

**BRISTOL CITY COUNCIL**

**MINUTES OF THE MEETING OF THE  
LICENSING COMMITTEE  
HELD ON 23<sup>RD</sup> NOVEMBER 2011 AT 2.00 PM**

- P Councillor Peter Abraham
- A Councillor Fabian Breckels
- P Councillor Barry Clark
- P Councillor Steve Comer
- P Councillor Fi Hance
- P Councillor Chris Davies
- P Councillor Brenda Hugill
- P Councillor Jay Jethwa
- P Councillor Bev Knott
- P Councillor Tim Leaman
- P Councillor Glenise Morgan
- A Councillor David Morris
- P Councillor Ron Stone
- P Councillor Mike Wollacott
- A Councillor Alex Woodman

**LIC**

**16.11/11 APOLOGIES FOR ABSENCE AND DECLARATIONS  
OF INTEREST**

Apologies were received from Councillors Breckels, Woodman and Morris. Councillor Jethwa declared that she was the owner of a licenced premises in the City. She had recently been consulted as such on the table and chairs policy (elsewhere on this agenda) but had not responded.

**LIC  
17.11/11 PUBLIC FORUM**

The following statements were received and considered by the Committee.

<b>AGENDA ITEM</b>	<b>SUBJECT</b>	<b>AUTHOR OF STATEMENT</b>
<b>7</b>	<b>Licensing of sex establishments</b>	<b>Trish Murray, Nice N Naughty</b>
<b>7</b>	<b>Licensing of sex establishments</b>	<b>Temptations</b>
<b>7</b>	<b>Licensing of sex establishments</b>	<b>Urban Tiger</b>
<b>7</b>	<b>Licensing of sex establishments</b>	<b>Fawcett Society</b>

The following question was received and considered by the Committee. Nick Carter, the Committee's Licensing Policy Advisor agreed to formally respond outside of the meeting.

<b>AGENDA ITEM</b>	<b>SUBJECT</b>	<b>AUTHOR</b>
<b>7</b>	<b>Licensing of sex establishments</b>	<b>Ryan Bradley, Nice N Naughty</b>

**RESOLVED - that a formal response be made to the question as set out above.**

**LIC**  
**18.11/11 MINUTES - LICENSING COMMITTEE – 16<sup>TH</sup> JUNE 2011**

**RESOLVED -** that the minutes of the meeting of the Licensing Committee held on 16<sup>th</sup> June 2011 be confirmed as a correct record and signed by the Chair.

**LIC**  
**19.11/11 ANNOUNCEMENTS FROM THE CHAIR**

There were no formal announcements from the Chair.

**LIC**  
**20.11/11 CONSULTATION ON THE DEREGULATION OF REGULATED ENTERTAINMENT**

The Committee considered a report of the Strategic Director of Neighbourhoods and City Development (agenda item no. 5) on the deregulation of regulated entertainment.

Stephen Meale, Policy Coordination Manager, referred to the draft response from Responsible Authorities in conjunction with the Licensing Development Group to the DCMS attached at Appendix a to the report.

In summary, the response did not support universal deregulation but accepted that there were some anomalies to be resolved.

Councillor Jethwa proposed that 'it should not be fixed if it was not broken' and was content to support officers in their professional judgment and that the draft response go forward on behalf of the Council. This was seconded by Councillor Knott. On being put to the vote, there was unanimous support.

**RESOLVED - That the draft response as attached at Appendix A be forwarded to the DCMS on behalf of the Council.**

**LIC**

**21.11/11**

**POLICY FOR REGULATING THE PLACING OF TABLES AND CHAIRS ON THE HIGHWAY: RESULTS OF CONSULTATION**

The committee considered a report of the Strategic Director of Neighbourhoods and City Development (agenda item no. 6) seeking members' views on the introduction of a policy to regulate the placing of tables and chairs on the highway following the completion of the consultation exercise.

The Committee was informed that there had been 172 responses received to the consultation, the majority of which did not support the introduction of a policy. However, there was strong support for allowing tables and chairs on the street scene. It was noted that the introduction would place a financial burden on small businesses in the current difficult economic climate and that the Council also possessed sufficient powers under the Highways Act to take action as appropriate. Officers had therefore recommended that, on balance, the policy should not be introduced.

Councillor Jethwa thanked officers for the hard work they had undertaken on this matter. She wished to support the recommendation to not introduce a policy, particularly in the current economic constraints. This was seconded by Councillor Knott. The Committee was reassured that the Highways Act would be sufficient to take enforcement action and officers were working together to ensure consistency of approach.

