



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (6)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** Committee held on **Thursday 11th January, 2018**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

Members Present: Councillors Melvyn Caplan, Heather Acton and Rita Begum

1 MEMBERSHIP

There were no changes to the Membership. Councillor Melvyn Caplan was appointed as Chairman for the meeting.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 THE WINDMILL, 17-19 GREAT WINDMILL STREET, W1

LICENSING SUB-COMMITTEE No. 6

Thursday 11th January 2018

Membership: Councillor Melvyn Caplan (Chairman), Councillor Heather Acton and Councillor Rita Begum

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd. Heidi Lawrence in attendance.

Relevant Representations: Objector (wished to remain anonymous), City Inspectors and Licensing Authority

Present: Mr Stuart Jessop (Counsel, representing the anonymous objector), Mr Glyn Franks (City Inspectors) and Mr Nick Nelson (Licensing Authority), Mr Michael Bromley-Martin QC (Representing Applicant), Mr Thomas O'Maoileoin and Mr Jack Spiegler (solicitors, on behalf of the Applicant), Mr Daniel Owide (Director, Applicant Company), Ms Annette Leahy (Designated Premises Supervisor), Retired Chief

Inspector Adrian Studd and Retired Inspector Graeme Ironside
(Consultants to Applicant).

**The Windmill, 17-19 Great Windmill Street, W1
16/09992/LISEVR**

An application for the renewal of a Sexual Entertainment Venue Premises Licence to provide full nudity striptease, pole dancing and table dancing between the hours of 09:00 to 05:30 on each of the days Monday to Saturday and 14:00 to 03:00 on Sunday. The Applicant did not request to change the relevant entertainment or to remove any standard conditions to the licence in the event the application was granted. Objections to the renewal application had been submitted alleging serious breaches of the conditions on the licence.

Amendments to application advised at hearing:

None.

Decision (including reasons if different from those set out in report):

Ms Gadd, introducing the application advised at the hearing that the original Objector had not waived the right to anonymity.

Mr Bromley-Martin, representing the Applicant, wished to make a preliminary point. He requested that the Sub-Committee permit the submission of two witness statements on behalf of the Applicant, from Mr Owide and Ms Leahy, which had been sent to the Licensing Service the day prior to the hearing. Mr Bromley-Martin clarified that the reason the witness statements had been sent at that time, which was after the deadline set out in the Council's Rules of Procedure ('all documentary or other information produced by a party in support of their application must be received by the Authority by noon on the third working day before the day of the hearing at which it is to be relied upon'), was in order to respond to further submissions sent on behalf of the Objector on Monday 8 January. He added that Mr Jessop, Mr Franks and Mr Nelson had no objection to the witness statements being submitted. The Sub-Committee permitted the submission of the two witness statements, adjourning briefly to read the documents.

The Sub-Committee decided to hear from the objectors first as that was considered to be the most appropriate way of dealing with an opposed application for renewal under the Sexual Entertainment Venue legislation.

Mr Jessop spoke first on behalf of the original objector, stating that the evidence on behalf of the objector was that there had been serious and significant breaches of the conditions on the premises licence. It was crucial that customers, performers and those involved in the industry were protected. Breaches of the conditions could have the effect of creating an atmosphere where the performers are encouraged or feel pressured to act in a certain way. In order to compete the performers may have felt it necessary to lower the standards.

Mr Jessop made the point that the breaches were serious and significant on the grounds that there were a number of performers who had not complied with the conditions and the breaches had occurred on a number of different days. It was not, he believed a small blip where one or two performers were taking a decision not to comply with conditions. It was a systemic failure of the Licensee's running of the premises, including the mismanagement of the performers and the security guards not preventing the issues from occurring. He also rejected what he believed to be the likely argument on behalf of the Applicant that the breaches were a 'one off' or occurred because of a period of difficulty. Mr Jessop commented that the issues had either deliberately been allowed to take place or gross negligence had been allowed to occur. He referred to key members of staff, including Mr Daniel Owide, being present at the premises whilst repeated incidents were taking place.

Mr Jessop referred to evidence of the breaches shown in CCTV footage of 1 and 5 October 2017. He also said that the business had been put on notice as early as 13 October 2017 of the ex-police officers' visits on behalf of the Objector in September. However, despite this there had been further visits by the ex-police officers on specific dates after this time in October and the first half of November, the Applicant had still not put its 'house in order'. There had therefore been persistent or flagrant breaches. He added that this either showed an inability to improve the situation or an unwillingness to do so and queried whether the Applicant was a fit and proper person to run the premises.

