that for two or three days a week and that they were going to continue operating as a nightclub for four days a week. However, they had jettisoned many of the conditions on their existing licence that applied to the operation of the existing nightclub and the conditions proposed by the applicant for the new licence had simply been cut and pasted from the premises licence for the Mayfair Club. The alternative set of conditions that had now been agreed had been drafted by the Environmental Health Service.

Richard Brown made his submissions on behalf of the Marylebone Association and indicated that he endorsed the comments made by Mr Kolvin. He referenced the written submissions against the applications in the report (page 74 in relation to the Sexual Entertainment Venue application and page 105 in relation to the Premises Licence application) and stressed that objections had generally come from a very wide section of the local community. He asserted that these objections amounted to a clear, cogent and unequivocal view of the community to the effect that both applications should be refused.

Mr Brown questioned whether the applicant had actually assessed the suitability of the area itself and also complained that there had been no engagement with anyone. He did not agree with the assertion by Mr Baylis that the application for the new Premises Licence was a mirror of the existing Premises Licence. He asserted that the Council's policy itself made it clear that the specific area was inappropriate for a Sexual Entertainment Venue licence and said that the nature of the area clearly pointed to a refusal of the application.

Mr Brown made specific reference to paragraph 2.1.11 of the Council's Statement of Licensing policy in respect of Sexual Entertainment Venues. This states that the Council will apply the policy strictly where applications are made for licences for premises at locations where sexual entertainment has not previously been provided, irrespective of the status of the applicant, and anticipates that over a period of time all sexual entertainment venues will be located in accordance with this policy.

Mr Brown had intended to call on Guy Austin to make his own representations on behalf of the Marylebone Association, but he was not available. However, he did ask if Julie Redmond could make submissions in his place. Ms Redmond expressed her concerns about the applications and stated that she represented nearly 3000 families that live in the Marylebone Area. She described the area as a family village area and described the uses that she and her family made of the more immediate area, including visiting Portman Square, eating out in St Christopher's Place and James Street and visiting the toy store in Selfridges. She made it clear that they were not prudes but felt uncomfortable about having such a premises in their immediate locality.

Jace Tyrrell then spoke on behalf of the New West End Company which he described as a Business Improvement District representing 600 retail, hospitality, entertainment and property businesses. He referenced the development of the Council's City Plan, which was seeking to promote complimentary uses to the core retail area, and also referenced the West End International Centre defined in the London Plan adopted by the GLA. This was promoting high quality, international businesses operating in the area. His view was that the operation of any Sexual Entertainment Venue was totally inappropriate in the area in respect of which the licensing applications had been made. He further mentioned an emerging vision for the Oxford Street district that was backed by significant public and private sector investment. The ambition was to make sure that the streets become a global exemplar of retail and leisure. In that context, the Sexual Entertainment Venue proposed was not appropriate at all. He also made the point that many retailers in that area were now seeking to open beyond 9 pm so there would be a potential crossover with the proposed opening hours for the Sexual Entertainment Venue.

Two anonymous objectors to the application for the Sexual Entertainment Venue licence were then given the opportunity to make their representations. They were respectively referred to as objector 6 and objector 28. Objector 6 stated that he was a resident of the Phoenix block of flats (located on Barratt Street and Bird Street, just a few metres from the applicant's premises) and was also an unpaid Director of the Management Company for that block. In that capacity, he spoke on behalf of 64 flats and 100 residents of those flats. He said that he did not have a big problem with the existing nightclub in Duke Street, apart from the fact that there were some noise problems during the early hours. However, he strongly objected to the premises being used as a Sexual Entertainment Venue. The local residents lived in the area on a 24-hour basis so they could be impacted whatever time the premises opened and closed. He was concerned about the people who might be attracted to that type of entertainment and the potential for prostitution and noise and nuisance.

Objector 28 explained that he was a tenant of the building in which the applicant's premises were situated. He worked for an educational company which used the building for office purposes. Students would visit the premises from the UK and around the world. When they acquired the office space, they chose it because of the nature of the area. He indicated that he would not have chosen the property if he had known that there was a Sexual Entertainment Venue operating within it. He strongly asserted that the operation of such a premises would fundamentally change the nature of the area.