Councillor Comer declared that he had responded to this consultation. He felt it had been a useful illustration of good practice as the Council had listened and had proposed not to introduce the policy.

Councillor Morgan asked that a strong message be sent to enforcement officers that action should be timely.

**RESOLVED - That the committee agree not to proceed with the policy at this time and rely on enforcement powers available under the Highways Act and Licensing Act to take action where appropriate,**

**LC**

**22.11/11**

**LICENSING OF SEX ESTABLISHMENTS:  
CONSIDERATION OF RELEVANT LOCALITIES**

The committee considered a report of the Strategic Director of Neighbourhoods and City Development (agenda item no. 7) requesting that the Committee consider the location of each of the four sexual entertainment venue (SEV) application sites and make decisions in respect of each relevant locality to facilitate the consideration and determination of applications for grant and/or renewal of sex establishments licences in those localities.

The Committee heard from its Policy Advisor, Nick Carter that policy and regulations had been agreed by this Committee on 21 January 2011 and the new provision for SEV's had come into affect on 31 January 2011. As part of the transitional provisions 'Round one' applications could be made in the first 6 months. An important point for members to remember was that the report was not seeking consideration of any individual applications that have been received. The report is focused on the localities within which they are situated rather than on the

individual premises themselves.

Nick Carter summarised the history of provisions in the four localities and referred to maps to assist with consideration of relevant localities. He referred to the January report and the adopted policy pointing towards the need to review existing policy in the light of new applications. He reviewed the existing policy and explained that to date only sex shops had been subject of applications and policy had been made by reference to sex establishments generally. He explained that the Committee was empowered to decide an appropriate number (which might be by reference to sex establishments generally or different types of sex establishments) in respect of each locality. The SEV policy set out the criteria for general obligations and discretionary grounds. The report was asking the Committee to apply its mind to each application site and identify what locality it was situated in; having done so, to consider if there was a number of sex establishments generally, or of sex establishments of a particular kind that was appropriate in that locality. Nick Carter stressed that this was a policy-making meeting and that appropriate numbers decided for relevant localities at this meeting would be guidelines. The Council would still be required to consider each of the four applications that had been received in the first round on their own merits. Once the relevant locality was identified, the policy guides on the factors that should be taken into account as referred to in the report.

To help Members make their decisions relevant officers had made comments about some of those factors and Nick Carter referred to the comments of the planning and regeneration officer in paragraph 8.1 of the report.

Paragraph 8.2 gave some information about general crime levels, which the policy guided should be taken into account. He referred to the data for the City Centre and observed that Members would already be familiar with the

crime hotspots of that part of the City which was the reason why the Police had asked for it to be designated as a Cumulative Impact Area under the council's licensing policy. At the heart of the request was a concern caused by high levels of alcohol fuelled crime and disorder. The statistics produced in Appendix C supported and evidenced the Cumulative Impact policy under the statement of licensing policy for the City Centre. Between 2004 and 2011 the crime and disorder levels evidenced the need to keep the policy in place. Purple flag status was a recognition of good management of the night time economy, gaining the award was a judgment of how crime and disorder in the City was managed.

Nick Carter drew the Committee's attention to paragraph 10- Risk Assessment of the report and it was noted that the missing sentence should read:

'If no decision is made on relevant localities and the appropriate number of premises then the operators of establishments caught by the new provisions will not be aware of the authority's stance prior consideration of their application.'

The following points were made and questions raised during the debate:-

- Councillor Hugill referred to the Police's scoping report and felt this could be misleading as it was not possible to predict for 2012. Nick Carter explained that this projection was based on pattern to date. He reinforced the point that when the report referred to Urban Tiger, Lounge or Temptations it was not a report about those specific premises, they were referenced because the Committee was asked to consider the locality within which they were situated. The data was directed to the character of that locality and there was no evidence in the report that the presence of these particular premises was causative of the crime to which the data

relates. It was about locality;

- The Committee Chair observed that on any weekend there might be as many as 40,000 people in the City centre. At certain locations there were taxi ranks, night bus stops and other places where large number of people congregated after a night out and this brought problems of managing the City Centre, eg. Queue management. The higher crime rates in some parts of the Centre were likely to be caused by something entirely different;
- Councillor Jethwa said she was not very happy with this part of the report. It had come from the Police and they should know better than to imply a link between particular premises and crime without proper evidence to back this up. She felt it very unlikely these statistics could be linked to these particular premises and did not accept any such link;
- Councillor Hance referred to issues that had been raised through items of Public Forum about human rights, consultation etc and asked for legal advice on these matters. The Chair asked the Committee's Legal Advisor, Pauline Powell, to guide the Committee on the matters raised. She advised the Committee as follows:-

