LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING COMMITTEE

HELD AT 7.00 P.M. ON TUESDAY, 10 JANUARY 2023

C1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT, LONDON, E14 2BG

Members Present:

Councillor Kamrul Hussain (Chair)

Councillor Faroque Ahmed (Member)
Councillor Leelu Ahmed (Member)
Councillor Suluk Ahmed (Member)
Councillor Sabina Akhtar (Member)
Councillor Asma Begum (Member)
Councillor Gulam Kibria Choudhury (Member)
Councillor Peter Golds (Member)
Councillor Kabir Hussain (Member)
Councillor Shubo Hussain (Member)
Councillor Ahmodul Kabir (Member)
Councillor Amin Rahman (Member)
Councillor Rebaka Sultana (Member)
Councillor Abdul Wahid (Member)

Other Councillors Present:

Officers Present:

Kathy Driver – (Principal Licensing Officer)
Jonathan Melnick – (Principal Lawyer-Enforcement)

Farzana Chowdhury –

1. DECLARATIONS OF INTEREST

There were no declarations of interest.

2. MINUTES OF THE PREVIOUS MEETING(S)

The minutes of the Licensing Committee held on 4th October 2022 were agreed.

3. RULES OF PROCEDURE - LICENCES FOR SEXUAL ENTERTAINMENT VENUES

The rules of procedure were noted.

4. ITEMS FOR CONSIDERATION

4.1 Application for a waiver under Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 E1 Studio Spaces Ltd, 110 Pennington Street, London E1 8EW

The Licensing Committee considered an application by Jack Henry of E1/Studio Space, 110 Pennington Street, London, E1 ("the Venue") for a waiver from the requirements of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 in respect of sexual entertainment venue (SEV) licensing.

The Committee heard from Mr. Charalambides on behalf of the applicant. He spoke to the application and informed the Committee that the test was that whether or not we thought it unreasonable or inappropriate to require the venue to be licensed under the SEV regime. The Home Office Guidance on SEVs was "unhelpful" and our own SEV policy, which Mr. Charalambides submitted was concerned with lap-dancing venues and similar, was silent on the issue of a waiver. The Venue was not a lap-dancing club and the issue was what to do in respect of adult entertainment and displays of nudity between consenting adults in a regulated space. The Venue was licensed under the Licensing Act 2003 and self-regulated by the management and by its patrons.

Mr. Charalambides outlined the difficulties with the definition of relevant entertainment and whether it covers consenting adults attending a closed space together. He explained that the Venue did not know if it did or did not carry on relevant entertainment. He gave an outline of the events put on by the different promoters that the Venue worked with and the different clientele they each attracted. This meant that the Licensing Authority needed to decide, on a case-by-case basis, whether a particular event would or would not fall within that definition.

Mr. Charalambides explained that the premises licence imposes a number of conditions, such as a restriction on under-18s attending, but that the Act otherwise envisages adult entertainment taking place on licensed premises. There is a difference between sexual entertainment and adult entertainment. In short, however, he emphasised that the Venue placed safeguarding at its core, that every event was risk-assessed, and that the regulator's role was to ensure the safety of the events.

He spoke briefly to the equality and diversity issues and provided the Committee with some updated statistics from the 2021 census.

Members asked a number of questions of both Mr. Charalambides and the Licensing Officer. For brevity, this decision sets out the key issues discussed. Mr. Charalambides emphasised that the Venue was not a lap-dancing venue and that the issues arising in such venues did not arise here. The premises licence, which contained SIA, CCTV and numerous other conditions, all dealt with safety. There were trained guardians as well from within the community.

Members queried why the waiver was sought for seven days per week and whether it was intended to carry on such events every day. Mr. Charalambides explained that the Venue was restricted by the premises licence, which required licensable activity to cease at midnight Sunday to Thursday. The Venue was therefore mostly intending to put on such events at weekends. He referred to the need to assess the entertainment on a case-by-case basis. This meant that an event by one promoter one week might not be relevant entertainment but might be the following week. The waiver, if granted, would provide certainty to both the Council and the Venue that they were not in breach of the law.

