

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 22 OCTOBER 2012

Present: Councillor Parvin (Chairman), and
Councillors Barned, Black, Mrs Gibson, Mrs Gooch,
Mrs Grigg, Mrs Joy, B Mortimer, Naghi, Mrs Parvin and
Yates

52. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Mrs Hinder.

53. NOTIFICATION OF SUBSTITUTE MEMBERS

The following substitution was noted:-

Councillor Black for Councillor Mrs Hinder

54. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

55. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

56. DISCLOSURES OF LOBBYING

Councillors Gooch, Grigg and Naghi declared they had been lobbied with regard to Agenda Item 7 – An application for a Sex Establishment licence for 87-88 Bank Street, Maidstone.

57. EXEMPT ITEMS

RESOLVED: That the Items on Part II of the Agenda be taken in private as proposed.

58. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982,
SCHEDULE 3 – APPLICATION FOR SEX ESTABLISHMENT LICENCE – FOR
87-88 BANK STREET, MAIDSTONE, KENT, ME14 1SD

The Committee considered the report of the Head of Democratic Services regarding an application for a Sex Establishment licence for 87-88 Bank Street, Maidstone.

The Legal Advisor to the Committee outlined the order of considerations to be made, dealing with the validity of the application, late objections

received, to consider and determine the application and, with regard to the Council's current policy, on determining the locality and appropriate number of sex establishments in the borough.

The Chairman requested those persons participating in the hearing to identify themselves, this included the Members of the Committee, the Head of Democratic Services, the Legal Advisor, the Committee Clerk, the applicant and his representative, and those making representations who wished to speak.

The Head of Democratic Services outlined the details regarding the late newspaper advertisement of the notice of application and, therefore, the need to confirm validity of the application.

Members considered whether to treat the application as valid in view of the required newspaper advertisement being published two days late. The applicant indicated that in applying on 17th, June 2012 he had missed the deadline for publication in the Kent Messenger that week and he felt that publicity would be wider and meet the purpose of the legislation most fairly if it were advertised in that publication, for width of distribution, on the next available date. Also, many objectors have come forward as a result. The objectors speaking made no representations in this regard. Members decided that they would proceed treating this application as valid as the number of objectors indicated that they had not been inconvenienced and that no prejudice had been caused.

The Head of Democratic Services then informed the Committee that ten objections had been received outside the time during which members must have regard to them but members had discretion to have regard to them having considered whether they were intentionally late, would cause any prejudice to the applicant, unreasonable disruption to Council business and any reasons given for lateness. The applicant's representative indicated that it was felt fair to consider all objections and so he consented to their being considered. Members confirmed that they would have regard to the ten objections received late.

The Head of Democratic Services briefly outlined the application received, his report and the objections received. He informed the Committee that as the Applicant had agreed to 4 x SIA trained staff at the premises during opening hours, the objection from Kent Police had been withdrawn.

The Applicant's representative then presented his case. He stated that the premises were bought in 2010 with the intention of turning it into an entertainment venue, with a sex establishment on part of the first floor. If the licence was granted, the entrance to the sex establishment will be regressed from the street, through a side entrance with no advertisement in Bank Street. Business will be achieved through the internet only and the sex establishment venue will be separate from the café/bar/night club element of the building and not inter-linked. There is a premises licence already in place and refurbishment of the building to a very high standard is on-going. The Committee agreed to allow the circulation of an artist's impression of the front of the building and photographs of the side

entrance. It was also mentioned that the application had stated the use of the venue from 12 midday, however, the applicant's intention is to only open the sex establishment venue in the evening and therefore would like to amend the opening hours to 7pm in the evening.

He stated that, having read the letters of objection, the applicant would also withdraw the operation of the sex establishment venue on a Sunday evening. He felt the impact of this venue on the locality was minimal and that the regeneration of the building as a whole will enhance the locality and the night time economy. The venue will entertain both men and women and they accept all the proposed conditions.

It was stated that the venue would be operated under a strict code for staff and dancers and that there was no evidence that these type of venues, if run properly, have any crime or disorder as a result of them. It was mentioned that the licence, if granted, is only for one year and that the Council can revoke the licence at any time should there be any problem. The company had managed a venue in Rochester for 20 years and one in Purfleet for 22 years with no issues.

