

Licensing Board, 7 November 2013

**LICENSING BOARD
7 November 2013**

PRESENT: Councillor Andrew Morgan - Chairman; Councillor David Kelsey - Vice-Chairman; Councillors Stephen Chappell, Susan Phillips, John Trickett and Chris Wakefield.

Mr. J. Rankin attended the meeting as Counsel for the Licensing Board.

The meeting commenced at 10.19 am, following a site visit at 9.30 am.

SECTION I - BUSINESS RECOMMENDED TO THE COUNCIL

No items.

SECTION II - BUSINESS DECIDED UNDER DELEGATED POWERS

160. APOLOGIES

Apologies for absence were received from Councillors John Adams, Mark Battistini and Anne Rey.

161. DECLARATIONS OF INTERESTS

There were no declarations of disclosable pecuniary interests made by Board members.

162. DEPUTATIONS

In accordance with Procedure Rule 37, the Democratic and Overview and Scrutiny Officer reported that no deputation requests had been received for this meeting of the Board.

163. APPLICATION FOR RENEWAL OF SEXUAL ENTERTAINMENT VENUE LICENCE - WIGGLE, 159 OLD CHRISTCHURCH ROAD

The Board considered an application made by Wellhot Limited for the renewal of the sexual entertainment venue licence held by the premises known as Wiggle, 159 Old Christchurch Road.

The Board conducted a site visit of the premises at 9.30 am, before the hearing. The Chairman explained that the site visit was an opportunity for

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all parties to understand the layout of the premises, however, no discussions took place between any of the parties on the application itself.

The Licensing Manager summarised the application as set out in Report 'A'. For clarity, the Licensing Manager informed all parties of the right of appeal against the decision of the Licensing Board on the application for renewal of sexual entertainment venue licences. All parties acknowledged that in the event that the Licensing Board refused the application for the renewal of the sexual entertainment venue licence for Wiggle, 159 Old Christchurch Road, the applicant could appeal the decision to the Magistrates Court, unless the application was refused under section 12(3)(c) or (d) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, in which case the applicant could only challenge the refusal by way of judicial review.

Section 12(3)(c) referred to the number of sex establishments of a particular kind, which was equal to or exceeded the number which the authority considered appropriate, and section 12(3)(d) referred to the character of the locality, or the use to which the premises in the vicinity was put, or to the layout, character or condition of the premises, in respect of which the application was made.

Consultation on the application had resulted in the receipt of two objections from the responsible authorities Dorset Police, and Bournemouth Borough Licensing Authority.

The following persons attended the Board hearing and gave verbal evidence based on their written submissions:

- Applicant - Wellhot Limited - represented by Mr. P. Kolvin QC, on behalf of Mr. J. Ojla, Director, and Mr. T. Williamson, Blake Laphorn Solicitors.
- Responsible authority - Dorset Police - represented by PC. D. Harris.
- Responsible authority - Bournemouth Borough Licensing Authority - represented by Mrs. S. Rogers, Senior Licensing Officer.

The Chairman explained the order of the hearing, to which all parties agreed was acceptable. The responsible authorities, Dorset Police and Bournemouth Borough Licensing Authority, confirmed that their objections would be presented together.

The responsible authorities outlined that their objection to the renewal of the sexual entertainment venue licence for Wiggle, 159 Old Christchurch Road, was on the grounds that the authorities considered the applicants, Wellhot Limited, to be unsuitable to hold such a licence. Evidence had been gathered from the outcome of an inspection conducted by PC. D. Harris and Mrs. S. Rogers, Senior Licensing Officer, on 16 August 2013. The authorities explained that they witnessed the breaches of licence conditions

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28, 29, 30, 31 and 32 on 16 August 2013. Additionally, following the request for CCTV footage from the premises, a number of days of past footage was unavailable, which further breached licence condition 20. The authorities further commented on the unacceptably high results of drug swabbing conducted by Dorset Police, both in the performers' changing rooms and toilet, and the public toilets.

The responsible authorities had prepared evidence in the form of CCTV footage for the Board's consideration. In line with this, the Chairman requested that members of the press and public left the meeting for this specific part of the meeting, as previously notified on the Licensing Board agenda.

DECISION MADE:

That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting, on the grounds that the evidence submitted by one or more parties will involve the likely disclosure of exempt information as defined in paragraphs 1 and 2 in Part 1 of Schedule 12A of the Act and that the public interest in withholding the information outweighs such interest in disclosing the information.

The Board considered the CCTV footage presented by the responsible authorities. The Senior Licensing Officer highlighted the continued licence conditions breached on the footage, of two separate CCTV cameras, and that no effort had been taken by the management at the premises to prevent these breaches from taking place, even after PC. D. Harris and Mrs. S. Rogers, Senior Licensing Officer, had left the premises following the inspection.

