

LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING COMMITTEE

HELD AT 7.00 P.M. ON TUESDAY, 13 SEPTEMBER 2016

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

Members Present:

Councillor Rajib Ahmed (Chair)
Councillor Khaled Uddin Ahmed (Member)
Councillor Amina Ali (Member)
Councillor Sirajul Islam (Member)
Councillor Mahbub Alam (Member)
Councillor Shah Alam (Member)
Councillor Peter Golds (Vice-Chair)
Councillor Dave Chesterton (Member)
Councillor Suluk Ahmed (Member)
Councillor Candida Ronald (Member)

Apologies

Councillor Denise Jones
Councillor Harun Miah
Councillor Md. Maium Miah
Councillor Joshua Peck

Officers Present:

Agnes Adrien	Team Leader, Enforcement & Litigation, Legal Services, Chief Executive's
Mohshin Ali	Senior Licensing Officer
David Tolley	Head of Environmental Health and Trading Standards, Safer Communities, Communities Localities & Culture
Antoinette Duhaney	Senior Committee Officer

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of interest.

2. MINUTES OF THE PREVIOUS MEETING(S)

The meetings of the previous meeting held on 14.06.16 were agreed as an accurate record of the proceedings.

3. RULES OF PROCEDURE - LICENCES FOR SEXUAL ENTERTAINMENT VENUES

The Rules of Procedure were noted.

3.1 Gambling Policy 2016 - 2019

The report was introduced by David Tolley, Head of Trading Standards & Environmental Health who advised that formal consultation took place from 19th October 2015 to 17th January 2016. The Gambling Policy was required to comply with guidance issued by Central Government and the Gambling Commission. There were approximately 80 Gambling Licenses in operation although it had been several years since a new Gambling License was granted.

The Council as Planning Authority, had recently strengthened its powers in relation to betting shops following a government change to the Use Classes Order. Applications for a Gambling License could only be refused if they were not in accordance with the Licensing Objectives and the use of fixed odd betting terminals did not require a license.

In the light of feedback received during the consultation period, the following additions/changes had been made in the following areas:

- Local Profile
- Inspection Format
- Scope of Risk Assessment
- Sample Conditions

The Committee expressed concerns regarding the increased use of fixed odd betting terminals and requested officers to investigate and requested offices to investigate how this could be managed.

RESOLVED – That the report be noted and the Gambling Policy recommended to Council for adoption.

3.2 Update in relation to Prosecutions and Appeals- Quarter 1 - 2016/2017

The report was introduced by Agnes Adrien, Team Leader Enforcement & Litigation who advised that the report provided details of completed licensing related prosecutions and appeals for the first Quarter of 2016/2017.

RESOLVED – That the report be noted.

3.3 Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for Variation to Sexual Entertainment Venue (SEV) Licence for Metropolis, 234 Cambridge Heath Road, London E2 9NN

This report was considered in conjunction with item 3.4 below (Application for a new premises licence for Metropolis, 234 Cambridge Heath Road under the Licensing Act 2003).

In attendance for this Item

David Tolley, Head of Environmental Health and Trading Standards
Mohshin Ali, Senior Licensing Officer
David Graham, Counsel for the Committee
Agnes Adrien, Legal Services
Antoinette Duhaney, Democratic Services
Gareth Hughes, Applicant's Legal Representative
Steven Martin, Applicant

At the request of the Chair, Mohshin Ali, Senior Licensing Officer, introduced a report which detailed the history and background to the Sexual Entertainment Venue Licensing and the changes proposed to be made to that Licence, together with the considerations for determining such an application and also a report detailing an application for a new Premises Licence application based on the same physical alterations to the premises.

The Committee were advised that the premises are currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended). This licence was in force up to: 31st May 2016 and a renewal application has been submitted. The premises also held a licence under the Licensing Act 2003.

In respect of the SEV application, Members were referred to the layout plan, the checklist of questions that was completed for the renewal application, the applicant's Codes of Conduct and Policies, the assessment and information for the vicinity and locality, and the number of Sexual Entertainment Venues within the borough. Members were also referred to the site notice, the press advert, the representations of the local residents, complaints and enforcement history and the LBTH Sexual Entertainment Venue Policy.