The witness for the applicant, Mr Hutchins, then addressed the Committee. He outlined the background to the application and that he welcomed the change in law as it cleans up the industry. He said they were a well-run establishment and welcomed the police and the Council to inspect the property. He mentioned that their venue in Rochester is in the middle of town and that the venue in Purfleet has 74 conditions attached to the licence. The applicant re-iterated that there would be no advertising in Bank Street, it would be internet marketing only.

The objectors, or their representatives, were then given the opportunity to ask questions of the applicant and/or his representative.

In response to questions, the applicant clarified details of the position of the other venues that the applicant runs, stated that passers-by in Maidstone would have no change to their view of the street, felt that the Lilith report was not relevant as it was prepared prior to the changes in 2009, was aware of the University of Leeds report (but not the content) and did not agree that Bank Street was one of the main roads into Maidstone as no vehicular access was allowed. He stated that he recognised the right of local people and that there is a balance to achieve the rights of the community and the operator.

Members of the Committee were then given the opportunity to ask questions of the applicant and/or his representative.

In response to these questions, the applicant explained that the Fire Authority determined the maximum number of people allowed in the venue, but in his own opinion he felt it would not be more than 100. He stated that 18 is the minimum age, but that he would be happy to adopt a Challenge 25 policy. He also responded to questions regarding internal advertising, number of door staff and the number and position of CCTV cameras.

At 12.05 pm there was a 10 minute comfort break.

The applicant responded to further questions regarding the night time economy, visiting Bank Street at club closing time and demand for this type of venue.

The applicant was then given the opportunity to clarify any matter that arose during questioning.

The applicant stated that there had been a misunderstanding about this application from the outset and that it was not the whole building that was to be used as a sex establishment, just a small part of the first floor. There will be over 40 cameras in the whole building, 28 toilet cubicles for women, the music would not be as loud as a nightclub as it is mainly background music and that the night club/café/bar will be totally separate and not inter-linked to the sex establishment venue.

The objectors or their representatives were then given the opportunity to make their representations.

Counsel, representing 87 objectors, asked to circulate a summary of the submissions he would be making. The applicant objected to this as they had not had sight of the document. The applicant's representative requested time to consider the document and to take instructions from his client. The Committee and the applicant agreed this would be done during the lunch break.

Counsel, representing 1 objector, brought the Committee's attention to the Ministerial Foreword in the Sexual Entertainment Venues ("SEVs") guidance notes regarding the reasons the new measures were brought into effect on 6 April 2010 and mentioned that the proposed location of this sex establishment, being in the heart of Maidstone, was not suitable and that, under the legislation, the appropriate number of SEVs in this location should be nil. He noted that there had not been a single representation in support of this application.

The applicant and his representative were then given the opportunity to ask questions. In response, Counsel stated that he felt there was no evidence that there is demand for this type of venue, that the location, being next to the Post Office and opposite the Town Hall, was inappropriate. It would be for the Committee to decide whether this location was where local people want to have an SEV and from the representations this is clearly, no.

There were no questions asked by Committee Members.

The meeting was adjourned at 1.05 p.m. for 55 minutes for lunch.

The Applicant's representative then stated their objection to the document sought to be submitted by Counsel to the 87 objectors stating that he should present his case verbally prevent undue weight being given to his

argument and to ensure fairness. The Committee agreed and therefore the document was not circulated to Members.

Counsel, on behalf of 87 objectors, then presented his case. He stated that the objectors were opposed to the locality of this application as it was in the heart of the town and will have a detrimental effect on this town. He felt it was important to consider the character of the locality and asked the Committee to consider that locality to be the town centre. He said Maidstone was a relatively compact town where everything is intermingled, quoting the distances to various churches, shops, children's centres etc. He felt that children were the main focal point of the objections received, detracting from a great family feel this town currently has, school children passing through this part of town. The applicant spending a lot of money is a red herring and a commercial risk not something Members should take into account. Whether there are womens' events or not, this type of establishment appeals to a particular type of individual with their own issues and this should be considered for Maidstone and on a case by case basis not based on history at other premises.

Counsel then called a witness, Rev. Jackie Cray, to speak, on behalf of Town Centre Management Limited ("TCM") who had written a letter of objection. TCM confirmed they had nominated her. (Cllr Mrs Joy indicated that she knew Rev. Cray as a result of her involvement with street pastors but had not discussed this matter with her in any way.) The witness stated that she supported the letter submitted by TCM and that she was not objecting on moral or religious grounds. Her main concern was the number of hen and stag parties this establishment would attract, that this would not be of benefit to the night time economy and would have a negative impact on the quality of life in the centre of Maidstone.