Mr Jessop stated that despite Mr Franks on behalf of the City Inspectors having observed CCTV footage on 8 December which he described as a 'marked improvement in the activity of SIA staff patrolling, responding to instructions and talking to customers, as well as performers', the Licensing Authority had found evidence of 19 breaches of Condition 22 in this same footage. Mr Jessop made the point that these breaches may not have been as serious or severe as those in September or October but he expressed the view that there had still been a large number of breaches. He asked the rhetorical question that if the most recent position was that there were still breaches when the Applicant was aware that the application was coming before the Sub-Committee, what would be the situation when the spotlight was not on the Applicant? Mr Jessop requested that the Applicant was not given a trial period to demonstrate that the situation had improved on the basis that the Applicant had had this opportunity already since September 2017 and had not improved sufficiently.

Mr Jessop referred to the Applicant potentially making the case that the issues were due to a period of difficulty arising from the ill health and death of Mr Oscar Owide. He said that he had sympathy for the Applicant on this point but that it had been recorded in the decision sheet at the Council's Sub-Committee meeting in 2012 that there had been a similar set of breaches of the conditions on the premises licence. Mr Jessop queried how Mr Daniel Owide, the son of Oscar Owide and current Director of the Company, had set out in his current witness statement that he was not aware of the breaches of the conditions in 2012. This was particularly as Ms Leahy had been the Designated Premises Supervisor ('DPS') at the time of the 2012 meeting, had been present at that meeting and would have been able to inform Mr Daniel Owide of the situation.

Mr Jessop also said that whilst it had been suggested that no criminal offences had taken place, there had been clear evidence of intimate touching and overt sex acts performed by performers. There were potential instances of prostitution and bribery of security guards to ignore incidents. Even if there were no criminal offences, there were clearly serious breaches of conditions.

The Sub-Committee heard from Mr Franks on behalf of the City Inspectors. He stated that he was made aware of the Objector's submission in respect of the premises on 13 October 2017. On 14 October he had sought to obtain CCTV footage of the premises. He was maintaining his objection on the basis of breaches of conditions of the premises licence which could be seen in footage obtained from 1 and 5 October 2017. Mr Franks had witnessed conduct that reflected breaches of conditions 17, 21 and 22 of the premises licence and in excess of 50% of the dances viewed would reflect breaches, or cause for concern. Mr Franks also advised that he had observed on the CCTV footage clear and prolonged contact between the customer and the performer, inappropriate contact between the performer and the customer and that the performers were not adequately managed. There was clear evidence of SIA staff being present and allowing the conduct to continue.

Mr Franks in response to a question from the Sub-Committee advised that there were clear full face images of the SIA staff in question and it was believed management had acted on information. Mr Bromley-Martin provided the information that the management did know the names of the SIA staff who had transgressed and that disciplinary action had been taken.

Mr Franks stated that following the evidence in the footage of the beginning of October, he had arranged a meeting with the licence holder for 14 November and had continued to monitor management and the conduct of the performers. He had subsequently obtained images of 7 November and 8 December. Mr Franks expressed the view that there were no clear breaches of the conditions on these dates which were sufficient for a review of the licence or a prosecution. There had been instances of contact between the performer and the customer but Mr Franks did not perceive these instances to be indecent.

Mr Franks confirmed to the Sub-Committee that he had not viewed any CCTV footage at the premises since 8 December. He was awaiting the outcome of the current Sub-Committee hearing before taking a decision on whether to continue the enforcement process.

The Sub-Committee asked Mr Franks a number of questions. These included why he had selected specific dates for viewing CCTV footage. He replied that 1 October and 5 October footage had been requested because a meeting had taken place with the premises on 31 October and he wanted to assess whether the licence holder was complying with the need to retain it for 31 days. He had also selected days of the week which were similar to those when the ex-police officers had visited the premises. He had then randomly sought CCTV footage of 7 November and 8 December.

Mr Franks was asked whether he or City Inspector colleagues had visited the premises recently prior to the Objector's submissions. He replied that he had carried out inspections of the premises, including on 26 July 2017. Visits of SEV premises

were conducted by City Inspectors at least three times a year. Mr Franks added that he had never during his visits witnessed any behaviour which he suspected of being a breach of the conditions. The nature of the visits was that he would introduce himself at the front door, then he would walk through the premises with a manager, they would go back to the office and often view CCTV. Most inspections would last approximately 15-20 minutes. All of these visits were unannounced. Mr Franks acknowledged that it was likely that the SIA door staff would make other staff aware of his visit as soon as he was at the front door.

Mr Franks advised that it was with consent that he viewed CCTV as the conditions did not require the operator to show it to him. It was his decision as to whether to request to view footage or not. He was not certain that he had viewed recent CCTV footage during his July 2017 visit. He had definitely looked at CCTV footage of the premises a couple of times during 2017. He generally requested footage of one or two of the private dancing areas as they were the greatest risk areas in terms of breaches of conditions.

