

Committee: Development	Date: 27 th June 2007	Classification: Unrestricted	Agenda Item Number: 7.1
Report of: Corporate Director of Development and Renewal		Title: Planning Application for Decision	
Case Officer: Jacob Jaarsma		Ward: Whitechapel	

1. APPLICATION DETAILS

Location:	17 – 19 Whitechapel Road, London, E1 1DU
Reference Number:	PA/06/02276
Existing Use:	Stripping Bar (Sui Generis) on ground floor, vacant on first floor.
Proposal:	Certificate of Lawfulness for existing use of ground floor as a Stripping Bar (Sui Generis).
Drawing Nos/Documents:	<ol style="list-style-type: none"> 1. A letter from the Valuation Office Agency dated 22nd September 2006 giving information in respect of the use of the first floor for commercial purposes 2. A Supper Hour Certificate granted for the first floor of the Nags Head Public House dated 14th December 1981
Applicant:	Mr. Karpal Singh
Ownership:	Mr. Karpal Singh
Historic Building:	N/A
Conservation Area:	Whitechapel High Street Conservation Area

2. SUMMARY

- 2.1 Planning legislation provides that uses and operations are “lawful” if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. Development or other activity on land is lawful for planning purposes if the time for taking enforcement action has expired.
- 2.2 The test under the Planning Act for a Certificate of Lawfulness Application for existing use as a Stripping Bar is to demonstrate that the use had existed continually for the last 10 years. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant’s version of events less probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate “on the balance of probability”.
- 2.3 The Local Planning Authority has considered the particular circumstances of the

certificate of lawfulness application and has found that:

- 2.4 The Local Planning Authority is satisfied that at the time the application was submitted, and on the balance of probability, the ground floor at No. 17 – 19 Whitechapel Road (Nag’s Head Public House) had been continuously in use as a Stripping Bar (Sui Generis) in excess of 10 years and is therefore immune from Enforcement Action.
- 2.5 Thus, by reason of the physical make up of the building and planning law, the site is considered to be a single planning unit and therefore the first floor would also benefit from the same use.
- 2.6 As a result of these conclusions, the planning application (PA/06/2276) submitted on 23rd February 2006 is unnecessary and the Councils should decline to consider the application.

3. RECOMMENDATION

- 3.1 That the Committee resolve to **GRANT** a Certificate of Lawfulness for existing use as a Stripping Bar (Sui Generis) for the following reason:
- 3.2 From the evidence before the Local Planning Authority, the ground floor of the premises forms part of the single planning unit. The lawful use of the planning unit is as premises for the provision of entertainment by striptease and the consumption of alcoholic and other drinks (a stripping bar) because such use has been in existence at the premises for a period of at least 10 years prior to the date of the application and is therefore immune from enforcement action.
- 3.3 That the applicant be informed that the application (PA/06/2276) for the external alterations to the front elevation of building including creation of level access plus change of use of first floor to a Stripping Bar (Sui Generis) to use in connection with existing ground floor is unnecessary as a result of the decision to grant a Certificate of lawfulness and therefore the Council declines to determine it. An amended application for the physical works only should be submitted.

4. PROPOSAL AND LOCATION DETAILS

Proposal

- 4.1 The application is for a Certificate of Lawfulness for existing use of the ground floor of the property as a Stripping Bar (Sui Generis).

Site and Surroundings

- 4.2 The application site is situated on the north side of Whitechapel Road, which is designated as a strategic road by the Department of Transport. The property is flanked by an A1 retail unit to the west and a travel agency to the east. The upper floors of the building to the west of the application site are used as offices. The upper floors of the building to the east and the buildings to the rear

of the application site are used as residential. To the south, on the opposite side of Whitechapel Road is St Mary's Gardens, a large open space. The rest of the ground floor shops within the immediate surrounding area consist of a mixture of A1, A2 and A3 uses.

- 4.3 The external appearance of the building suggests that the property is used as a Public House. However a site visit (conducted on 6th February 2007) confirmed that the ground floor is currently used as a stripping bar (Sui Generis). The windows on ground and first floor front elevation are blacked out and there was a doorman present at the time the application site visit was conducted. The first floor would appear to have been a restaurant/bar but is currently vacant and in a poor state.
- 4.4 The property is located within the Whitechapel Road Conservation Area. The subject building is not listed.

Planning History

- 4.5 On 23rd February 2006 the following planning application was submitted by the applicant :

External alterations to front elevation of building including creation of level access plus change of use of first floor to a Stripping Bar (Sui Generis) to use in connection with existing ground floor (PA/06/00294).

