

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 6.30 P.M. ON MONDAY, 26 SEPTEMBER 2022

**THE COUNCIL CHAMBER, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5
CLOVE CRESCENT, LONDON, E14 2BG**

Members Present in Person:

Councillor Kamrul Hussain
Councillor Saied Ahmed
Councillor Suluk Ahmed
Councillor Gulam Kibria
Choudhury
Councillor Peter Golds Island Gardens
Councillor Kabir Hussain
Councillor Ahmodul Kabir
Councillor Amin Rahman
Councillor Rebaka Sultana
Councillor Abdul Wahid

Members In Attendance Virtually:

Councillor Sabina Akhtar
Councillor Shubo Hussain

Apologies:

Councillor Faroque Ahmed
Councillor Leelu Ahmed
Councillor Asma Begum

Officers Present in Person:

Kathy Driver (Principal Licensing Officer)
Tom Lewis (Team Leader - Licensing Services)
Jonathan Melnick (Principal Lawyer-Enforcement)
Simmi Yesmin (Democratic Services Officer, Committees,
Governance)

Other In Attendance in Person:

James Rankin (Legal Representative for Applicant)
Jeremy Bark (Legal Representative for Applicant)
Santosh Nair (Applicant)
Mark Halton (Independent Auditor)
Joe Cannon (Legal Representative for Licensing Authority)

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 31st May and 14th July 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 New Sexual Entertainment Venue Licence for Club Oops, 30 Alie Street, London, E1 8DA**

At the request of the Chair, Ms Kathy Driver, Principal Licensing Officer, introduced the report which detailed the application for a new sexual entertainment venue (SEV) licence for Club Oops, 30 Alie Street, London E1 8DA. It was noted that an objection had been made on behalf of the Licensing Authority. It was noted that this was an existing SEV premises and a renewal application had been made. However, that had been made after the expiry of the previous licence. The licence therefore lapsed and now a new application was made. No other representations were received during the consultation period.

Councillor Saied Ahmed arrived late for the meeting at 18:48. The Legal Adviser informed the Committee and the parties that although he was permitted to remain in the meeting he would not be permitted to participate during the decision making process because he had not been present for the whole duration of the item in consideration.

At the request of the Chair, Mr James Rankin, Legal Representative on behalf of the Applicant, Mr Santosh Nair, explained that the name 'oops' has never been more appropriately named than in these circumstances because oops was the only word that could probably apply to what Mr Nair had done. He explained that Mr Nair had been operating the premises for the past four years and had renewed the licence every single year without any objections/incidents and every single year the premises had been visited by Enforcement Officers save for the most recent year. He explained that for some reason this year Mr Nair was clearly under the misunderstanding that that his licence expired on the 1st June, he was unaware that it actually expired on the 31st May 2022. After submitting the application, Ms Kathy

Driver from the Licensing Authority informed Mr Nair that the licence had expired. Mr Nair at this point immediately ceased trading and then instructed lawyers to help him with this matter which was now before the Committee .

Mr Rankin expressed how unfortunate the situation was, which could have been easily avoided had Mr Nair checked the renewal date and made the application on time.

Mr Rankin acknowledged the basis of the objection made by the Licensing Authority, on the grounds of the nil policy in place. He first highlighted that it was often the view of many Councillors and members of the public that premises such as these, where ladies disrobe for entertainment and where money is exchanged for that, in some way is distasteful and objectifies women. However, moral beliefs or objections cannot be taken into account in the determination. Mr Rankin therefore respectfully asked that Members of the Committee set aside any moral views when making their decision.

He gave a brief background of when the legislation was first introduced in 2012. He stated that these premises had always held striptease of some kind since 2009, were then regulated under the new provisions adopted by the Council in 2014 and have held a licence every single year since. Mr Rankin explained that in 2016, Mr Nair purchased these premises and due to a requirement that the premises are run by someone who properly understands the legislation, he sensibly employed Mr McVitie, who was very experienced and ran these premises extremely well and introduced checks and balances and the code of conduct for the welfare of the dancers.

He then addressed the issues of the Policy, which was introduced on the 1st June 2014. He referred to page 135 of the agenda which listed all of the premises that were in existence at the time that this policy was drafted and these premises was one of them. It was noted that from 1st June 2014, the Authority set a limit on the number of sexual entertainment venues that are appropriate for the Borough with it being set as nil with no further additional premises other than those already in existence. He explained that the overarching consideration was to ensure that there was no increase in the number of premises that were already in existence at the time that this policy was introduced. It also went further to limit the number of sexual entertainment venues in the borough to nil but then used the caveat that it recognised that there were a number of businesses that had been providing sexual entertainment in Tower Hamlets for several years that the Council will not apply this limitation when considering applications for premises already trading with the express permission for the type of entertainment which is now defined as sexual entertainment.