The applicant then asked questions of the witness regarding the concession made with opening times, footfall figures and objections to previous applications.

The applicant then asked questions of Counsel regarding opening hours, what grounds they have for stating that this establishment would have a negative impact on the area, representation of the businesses in Bank Street.

Members had no questions for the witness or Counsel.

Counsel was then given the opportunity for clarification but had nothing further to add.

An individual objector then addressed the Committee, objecting to the application stating that she had lived in Maidstone all her life, had 2 young children and wanted to protect their rights. She referred to Maidstone having a new and beautiful square and that use by families should not need to stop at 7pm.

The applicant then asked questions regarding the change of opening hours.

Members had no questions for the objector.

The Head of Democratic Services outlined the conditions proposed in his report.

The applicant's representative stated they had no objections to the standard conditions or the extra conditions, confirming the change of hours to 7pm to 6am Monday to Friday, 7pm to 5am on Saturdays and closed on Sunday evenings. It was also stated that they would be happy for their guidelines for safe operation, dancers code of conduct, dancers welfare policy and the customer code of conduct to be included as conditions if the Committee felt that to be appropriate.

Members then discussed the possibility of other conditions relating to later opening times during late night shopping times in the Town Centre and advertising. The applicant's representative indicated that they would accept a condition not to open until 9pm on the 4 Thursdays before Christmas each year.

Members were then given the opportunity ask any questions of clarification of the applicant.

The Head of Democratic Services informed the Committee that many of the objections requested that the authority consider changing its current policy of considering what relevant locality and appropriate number of sex establishments for that in each case on its own merits and at the time of the decision on the application. They requested a change of policy to the number for Maidstone being nil. No representations were made by the objectors speaking at the hearing in this regard. The Head of Democratic Services recommended that the current policy be retained on the basis that the policy had been adopted in 2011, after extensive consultation, and was felt to provide a flexible position for members considering each case because, in any event, any policy pre determining localities and or numbers would have to be reviewed at the time of determining any application and could not bind members for the future. Members considered the policy position and agreed to retain their current policy for those reasons.

All parties were then given an opportunity to sum up.

The Committee then retired to consider the application and

RESOLVED: That the application made by Century Buildings (Rochester) Ltd, on 17th, June, 2012, for a sexual entertainment venue licence for premises at 87-88, Bank Street, Maidstone under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 would be refused under the following grounds of Schedule 3, paragraph 12 of that Act:-

(3)(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.

(3)(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.

The Committee considered; the report and oral presentation of the Head of Democratic Services, the application and all accompanying documents provided by the applicant, the submissions by Mr Walters of counsel and the evidence of Mr. Hutchins on their behalf, the objections received both in time and those which were late (but the Committee exercised their discretion to have regard to them, as consented to by the applicant), the submissions of Sir Tony Baldry MP. of counsel representing the objector whose representation is at page 82 of the agenda, the submissions of Mr Phillips of counsel representing eighty nine objectors,(their objections appearing at pages78, 79, 81, 86, 87, 89, 90, 93, 99, 126, 127, 128, 130, 131, 133, 134, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 149, 150, 151, 152, 153, 154, 155, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 168, 169, 172, 177, 178, 180, 182, 183, 185, 186, 187, 188, 192, 193, 194, 195, 196, 197, 198, 199, 201, 202, 203, 205, 206, 208, 209, 211, 212, 213, 214, 216, 217, 218, 221, 222, 224, 226, 227, 231, 232, 233, 235, 236, 237, 239 of the agenda) and his witness Rev. Jackie Cray and the submissions of Mrs. Dorcas Kingsford, (objection at page 238 of the agenda). Ten further submissions in response to questions to objectors, relating to locality, character and vicinity, were summarised as agreed by the applicant, but not copied to members. An update to the Committee indicated that the Police observations had been withdrawn by letter following confirmation by the applicant that four SIA registered door staff would be provided at the proposed premises.

Members found that the nature and content of the relevant entertainment proposed was, lap dancing, pole dancing and stage striptease and that events may be held for both male and female audiences. The hours applied for were 12:00 to 06:00 the following day, Monday to Sunday. In the course of the hearing the applicant conceded that in response to the objections and the matters raised he would be content to accept a change of hours to 19:00 to 06:00 Monday to Saturday including to 06:00 Sunday but not Sunday evening to Monday morning. There were, during a conditions discussion, further amendments stated to be acceptable; if the licence were to be granted, moving the starting hour to 20:00 daily and the closing to 05:00 on Sunday morning and also, on the four Thursdays in the run up to Christmas, a start time of 21:00. The sexual entertainment venue operation would take place in part of the first floor of 87-88, Bank Street, as shown on the plan with the application and the applicant stated that the capacity would be likely to be in the region of 100, although there was no confirmed number as yet.