Decision Pending - Currently held in abeyance subject to the outcome of this Certificate of Lawfulness Application (PA/06/02276).

No other relevant Planning History

5. PLANNING POLICY FRAMEWORK

- 5.1 Planning policy is not relevant to the consideration of this application

6. REPRESENTATIONS RECEIVED

- 6.1 The views of officers within the Directorate of Development and Renewal are expressed in SECTION 8 below. The following were consulted regarding the application:

Respect Party

- 6.2 States that internet websites indicates that use as being established since 2003, and there is no evidence of the use being continuous for 10 years.

Fladgate Fielder Solicitors (acting on behalf of an objector)

- 6.3 Have attached documents from their clients that in their opinion demonstrates beyond a reasonable doubt that the use of the premises as a stripping bar only

started in 2003. They consider that prior to that the main use was a pub with ancillary activities of a sexual nature. They consider that there is insufficient evidence to approve the application.

Local representations

- 6.4 A total of 148 neighbouring properties within the area shown on the map added to this report were notified about the application and invited to comment. It was stated in the consultation letter that the subject application is solely to establish the legal use of the property and views and comments on the use cannot be taken into consideration unless it relates to what the recipient consider the use of the property has been over the last ten years. The number of representations received from neighbours and local groups in response to notification and publicity of the application were as follows:

No of individual responses: 1 Objecting: 1 Supporting: 0

No of petitions received: 0

7. Background

- 7.1 A planning application (PA/06/00294) for external alterations to front elevation of building including creation of level access plus change of use of first floor to a Stripping Bar (Sui Generis) is currently held in abeyance subject to the outcome of this Certificate of Lawfulness Application (PA/06/02276). On 6th September 2006, the Development Committee did not accept officers' recommendation to approve the application. Members were then advised that further investigation (including legal advice) was needed on the application because there was a possibility that planning permission was not required for the change of use. A decision was deferred so that a new report could be brought to a future meeting of the Development Committee for consideration.
- 7.2 Members were further advised that the application would stay deferred until a future Development Committee to allow the applicant to submit an application for Certificate of Lawfulness for the Existing Use as a Stripping Bar (Sui Generis).

Land Use

- 7.3 The applicant seeks a determination as to whether on the balance of probability; the existing Stripping Bar (Sui Generis) on the ground floor has been used for this purpose in continuously excess of 10 years and therefore immune from planning enforcement action. The onus is upon the applicant to provide evidence to the Local Planning Authority to support their application.
- 7.4 Before considering the evidence it is first necessary to clarify the planning position in terms of how the use of the building should be analysed.

Analysis of the Planning Unit (*the concept*):

7.5 The Planning Unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. The general rule is that the materiality of change should be assessed in terms of the whole concerned, normally the whole of the area in the same ownership or the same occupation. However the assessment of the planning unit is a matter of fact and degree, and there is no rigid code in analysing planning unit problems.

Functional and physical separation required:

7.6 Both functional and physical separation is required before a smaller unit can be identified. Thus, a single primary use of a site will not amount to a functional separation, and will normally be treated as a single planning unit.

Dual Uses normally constitute separate units:

7.7 Where a site has two uses, which are physically and functionally separated, it would be normal to regard each part as a separate planning unit.

7.8 The premises at 17-19 Whitechapel Road was clearly originally built as a Public House. It is possible for such a building to comprise to separate planning units, but for this to be so the ground and first floor would need to be functionally separate from each other. This is not the case; access to the first floor can only be achieved by entering the ground floor.

7.9 Historically, the premises appear to have been used as a Public House with a function room on the first floor that was available for hire. For a period it appears to have also been used as restaurant. These are all activities that were either ancillary to the primary use of the premises as a Public House or part of the overall use of the premises within the A3 food and drink class as it was at that time.

7.10 More recently, activity on the first floor has declined to the point that the rooms are now in what appears to be a poor state. However it remains the case in planning law that the premises is a single planning unit and whatever the lawful activity is on the ground floor, that activity can be carried out on the first floor without the need for planning permission.

8 EXAMINING THE EVIDENCE:

8.1 The evidence supplied by the applicant needs to demonstrate to the Local Planning Authority that:

- i) the stripping bar use has been in existence on the ground floor continuously for more 10 years and that
- ii) the stripping bar use, has been within that time, the primary use of the ground floor.

