

Southwark Licensing Policy Review

Proposals on:

- (1) Premises licences for adult entertainment**
- (2) Ward councillor participation in licensing applications**
- (3) Decision-making on relevance of objections**

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Introduction

1. Southwark Council is reviewing its licensing policy. The Lane and Peckham ward councillors led the community response to an application earlier this year for a premises licence for 24-hour adult entertainment on Peckham High Street. The application was eventually withdrawn. The experience highlighted the deficiencies in Southwark's current SLP, which deals only minimally with adult entertainment. It also brought to the fore a number of procedural issues about community involvement in licensing. Those included the proper scope of ward councillors' role in the objection and hearing process, and officers' approach to deciding what is a "relevant" objection under the 2003 Act. Similar issues arose in relation to an earlier application in Tooley Street, SE1.
2. At Council Assembly on 28 June, a motion on licensing policy, moved by Labour Deputy Leader Fiona Colley and seconded by Lane ward councillor Gordon Nardell, was carried with an amendment. The text is at the end of this paper. A further motion, focusing on procedure, in particular the role of ward councillors, moved by Lane ward councillor Susan Jones, was passed at Council Assembly on 12 September, also with an amendment.
3. The councillors and other community leaders involved in the Peckham application found the experience a valuable source of lessons about the deficiencies in the workings of licensing system locally, and ideas for its improvement. They would like to share those lessons and ideas with the licensing review.
4. A first draft of this paper was prepared for discussion among local ward councillors and other community leaders. We then circulated a redraft in mid-September, reflecting the many helpful comments we received. This version, which we submit to the Review, takes account of further comments and suggestions from members of the community following discussions at the September meetings of Peckham and Nunhead & Peckham Rye Community Councils. The proposals set out in this paper

have broad community support, and we commend them to our Council colleagues as a starting point for formulating the revised Statement of Licensing Policy, and local hearing procedures, that will emerge from the review.

Policy on adult entertainment

5. Southwark's current Statement of Licensing Policy (SLP) is downloadable in three parts from this page: <http://www.southwark.gov.uk/BusinessCentre/Licensing/LicensingActFAQ.html>
6. The policy on adult entertainment is contained in a short passage starting on page 34, headed "Entertainment involving striptease and nudity". This is in the section of the SLP dealing with the licensing objective of "Preventing crime and disorder".
7. We have taken a particular interest in Westminster's licensing policy, which contains a comprehensive set of provisions about adult entertainment, enabling its licensing committee to refuse applications which fail to meet the criteria set, and to set appropriately stringent conditions in other cases.
8. As we understand it, members have been advised in the past that Southwark is not entitled to take exactly the same approach as Westminster because we do not have a saturation of adult entertainment venues. But having looked at Westminster's policy, we consider that only certain elements of it are really about saturation or the related topic of cumulative effect. Most of the policy is firmly linked to the licensing objectives of protection of children from harm (including moral harm), prevention of crime, and prevention of nuisance.
9. We take the view that it is both feasible and necessary for Southwark to formulate a robust but fair policy on adult entertainment, a policy that commands wide community and political support and that is linked to the licensing objectives in a way that withstands judicial scrutiny.
10. The draft text that follows is emphatically not a policy on saturation, nor is it primarily about cumulative effect -- though it includes provision that anticipates possible saturation and cumulative effect in future. Equally importantly, it is not designed as such to restrict numbers of premises. Rather it sets out a framework of criteria, with a supporting justification, for evaluating any application that involves adult entertainment against the key licensing objectives of prevention of crime and disorder, prevention of nuisance and protection of children from harm.
11. The draft passage we propose slots into the "prevention of crime" part of the SLP. But that is just a matter of convenience. The sections of the SLP dealing with "prevention of nuisance" and "protection of children"

should contain appropriate cross-references to the new passage: see below.

12. We will happily place ourselves at the disposal of our colleagues on the Licensing Committee, and officers, to help the process of developing policy in this area further.