The Sub-Committee heard from Mr Nelson on behalf of the Licensing Authority. He stated that the Licensing Authority had responded to allegations from the Objector. There had been discussions with the operator and the Licensing Authority had carried out its own investigations, largely by viewing CCTV clips of the premises during 2017 (from 1 October, 5 October, 7 November and 8 December). Mr Nelson concurred with Mr Jessop that the CCTV footage showed a high number of serious and significant breaches of the conditions on the premises licence. The Licensing Authority's view differed from Mr Franks', particularly in relation to footage of 7 November and 8 December, in that evidence of touching of customers still amounted to evidence of breaches. Mr Nelson perceived that he was taking a literal view of the conditions whereas Mr Franks was viewing the footage from an enforcement perspective. Mr Nelson wished to clarify that he was in agreement with Mr Franks insofar that had he only seen footage of 7 November and 8 December and not 1 October or 5 October, it would be doubtful that the Licensing Authority would have made a representation.

Mr Nelson advised that there were clips of CCTV footage of the premises should the Sub-Committee wish to view them. The Sub-Committee asked Mr Nelson what information would be obtained from the clips that was not known by Members having read all the papers. Mr Bromley-Martin, in order to assist the Sub-Committee, indicated at this point that the Applicant had no dispute with the content of the witness statements submitted on behalf of the Objector or the assertion there were substantial breaches shown in the CCTV footage of 1 and 5 October. The Applicant also did not object to the assessment of the 7 November and 8 December footage given by Mr Franks or Mr Nelson.

Mr Nelson referred to the Licensing Authority having viewed 37 hours of CCTV footage at the premises. Breaches of conditions 17, 20, 22 and 23 of the premises licence had been observed as set out in his written representation. Mr Nelson described the breaches of 1 and 5 October as 'extreme' as there had been a very significant level of contact and over-familiarity between performer and customer and performer and performer. Mr Nelson advised that it could be seen from the footage of 8 December that there had been a period of re-education of the performers that the previous levels of contact were not acceptable. There were later examples of

security staff interrupting performances and pointing to plaques on the wall which it was believed prohibited contact. There were also later examples of performers performing further away and pushing customers back into their seats. Mr Nelson said there were still some examples of performers dancing very close to the customers and there being some contact such as touching a shoulder, knee or thigh. The examples of contact could be seen as 'soft breaches'.

Mr Nelson advised that it was clear that there had been a marked improvement but it was clear that from a literal interpretation of the conditions, breaches were still occurring on the most recent footage viewed. More active monitoring, management and security of the premises appeared to be taking place. It was up to the licence holder to design an operation that is able to comply with conditions. The Licensing Authority needed confidence in the licence holder's ability to do so. Mr Nelson had read the submissions of the ex-Police officers on behalf of the Objector and he was of the view that they were consistent with what he had observed in the CCTV footage. He was concerned that performers and customers had been able to locate blind spots which were not covered by the CCTV cameras but this appeared to be resolved. Mr Nelson advised that he had seen Ms Leahy in later footage monitoring the performances. He believed that the training measures set out in the Applicant's submissions were positive.

Mr Nelson perceived that customers had developed an expectation of receiving more than just a dance from the performers. This had led to frustration, including arguing, on their part. Management would need to demonstrate that they were able to manage the customers so that there was no expectation of more than just a dance.

Mr Nelson said that the option was open to the Sub-Committee to grant a probationary licence of less than a year. This would give management the opportunity to improve whilst monitoring takes place. The Sub-Committee needed to have confidence that the premises would be operated so that conditions were complied with.

The Sub-Committee asked Mr Nelson whether he believed the Applicant was able to comply with conditions on the premises licence. Mr Nelson replied that the situation had been dire. He believed the operators had the ability to manage the premises and comply with the conditions. He was concerned that there could be a situation where the Licensing Service intervenes and the licence holder improves its procedures only for a gradual decline to occur over time. Mr Nelson referred to the recorded issues in 2012 but wished to balance this with the point that no enforcement action had been taken against the premises in the last five years.

The Sub-Committee was addressed by Mr Bromley-Martin. He began by asking questions to officers. Mr Nelson confirmed that he had received full co-operation from the licence holder in the Licensing Authority's investigation. Mr Nelson also confirmed it was his understanding that there had been a full review of CCTV and an improvement of the coverage. Mr Franks was asked whether there had been an improvement in the CCTV and he replied that there had been with the blind spots having been removed. There were now additional screens for management to view. He believed it probably had been the case that from the CCTV footage on 7 November the performers were aware where the blind spots were. Mr Nelson and Mr Franks also confirmed they were aware that disciplinary and compliance

documentation had been produced on the part of the Applicant.