Whilst i) is self explanatory, it is necessary to further clarify ii) before examining

the evidence.

- 8.2 If the ground floor was used for activities associated with a Public House, i.e. drinking and other activities associated with such a use, and the stripping only took place occasionally, (such as once or twice a week), then the primary use of the ground floor would be a Public House. Similarly, if bands/performers played at the premises on occasions or even regularly, but for the purposes of entertaining patrons whose main activity is to drink or socialise at the premises, then the Public House would be the primary use.
- 8.3 However, if patrons visited the premises with the intention of being entertained by the Stripping Bar use, and were able to purchase drinks to supplement that entertainment, then the Stripping Bar use would be the primary use. This would be akin to say a comedy club or a theatre, where the intention is to be entertained by performers supplemented by the availability of drinks or food.
- 8.4 In order for the Local Planning Authority to be satisfied that the use is Lawful, the applicant has to demonstrate that the above paragraph is the case in his particular circumstances, and that such activity has taken place at the premises continuously for 10 years or more. He would have to demonstrate that the over time, but within the last 10 years, the Public House use had declined and that the main activity taking place was now the Strip Bar use. The Local Planning Authority will be looking for documentary evidence to support the applicant's case, or preferably from an independent source or witnesses to the fact from a reliable and credible source. The Local Planning Authority will also consider the information supplied to it to counteract the applicant's evidence.

Evidence supplied by the applicant

- 8.5 The applicant has stated that the first floor of the premises received negative publicity in September 1992 following a private function involving striptease and since then the use has ceased and remained so. He now wants to re-instate that the use together with the ground floor.
- 8.6 The applicant has also stated that since approximately 1987, the Nags Head Public House has benefited from Public Entertainment Licenses and has provided music, dancing and striptease entertainment- occasionally at private functions on the first floor and continuously on the ground floor. The applicant indicated that different uses rules/conditions/requirements were attached to the Annual Public Entertainment Licenses granted over the years – such that, inter alia, it has been a condition that windows be obscured and that registered door staff be employed.
- 8.7 The applicant's evidence indicates that the stripping bar use took place but not that it was anything other than ancillary to the primary use of the premises as public house. This is supported by a Metropolitan Police schedule of entertainment licenses which indicates that the premises had a Sunday Music/Sunday dancing with striptease waiver license as far back as 1992, and a Sunday Dancing and Entertainments License issued on the 1 May 1997 . Therefore whilst the stripping took place his evidence does not support the assertion that it was the main use.

Other evidence

8.8 Various other documents have been retrieved from Council records including;

i) documentation relating to the issue of 1992 Sunday and Music dancing license, with a “Striptease Waiver”.

ii) a letter from the Valuation Office Agency dated 22nd September 2006 giving information in respect of the use of the first floor for commercial purposes. The letter states that an inspection dated 13th January 1984 commented “restaurant at present closed”. Further inspection notes dated 22nd December 1992 commented that the “first floor restaurant closed six years ago”.

iii) a Supper Hour Certificate granted for the first floor of the Nags Head Public House dated 14th December 1981. The certificate stated that the first floor is structurally adapted and bona fide intended to be used for the purpose of habitually providing, for the accommodation of persons frequenting the premises, substantial refreshment, to which the sale and supply of intoxicating liquor is ancillary.

8.9 However, none of these documents support the contention that the stripping bar use has been the primary continuous use of the ground floor within the last 10 years

8.10 Evidence/information (provided by local residents/interested parties) disputing the applicants evidence is tabled as follows:

8.11

Date	Document	Summary of Information	Officer Comment
2002	Thomson Local	Subject site advertised as a ‘Public House’ in 2002 in Thomson Local	This advertises the premises as its original use and does not take into account the activity carried on over the last 10 years
10/11/2006	Transcript of interview between BBC and Chair of Banglatown Restaurant Association	Chair of BRA is of the opinion that the use as a ‘stripping bar’ has been going on for less than 10 years	This is an opinion without any evidence to support the comment.
13/11/2006	E-showgirls Articles	“In 2003 they introduced table dancing at the	Table dancing is only an element of a Strip Bar use and may have

		application site”	been introduced as an activity at a later date.
13/11/2006	BBC London – Tower Hamlets	Chair of Banglatown Restaurants Association says the Nags Head has not been a strip club for as long as 10 years	This is an opinion without evidence to support the comment
15/11/2006	Internet Extraction	Advertising the Nags Head as a Public House	This advertises the premises as its original use and does not take into account the activity carried on over the last 10 years
16/11/2006	Information from Fladgate Fielder Solicitors	“The Nags Head became a stripping bar in 2003” “You might conclude that this is a Public House, which illicitly introduced table/poll dancing in or about December 2003 – Enforcement Action should be taken”	This is an opinion.
22/11/2006	E-mail from leader of Respect Party	“Sex websites on which the charms of the Nags Head are advertised clearly state it has been a pole dancing club only since 2003”	This is a third party assessment of the use. Not a proper examination of the use.