Prevention of crime

13. Add at SLP p. 29 the following additional bullet point:
 - Prostitution, lewd acts and similar offences”
14. Replace the passage entitled “Entertainment involving striptease and nudity” (p. 34) with the following:

“Adult entertainment

Where the activities specified in the operating schedule include adult entertainment (see the definition below), the licensing authority will give particular consideration to the implications of the proposals for the licensing objectives in relation to the prevention of crime and disorder, prevention of nuisance and the protection of children from harm. The issues raised here may also shade into the objective of ensuring public safety.

Premises providing adult entertainment are likely to constitute a public nuisance if they are in or near residential areas, or other areas which are not already associated with provision of entertainment, particularly if the premises are close to schools, places of worship or community facilities. Their clientele often arrives and departs in large groups. Such premises have a propensity to generate particular crime, disorder and nuisance concerns. These arise from lewd acts and disorder on poorly-run premises¹; and from the generation of activities such as prostitution, touting, clipping (see the definition below) and lewd acts in public places around and associated with the premises.

The presence of premises offering adult entertainment tends to expose individuals in the vicinity – particularly women – to a heightened risk of facing criminal and disorderly behaviour or conduct amounting to

¹ 'Strip Club Testimony' by Kelly Holsopple reported that activities in such establishments can include customers spitting on women, spraying beer, and flicking cigarettes at them. Strippers are pelted with ice, coins, trash, condoms, room keys, pornography, and golf balls. Men pitched a live guinea pig and a dead squirrel at two women in the survey. Some women have been hit with cans and bottles thrown from the audience. Customers pull women's hair, yank them by the arm or ankle, rip their costumes, and try to pull their costumes off. Women are commonly bitten, licked, slapped, punched, and pinched. There is an obvious risk that such behaviour against women within premises will be seen by the clientele as “acceptable” and will spill over into violent and other unacceptable conduct against individuals in the vicinity of the premises.

nuisance. The Lillith Report, on lap dancing and striptease in the London Borough of Camden, reported a link between such establishments and significant increases in local sexual offences including rape and other forms of sexual assault in the vicinity. The presence of such premises can also deter visitors and have a negative impact overall on the community's sense of safety and well-being.

In addition, the licensing authority has concerns about the connection between entertainment involving nudity or performances of a sexual nature, and "people trafficking" and other forms of organised crime.²

Impacts of the sort described above³ are quite apart from such matters as visual displays that indicate the type of entertainment on offer, which if judged indecent can be regulated under the Indecent Displays Act 1981.

For all these reasons, an application involving adult entertainment will only be granted if the licensing authority is satisfied, having regard to all the circumstances including the nature and extent of the activities, the location of the premises, and the conditions proposed by the applicant or which might properly be imposed by the authority, that the proposals are compatible with the promotion of the objectives of prevention of crime and disorder, prevention of nuisance and the protection of children from harm.

In particular, while each such application will be considered on its own merits:

- 1) Applications are more likely to be granted in respect of premises in locations where licensed entertainment already takes place and where the locality is demonstrably capable of absorbing the impact of the night-time economy, than in other locations.*
- 2) That is, however, subject to the cumulative effect of premises offering adult entertainment in a particular area; and, in future, to any special policy which the licensing authority may adopt should a particular location become saturated with such premises.*
- 3) Applications will not normally be granted where the premises are located:*
 - (a) near residential accommodation,*
 - (b) near places of worship, community facilities or public buildings,*

² *Sex and the City: Mapping commercial sex across London* (The Poppy Project, 2004).

³ In relation to experience of these impacts in London and elsewhere, see generally *Sex and the City: Mapping commercial sex across London* (above); *The Lillith Report* (above); Report of the Scottish Executive's Adult Entertainment Working Group.

- (c) *near schools, youth clubs or other places regularly used by children, or*
 - (d) *on or within sight of pedestrian routes or transport nodes (such as stations or bus stops) serving places in categories (a), (b) or (c).*
- 4) *Where nudity or partial nudity forms part of the entertainment, or is part of the operation of the premises, the licensing authority will, if the application is granted, normally attach conditions to promote the licensing objectives. These are likely to include conditions relating to:*
- (a) *exclusion of persons under 18 at all times from the premises; the prevention of views into the premises;*
 - (b) *prohibition of exterior advertising of the sex-related entertainment at the premises; and*
 - (c) *prohibition of leafletting or touting for business.*

Conditions are also likely to require that all service is to seated customers; that the participation of customers in performances is prohibited; and that a minimum distance of 1 metre is maintained between performers and customers, and between performers, during performance. The latter requirement is to ensure that it can be readily observed that no touching or other acts that would constitute disorder take place.