Mr. Charalambides spoke to the statutory exemption of eleven events in a twelve-month period and that it applied only if the entertainment was relevant entertainment within the Act. Some would likely be, but others would not be, and the ultimate arbiter in any particular case would be the courts in the event of a prosecution for breach of the 1982 Act. He suggested that rather than thinking about the eleven individual events it might assist to consider the entertainment as a whole and that all of the events fall within a grey area. It did not follow, however, that all events would be a "full-on" sexual event.
Members also explored issues around compliance and enforceability. It was explained that conditions could not be added to the waiver, if granted. However, undertakings could be and were offered up by the applicant. If those were not complied with, the inevitable outcome would be a revocation of the waiver by the Council. The Venue was offering the various "conditions" on pages 76 to 78 of the report pack as undertakings and was also amenable to one that would effectively prevent the Venue from operating as a lap-dancing club.

Mr. Charalambides, in answer to a question posed by the Legal Adviser as to whether the waiver, if granted, should be open-ended or time-limited, posited an eighteen-month time limit, which would allow for a six-month "bedding-in" period and then a focused year thereafter. He acknowledged the potential concern with respect to an open-ended waiver.

The Committee has carefully considered the application for a waiver. The Committee understood that there is effectively no guidance as to how to approach such an application. There is no Home Office guidance, as there is for the Licensing Act 2003, nor is there any case law. Our SEV Policy is silent on waivers. It is a purely discretionary decision to be exercised in accordance with the usual public law principles.

The 1982 Act provides an exemption for occasional relevant entertainment, which the Venue can take advantage of in any event. The Committee understood that some of the entertainment fell within a "grey area" but it was not disputed that some was highly likely to fall within the statutory definition. The Committee understood that the waiver, if granted, would be for seven days per week. It noted Mr. Charalambides' explanation that in reality it would likely only benefit the Venue in respect of Fridays and Saturdays given the restricted weekday times of the premises licence. That would still, however, permit a number of events each year which, if they constituted relevant entertainment, would far exceed the permitted exemption.

The Council has an SEV Policy and whilst it does not deal with waivers specifically, it is still a relevant factor for the Committee to consider. The language of the policy does not refer to specific types of venue. Whilst the Venue was not a lap-dancing club, it potentially still provided relevant entertainment and could therefore be an SEV. The policy expresses an intent to reduce the number of SEVs in the borough to nil. The Committee noted also that the waiver application, unlike an application for an SEV licence, makes no provision for consultation. Given that SEVs are a matter on which the local community will often wish to express a view, this was also a factor that the Committee considered. The Committee noted the submission that whether or not relevant entertainment was provided at the Venue may be a grey area and that a waiver would give the benefit of certainty to the Venue and to regulators. However, so too would an SEV licence, if granted.
The waiver, if granted, could take effect seven days per week (even if the intention was not to do so). Parliament has imposed a tight restriction on anything amounting to more than the occasional provision of relevant entertainment, generally requiring it to be regulated. The more frequently that events which are or may be relevant entertainment may be carried on, the less likely it is that a waiver will be appropriate. For all these reasons, and given that the SEV licensing process requires consultation, which the waiver process does not, the Committee did not consider it to be unreasonable or inappropriate to require the Venue to be licensed and regulated under the 1982 Act and the decision of the Committee is to refuse the application for a waiver. Finally, the Committee wishes to express its thanks to the applicant and its representatives for the engaging and eloquent way in which the application was brought before us.

Accordingly, the Committee unanimously;

RESOLVED

That the application for a waiver under schedule 3 Local Government Miscellaneous provisions) Act 1982 E1 Studio Spaces Ltd, 110 Pennington Street, London E1 8EW be **REFUSED.**

The meeting ended at Time Not Specified

The meeting ended at Time Not Specified

Will Tuckley
CHIEF EXECUTIVE