Comment had been made about lack of consultation. There was no legal obligation to have a policy and no legal obligation to engage in consultation but as Nick Carter had made clear, the Council did seek views on the question of localities and appropriate numbers prior to adopting its policy and she referred to that part of the January report and the responses that had been received by the council when it consulted. She said that Members understood well that responses should be taken into account where relevant and must be disregarded where irrelevant to the issue.

It had been suggested that proceeding today without taking representations from applicants was a breach of natural justice. This was not correct. The rules of natural justice did not apply to the making of policy. The committee was not being asked to

determine any applications today; Members were being asked to make policy. Policy was guidance, not rules.

Nor was it correct that the process being followed today was in conflict with what had been decided in January. The process being followed was exactly as had been set out in the committee report and the minute summarising the legal advisor's comments at the January meeting and should be understood in that context.

Although not required by law, the council had considered it fair that those affected by the policy should know the Council's views on appropriate numbers in advance of the consideration of their particular applications. She observed that certain decisions made on appropriate numbers might impact on a number of existing operators, including licensed operators as had been referred to in paragraph 9 of the public forum submissions made on behalf of an applicant in West street. A policy indication in advance of individual matters being considered enabled all of those affected to deploy any arguments they chose to make before decisions were made, eg as to why any policy ought not to be followed in their particular case at point of determination. She also observed that the ground was specific that the final decision falls to be made at determination – as with any policy it was indicative of the Authority's views and not determinative of any particular application.

It had been suggested that taking a policy stance on the basis of this officer report was in breach of rights under Article 6 of the convention but the Committee's legal advisor did not support this interpretation. Article 6 was engaged in respect of decisions that were determinative of civil rights or obligations. Policy decisions were not determinative. Whatever policy decisions might be made at this meeting, officers recommended that all applicants were afforded the right to be heard during consideration of their particular application and able to deploy all relevant arguments as to why any policy ought, or ought not, be applied to them.

It had been suggested that a policy that does not guarantee the continuance of existing businesses offering relevant entertainment, by allowing them to continue to trade as an exception, would be contrary to Article 1 of Protocol 1. This licensing regime contemplates that Authorities can restrict this type of business in relevant localities were that was reasonably and properly considered to be appropriate, including restriction to Nil. The regime was certified in Parliament as being compatible with convention rights, which would include the property rights referred to. She outlined that under Article 1 of Protocol 1 there are three rules for the protection of property rights:

Rule 1 being that 'Every natural or legal person is entitled to peaceful enjoyment of his possessions'

Rule 2, is that 'No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of International Law'

This was directed at situations in which a specific deprivation of property takes place. EG the making of a Compulsory Purchase Order would fall within this rule.

The third Rule is that: 'the preceding provisions shall not, however, in anyway impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties'.

She advised that the third rule – about control of use in accordance with the general interest – was the one in play in this legislation. Parliament has established a regime that struck a balance in the general interest such as to enable local authorities to restrict numbers in relevant localities, even to zero and had certified this as being compatible with convention rights.

She advised that if the Committee reasonably decided that restriction of numbers in a particular locality would be in the general interest, striking a fair balance between the rights of all

property owners and the general public, then adoption of policy would not amount to an unlawful interference with the rights of all property owners who now or in the future might wish to use their premises for the provision of licensable regulated entertainment.

Pauline Powell also endorsed what Nick Carter had said, making it clear that today's decisions concern policy for relevant localities and not the merits or otherwise of existing businesses. Ground C is locality based, not premises based. Insofar as any material advanced focuses on the individual merits of particular businesses the Committee should disregard this. The council had adopted a policy under which any businesses that were licensed would likely be subject of a high quality of regulation and expected to meet exacting standards, so the committee was entitled to consider the question of an appropriate number for any particular relevant locality on the basis that any that might be licensed should be well run premises.

Not for the first time in this process of implementing the new regime, it was suggested to the committee that as there was no right of appeal to the Magistrates Court this should encourage them to take a particular decision with regard to appropriate numbers in a relevant locality. Pauline Powell said Members should not go there. The absence of appeal rights in the Magistrates Court was completely irrelevant, the committee must make all of its decisions on the basis of sound reasonable judgement. In any event it was not true that the absence of appeal rights to the magistrates court would protect the council's resources in terms of litigation, since such decisions can be amenable to judicial review in the High Court, which was a costly process.