8.12 This evidence is mostly based on information obtained from the internet and in particular websites advertising the subject site as a public house, as well as on opinions. This evidence is as inconclusive as that supplied by the applicant and that contained on Council records. The opinions of Fladgate Fielder Solicitors and the leader of the respect party have been noted, however a decision on this application has to be based on evidence

8.13 The Council, through its normal duties have reason to visit many premises in the borough including the application premises. Given the inconclusive documentary evidence and the unsatisfactory evidence supplied by the applicant, enquiries were made of officers who worked in Environmental Health (Licensing Section) and who have worked for the Council for more than 15 years. This evidence is provided in the form of Witness Statements made under Section 9 of the Criminal Justice Act 1967.

8.14 Their evidence indicates that the applicant has benefited from an Annual

License for Music and Dancing since 1992 which allowed him to carry on striptease performances unrestricted during his opening hours. This license, although rejected at the then Licensing committee, was subsequently granted on appeal. Through the course of their work on occasions where they have had to visit the premises, their own experiences over the last 15 years suggests that the premises has mainly been used for striptease performances.

- 8.15 The evidence of Jaqueline Randall (Principal Consumer Services Officer) meets the test identified in paragraph 8.1, that the stripping activity has been in place for more than ten years. She has confirmed in her evidence that she has visited the premises at least twice yearly over the last 15 years, and during her first visit in 1992 she witnessed the stripping activity taking place. This evidence is also supported by an application for a renewal public entertainment license dated 4th December 1992. The fact the license includes a fee for a 'striptease waiver' indicates that the premises may have been holding striptease performances in 1991.
- 8.16 Ms Randall has also confirmed that during her twice yearly visits she has found that the layout and appearance of the premises (in that there was a large stage with mirrors that took a primary position; blacked out windows; signs not allowing entry to anyone under the age of 18), the activity taking place, in that she has only ever found patrons visiting the premises to either watch performances, or waiting for the performances to begin, lent itself to a primarily stripping bar use. Thus it appears that her evidence meets the second part of the test set out in paragraph 8.1, that the stripping activity has been the primary use, and that the use has been continuous over the last 15 years.
- 8.17 The evidence of David Hall (License Safety Officer) echoes that Jaqueline Randall given that part of his duties is to inspect the premises annually. His evidence concludes that over the last 17 years, the sole and only form of entertainment he has witnessed at the premises has been that of striptease, and that this has been the main activity on each occasion that he has visited the premises.