Members were reminded that in considering the premises licence application, they were required to consider the same in accordance with the Home Office Guidance and the Council's Statement of Licensing Policy and other relevant legislations.

Mohshin Ali clarified that although the Licensing Act 2003 application has been effectively described in the report as a variation, it is in fact a new application due to the substantial changes being proposed and therefore, the application should be treated as a new licence application rather than a variation.

It was debateable whether the applications should have been presented to the Committee prior to the determination of the application for renewal of the SEV licence. However, as the current applications were submitted prior to expiry of the current SEV Licence, officers were of the view that it was appropriate for the applications to be considered.

Gareth Hughes addressed the meeting on behalf of the applicant and confirmed that the Applicants' position was that a variation under Section 34 of the Licensing Act 2003 would not be the correct procedure as the variation to the premises was "substantial" and it was a new application. Alterations

were proposed to the premises but there were no proposed changes to any of the licensable activities, only to the layout. As the plans were incorporated as a condition of the SEV licence, he said that the applicant could not change the premises without the Committee's authorisation.

Apart from the plans, the proposed licence would mirror the current licence. If the Committee was minded to grant the application, all existing conditions would be carried forward along with additional conditions suggested by the Metropolitan Police and Environment Health. His clients had been there since before the 2003 Act came into force. Mr Martin said it has been his father's business there since he was nine years old in 1976.

Although the planning application to make alterations to the premises was submitted in November 2015, it was not determined until May 2016 and once the scheme was approved, the new premises licence application was submitted. In respect of the potential for noise nuisance when the roof terrace was in use, Mr Hughes referred to the Acoustic Assessment of the roof terrace (pages 234 – 238 of the agenda pack) which suggested that noise disturbance was unlikely, subject to measures including a limit on the number of patrons on the terrace (although no number or limit was offered/set). He said they had never had an issue about noise escape from the current premises.

The alterations to the premises would increase the capacity of the premises to 600 patrons and reduce what he described as 'considerable queueing' outside the premises. He stated that there had been attacks on individuals whilst queueing and with police protection they had put up a barrier on the street (documented at page 201—202). This application would mean people came in quicker, and would prevent patrons attending Lesbian, Gay, Bisexual and Transgender events from being targeted whilst queueing to enter the premises. The dispersal policy had been updated to accommodate the increase in capacity and additional conditions suggested by Environmental Health (page 264).

Mr Hughes stated that no objections had been submitted by any of the Responsible Authorities and there was no history of Anti-Social behaviour or noise nuisance associated with the premises. There were no proposals to reduce the opening hours of the premises as the alterations to the premises did not impact on the hours during which the premises were in use.

In response to observations and questions from Committee Members, Mr Hughes stated the following with assistance from Mr Martin:

- The premises ran a range of themed nights for different target audiences which were widely advertised in publications such as *Time Out*, *GQ*, *QX* and *Boys Magazines*. Mr Martin advised that the majority of patrons attended LGBT nights on Fridays and Saturdays. In the future it was proposed to extend LGBT nights to Sundays too, with striptease the rest of the week.

- The capacity of the premises would be increased to more than double as a result of the new fire escapes and additional floor space provided by the basement and roof terrace.
- With the new configuration of the premises, private booths would be located in the basement, live entertainment would be on the ground floor, the main stage located on the first floor and the roof terrace was on the second floor. The applicant was doing work in the cellar.
- There would be strict limits on the number of patrons on the roof terrace at any one time and staffing levels would be increased to cover the increased capacity of the premises. There would be capacity at the top of the venue for 150 people though not all would be outside at once.
- There were usually around 25 smokers outside in the street at the moment, though numbers were variable, and there was no specific policy to limit or control numbers.
- When the roof terrace was open, patrons would not be visible from the street or other adjacent premises.
- The increase in capacity would reduce the number of patrons queuing outside to enter the premises. Mr Martin stated that at the moment the venue was full up by 1.30 to 2 am in the morning after the busiest nights and Gareth Hughes referred to “considerable queuing”. (Mr Martin also stated that he would have no issue if the premises were full to capacity and 300 people were queuing outside the premises).
- The proposal was for sexual entertainment to be licensed to take place on every floor of the enlarged venue.