The Sub-Committee asked representatives on behalf of the Applicant to explain about the CCTV. Ms Leahy and Mr Bromley-Martin stated that there was comprehensive coverage now, including in the private booths on the first floor. It had been identified that there were blind spots that were being exploited. Performers had been able to see this from the monitors. Performers had then needed to ensure that security staff either did not see what was taking place or did not report them. Ms Leahy informed the Sub-Committee that there were monitors at the reception desk. Mr Owide informed the Sub-Committee that he was able to monitor the venue from his office in the basement and that the performers and security staff could no longer observe the monitors in reception. Only Ms Leahy could see them or another trusted member of staff if Ms Leahy was busy.

Mr Bromley-Martin stated that The Windmill had been an institution for many years. It had been owned by Mr Oscar Owide until his death in December 2017. Mr Bromley-Martin accepted that by October 2017 there was a systemic failure to comply with the conditions on the premises licence, including in relation to the contact between the customers and the performers. He explained that the way in which the venue was run was always in accordance with Mr Oscar Owide's wishes. He described Mr Oscar Owide as a man of positive character who was autocratic to a degree. He had not allowed his son Daniel, the manager of the premises, to be in the office unless he was there.

Mr Bromley-Martin wished to refute what he perceived to be the suggestion in the Objector's written representation that the management was involved in the breach of the conditions as part of the exploitation of the performers. He said it was not a case of profiteering at the expense of performers. The performers and security staff who had transgressed had disregarded rules because they were able to make more money.

Mr Bromley-Martin said that there was a duty on the part of the Applicant/licence holder to prevent breaches of the conditions occurring and this was accepted by management. It was necessary to take appropriate disciplinary action against staff who had transgressed.

Mr Bromley-Martin stated that the issue was not whether The Windmill should be punished for the earlier systemic failure to comply with conditions but whether the Sub-Committee could be confident such a situation would not arise again. It was his intention to persuade the Sub-Committee that the management of the premises had the determination and willingness to comply with the conditions. He referred to the Applicant providing CCTV footage to Council officers as requested after it had become apparent that there were issues. CCTV coverage had been improved after it had become apparent that there were some blind spots. Monitoring of the CCTV by management had also been improved so that Ms Leahy and Mr Owide could be seen on 8 December CCTV footage arriving on the scene and action having been taken.

Mr Bromley-Martin made the point that the ex-Police officers' detailed witness statements on behalf of the Objector had enabled the management of the premises to take the necessary disciplinary action. As a result, seven performers had been dismissed and a number disciplined and warned. Also, four security staff had been

dismissed.

Mr Bromley-Martin explained that Retired Inspector Graeme Ironside had been employed to review the compliance documentation and provide training to staff on compliance and discipline. His reports had been included in additional papers submitted to the Sub-Committee by the Applicant. The training to staff had taken place on 30 November 2017. Mr Bromley-Martin informed the Sub-Committee that there had been a need for disciplinary action since that date with there being at least one dismissal.

The report from Retired Chief Inspector Adrian Studd was also included in additional papers submitted by the Applicant. Mr Bromley-Martin explained that Mr Studd had been employed to assess the premises and then report his findings to the licence holder. Mr Studd had made recommendations and then returned to make covert investigations of the premises including the behaviour of the performers and security staff in December 2017 to see whether the conditions on the premises licence were being complied with.

Mr Bromley-Martin expressed the view that it was important that the Sub-Committee accepted the analysis of the situation provided by Mr Nelson and Mr Franks rather than Mr Jessop.

Mr Bromley-Martin wished to highlight the conclusions of Mr Studd's report. This was that whilst there had been issues at the premises in the past, he was satisfied that 'the premises is now in compliance with the standard conditions for SEV premises and will continue to do so should the licence be renewed'.

The Sub-Committee wished to understand from Ms Leahy how, when she had been the DPS for many years, she was not aware that the breaches of the conditions were taking place. There were concerns about how the premises was being run. Ms Leahy had stated for instance that she was not at the premises on the evening of 25-26 October 2017 when the ex-Police officers had visited the premises and uncovered breaches of the conditions. Ms Leahy responded that the business was run in a different way by Mr Oscar Owide than his son Daniel and the latter wanted to take the business in a different direction. A mistake had been made in trusting security staff who had worked at the venue for some time. It had been a shock to management that they had not been respecting the conditions. Ms Leahy had been aware that there had been some breaches of the conditions. She said disciplinary action had been taken in relation to the breaches she had been aware of. It was Ms Leahy's submission that there was a culture where door staff would use their radios when the management was approaching to warn security upstairs they were coming. By the time the management were upstairs all staff were behaving. As far as she was aware there were no concerns.