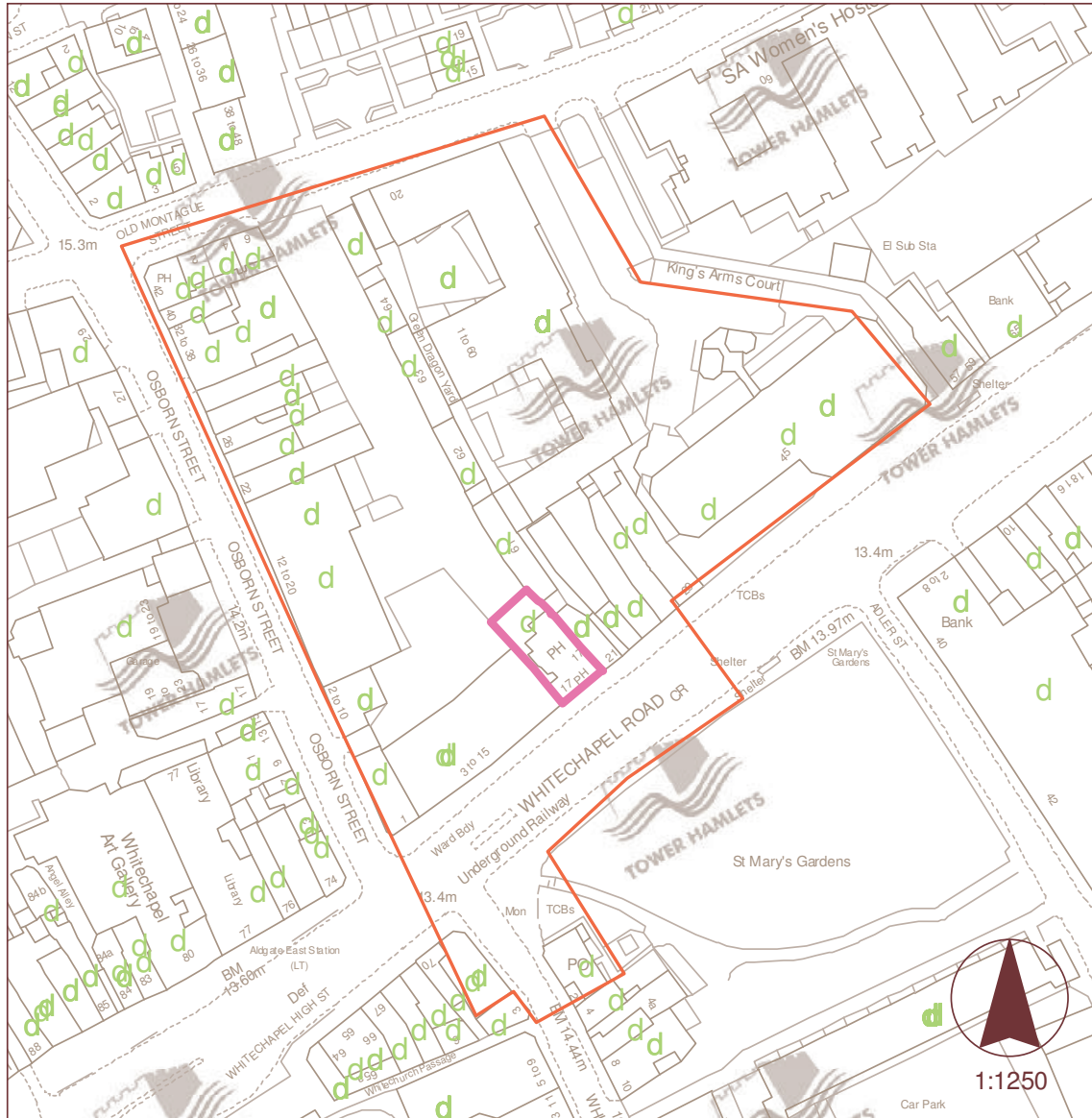
9. Conclusion

- 9.1 It is not necessary for the Local Planning Authority to establish the exact date when the ground floor of the Nags Head Public House became a stripping bar, however provided that it can be established on the balance of probability that it has been going on continuously for more than 10 years, then a certificate should be issued.
- 9.2 The most reliable evidence is that supplied by officers of the Council who have witnessed activity at the premises. Their evidence in the form of Section 9 witness statements (this renders them liable to prosecution if made falsely), is considered to carry the most weight.
- 9.3 Without being a patron of the premises, it is not possible for the officers to categorically state that the stripping activity took place each and everyday, however, it must be remembered the determination of the certificate rests on the 'balance of probability' and not the more difficult test of 'beyond reasonable

doubt'

- 9.4 Given the frequency of visits, what was found during those visits, and the independent nature of the evidence, it would be reasonable to conclude that on the balance of probability, the evolving phase from a Public House to a venue primarily known for its provision of striptease/nude dancing (Stripping Bar) entertainment at the application site has been in place for over 10 years.
- 9.5 Consequently, it is officers' opinion that on the balance of probability the use of the ground floor of the property as a Stripping Bar (Sui Generis) has been operating for more than ten years and is considered to be immune from enforcement action. It is therefore recommended that a Certificate of Lawfulness for existing use as a Stripping Bar (Sui Generis) be Granted.
- 9.6 Planning case law supports the fact that the ground and first floor at No. 17 – 19 Whitechapel Road is considered a single planning unit. It is therefore recommended that the applicant withdraw the planning application for a change of use of first floor to a Stripping Bar (Sui Generis) to use in connection with existing ground floor (PA/06/00294) as such a use would not need planning permission.

Site Map



Legend

- Planning Application Site Boundary
- Consultation Area
- d Land Parcel Address

This Site Map displays the Planning Application Site Boundary and the neighbouring Occupiers / Owners who were consulted as part of the Planning Application process. The Site Map was reproduced from the Ordnance Survey mapping with the permission of Her Majesty's Stationery Office © Crown Copyright.
 London Borough of Tower Hamlets LA086568