A detailed discussion followed about the conditions that would apply to both the Premises Licence and the Sexual Entertainment Venue licence in the event of the applications being granted. It was confirmed that the alternative conditions proposed by Environmental Health would apply in their entirety to the Premises Licence. In response to a question posed by Mr Panto, the legal adviser to the Licensing Sub-Committee, it was also acknowledged that any conditions relating to relevant entertainment that differed to the standard conditions for Sexual Entertainment Venues should also be included on the Sexual Entertainment Venue licence rather than the Premises Licence. It was further confirmed that club membership conditions would apply to the use of the premises as a nightclub but would not apply to the use of the premises as a Sexual Entertainment Venue. A question arose about the potential for queuing outside the premises and Mr Baylis confirmed that no such queuing would be required or allowed.

Mr Kolvin commented that the situation regarding the conditions was very muddled and questioned whether the alternative conditions proposed by Environmental Health did actually incorporate all of the conditions that applied to the existing nightclub licence.

In closing, Mr Kolvin stated that he wanted to deal with some of the process matters. He stated that the plan submitted was total inadequate and did not comply with law or Council policy. There were other important questions. Was this premises a nightclub or a Sexual Entertainment Venue? What is the layout? What are the premises operation plans? What precisely are the conditions? The most basic questions had not been answered. However, the most important point was about the character of the locality and the neighbouring uses. The proposed use was totally contrary to the aspirations of the local community. He mentioned that the Licensing

Sub-Committee had heard from residents, a residents' association, retailers, business occupiers and from landowners. The collective view was that the proposed use of the premises jarred with their aspirations. He urged the Licensing Sub-Committee to reject both applications.

Mr Brown urged the members to have careful regard to the views of the experts, whom he described as the residents and businesses and others who had collectively expressed strong views about the proposed applications. He also urged the Licensing Sub-Committee to reject both applications.

Mr Drayan clarified some of the points that had been raised about the conditions that he had proposed which he said were slightly tighter than the existing conditions.

Mr Baylis said that he entirely understood the knee-jerk reaction of residents and others who had objected to the operation of a Sexual Entertainment Venue. There is still a misperception about how the industry works. It is very well regulated and Sexual Entertainment Venues do not create problems in practice. They do not regularly give rise to prostitution or noise or nuisance or disturbance. He referred back to the evidence presented by both the Environmental Health Service and the Police in that regard and the assertion made that Sexual Entertainment Venues tend to have less impact than a nightclub.

Mr Baylis also commented on the references that had been made by those who were legally represented to what he described as small aspects of the application, such as plans not being appropriate and conditions not being rightly worded. He said that plans and conditions can be discussed and amended. Any suggestion that the application had not been properly prepared simply because it had been decided to use existing conditions was superfluous. What he had not heard from the legally represented objectors is how granting the application will actually change the character of the locality. Externally, the premise was a door in a wall. If one walked past the premises it would not be apparent that the premises was being used as a nightclub. The situation would be exactly the same if the premises was being used for sexual entertainment. There will be no external advertisements. Mr Baylis posed the question as to whether it could seriously be suggested that the operation of a 50 capacity sexual entertainment venue would actually have any impact on the local residents or the high-class retail developments being carried on. He did not think so.

Analysis

The members of the Licensing Sub-Committee carefully considered all of the evidence and submissions made by the parties attending the virtual hearing but also had regard to all of the written evidence and submissions contained in both reports, including the evidence of those who were not able to attend the hearing. In reaching its decision, the members of the Licensing Sub-Committee also had full regard to the Human Rights Act implications and the Public Sector Equality Duty as set out in the reports. No specific points were raised about those matters at the hearing, but the Sub-Committee was satisfied that the decision was taken in accordance with its duties under section 149 of the Equality Act 2010.

A number of questions had been raised during the hearing regarding the detail set out in the applications for both the new Premises Licence and the new Sexual Entertainment Venue licence. Questions were posed about the suitability of the basement plan and the appropriateness of the conditions. It was suggested that there was insufficient clarity regarding the actual use of the premises on a day-to-day basis and there were no operational plans. Many of those objecting stated that there had been no proper assessment of the area and no engagement with the local community, whether residential or business in nature. Mr Baylis had argued that these were matters that developed throughout the licensing process. He said that plans could be altered, and conditions amended or imposed.