Crime data.

The policy anticipated the council might take into account levels of recorded crime in making decisions under ground c, but Members would appreciate the need for caution in how that data was used. There was no evidence in the report that linked

recorded crime levels in the city centre to particular premises and in any event the focus was not on particular premises but on the council's policy for relevant localities.

Members should look at where each of these applications was situated and identify which relevant locality they were situated in.

### Equalities obligations

The council's duty under Section 149 of the Act was, in the exercise of the functions of deciding what constitutes relevant localities and the matter of appropriate numbers for each of them, to have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the equalities Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These were matters for the decision taker to apply its mind to. An impact assessment might assist the committee in this task.

The Chair thanked the committee's legal advisor for her advice and asked if she was aware of any litigation or data in relation to an expectation of provision of SEV's by any of the groups with protected characteristics under equalities law. Pauline Powell said she was not aware of any data to that effect but if any were available it should be considered to ascertain if it was relevant to the equalities obligations referred to, to which the Committee must have due regard when exercising its functions.

There was a ten-minute comfort break.

Councillor Jethwa proposed that in the Old Market/West St locality the appropriate numbers for sex establishments should be as follows :

Sex Shops - 2

Sex Cinemas - 0

Sexual Entertainment Venues (SEV) - 1.

This was seconded by Councillor Abraham.

Councillor Hance argued against this. She felt this area was undergoing urban regeneration and the existence of these type of premises had a negative impact on this regeneration. This was borne out by feedback from local businesses. She was therefore minded towards reducing numbers of such premises in this locality.

Councillor Jethwa responded that making this policy decision did not mean that the applications would not be made on their own merits.

Councillor Abraham supported the motion. He had not heard of any particular problems in the locality because of the presence of SEV's and sex shops. He wanted the Council to have a policy that was both reasonable and well understood. He did not support having a nil policy with an expectation that exceptions might be made at the stage when applications were determined. The public would decide whether they wished to use premises that offer relevant entertainment and the Committee should ensure that it protected the public where there was a need for protection. If particular premises within a locality were next to a school etc, then he would want to deal accordingly, but he felt that 2 sex shops and 1 SEV was not over the top. It was a reasonable proposal that allowed to exercise an appropriate degree of control. Each application would be treated on its own merits in line

with legislation. He would expect premises licensed to be properly run and should not be allowed where they caused problems within the Old Market locality. He considered this to be a practical way forward and gave a clear message to the public and to applicants.

Councillor Comer spoke in favour of the motion. The usage had been part of the locality for more than thirty years and he wanted to consider what could be done that was both realistic and a policy of containment. He did not wish for similar uses to come forward in the locality and felt the number suggested was appropriate. He felt that a nil policy in this locality was not sustainable and verged on gesture politics. He had read the papers very carefully and was very clear about what was and what was not relevant and he believed he could defend his decision as a reasonable one.

Councillor Hugill supported the motion. Old Market was an area of regeneration and she had borne that in mind. She had considered the policy and was satisfied that any establishment the Council agreed to licence would have to be well run. She felt that she had to support the motion that had been put forward.

Councillor Morgan said she also supported regeneration of this locality and she considered this presented an opportunity to improve the area and she would be in favour of a reduction in the number of sex establishments in this locality.

Councillor Hance observed that the area was a lot more residential than was the case 10-15 years ago. She was not making decisions based upon how establishments operated now, or about particular establishments. She thought the appropriate number should be nil in this locality.

Councillor Jethwa referred to the feedback in the report,

particularly the comments of the planning and BCAAP information with its reference to sex shops, lap dancing clubs and massage parlours. She understood the need for regeneration but felt that that without more information about what was behind the 44% feedback it was entirely possible they meant massage parlours more than premises that were known to fall under this legislation. Also, she did not consider it was right to say there was no control currently. With this policy, there would be better control and she supported a better control approach.

Councillor Knott referred to para 8.1 of the report regarding the recent survey of Old Market businesses. 44 % of businesses raised sex establishments as one of the worst things about the area. He did not think this was a Strong factor as it did not say that they caused trouble.

Councillor Davies referred to a visit the committee had made to this locality some years ago and even then the demographics were changing and a community was building, this was one of the obstacles to building a strong community in this locality and there were more children living there now. He did not support one SEV or two sex shops, he considered nil was the appropriate number for this locality.