The Chairman thanked the responsible authorities for the submission of the CCTV footage as evidence.

-The meeting resumed in open session-

The applicant informed the Board of his deep regret of the CCTV footage and strongly reassured all parties that had he known of these continual breaches of licence conditions, the mismanagement of the premises would have been dealt with much more quickly. Mr. J. Ojla was a family man with 37 years of business experience, 25 of those years in the licensed trade, with significant experience of operating bars, public houses and gentlemen's clubs.

The Board were informed that Mr. Ojla had never experienced such problems in business before and did not wish to be associated with the poor management demonstrated at his premises by the previous management team. It was confirmed that both the previous manager and assistant manager had been dismissed, following the appropriate human resource

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procedures. Furthermore, Mr. Ojla demonstrated the £250,000 cost of the leasehold premises, a refurbishment cost of £50,000, in addition to an on going £110,000 annual ground rent, which highlighted his financial commitment to the premises. In connection with this, the poor management of operations at Wiggle, 159 Old Christchurch Road, was not in his financial or reputational interest.

Mr. Ojla explained his experience of 16 August 2013, and the following weeks. The previous manager at the premises had telephoned Mr. Ojla the following day to explain that Dorset Police had visited the premises and had complained about the conduct of one performer at the premises who had breached the licence conditions, Mr. Ojla stressed that he was not aware of the continual and wide ranging number of licence breaches by several performers, and he reaffirmed that the previous manager was fully aware of the stringent conditions attached to the club's licence.

The Board were reassured that the faulting CCTV system had been replaced at the earliest opportunity, with further software required and subsequently purchased to permit the playback of footage.

Mr. Ojla explained that the trust he had placed in the previous management team was misguided, and that every effort had been considered as part of the renewal process to ensure that no similar problems were ever experienced at the premises again. Mr. Ojla confirmed that if such issues arose in the future, he would not apply for the renewal of the sexual entertainment venue licence at Wiggle, 159 Old Christchurch Road.

Mr P. Kolvin QC took the Board through the submitted bundle of evidence for the application, which addressed a number of new practices and procedures implemented at the premises to ensure the responsible, safe and appropriate operation of the premises.

The Board noted the submission of the following documents, designed to reassure the Board of improvements taken at Wiggle, safeguard the premises, performers, staff and customers, and clearly demonstrate the importance of the adherence to conditions attached to the licence:-

- Wiggle Staff Handbook
- Performer Confirmation Form - Wiggle Company Handbook
- Performer Confirmation Form - Performer Code of Conduct
- Door Supervisor's Duty Log for August 2013
- Staff List
- Revised Customer Code of Conduct
- Revised Performer Code of Conduct
- Compliance Officer Check Log
- Record of Performer Contract Termination
- Staff Confirmation Form - Company Policies
- Wiggle Drug and Alcohol Policy

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- Action taken against Drugs at Wiggle
- Wiggle Drugs Notice
- Character References for Mr. J. Ojla

The applicant spoke on the employment of the Compliance Officer, whose sole duty at the premises was to ensure the strict compliance of licence conditions, by continually monitoring the CCTV footage of performance areas, and working closely with other staff members to undertake appropriate checks across the premises.

Furthermore, Mr. Ojla confirmed that his new business focus would be Wiggle, with the removal of his name as designated premises supervisor on his other premises, to ensure the improvements were managed appropriately. Mr. Ojla would be at the premises managing operations himself.

In connection with the suggested improvements, the applicant circulated, with the agreement of all parties, a proposed set of additional conditions as follows:-

1. The designated premises supervisor shall work and be based at the premises.
2. The licensee shall employ a compliance officer to monitor compliance with the licence conditions. The compliance officer shall not perform any other functions at the premises while relevant entertainment is being provided.
3. All private dancing shall be monitored at all times.
4. The licensee shall procure two independent mystery shopper visits per annum for the purpose of verifying that the conditions of this licence are being observed.
5. There shall be random drug searches on entry.
6. The toilets shall be regularly checked while the premises are open.
7. The licensee shall conduct weekly drug swabs tests in the premises.
8. Notices shall be prominently displayed on the premises setting out the customers' code of conduct and the premises' zero tolerance drugs policy.

Further conditions relating to the treatment of flat surfaces, use of public toilets, independently verified drug training, drug safe operation, code of conduct reminders, and the review of door staff were discussed and agreed by all parties, to be considered by the Board.

In response to one member's question, the applicant confirmed that any reduced term of renewal of up to one year would be acceptable to the applicant, to demonstrate their ability to operate the premises responsibly.

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Members asked various questions to the Licensing Manager, responsible authorities and applicant during the hearing. All parties were given the opportunity to ask questions of one another, and to sum up, before the Board retired to make its decision.