He then said that each application should be considered on its merit although new applications will have to demonstrate whether council should depart from its policy. Furthermore, he highlighted that the policy states that if any of the existing premises ceased trading there is no presumption that the council will consider any new applications more favourably. He suggested that this related to new applicants unconnected to any existing premises.

Mr Rankin described Mr Nair's failure to renew the application as an extreme level of stupidity on his part and an administrative error which will bear huge consequences for the Applicant if the application is not granted. He said if Members were against him on policy grounds, he submitted that this should be treated as an exception for two reasons; the first was the particular circumstances, and Mr. Nair offered his sincere apologies; the second was the consequence of a refusal. The business employed seven staff and twelve dancers. They had suffered disproportionately because of the impact of covid restrictions. Despite being forced to close in March 2020 and not being permitted to re-open until July 2021, they were still required to pay rent. In addition, the consequence of the failure to apply to renew in time was that the Premises had been closed since June 2022.

Mr Rankin directed Members to the three bullet points that should be considered when somebody is applying for a licence and he believed that Mr Nair met these three requirements: high standards of management, a management structure and capacity to operate the venue, and the ability to adhere to the standard conditions for sex establishments. He said that these premises have been under an enforcement microscope not only by Council Enforcement Officers who visit the premises and satisfy themselves that the premises has been operating correctly but also the applicant appoints Mr Mark Holton (also present at the meeting) a former police officer and prison inspector with over 30 years of exceptional licensing experience. An independent auditor had been to the premises every quarter for the last four years and assessed the premises to ensure that it complies with conditions etc. Mr Holton would describe these premises as the easiest SEV premises out of all of those that he audits. He says this is an excellent, well run premises that does not cause any issues either within the premises or within the surrounding areas. He finally made reference to the fact that local resident had approached Mr Nair since the premises has been closed to ask when the premises would reopen, not to frequent the premises but because the premises provides safety and security for the local residents and local area as one of the conditions of the licence is that there has to be patrols by the SIA door staff outside the premises every 30 minutes after 22:00 hours which in turn helps prevent crime and disorder in the area. Mr Rankin finally concluded by urging Members to grant the licence.

Members then heard from Mr Joe Cannon, Legal Representative representing Mr Tom Lewis from the Licensing Authority. He referred Members to page 39 of the agenda which set out the mandatory and discretionary grounds for refusal of applications of this nature. He said the report says quite accurately the committee has discretion to refuse an application if any of the following grounds apply, he highlighted under paragraph 19.3 (c) it sets out, that you can refuse on the grounds that the number of sex establishments exceeds the number or is equal to the number which the council considers appropriate for that locality, which was clearly appropriate for this application.

Mr Cannon said that as a Council, Members had already determined the appropriate number of sexual entertainment venues that there should be in this locality and it was nil. It was also noted that the policy also stated that there is no presumption of treating new applications more favourably. It was

further noted that the schedule initially had eleven SEV premises in the borough and had now reduced to four, following this year's failed renewal. He said it was a one-way ratchet as premises fall away with the presumption against new ones, with the aim of getting to nil.

Mr Cannon stated that the Applicant didn't renew his application in time, it was a simple thing to do, the expiry date is on the front of the licence which clearly sets out the expiry date as 31st May 2022. He emphasised that the application for renewal should have been submitted before 31st May and not on 31st May. The absent mitigating circumstance for the failure to apply on time had consequences and as a result the licence having lapsed and there was now one less SEV licence in the borough from five to four.

It was noted that from the list of premises set out in the policy in 2014, a good number of SEV premises had closed down and now from five premises it had become four because this premises had lapsed. This said Members were now being asked to grant another application taking it from four to five against the one way ratchet that supports the policy. Mr Cannon did accept that the Council would not apply the limitation of nil when considering applications from premises that were already trading and have been trading from 2014 as long as they can demonstrate the fulfilling of the three conditions are fulfilled, high standards of management, management structure and capacity to operate the venue and the ability to adhere to the standard conditions.