Councillor Abraham said if he believed that regeneration of this area would be greatly aided by a policy of an appropriate number of nil then he would support it. He thought the Council should be very clearly saying this was the policy and it would be strictly applied within the law.

The Chair spoke in favour of Councillor Jethwa's motion. He stated that the Council had determined appropriate numbers in this locality and this had been the beginning of the regeneration of the area. He believed that whatever was agreed needed to be reasonable and defensible. He agreed with Councillor Abraham and he supported Councillor Jethwa's motion. Practically, regeneration of the locality had continued. He noted that

licences could be taken away at application stage if they were not considered to be well run.

Councillor Comer said there has been regeneration with such premises in the locality, a great deal of infill, the development of the Drill hall and all of the regeneration down by the River Avon, making the area more residential. This locality was in a process of transition and it might be that when the Council revisited the issue in the future it might think again about the appropriateness of sex establishments in this locality. He agreed that effective regulation of massage parlours was desirable. He wanted to see how proper regulation of such premises and effective protection of these working in the venues worked in the locality. He agreed with the Chair, in 3-5 years time he might take a different view but as the locality was now he considered the numbers put forward in the motion to be appropriate for this locality.

Councilor Jethwa indicated to the chair that it was not helpful when debating to have noise in the public gallery and asked that those attending to please let the Councillors conduct their business without distraction.

The Chair, noting there were no further responses to the motion, called for a vote. On being put to the vote, 5 were in favour, 5 were against and there were 2 abstentions. The Chair therefore had a casting vote which he used to support the motion which was carried 6:5.

There then followed a discussion about the localities that had been identified in previous years as “off centre” and Broadmead”. Members were agreed that these places were both situated in a place that was characterized by reference to its thriving night time economy and crime hot spot. The three remaining application sites were all identified as falling within the city centre cumulative impact locality and a motion to that effect was agreed without objection.

Councillor Jethwa then proposed that the appropriate numbers for the City Centre CIA locality should be as follows:

Sex Shops - 2  
Sex cinemas - 0  
SEV's - 4.

This was seconded by Councillor Abraham.

Councillor Hugill considered that 4 was too many for the locality and proposed an amendment that the appropriate numbers of SEV's for this locality was 2 and this was seconded by Councillor Hance.

Councillor Hance considered there was a demand for such venues in the city centre and she was concerned that a reduction might drive the provision underground. She considered a reduction to 2 SEV's would be appropriate and reasonable.

Councillor Abraham supported the amendment as he felt a reasonable case had been made to reduce the Numbers below those initially proposed.

On being put to the vote, 10 were in favour and there were 2 abstentions. The motion was therefore carried.

Councillor Jethwa proposed that the Bishopston/Redland/Cotham/Ashley locality policy number for sex establishments be as follows:

Sex Shops - 0  
Sex Cinemas - 0  
SEVs - 0.

This was seconded by Councillor Knott. There were no further speakers to the motion and the Chair therefore put it to the vote. The motion was carried unanimously.

Pauline Powell confirmed that the first round of applications would need to be heard before a determination could be made. Nick Carter had understood that Full Committee wished to take these decisions itself but pointed out that it was possible to delegate to a Sub-Committee. However, applications within the same locality would ideally be determined by the same body of Members.

Councillor Jethwa referred to Anne Summers in Broadmead and Pomegranate on Park Street which she understood were unlicensed but from what she had seen she believed that they should be licensed. Nick Carter replied that the Council's enforcement team were looking at this issue.

**RESOLVED - 1) that the appropriate number of sex establishments for the Old Market/ West Street locality be as follows:**

**Sex Shops - 2  
Sex Cinemas - 0  
SEVs - 1.**

**2) that the three City Centre applications were all located within the City centre CIA locality;**

**3) that the appropriate number of sex establishments in the City Centre CIA locality be as follows:-**

**Sex Shops - 2  
Sex Cinemas - 0  
SEVs - 2.**

**4) that the appropriate number of**

**sex establishments in the  
Bishopston/Redland/Cotham/  
Ashley locality be as follows:**

**Sex Shops - 0  
Sex Cinemas - 0  
SEVs - 0.**

Finally, the Committee's Vice-Chair, Councillor Jethwa wished it to be noted for the record the Committee's thanks to staff who had been involved in undertaking the work behind the subjects on this agenda. She asked that this message be conveyed to officers not present at the meeting.

(The meeting ended at 5:15 pm.)

CHAIR