Whilst the Licensing Sub-Committee did accept the point that changes can be made throughout the licensing process, it was astounded by what it considered to be a totally inadequate application. There was no reason why an applicant could not cut and paste conditions from an existing licence if those conditions were appropriate for the new application being made. However, there was confusion right from the outset as the application forms did indicate that the premises were intended to be used as "lap dancing" club. It was not immediately obvious that the premises would continue to be used as a nightclub for at least four nights each week. However, that being the case, it was extraordinary that the applicant had simply jettisoned (to use the word proffered by Mr Kolvin) all of the conditions relating to that nightclub use that were included in the existing premises licence.

A number of objectors had pointed out that this was a significant set of applications that were obviously going to be controversial having regard to the very different nature of the area to the area in which the Mayfair Club had been situated. It did seem extraordinary to the Sub-Committee that there hadn't been more engagement with the local community in those circumstances and there wasn't any evidence to suggest that the applicant had actually carried out its own assessment of the suitability of the location, having regard to the Council's policy statements. In particular, the members refer to paragraph 2.1.11 of the Council's Statement of Licensing policy in respect of Sexual Entertainment Venues which was drawn to their attention by Mr Brown. This clearly states that the Council will apply the policy strictly where applications are made for licences for premises at locations where sexual entertainment has not previously been provided, irrespective of the status of the applicant.

The members of the Licensing Sub-Committee do not think that it is appropriate for applications to be made which essentially require all the detailed work to be carried out when the hearing is being conducted. The applicant should present its application in detail with clear plans and a clear indication of exactly what is proposed and how the premises will be operated. The proposed conditions should be fit for purpose. Whilst it is always accepted and understood that some changes might be made to some of the conditions at a hearing, it is extraordinary to be confronted with a situation where the applicant agrees to substitute one set of conditions for an entirely different set of conditions proposed by the Environmental Health Service. That approach also makes it very difficult for anyone to make considered representations in advance of the hearing.

There was a lot of discussion about the conditions at the hearing and it was confirmed by the applicant that they were prepared to accept the conditions

proposed by the Environmental Health Service in full. However, some of the objectors, including Mr Kolvin on behalf of Selfridges and Dukeson Properties and Mr Brown on behalf of the Marylebone Society, still questioned whether other conditions on the existing Premises Licence were also required.

In the final analysis, the Sub-Committee has not had to come to any conclusion with regard to the conditions because it has decided to refuse both applications on policy grounds. In accordance with the approach adopted by Mr Baylis, the main consideration for the members has been the application for the new Sexual Entertainment Venue licence on the basis that the applicant already has an existing premises licence for the same hours that it can continue to use when operating as a nightclub. In other words, the application for a new Premises Licence that makes any reference to licensable activities taking place in connection with the operation for a Sexual Entertainment Venue must fall if the application for the Sexual Entertainment Venue is itself refused.

The potential statutory grounds for refusing the application for the Sexual Entertainment Venue Licence are those set out in paragraph 12(3)(d) of Schedule 3 to the Local Government (Miscellaneous Proceedings) Act 1982 as amended in 2009, namely that the grant or of the licence would be inappropriate, having regard (i) to the character of the relevant locality; or (ii) to the use to which any premises in the vicinity are put; or (iii) to the layout, character or condition of the premises in respect of which the application is made.

The key policy considerations are those set out in section 2.4 of the Council's Statement of Licensing Policy in respect of Sexual Entertainment Venues, published in 2012, and especially policy statement LO1, LO2 and LO3. The relevant locality in this case is considered to be the immediate locality surrounding the premises, including the entire length of Duke Street, but also the slightly wider area which has been described as the Mayfair Village. That certainly includes the junctions of Duke Street with Oxford Street and Wigmore Street, Picton Place, Barrett Street, Bird Street, James Street and St Christopher's Place.

With regard to policy statements LO1 and LO2, it is clearly stated that, in considering whether granting a licence would be inappropriate, the council will specifically consider whether the character of the locality is predominately residential, high profile retail, of historic importance or iconic in nature, or one of family entertainment or leisure. Paragraph 2.4.11 states that areas predominately characterised by general or family retail use may be inappropriate localities for sexual entertainment because of their use by children, either unsupervised or in a family context, and by adults wishing to avoid the characteristics of, or associated with, sexual entertainment venues. Paragraph 2.4.12 states that localities characterised as areas of historic importance, or iconic in nature, will be particularly attractive to, and used by, visitors, both adults and children. The council may consider it inappropriate for these localities, which in many cases will be of national and international significance, to be associated with sexual entertainment venues and their associated character, because of the effect that such an association would have on visitors and on the image of London and Westminster in particular.