Mr Cannon explained as already mentioned by Mr Rankin that if any of the existing premises ceased trading there was no presumption the Council would consider any new applications more favourably. He said the failure to renew the license demonstrated the opposite of high standards of management as renewing the licence should have been the number one priority for the Applicant. As the Applicant failed to do this, it was clear what the consequences would be and to say if only he checked or it was stupidity, these cannot be seen as a form of mitigating circumstances.

With that said Mr Cannon urged Members to refuse this application for a new licence for a sexual entertainment venue on the basis of paragraph 19.3 of the legislation and on the basis that the appropriate number of SEV licences in this locality would increase, from four to five.

In response to questions, it was noted that the renewal application was submitted on 1st June 2022, having been informed that the licence had lapsed, the applicant submitted a new application on 22nd June 2022 as detailed on page 30 of the agenda.

Members pointed out that they were aware of their duties of being a Member of the Licensing Committee and acknowledged the fact that morality would not be a consideration when making their decision and as elected members they would make a decision based on evidence before them and the policies set out whilst taking into account the borough and its residents.

Concluding remarks were made by both parties.

Decision

The Licensing Committee considered an application by Santosh Nair for a new Sexual Entertainment Venue (SEV) licence to be held in respect of Club Oops, 30 Alie Street, London, E1 8DA (“the Premises”). The application fell to be determined by the Committee as the application had received an objection from Tom Lewis, on behalf of the Licensing Authority. References to page numbers are to pages within the main agenda pack.

Mr. Rankin addressed the Committee on behalf of the applicant. He reminded the Committee that issues of morality needed to be disregarded and the application determined on its merits. He submitted that a strictly-regulated premises was better than one that was not. Striptease had been taking place in these premises for some time.

Mr. Rankin explained that Mr. Nair had purchased the premises in 2016 and that he had employed a former local authority enforcement officer to run the premises for him. The premises were run well and without complaint. Mr. Nair had simply inadvertently believed that the licence expired on 1st June 2022 rather than 31st May 2022.

Mr. Rankin drew the Committee’s attention to its SEV Licensing Policy, which took effect from 1st June 2014, and which stated that the Council wished to reduce the numbers of SEV licences to nil. Exceptions were made to those businesses already trading at that time and the Premises was one of those listed (Page 135). He referred to the second and third paragraphs on Page 136 and submitted that the policy therefore did not apply because at the time of adoption the business was already trading. The policy was not intended to catch existing businesses operating at that time.

Mr. Rankin said that the final paragraph on Page 136 applied to new applications. This, however, was a failure to renew and was an administrative error. If Members were against him on policy grounds, however, he submitted that this should be treated as an exception for two reasons. The first was the particular circumstances, and Mr. Nair offered his abject apologies; the second was the consequence of refusal. The business employed seven staff and twelve dancers. They had suffered disproportionately because of the impact of covid restrictions. Despite being forced to close in March 2020 and not being permitted to re-open until July 2021, they were still required to pay rent. In addition, the consequence of the failure to apply to renew in time was that the Premises had been closed since June 2022.

Mr. Rankin told the Committee that the applicant met the exceptional criteria set out in the policy. The Premises are licensed under the Licensing Act 2003 and between the two licences there were some fifty-five conditions to be adhered to. The Premises had been visited by officers and by an independent auditor, Mark Halton, who provided a report (Pages 3-31 of the Supplemental Agenda pack). Mr. Halton expressed the view that the Premises were well-run and managed.

Mr. Rankin asked the Committee to consider the position if the Premises operated as a nightclub. He stated that four residents had asked Mr. Nair when they would be re-opening. That was not because they were patrons; rather it was because the Premises' security staff patrolled the area and made it safer. Leaving aside the question of the strict application of the policy, he submitted that the Committee could safely grant the application.

Mr. Cannon addressed the Committee on behalf of the Licensing Authority. He asked that the application be refused. The Council's policy was clear; it had determined that the appropriate number of SEVs in the locality of the Premises was nil. The aim of the policy was one way, namely to reduce the number of SEVs to zero. In this instance, the applicant simply failed to renew on time. The licence clearly stated on its face that it would expire on 31st May 2022 and all that Mr. Nair was required to do was to submit the application by the end of that day. The consequence of that is that the licence lapses and the number of SEVs operating under the policy reduces from five to four.