There will also normally be conditions on the installation and operation of CCTV, retaining recordings of performances, and the employment of supervisors.

- 5) *In deciding whether the imposition of particular conditions enables an application to be granted rather than refused, the licensing authority will bear in mind that the proper regulation of sex-related entertainment requires a range of conditions not only to be imposed, but to be supervised by the authority and specialist units of the police. The specialist resources to do this are limited.*
- 6) *Applicants will be expected to indicate in their operating schedule what measures they propose to have in place to ensure that the conduct of the licensed activities, including the recruitment or supply of performers, is free of the influence of organised criminal activity.*

Definitions:

“Adult entertainment” means entertainment involving nudity or striptease, and any other kind of sex-related entertainment;

“Clipping” means obtaining money through deception by the apparent offer of sexual services or entertainment. Examples include the deception of receiving money and sending victims to addresses where no such offer is available; and charging fees for “hostess” services when not requested. In some instances it is associated with luring victims to places where they are subjected to other criminal activity such as robbery.

Prevention of nuisance

15. We suggest inserting a short cross-reference at the end of the paragraph on page 41 that begins “For this purpose, table 3...”:

“Applicants are also reminded that the licensing authority will apply the policy set out at pages 34-... above in order to prevent nuisance where the proposed licensed activities include adult entertainment (as defined in that policy).”

Protection of children from harm

16. Again, we recommend a short cross-reference. P. 45 of the SLP already makes the point that this objective includes protection of children from moral and psychological as well as physical harm. This should be expressly attributed to DCMS guidance to licensing authorities (see the Guidance at paras. 7.47-7.60).
17. We suggest insertion of the following new paragraph just before the heading “Children and smoking bans” on p. 48:

“Applicants proposing activity that includes adult entertainment are also referred to the policy set out at pages 34-... above. The victims of “people trafficking” often include young females under 18, and this is a further reason why the policy makes reference to it.”

Ward councillors’ role in relation to objections and sub-committee hearings

18. It became apparent when Council Assembly debated the licensing motion on 12 September that there is a divergence of view on the proper extent of a ward councillor’s role in responding to an application for a premises licence in his or her ward. The amendment passed by Council referred expressly to limitations contained in advice given by the Borough solicitor. Very brief advice on this subject from the Acting Borough Solicitor was indeed contained in paragraph 10 of the Chief Officer’s Comments on the motion.
19. A councillor must not, of course, act for an improper motive (such as an undisclosed private interest in the outcome of an application). But subject to that, our view is that a ward councillor may, as part of his or

her functions as an elected representative, properly form a view about the merits of an application for a premises licence in his or her ward; may communicate that view to others, including “interested persons” within the meaning of the 2003 Act; and may assist or even lead the submission of objections. This was the sort of activity that the Lane and Peckham ward councillors undertook in the context of the Peckham High Street application. That sort of activity is not, in our view, contrary to the 2003 Act or the Code of Conduct. This view is consistent with advice given by the Association of Labour Councillors.

20. We do not think there is a need for specific guidance on members’ conduct. Councillors are well aware of the Code of Conduct and the need to avoid acting, or being seen to act, for any improper motive including private gain. If doubt remains about the extent to which members can properly be proactive in inviting or organising objections from interested persons, the Council may wish, as part of the review, to ask for the subject to be comprehensively reviewed in conjunction with its legal advisers.
21. There is a linked issue of the extent to which the Council itself is entitled to draw local residents’ attention to an application. The legislation envisages that it is up to the applicant to display proper notices. But we think the Council also has a role to play in ensuring that the community is made properly aware of an application and, along with the applicant, has a fair opportunity to express its views. We hope that the Review will consider this issue.
22. On the subject of hearings, the present conventional wisdom is that a ward councillor who is not an interested person may only address a sub-committee hearing as representative of particular interested persons.
23. The Council has rightly complained of the failure of the present law to give ward councillors an express role in the hearing process. However, we are not convinced that the Hearings Regulations in their current form prevent a licensing authority from permitting ward councillors to share their views with the sub-committee *in their capacity as ward councillors* rather than as objectors’ representatives.
24. We think that the Council could lawfully adopt sub-committee procedures under which a ward councillor could comment in much the same way as the authority’s licensing officer or other functional officers (such as environmental health officers) currently attend and comment. So long as the councillor’s comments are made, like those of other officers, before the applicant has its last word, there is no breach of the regulations and no infringement of the applicant’s (or indeed objectors’) right to a fair hearing. Ward councillors are currently invited to comment in this way at Planning Committee meetings; nobody suggests there is anything inappropriate or unfair about this.