The Sub-Committee also wished to understand from Mr Daniel Owide why the flagrant breaches would not happen in the future. Mr Owide responded that his father was very controlling and gave no input to the management, particularly in the final months of his life. Mr Owide explained that his intention going forward was to advertise for new performers and do in-house training. Staff on site would all be part of the compliance team. He added that security staff had been employed by his father. It had not been a complete surprise to him regarding the breaches although

the degree of the issues had been. Now security staff would be rotated in order to prevent them being over-familiar with their positions.

The Sub-Committee asked Mr Owide how the venue was managed when Ms Leahy was not on duty. Mr Owide replied there was always a member of the management at the premises. There was another lady who was able to cover. The general manager had received his SIA security training. Performers and staff would be re-trained after Christmas.

Mr Jessop was given the opportunity to ask questions of the Applicant. He asked Ms Leahy why she had not informed Mr Daniel Owide of the concerns raised about breaches of conditions at the Licensing Sub-Committee meeting in 2012. She replied that her view was that matters that were raised in 2012 had been dealt with. New staff had been brought in, including to monitor the CCTV. The Council had asked to view CCTV footage and no issues had been raised by officers. It was not until the last six months that the issues had been brought to her attention. Security staff had become too comfortable and over-familiar. Ms Leahy informed the Sub-Committee and Mr Jessop that the previous individual who had monitored the CCTV had left the role and one of the existing security guards had taken over who was believed to have been part of the problem. She had become aware of the extent of a culture having developed regarding performers and security staff at the premises in November.

Ms Leahy also said that in addition to being made aware of the Objector's submissions in October 2017, Mr Daniel Owide had been affected at the time by his father's illness and had not been at the premises as much. It may have been that his attention was diverted.

Mr Jessop asked Mr Owide whether he was at the premises on the evening of 25-26 October 2017 when Ms Leahy had set out in her witness statement that she had not been present. This was an evening when the ex-Police officers had visited the premises and uncovered breaches of the conditions. Mr Owide confirmed that he had been at The Windmill that evening but explained that he was unaware of what had taken place.

Mr Owide wished to bring to the Sub-Committee's attention that during the period when breaches had taken place, he had been occupied with touts standing outside the front door (conversations had taken place with Mr Franks on this issue). Many regular customers had stopped coming to the venue and had been taken to another nightclub. Mr Owide had therefore stayed outside observing what was occurring.

Mr Studd was asked by Mr Bromley-Martin to comment on confidence in the present management to comply with conditions and ensure that the breaches never happened again. Mr Studd replied that he believed that he, Mr Nelson and Mr Franks had all been struck by the shock of Ms Leahy and Mr Owide when they had become aware of the extent of the issues at the premises. He believed significant improvements had been made at the premises, including in relation to the CCTV and training and replacement of staff. Mr Studd was of the view that Ms Leahy and Mr Owide had accepted responsibility to address the issues that had arisen. He believed it had been tempting to rely on people who had been employed at the premises for a long time.

The plans of the premises were discussed. Mr Bromley-Martin offered on behalf of the Applicant to provide up to date plans which included the locations of the CCTV cameras and monitors.

The Sub-Committee asked Ms Leahy how often staff meetings had taken place and whether any issues had been raised there. She replied that staff meetings took place once a month and no issues had been raised there.

The Sub-Committee heard the final submissions from Mr Jessop and Mr Bromley-Martin. Mr Jessop referred to a paragraph in the decision sheet for The Windmill at the Licensing Sub-Committee hearing in May 2012. The Applicant in that instance had stated that 'the necessary disciplinary action had been taken in respect of the performers and the security. The CCTV would in future be monitored more closely and the company was in the process of employing someone to view the CCTV continuously. Currently there was a receptionist employed full time and Ms Leahy, the DPS was also viewing CCTV for 15 to 20 minutes each hour in reception'. Mr Jessop commented that not only had there been significant contact between performers and customers then but similar solutions had been offered. Ms Leahy had also been in the same role. He re-iterated that there was a question to answer as to why Ms Leahy did not advise Mr Daniel Owide of the previous issues which had existed in 2012. Mr Jessop made the point that whilst his father may have been an autocrat, Mr Daniel Owide was in a position of influence.