Mr. Cannon further submitted that it was correct to say that the policy was not applicable to premises that were already trading but only if the three conditions were fulfilled. The failure to renew did not demonstrate high standards of management. The failure to renew had consequences. It was not difficult to complete a renewal application on time and the failure to do so was concerning. He asked the Committee to refuse the application on the basis of Paragraph 12(3)(c) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

During questions it was confirmed to Members that a renewal application had been submitted on 1st June 2022 and that a new application was received on 22nd June 2022.

It was accepted by both parties that this was a new application for an SEV licence. Any provisions relating to renewal therefore could not apply. It was a new application to be treated on its own merits. The Committee accepted, as Mr. Cannon submitted, that the consequence of a new application meant that the application risked falling foul of the Council's policy.

The SEV policy was adopted by the Council in 2014, eight years previously. It set out a clear intention that it did not wish to see an increase in the number of premises trading at the time that the policy was adopted. As Mr. Cannon submitted, there was a "ratcheting-down" in respect of the numbers. Mr. Nair would or ought to have known of the policy. The policy (Page 144) clearly stated that "in order to continue operating as a sex establishment the licence holder must make a renewal application prior to the expiry of the existing licence." This, combined with paragraphs 2 to 4 on Page 136, made very clear the risks to existing operators of failing to submit a renewal application on time. They would be classed as new applications and fall to be determined as such and as against the expressed intention of the policy.

Further, the introduction (Page 133) stated that "This policy is intended to be strictly applied and will only be overridden in genuinely exceptional circumstances. Such circumstances will not be taken to include the quality of the management, its compliance with licence conditions, the size of the premises or its operating hours." The policy confirmed that the appropriate

number of sex establishments in each and every locality of the borough is zero (Page 137).

Those paragraphs too emphasise the importance of a prompt renewal and of the fact that any new applicant will need to demonstrate why the Committee should depart from this policy.

There were no representations in support of the Premises or objecting to the application. The only other information before the Committee was Mr. Halton's inspection report, dated 24th March 2022. Whilst that suggested the Premises were operating in compliance with its licences at that time, the failure to do so something so basic as to make a renewal application on time did cause the Committee concern as regards the standards of management.

Mr. Rankin suggested that the Committee could find an exception because this was a simple human error by Mr. Nair. The Committee did not agree. Mr. Nair has held the SEV licence in respect of the Premises for some six years. He would or ought to have been aware of the expiry date that was clearly expressed in bold upon the face of the licence. That he failed to do something so fundamental led the Committee to conclude that he did not display the high level of managerial responsibility that it would have expected to see and which is required to justify an exception to the policy. Human error is not exceptional and nor are errors of this particular nature; rather, they are all too common. The Committee noted that the expiry date was stated in bold on the face of the licence. Mr. Nair was not required to leave the application until what he thought was the last day. It would have been a simple matter to have made the application at any point in the twenty-eight days or so before what he thought the expiry date was. Had he done so, it is reasonable to assume that there would have been no objection by the Licensing Authority on policy grounds.

Mr. Nair was or ought to have been aware of the potential consequences of failing to submit his renewal application on time. No explanation was given to the Committee as to why he had made the decision to leave the renewal application until what he thought was the last minute. After being informed of the need to make a new application, that did not happen for another three weeks.

The Committee also had regard to the fact that the Premises employed a number of people, but this was also not determined to justify an exception to the policy.

For the reasons set out above, the Committee was not satisfied that this new application should be treated as an exception to its policy and the application is therefore refused pursuant to paragraph 12(3)(c) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, namely that the number of sex establishments in the locality of the Premises exceeds the number which the authority considers is appropriate for that locality.

Accordingly, the Committee unanimously;

RESOLVED

That the application for a New Sexual Entertainment Venue Licence for Club Oops, 30 Alie Street, London E1 8DA be **REFUSED**.

4.2 Gambling Policy 2022 - 2025

Mr Tom Lewis briefly referred to the Gambling Policy 2022-2025 set out in pages 149-310 of the agenda. He explained that as a Licensing Authority the Council must review the existing Gambling Policy and adopt a new policy in November 2022, as one of the responsibilities it has to regulate 'high street' premises under the Gambling Act 2005. The purpose of the policy was to define how the responsibilities under the Act are going to be exercised and administered.

It was noted that the Policy would be presented to Full Council for adoption under the provisions set out in the Council's Constitution.

The Committee welcomed the report.

The Licensing Committee;

Resolved

1. That the report be noted.

The meeting ended at 8.15 p.m.

Chair, Councillor Kamrul Hussain
Licensing Committee