When the representations were concluded, the Committee advised the applicant that the decision would be deferred and would be notified to them in writing in due course.

The meeting terminated and Members withdrew from the meeting to deliberate in private.

RESOLVED – That the application for a Sexual Entertainment Venue (SEV) Licence for Metropolis, 234 Cambridge Heath Road, London E2 9NN be refused. Detailed reasons for the refusal are set out below.

Reasons for refusing an application for variation of a sexual entertainment venue licence

1. The London Borough of Tower Hamlets resolved on 26th March 2014 to adopt the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'), as amended, in

relation to the licensing of sex establishments. At the same time, the Borough resolved to adopt the *Sex Establishment Licensing Policy* ('the Policy').

2. The Committee has had regard to the Policy in reaching its determination, and was mindful that the application falls to be judged on its own merits having regard to the Policy. It has carefully considered all the submitted documentation, the oral submissions of Mr Gareth Hughes, counsel for the applicant, the comments by officers, and the responses of the applicant Mr Martin and his counsel to questions posed at the hearing on Tuesday 13 September 2016.
3. In determining this 1982 Act application, the Committee has had regard to the documentation submitted by the Applicants in respect of their parallel application for a premises licence under the Licensing Act 2003, since the two applications both concern the same proposed operation at Metropolis, and the extent to which impacts can be controlled under the 2003 Act regime is relevant to the determination under the 1982 Act. However, it has been mindful at all times of the different statutory tests for the two applications.
4. Where page references to documents are given in this Appendix, they refer to page numbers from the agenda pack for the meeting on 13 September 2016 unless otherwise stated.

This Application and the previous Licence

5. This application was presented as an application for variation of an existing licence pursuant to paragraph 18 of Schedule 3 to the 1982 Act. This states, so far as is material:
'(1) The holder of a licence under this Schedule may at any time apply to the appropriate authority for any such variation of the terms, conditions or restrictions on or subject to which the licence is held as may be specified in the application.
(2)...the appropriate authority-
(a) may make the variation specified in the application; or
(b) may make such variations as they think fit; or
(c) may refuse the application.'
There is no statutory limitation upon the grounds on which a paragraph 18 variation application may be refused.
6. There is a separate statutory basis for an application for a grant or renewal of a licence under paragraph 10 of Schedule 3. Paragraph 12 provides that the appropriate authority may refuse to grant or renew a licence if *inter alia* the number of sex establishments in the relevant locality is equal to or exceeds the number which the authority consider is appropriate for that locality, or that the grant or renewal would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put, or to the layout, character or condition of the premises.

7. The previous sex establishment licence for Metropolis ('the SEV Licence') was granted by a decision notice on 17 July 2015. It was due to lapse on 31st May 2016 unless an application was made to renew it before that date. Such an application was made, on a form dated 27 May 2016 which stated (capitals in the original): 'WE ARE NOT AMENDING IN ANY WAY THE CURRENT LICENCE. THIS IS MERELY A RENEWAL APPLICATION'. The renewal application remains to be determined. This application was subsequently made by form dated 12 July 2016.
8. The Committee has considered whether it would be appropriate to license premises at 234 Cambridge Heath Road as proposed in this application, without prejudice to whether it would be appropriate to renew the Licence as it currently stands.
9. The Licence was granted in respect of 'Metropolis' as it then stood, comprising 'public areas' and 'sexual entertainment areas' on the ground, first and second floors only. The Definitions accompanying the Standard Conditions (p.45) made clear that 'In this Licence 'the Premises' means the premises authorised in this Licence as a sexual entertainment venue and shown on the attached plan'. The licence limited the capacity of Metropolis to 270 persons, excluding staff (p.43, condition number 42). It allowed for 190 persons to be accommodated at the ground floor bar, with a maximum of 80 persons on the first and second floors combined.
10. The Applicants did not, in their application or subsequently, specify precisely which terms, conditions or restrictions 'subject to which the licence is held' they sought to vary, and nor did they provide a draft text indicating the variations that they sought to make. The application form provided a box at Section H (page 72) asking the Applicants to 'give details of any additional conditions you would like to propose, or conditions you like [sic] to amend or remove'. This was filled out to say, 'THE CONDITIONS WILL REPLICATE THE CONDITIONS OF THE EXISTING LICENCE ATTACHED'. There was also a box at Section J in which space was given to amplify answers to previous questions or to provide other information (p.74). This box was filled in to cross-refer to a continuation sheet (p.77).
11. The continuation sheet referred to the grant of planning permission (no.PA/15/03131) on 9th May 2016 for erection of a roof terrace and external fire escape. It was stated:

'This application seeks to extend the area of the club to the roof terrace as allowed by the attached copy planning permission.

The application further seeks to move existing activities from the current ground floor into the basement level which has not previously been used...

...Insofar as increased numbers at the premises are concerned the applicant produces herewith a dispersal management plan and it is submitted that the increased space will allow less

queueing on the street outside the premises which has not been the source of any problems previously in any event'.

12. It emerged from the oral submissions and responses on behalf of the Applicants at the hearing, and from documentation submitted as part of the parallel application for a new premises licence under the Licensing Act 2003 that the Applicants sought to allow sexual entertainment, and public access, to be extended throughout all levels of the building, extending the licensed premises of the club to include the new public and entertainment areas in the basement and on the top floor with the roof terrace. It transpired that the Applicants wanted the capacity limit raised to 'about 600 people' (p.202).

The Policy of the Council

13. The Policy states that the policy of the Council 'is to refuse applications for sexual entertainment venues', and that such policy 'is intended to be strictly applied and will only be overridden in genuinely exceptional circumstances [which] 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'. It then states (emphasis added):

'The Council intends to adopt a policy to limit the number of sexual entertainment venues in the borough to nil however it recognises that there are a number of businesses that have been providing sexual entertainment in Tower Hamlets for several years. The Council will not apply this limitation when considering applications for *premises that were already trading* with express permission for...sexual entertainment *on the date that the licensing provisions [of the 1982 Act as amended] were adopted* by the authority *if they can demonstrate in their application*:

- *high standards of management*
- *A management structure and capacity to operate the venue*
- The ability to adhere to the standard conditions for sex establishments.

The Council will consider each application on its merit although new applicants will have to demonstrate why the Council should depart from its policy. Furthermore if any of the existing premises cease trading there is no presumption that the Council will consider any new applications more favourably.'

14. 'New applicants' are defined further on in the policy under the heading 'New applications', as follows (emphasis added):

'New applicants are people who wish *to use premises as a sexual entertainment venue after the 1st appointed day* [the date of the Council's resolution to adopt the 1982 Act provisions] *but do not already have a premises licence or club premises licence to operate as such under the 2003 Act* or do have such a licence but have not taken any steps towards operating as such.'

15. The Policy states:

'The Council's policy is that there is no locality within Tower Hamlets in which it would be appropriate to license a sex establishment. Accordingly, the appropriate number of sex establishments for each and every locality within Tower hamlets is zero.'

16. The Policy further states that in considering new or variation applications, the Council will assess the likelihood of a grant causing impacts, particularly on the local community. It sets out a list of relevant factors including the type of activity, the layout of the premises, the character and locality of the area, the applicant's ability to minimise the impact of their business on local residents and businesses, evidence of the operation of existing or previous licences, reports about the management of the premises, crime and disorder issues, complaints about noise and disturbance, and planning permission and planning policy considerations.

The Committee's findings as to the nature of the proposed premises

17. As a matter of fact and degree, the Committee has concluded that the premises as proposed to be extended, and as proposed to be licensed pursuant to this application, would not be the same premises that were licensed in the Licence and were 'already trading...on the date when the licensing provisions were adopted'. In particular, the public areas would extend to additional floors of the building, have a different layout, and would have more than double the capacity of the previously existing Metropolis club.
18. The Committee notes in this regard that the Applicants accepted at the hearing that their proposals involved a 'substantial variation' to the premises, such that for the purpose of the Licensing Act 2003 it was necessary to apply for a full new licence under that separate regime. The proposed premises therefore did not already have a premises licence 'to operate as such' at the time of the first appointed day.