MANDATORY GROUNDS

There was found to be no evidence that any of the mandatory grounds under Schedule 3, paragraph (1) were engaged and none were raised by the Police or objectors.

DISCRETIONARY GROUNDS

SUITABILITY OF APPLICANT ETC. AND LAYOUT ETC. OF PREMISES.

No evidence was found to be relevant to discretionary grounds for refusal in Schedule 3, paragraph 12(3) (a), (b) and (d) (iii) and they were not raised by Police or objectors.

THE RELEVANT LOCALITY

Submissions from objectors on what was the relevant locality for the premises referred to the whole of Maidstone, the town centre, Bank St/High Street and area outside the Town Hall, the High Street regeneration area and pedestrianised areas of the town centre. The locality being characterised by its mixed uses including shops, restaurants, cafes, hairdressers and other businesses, residential, entertainment venues including a nearby SEV, premises with uses involving families and children, such as the Post Office, bus stops where commuters and children congregate and community use of the new Jubilee square and Town Hall. The applicant submitted that the relevant locality would be Bank Street or just the upper end of it as the impact of the premises would be minimal and the locality being one with other night-time economy venues would be suitable, there being no other SEV in bank Street.

Members found that the relevant locality is Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance. This being characterised by being part of a conservation area with listed and historic buildings, with mixed uses in the daytime and continuing in to the evening and night time with uses for entertainment and the community uses centring on the Town Hall and Jubilee Square and being part of the Council's High Street regeneration project.

The locality relevant to this application at the time of the determination was not considered to be the same as that at the time a sex shop licence was granted to 89, bank Street in November 2009. That premises closed in 2010 and the High Street regeneration project and Jubilee Square were not then in existence.

NUMBER OF SEVs APPROPRIATE TO THE RELEVANT LOCALITY

Members, having found that the relevant locality is Bank Street, the High Street from Mill Street up, including Jubilee Square, Middle Row and King Street as far as Wyke Manor Road and The Mall entrance then went on to consider what is the number of appropriate sex establishments in the relevant locality. Members considered specifically whether a sex establishment of the type applied for is appropriate to the relevant locality. The number of SEVs considered appropriate for this locality is nil.

CHARACTER OF THE RELEVANT LOCALITY

Members further considered the character of the relevant locality finding it to be part of a conservation area with numerous listed buildings, having a historic value to the public and tourists. Also, part of the High Street regeneration project area. It is an area of mixed uses as stated above and the locality is used by families and community as a pedestrian route and to frequent restaurants and other family orientated activities including those at the Town Hall and Jubilee Square.

An SEV of the type applied for, even one on the first floor, with a side entrance stepped back and operating within the restricted hours offered would be inappropriate in a locality at the heart of the town centre and of this character because the current use by families and people of all ages for all sorts of activity, including family orientated, should be able to continue and the family ambience and community events in Jubilee square should be able to continue to be developed without the addition of an SEV adding to and changing the existing character.

Members sought to carefully limit their consideration to such representations and submissions as directly assisted in the determination of the character of the relevant locality and placed to one side those submissions and representations that were based on understandable but none the less inadmissible moral grounds.

Members also considered submissions that crime and anti-social behaviour would increase but did not find they had sufficient evidence to support this view, independent of perception or fear of increased issues attributable to the proposed premises.

USE OF PREMISES IN THE VICINITY

Consideration was then given to the vicinity of the premises and it was found that this was a smaller area than relevant locality, being Bank Street/Middle Row, including Jubilee Square, from Mill Street to Gabriels Hill. The proposed SEV was considered to be inappropriate to the vicinity of the use of the Town hall and adjacent Jubilee Square for public activities during the day and evening.

Members ALSO considered submissions from objectors about the effect on, places of worship and schools but these did not fall within what members considered to be the vicinity of the proposed SEV, being some distance away and unlikely to be directly affected.

CONCLUSION

FOR ALL THESE REASONS THE APPLICATION WAS REFUSED.

59. DURATION OF MEETING

10.00 a.m. to 5.45 p.m.