

# ***Licensing Scrutiny Committee of 23rd November 2017***

## ***Summary of Representations of Frances Zammit***

### ***Introduction***

1. I live at James House, 18 The High Street. On one side of the flats is Chimichanga, and on the other Turtle Bay. I am a retired barrister and have in the past offered legal training to decision-makers and those engaged in the Social Care and Education.
2. I am concerned with the way decisions are taken in the Council, in this instance in the Licensing Committee. In my view this has very serious repercussions for a successful, safe and vibrant night time economy in Central Ealing.
3. **As an example:**
4. I objected to, and attended a Sexual Entertainment Venue (“SEV”) Licence Renewal Hearing<sup>1</sup> at the beginning of the year when it was said the the club had an exemplary record. The licence was renewed. In July, just a few months later, and because of a very serious incident the ‘*alcohol licence*’ of the Club was reviewed by the police because ‘*The Police believe that the conduct of the premises show a complete disregard to the Licensing Objectives and that it places the public at risk of serious harm.*’ The police set out a long list of violent incidents relating to the Club from well before the SEV licence renewal. None of these were mentioned or referred to in that renewal.

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<sup>1</sup> I do not mention the club’s name here because it would not be right to appear to re-try the issues. However, we all know which club it is.

5. The review of the ‘*alcohol licence*’ was under s. 53A(1)(b) of the Licensing Act 2003 and it was certified by the Superintendent of the Metropolitan Police that it was because in his opinion “*the premises is associated with serious crime.*”<sup>2</sup>”
6. I raised the issue of the (to put it politely) seriously conflicting evidence on which the SEV Licence was renewed and was told by the Chair of the committee (who was at both hearings) that it was irrelevant because one was for the SEV Licence and one for the ‘*alcohol licence*’. Such a statement by a Chair<sup>3</sup> of the licensing committee is incredible. It is the same club, the same people, the same premises, the same serious crime and violence. Merely because there are 2 separate pieces of paper (licences) that doesn’t mean the serious crime and violence can only be referred to one. Not only does it call into question the decision to renew the SEV licence but it calls into question the suitability of the persons holding the licences. For a Chair of a Committee who is supposed to make lawful decisions to think in this way is worrying in the extreme.
7. After the very serious incident in July, and the police intervention the Licensing Sub Committee<sup>4</sup> made a decision that the Club could open again in only 72 hours - not nearly enough time for a proper investigation (bad decision). And that a condition of it re-opening was that an “*attack*”

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<sup>2</sup> The papers can be seen here <http://ealing.cmis.uk.com/ealing/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/5667/Committee/16/Default.aspx>

<sup>3</sup> I must comment that in all Licensing hearings I have attended I have been very concerned about the Chair’s way of conducting the hearing. I have found that he rushes through as though the decision has already been made and it is irrelevant what anyone says and he doesn’t want to overrun the allotted time by even a minute - That he does not listen, and when he does listen it does not seem to me that he understands the points that are being made. I have also been concerned about the legal officers in the licensing committees and other committees. On a number of occasions they have relied upon the bare assertions, (unsupported by any reference to law,) of Applicant’s legal representatives even when these assertions have been challenged. It is for the Council’s legal officers to advise the Council and not to rely on what is said by an interested party.

<sup>4</sup> I was not there and don’t know who was part of that Committee.

*dog must be present at all times the premises is open.*' The Committee used the words "Guard dog". I use the words "attack dog" advisedly because it is the correct word<sup>5</sup>. My understanding is that the dog was considered necessary in case there were reprisals by friends of the person who was attacked by security guards from the club.

8. How could any reasonable decision-maker believe it would be a good idea to have an attack dog on a main street, with family friendly restaurants and residential premises. Particularly when the only purpose of the dog being there at all was to allow a club, whose staff had behaved violently, to re-open before a proper investigations could be carried out. What kind of impression does that give to the man (and friends of his) who was badly beaten up by the club security guards? And what kind of impression does it give of the Council who condone it. It is behaviour which appears to seek to incite retaliation.
9. I became aware of this because, as I walked home from the station at about 2 a.m, there was a large group of men outside the club laughing and joking (even though it was faithfully promised at the SEV renewal hearing earlier in the year that no men were allowed to congregate outside) alongside the attack dog and it's handler. And to make matters worse, two of the men were owners of the club<sup>6</sup>. I am surprised it didn't lead to a serious reprisal. It seemed almost designed to incite one.

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<sup>5</sup> [http://www.petmd.com/dog/training/evr\\_dg\\_attack\\_dogs\\_versus\\_guard\\_dogs](http://www.petmd.com/dog/training/evr_dg_attack_dogs_versus_guard_dogs) "Guard dogs are not generally trained to attack. Rather, a guard dog's task is to alert its owner of a stranger's presence (i.e., bark, growl, etc.). And contrary to popular belief, a guard dog does not make a good attack dog, or vice versa"

<sup>6</sup> This information was given in the Club's evidence at the subsequent hearing when I commented that one of the men 'looked like' he was the owner, by his demeanour.