Mr Jessop picked up on the comment Ms Leahy had made that she had been aware that there had been some breaches of the conditions prior to October. He questioned whether Ms Leahy would have been totally unaware of the culture of breaches as documented in the Objector's submissions. Mr Jessop quoted Mr Nelson's representation that 'it is clear from the footage that an expectation has been created amongst customers of the premises that contact can be expected from performers. This is very clear in later CCTV footage when frustration is clearly visible amongst some customers when contact is not forthcoming. The premises is likely going through a transition phase where customers still expect to receive contact and will likely face difficulties in changing this behaviour and managing this expectation out'. Mr Jessop concluded it was common sense that cultures do not arise overnight or in the space of a few weeks. If customers were struggling with the new culture, it was because they had got used to the old one which was likely to have been over a long period of time. This was a period of time when Ms Leahy was DPS and Mr Daniel Owide should have been made aware of the problems, as documented in 2012.

Mr Jessop said that he accepted Mr Bromley-Martin's point that the Sub-Committee's decision should not be about punishment but whether the operator was suitable to run the premises. He asked the Sub-Committee to give careful consideration to whether the operator was fit and proper, given that either Ms Leahy or Mr Daniel Owide were at the premises whilst the breaches were taking place.

Mr Jessop made the point that the evidence of the serious breaches was not merely confined to what had been seen on the CCTV footage. The ex-Police officers had witnessed them on dates when CCTV footage had not been observed by Council officers. The evidence of the ex-Police officers was accepted by the Applicant. The

CCTV footage had been viewed on 7 November and the officers had deemed there to have been an improvement, which had been described as 'soft breaches'. However, the ex-Police officers had visited the premises on 9 November and found a number of serious breaches of the conditions, including physical contact between the performer and the customer.

Mr Jessop queried why management had not been aware there were blind spots in the CCTV coverage which had been picked up by the performers who had transgressed. He believed that the performers and the security staff were scapegoats for these failings and there was a lack of responsibility taken by management.

Mr Jessop commented that conditions had been placed on the premises licence for a reason. It was only a short journey from the 'soft breaches' to the more serious breaches. The conditions were placed on the premises licence in the context of sexually charged activities. Mr Jessop expressed the view that the breaches involving touching could therefore not be deemed to be soft. The conditions were there to safeguard staff and customers.

Mr Jessop did not dispute that there had been recent progress. However, the issue was whether the Applicant was fit or proper to run the premises. If breaches were still carrying on, and he did not accept the definition of 'soft breaches', then he believed the Applicant fell at that hurdle. He was of the view that the breaches were still carrying on as they were still taking place in December 2017 when the most recent CCTV footage had been viewed. Despite being put on notice in October 2017, there were still conditions that were not being complied with.

Mr Bromley-Martin, in his final submission, stated that the breach of the touching rule plagues table dancing venues. He wished to emphasise that Mr Daniel Ovide had not been involved in managing the premises in 2012 when the issues with contact between performers and customers were raised at the Council's Sub-Committee meeting. The premises were firmly run by his father. He expressed the view that there was little significance in what had taken place in 2012.

Mr Bromley-Martin believed it was wrong for Mr Jessop to suggest that the breaches had been taking place for a long time. He said there was no evidence to suggest anything untoward was happening before 1 October 2017. The Licence Holder was grateful for the evidence provided by the Objector which was to the advantage of all.

Mr Bromley-Martin requested that the Sub-Committee accept the submissions of Mr Nelson and Mr Franks. He believed the evidence was that there had been a serious problem in October, an intermediary period in November and by December the problem is solved. There were no actionable breaches by December. Mr Bromley-Martin believed it was of note that there was no evidence since 8 December of actionable breaches. He described the steps taken by management as strong actions. At least eleven staff had lost their livelihoods. He was of the view that reassurance should be given by the report of Retired Chief Inspector Adrian Studd that the breaches had been resolved and the premises are now being managed properly.

Mr Bromley-Martin recommended that a probationary period was not imposed by the

Sub-Committee as this had already existed between December 2017 and the current hearing.

The Sub-Committee considered, in reaching a decision, that a large part of the case was not in dispute as all parties to the hearing had accepted, including the Applicant, that there were serious and severe breaches of the conditions on the premises licence. It was for the Sub-Committee to judge the suitability of the Applicant holding the premises licence. Mr Jessop had made the point that the issues had either deliberately been allowed to take place or gross negligence had been allowed to occur. The Sub-Committee considered that there were situations where one off breaches take place. However, in this case, as accepted by all parties, there had been a systemic failure to comply with the conditions on the premises licence.

The Sub-Committee had noted that the initial evidence of breaches had been provided by the original Objector who had no direct connection with the premises. The suggestion was that customers also had an expectation that the performers would engage in more than just a dance for them. The only people who had appeared to be unaware of what was taking place in The Windmill were those in charge of the Applicant company. It was the duty of the management to make sure that they are aware of what is taking place in the premises. There was a failure and a lack of responsibility taken on the Applicant's part.