The decision of the Licensing Sub-Committee has primarily been taken with regard to the characteristics of the area as described by all of those who have objected. The characteristic of the area can obviously also relate to the use of premises within that area, Selfridges being a prime example and especially as it is situated immediately opposite the subject premises. Less weight has been given to policy statement LO3

which is about the layout, character or condition of the proposed venue. That is because most of the objectors have not focused on that point. However, it is of some relevance as there was a lot of discussion about the accuracy of the plans submitted. Mr Kolvin specifically posed the question as to how the Licensing Sub-Committee can actually exercise its functions if the plans are meaningless. For example, he identified some potential concerns about the welfare arrangements for the performers. The Licensing Sub-Committee did accept the point made by Mr Baylis that plans can be amended but no amended plans had been submitted at the hearing and policy LO3 identifies that the considerations that will be taken into account include whether the layout of the premises promotes good management and appropriate supervision within the premises and whether the layout promotes public safety in respect of, amongst other things, facilities for performers. In the absence of amended plans, it was not possible to do that.

The Licensing Sub-Committee concluded that the relevant area for the purposes of the Sexual Entertainment Venue application, as described above, was very different to the area where the Mayfair Club was situated. Detailed representations were made against the application, expressing the concerns of a wide variety of different people and organisations. Whilst the Council has acknowledged that Sexual Entertainment Venues can only be situated within the CAZ (North) area identified in the policy statement, that does not mean that any part of that area is appropriate for such use and that is why the Council has the discretion to determine the appropriateness of any such use within the relevant vicinity identified. The evidence submitted by all those objecting is very clear. They have been able to tolerate the existing nightclub use of the premises, but they have serious concerns about any use that involves sexual entertainment as they all think that will be seriously detrimental to the area that they live and work in.

The objections do not necessarily mean that there is any suggestion that the applicants are not capable of running the premises properly, though the absence of detailed operating proposals did not help in that regard. It is accepted that there were no major problems associated with the Mayfair Club and that there have been no major problems with the running of the existing nightclub, though evidence has been given that some residents have been troubled by noise during the early hours of the morning. The refusal of the Sexual Entertainment Venue application is not based on any suggestion that the applicant is not suitable to hold a Sexual Entertainment Venue licence.

The application for the Sexual Entertainment Venue licensed is refused on the basis that the Licensing Sub-Committee accepted all of the submissions made by those objecting to the application. It agreed with Mr Kolvin's conclusions that this proposal for a new lap dancing club was inimical to the character of the area as it is now and as it is becoming and also to the uses in the area. The grant of the licence would, therefore, be inappropriate having regard to the character of the relevant locality and the use to which any premises in the vicinity are put. Whilst the Licensing Sub-Committee did have serious concerns about the plans submitted it did not consider that it was appropriate to refuse the application on the ground relating to the layout of the premises.

Having refused the application for the Sexual Entertainment Venue licence, the members decided that there was no alternative but to also refuse the application for the Premises Licence. If the premises could not operate as a Sexual Entertainment Venue, the Premises Licence as drafted was not fit for purpose and would not, therefore promote the licensing objectives under the Licensing Act 2003. This also reflects the criticism that the Licensing Sub-Committee has made about the way in

which this application has been handled. The first set of conditions proposed had jettisoned all the conditions relating to nightclub use. The second set had been drafted by Environmental Health, but the objectors still had issues as to whether the amended version covered all the concerns about the running of a nightclub. In addition, there was a great deal of uncertainty as to when the premises might or might not be used for sexual entertainment. The Licensing Sub-Committee was not in the business of itself having to determine alternative conditions that might be fit for purpose, though it acknowledged the attempt by Mr Drayan to do that for the benefit of the applicant. The applicant could, of course, continue to make use of the existing Premises Licence that was fit for purpose if the premises was going to continue operating as a night club.

The Meeting ended at 12.30 pm

CHAIRMAN: _____

DATE _____