## ***Good (Lawful) Decision Making***

10. On a previous occasion I attended a Planning Committee Meeting and a member of the public was trying to point out that one piece of information being given to the Committee was factually incorrect. He said *'You can't make a decision based on factually incorrect information'*. In legal terms he was right. He was almost ejected from the room. The Chair said *"We can make a decision on any basis we ....."* before he was (as it appeared to me) nudged under the table by the Legal Officer, and so didn't finish his sentence.
11. For centuries England has honed its view on what is and what is not *'lawful decision-making'*. It is not *'lawful'* for the sake of being *'lawful'* it is lawful because it is what works to maintain an Equitable, Successful Civilised Society. The alternative is a regression back to barbarianism where the most powerful (whether by physical strength, money or decision-making power) impose their will on those who they are empowered to protect. Lawful decision-making is based on what works and what doesn't work - *The Rule OF Law NOT Rule BY Law*.
12. Considering the licensing example above - What did the Council's decision-making facilitate? One person (whether human or Company) being allowed and encouraged to continue making a personal profit from a questionable trade<sup>7</sup> while endangering and frightening members of the public, costing the tax payer unnecessary sums of money for policing it, and making my street a virtual no-go area after dark<sup>8</sup>. This is extremely

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<sup>7</sup> Statute accepts that in the 21st Century Sexual Entertainment Venues are a Questionable Trade by imposing numerous onerous conditions on the licence and allowing Local Authorities the freedom to decide not to have any at all in their area.

<sup>8</sup> I have heard from grown men that they will not walk down the High Street after dark.

serious in relation to developing the right kind of night time economy for Central Ealing<sup>9</sup>.

13. If you consider the historic and successful cultural and commercial geography of London, from the City, westwards, Central Ealing is the next ideal place for a valuable, socially beneficial night, and day-time economy. And one based on the type of cultural activities that *all* the community can, and generally want to, engage in. There are the Theatres and Art Galleries in the West End, moving Westwards to the Royal Albert Hall and the Museums, and now as the population grows, Central Ealing is perfectly situated to provide similar provisions which would invigorate and provide custom for the shops, restaurants and pubs etc in the area. This has always been the *Spirit of Place*<sup>10</sup> of Central Ealing. In the 16th, 17th and 18th centuries it was the playground of the London wealthy, providing accessible *Country* homes for parties and sports. In the 19th Century, development for the general public came about with a large Theatre, music venue, public library and baths etc, and Shakespeare in the Park. To the 1960's and '70's when it was the the place to go to buy musical instruments and listen to the new "*Rock*" music, either live or in record shops.
14. All this can be built upon through proper, lawful decision-making.

### ***Suggestion***

15. So my suggestion to the Committee is that the Licensing Committee, and ideally others in the Council, engage in a bit of research and education on

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<sup>9</sup> I am aware that '*big business*' puts pressure on Councils, by invoking the Company's (so called) Right under the Human (?) Rights Convention Article 1, Protocol 1, to profit. But this is a very limited (and perhaps, according to many lawyers, mistaken) Right which does not bear much scrutiny.

<sup>10</sup> The *Spirit of Place* is the rationale and basis for the National Planning Policy Framework (NPPF). Why does it underpin the Policy? Because experience has shown the if you develop contrary to the Spirit of Place it is always a Social, Economic and Environmental disaster.

Good Decision-making - Not so they can manipulate the law to push through decisions they want to take for the wrong reasons, but to ensure the right decisions are made for a successful day and night-time economy in Central Ealing.

16. I would suggest the following as a good start:

(a) The Government Document called JOYS, for short - *The Judge over your Shoulder*. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/538447/160708\\_JOYS\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538447/160708_JOYS_final.pdf)

(b) Engagement with the *Public Law Project* - <http://www.publiclawproject.org.uk> who offer training and events.

(c) Listening to Lord Neuberger's (Supreme Court) talk at the Public Law Project's annual Conference: *The Role of Judges in a Post-Referendum World* - <http://www.publiclawproject.org.uk/resources/265/the-role-of-the-judges-in-a-post-referendum-world> which is really encouraging because it shows that Ealing Council are not the only one's making questionable decisions contrary to the Rule of Law (perhaps why civilisation is breaking down?).

17. I am not suggesting this in order to cause the Council to make decisions in order to avoid the risk of Judicial Review (that would be an unlawful consideration). Nevertheless, avoiding Judicial Review, is a welcome side effect. I am suggesting it so that good decisions are made that benefit Ealing.

### ***Last word***

18. The Supreme Court/House of Lords have confirmed that a Local Authority must spend their money on their duties before spending it on anything else *R v East Sussex CC ex p Tandy* HL [1998] AC 714 - Lord Browne-Wilkinson "*First, the county council has as a matter of strict legality the*

*resources necessary to perform its statutory duty under section 298. Very understandably it does not wish to bleed its other functions of resources so as to enable it to perform the statutory duty under section 298. But it can, if it wishes, divert money from other educational, or other, applications which are merely discretionary so as to apply such diverted moneys to discharge the statutory duty laid down by section 298. The argument is not one of insufficient resources to discharge the duty but of a preference for using the money for other purposes. To permit a local authority to avoid performing a statutory duty on the grounds that it prefers to spend the money in other ways is to downgrade a statutory duty to a discretionary power. .... Parliament has chosen to impose a statutory duty, as opposed to a power, requiring the local authority to do certain things. In my judgment the courts should be slow to downgrade such duties into what are, in effect, mere discretions over which the court would have very little real control. If Parliament wishes to reduce public expenditure on meeting the needs of sick children then it is up to Parliament so to provide. It is not for the courts to adjust the order of priorities as between statutory duties and statutory discretions". This case refers Education, but is equally relevant to any other Statutory duty - versus - Statutory power.*

**Frances Zammit**

**22 November 2017**