The Sub-Committee was required, as asserted by Mr Bromley-Martin, to decide whether there was confidence that breaches of the conditions would not happen again. The Sub-Committee had been asked to take into account the improvements in place and that training had been carried out and whether that was sufficient that issues would not arise in the future. Members had found it hard to believe that the nature of the breaches had only been taking place since October 2017. They accepted the point that the CCTV footage had demonstrated that an expectation had been created amongst customers of the premises that contact can be expected from performers and that the culture was not likely to have arisen over a short period of time. The Sub-Committee had to weigh up that the management going forward would be the same as the management in the past. The Sub-Committee gave its condolences to Mr Owide for the loss of his father and appreciated that his ill health and death would have been a stressful period for Mr Owide. However, if the management stayed the same, the Sub-Committee had to be convinced that the culture would change.

The Sub-Committee had been asked to accept the evidence from the Applicant that Mr Oscar Owide was such a dominant character that it was not possible to prevent a culture where the conditions were not complied with. The Sub-Committee did not consider it an option as to whether licence holders complied with conditions on the premises licence. It was absolutely necessary for licence holders to comply with conditions at all times. The Sub-Committee also did not accept the concept of 'soft breaches'. Any breaches were not acceptable. The Applicant had been advised in October 2017 of the breaches and the Council had been told that they would never happen again. However, severe breaches had occurred again as set out in the ex-Police's officers witness statements on behalf of the Objector relating to visits to the premises on 26th October and 10th November 2017.

The Sub-Committee had given consideration to whether a trial probationary period

was appropriate. It had been suggested by Mr Jessop and Mr Bromley-Martin that this had been in existence already. The Sub-Committee had decided that this was not appropriate. The licence was due for renewal in September 2018.

Having read all the evidence and listened to the submissions at the hearing, the Sub-Committee was not convinced that similar issues to those documented over recent months would not happen again. The same management, notably the DPS, were in place. The Sub-Committee was not convinced that the conditions on the licence would be adhered to. The Sub-Committee recognised that training had been given to staff and that had led to some improvements. However, the test was whether the Applicant was suitable and whether such incidents would happen again. The Sub-Committee did not consider that the Applicant was suitable to hold the Sexual Entertainment Venue Premises Licence and the decision was therefore that the renewal of the licence was refused.

4 SUNSET STRIP, BASEMENT, 30 DEAN STREET, W1

LICENSING SUB-COMMITTEE No. 6

Thursday 11th January 2018

Membership: Councillor Melvyn Caplan (Chairman), Councillor Heather Acton and Councillor Rita Begum

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd. Heidi Lawrence in attendance.

Relevant Representations: An objector.

Present: Mr Declan Forde (Applicant), Mr Martin McVitie (Manager, Sunset Strip) and Mr Thomas Strange (Objector).

Sunset Strip, Basement, 30 Dean Street, W1 17/10883/LISEVR

An application for the renewal of a Sexual Entertainment Venue Premises Licence to provide striptease, pole dancing and table dancing involving full and partial nudity between the hours of 09:00 to 01:00 on each of the days Monday to Saturday and 09:00 to 23:00 on Sunday. The Applicant has not requested to change the relevant entertainment or to remove any standard conditions to the licence if the application is granted.

Amendments to application advised at hearing:

None.

Decision (including reasons if different from those set out in report):

Ms Gadd, introducing the application advised at the hearing that the objector, Mr Strange, had waived the right to anonymity. Mr Strange confirmed this was the case.

The Sub-Committee heard from Mr Strange first as that was considered to be the most appropriate way of dealing with an opposed application for renewal under the Sexual Entertainment Venue legislation. This is not actually a requirement of the legislation. Mr Strange expressed the view as a local resident that Soho was changing and that the venue no longer fitted the cultural fabric of Soho. Even when compared with other premises of a similar nature in the vicinity such as Sophisticats, it was the most obvious in terms of the trade it carried out.

Mr Strange stated that Soho was increasingly frequented by families and young people who he believed should not be exposed to the activities which took place at the premises. He was of the view that in terms of its external appearance Sunset Strip was not in keeping with the aesthetics of the street. None of the other Sexual Entertainment Venues ('SEVs') in Soho had images such as those on the glass on the first floor which are visible from outside and which he believed were suggestive. Mr Strange also commented that none of the other SEVs had a shutter which was always open so that it was possible to see inside. He had regularly seen the female performers inside the premises on the ground floor of the premises wearing limited clothing. Mr Strange also believed he had seen female performers standing outside smoking with what he perceived to be customers.