DECISION MADE:

That the application for the renewal of the sexual entertainment venue licence for the premises known as Wiggle, 159 Old Christchurch Road, be granted for a six month period, subject to the following additional conditions, agreed by all parties:-

1. The designated premises supervisor shall work and be based at the premises, and shall not be DPS at any other premises. Should the DPS be absent from the premises, a written notice of delegation of responsibility shall be given, and should be available on request.
2. The licensee shall employ a compliance officer, approved by the Council, to monitor compliance with the licence conditions. The compliance officer shall not perform any other functions at the premises while relevant entertainment is being provided.
3. All private dancing shall be monitored at all times by a person physically on the premises, as well as by CCTV.
4. The licensee shall procure two independent mystery shopper visits per annum for the purpose of verifying that the conditions of this licence are being observed. Records of mystery shopping visits to be made available on request.
5. There shall be random drug searches on entry.
6. The toilets shall be checked at least every 30 minutes whilst the premises are open, with a record of such checks retained and made available on request.
7. The licensee shall conduct twice weekly drug swab tests in the premises, with equipment approved by Dorset Police. For the avoidance of doubt, such tests must include the dancers' changing facilities and toilets. Records of such tests shall be retained and made available on request.
8. Notices shall be prominently displayed throughout the premises, setting out the customers' code of conduct and the premises' zero tolerance drugs policy.
9. All flat surfaces in the toilets and changing rooms shall be appropriately treated to deter drug use.
10. Public toilets shall not be used by dancers, except in emergencies.
11. There shall be independently verified drug training, at least annually, for all dancers and members of staff.
12. Records must be kept of any drug seizures, and the Police informed. Records of such seizures shall be retained and made

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- available on request. The premises shall install and maintain a drugs safe, to which only the Police and the DPS have access.
13. Customers must be informed that dancers are not permitted to touch them.
 14. Performers shall be reminded on a nightly basis of all relevant codes of conduct, with a particular emphasis on the 'no touch' policy and zero tolerance of drugs.
 15. Every individual working at the premises shall be trained on all codes of conduct and the drugs policy. Refresher training shall be arranged on a regular basis. Full records of training shall be retained and made available on request.
 16. The premises shall remove all existing door staff and replace them within 14 days.

REASONS FOR DECISION:

The Chairman explained that the Board had taken account of the written evidence that had been submitted before the meeting along with the verbal submissions made by all parties at the meeting. In making its decision, the Board had regard to the Human Rights Act, the Home Office Guidance for England and Wales on Sexual Entertainment Venues, the Provision of Services Regulations 2009, and the Council's Policy document on Sex Establishments.

The Chairman alluded to the exempt session of the Licensing Board hearing, which involved the presentation of sensitive CCTV footage as evidence. In connection with this, the Board were shocked, surprised and appalled at the systematic and continual breaches of licence conditions at the premises, which the operators failed to manage. The Board accepted that Mr. Ojla had been let down by a very poor management team.

The Board acknowledged the genuine remorse shown by Mr. Ojla throughout the hearing. It was stressed that Mr. Ojla's 37 years of business reputation had been on the line during the consideration of the licence renewal, and that his trust of poor management staff had been misguided. The Board felt that whilst Mr. Ojla had been severely let down, he should have removed his management team more quickly and contacted the Council's Licensing section or Dorset Police, to verify the reports from the management team and find out the full extent of the concerns.

In light of all of the available evidence, the Board considered it necessary and proportionate to attach a further 16 conditions to the licence, and limit the renewal of the licence to six months. The Chairman stressed that in no uncertain terms, the Board considered very seriously the option of revoking the sexual entertainment venue licence.

In respect of the additional condition suggested by the Board, and agreed by all parties, in relation to the removal of all door staff, the Chairman

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highlighted that the lack of refreshed door staff at the premises for as long as six years, was very uncommon in Bournemouth. The agreed condition was an appropriate and proportionate measure to bring a renewed, fresh approach in line with the new operating and training procedures.

The Chairman stressed that the six month licence was very much a life line for the premises, and gave Mr. Ojla the opportunity to show he could run the business in a responsible manner.



The Board recorded their thanks to Dorset Police and Bournemouth Borough Licensing Authority, for a well operated and thorough inspection.

The Chairman gratefully acknowledged the comments of the applicants in what had been considered a very fair and full hearing for all parties.

Mr. J. Rankin, Counsel to the Licensing Board, advised all parties that any persons aggrieved by the decision of the Licensing Board would have the right of appeal to the Magistrates Court, and any such appeal should be lodged within 21 days of receiving the decision letter.

The meeting adjourned between 11.20 - 11.34 am, and 1.48 - 3.03 pm.

The meeting closed at 3.15 pm.

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