25. Many of us are perfectly happy performing the role of spokesperson for individual objectors. But that can be an invidious role, and we think it would make more sense to enable ward councillors – so long as they are not members of the Licensing Committee -- to assist a sub-committee with an independent judgment about the local situation.

Relevance of objections

26. During members' work on the Peckham High Street application, a number of individuals complained to us that officers had indicated that their objections were not "relevant" because they lived more than 100m from the premises. Such an approach would have excluded at a stroke anyone complaining about impact eg. as a passer-by or a visitor to businesses or other facilities in the area.
27. Officers subsequently assured us that no arbitrary 100m cut-off was in fact applied. However, there appears to be a need to alter guidance to licensing staff to ensure they are alive to impacts on people in capacities other than as occupiers of nearby residential premises. There is also a case for amending the scheme of delegation (see SLP p. 21) so that decisions on relevance, in the event of doubt or a dispute, are referred for determination by a licensing sub-committee rather than by officers. Where officers, without reference to a sub-committee, take the view that a representation is not relevant, they should notify the person concerned and inform him or her of the right to ask a sub-committee to determine the point.

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Appendix: text of motion passed at Council Assembly 28.6.06:

RESOLVED:

1. That council assembly notes the concern of local businesses, faith groups, tenants' and residents' associations, schools, community organisations, visitor attractions, trade unions, health services and residents that the opening of adult entertainment establishments will have a negative effect on regeneration and a harmful impact on those who live, work and visit the area, especially women.
2. That council assembly welcomes the proposal for review of and consultation on Southwark's licensing policy but remains concerned, given recent statements by the leader of the council reported in the local media, that the policy, even if reviewed, may not protect the interests of local people partly due to the fact that councils cannot ban or restrict adult entertainment premises and the fact that Southwark cannot claim a 'saturation policy' similar to that in Westminster where there are 100s of adult entertainment businesses.
3. That council assembly further notes:
 - (i) The failings of the government's new licensing laws, as reported by the Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee, which believed that the new laws placed an unnecessary restriction on elected representatives wishing to speak on licensing applications; and,
 - (ii) That despite concerns expressed to the Department for Culture, Media, and Sport (DCMS) prior to the implementation of the Licensing Act 2003, the department significantly underestimated the cost of implementing the Act and set the fees associated with licence applications too low thereby reducing the ability of the council to carry out high levels of consultation, despite the council incurring over £350,000 extra expenditure.
4. That council assembly therefore calls on the government to review its licensing laws with a view to:
 - (i) Allowing councillors to represent their local communities;
 - (ii) Allowing licensing committees to consider restricting certain classes of entertainment in a location, even where no current such use exists, where that class of entertainment is in conflict with an area's regeneration and community safety objectives; and,

(iii) Introducing a fee structure that accurately reflects the cost of implementing the Act.

5. That council assembly also calls on the licensing committee to:

- Ensure wide consultation on the review of the licensing policy;
- Ensure that the consultation includes a policy option which ensures that adult entertainment clubs are not opened in close proximity to schools, visitor attractions, residential areas, places of worship and other community facilities;
- Review the procedural aspects of Southwark's licensing policy, and if necessary make representations to the government, to ensure that ward councillors are not prevented from playing an effective role as advocates for their communities in licensing matters; and
- Assure the local community that it will honour its responsibilities to local people and to local business and ensure that the Southwark council takes this issue as seriously as other London boroughs such as Westminster council.