Mr Strange explained that he was not looking for the business to be removed or to impact on anyone's livelihood. However, if the application was to be renewed, he was seeking significant modifications to be made to the venue so that it was more in keeping with Soho.

The Sub-Committee asked the Applicant as part of the submission at the hearing to comment on whether Sunset Strip complied with condition 4 on the premises licence that 'no provision of relevant entertainment, or material depicting nudity or relevant entertainment, shall be visible from outside the premises' and also to respond to the comments of Mr Strange such as the concerns about the entrance door being open. Mr McVitie responded that the external imagery at the premises had never previously been deemed a breach of condition 4 on the SEV licence. Sunset Strip was not like any other SEV. It was the only venue which did not operate a VIP area. There was a traditional bar on the ground floor and the striptease area was in the basement, which contained four private booths. There was no door to the ground floor. The shutter went up when the premises opened at midday and came down at 01:00.

Mr McVitie advised that the female performers on the ground floor were required to wear dresses. There was a Council approved smoking area for female performers on the first floor and they were not permitted to smoke outside the venue. Mr McVitie believed there was the possibility that Mr Strange had seen female customers smoking outside the premises.

Mr McVitie informed the Sub-Committee that the Applicant had sought mediation with Mr Strange. However, Mr Strange had been busy and they had not been able to meet. Mr McVitie said that the Applicant would try and resolve concerns raised by Mr

Strange.

Mr McVitie was asked by the Sub-Committee whether drinks were taken outside. He replied that there was permission in respect of the Licensing Act premises licence for customers to do so. There were two doorman monitoring the outside area, including the smoking area.

The Sub-Committee asked the Applicant how long the images had been present on the first floor of the premises which were visible externally. Mr Forde replied that they had been there approximately ten to twelve years.

Mr Strange was asked whether the comments of the Applicant allayed his fears or whether he was still seeking modifications to the SEV licence. He replied that the Applicant was implying that the status quo in respect of the premises was acceptable but Soho had changed a lot. This was reflected in different type of businesses and the introduction of Crossrail. There was a different type of visitor and tourist coming to Soho.

Mr Strange wished to stress that he was not being specifically critical about sexual entertainment taking place in the premises. His opposition to the SEV licence renewal was due to the nature of the business being excessively visible from outside the premises. If the SEV licence was renewed it should be the case that no-one should know what the type of business is that is taking place at the premises as was currently the case at Sophisticats.

Mr McVitie and Mr Forde were asked by the Sub-Committee whether they were willing to take action so that people were not able to see inside the venue, including seeing any scantily clad individuals inside which Mr Strange confirmed was a concern. Mr McVitie re-iterated that performers were required to wear dresses. He also responded that it was possible when walking past to see bar areas in other venues where men and women were sitting talking to each other. There was no sexual activity taking place on the ground floor. It took place in the basement. The Sub-Committee requested clarification whether, whilst there was no performing on the ground floor, the performers were coming upstairs from the basement and not dressing appropriately. Mr Forde denied this. The Applicant had implemented a policy of female performers wearing dresses until 18:00 on the advice of the Police. The Applicant had then asked the female performers to wear dresses after 18:00. Mr Forde did express concern that if venues such as Sunset Strip were lost, the area would lose its identity. He took the view that it created a more positive atmosphere if potential customers could see people in the bar area as opposed to the impression given by a SEV operating behind closed doors. He added that there was no pressure on customers to sit with the performers or buy them a drink.

Mr Strange expressed the opinion that there was an issue in that the solicitation of the sexual activity which was agreed between the Applicant and the performer could be seen on the ground floor in public view.

The Sub-Committee considered that a number of points that Mr Strange had made in his representation were valid. This included that the nature of the area was changing. However, the Sub-Committee was not of the view at this time that the change to the locality was sufficient to refuse the application. It was appropriate to

grant the application for the renewal of the SEV licence. The Sub-Committee considered that it was positive that there had been the start of a dialogue between the Applicant and Objector. Mr Strange clearly cared about the area.

The Sub-Committee gave consideration as to whether to impose additional conditions. In particular, there was a question mark about whether the imagery on the first floor that could be seen from outside the premises was appropriate going forward. The Sub-Committee decided not to impose a condition to remove the imagery at this time. The Applicant was encouraged to think about whether it should remain.

In response, Mr Forde stated that he was volunteering to remove the imagery. The Sub-Committee welcomed this pragmatic approach to the issue and also the policy that the female performers in public view on the ground floor would be wearing dresses at all times. The Sub-Committee did, however, recommend that the Applicant think about whether the use of a steel shutter on the ground floor was appropriate.