Inappropriateness of the Paragraph 18 procedure

19. It appears to the Committee that the paragraph 18 procedure is not designed to allow the Licence to be extended to additional premises beyond those originally licensed. It was submitted on behalf of the Applicants that the specification of the premises to which the Licence applied was a term of the Licence, and that the plans were incorporated as conditions. However, while the language of paragraph 18 refers to 'terms', this has to be interpreted along with, and takes its colour from, the neighbouring words 'conditions or restrictions on or subject to which the licence is held'. It does not mean 'words', but rather stipulations or provisos. The provision therefore envisages amendment of clauses limiting what would otherwise be granted by the licence. It cannot be intended to allow one set of premises specified in a licence to be substituted for another.

20. The Committee finds that Licence licensed Metropolis as it then stood, not the plot of land it stood on, and not the building as it is proposed to be enlarged and re-modelled in future. This is apparent from the wording on page 42, the accompanying application and context, as well as the definition of 'the Premises' in the Standard Conditions (p.46) and condition 8 (p.47). It therefore appears that an application should have been made for a fresh licence and that the application falls to be determined as an application for grant of a new licence under paragraph 10(1) of Schedule 3 to the 1982 Act rather than an application falling within paragraph 18. It also appears that in any event the application form failed to specify in terms what variation was sought, as is required for a paragraph 18 application.
21. *De bene esse*, the Committee has nonetheless considered the application and unanimously concluded that whether it falls to be given effect to and treated as an application for a fresh licence under paragraph 10 or as a variation under paragraph 18, it should be refused, and for the same reasons.

Non-compliance with policy

22. It follows from the Committee's factual findings at paragraphs 17 and 18 above that the general 'nil' presumption against granting the application applies, and not the exception for premises trading at the time when the provisions were adopted. The Applicants fail to be treated as new applicants for the purpose of the Policy, and the 'nil' policy on the appropriate number of venues applies.
23. Furthermore, the exception to the 'nil' presumption only applies if it be demonstrated in the application that there would be 'high standards of management', with a 'management structure and capacity to operate the venue' as proposed in the application in a satisfactory manner. In the Committee's view, such has not been demonstrated by this application. The Applicants have not demonstrated to the satisfaction of the Committee that increased numbers of patrons arising from the proposed extended premises would be managed sufficiently well to avoid problems (as to which see further in the next section below). The application lacked detail. For instance, documentary references to a proposed new capacity of 600 were contained only in supporting materials to the 2003 Act application, and the only brief reference to attacks on patrons was contained in a letter relating to that other application. It was unclear to the Committee whether this vagueness was due to a lack of candour, or of diligence. Responses to questions at the hearing, such as comments that the floorspace figures were not known and the lack of a smoking policy, also suggested a certain complacency. It was notable that conversion of the basement was referred to in the past tense and, when this was queried, was said to be 'ongoing', even though its lawful use for its intended purpose was contingent on the outcome of the licensing applications being considered at the hearing. There did not appear to have been substantial thought given to management of queues and smokers. This

was disappointing when the Policy stipulates that applications under the 1982 Act are expected to demonstrate effective management capability and to address the potential impacts from the proposals.

24. The Borough expects to apply its 'nil' policy strictly unless there are genuinely exceptional circumstances. The Committee has concluded that the Applicants have not in their application demonstrated any exceptional circumstances. The fact that there has been an existing sex establishment operating on the Metropolis site, and complying with the conditions imposed on it, is not an exceptional circumstance justifying the grant of a licence to permit operation of a substantially larger sexual entertainment venue occupying more floors.
25. Even if -contrary to the Committee's view- the policy exception for 'existing premises' were literally applicable to this application and the Applicants were not to be treated as new applicants for the purpose of the Policy, the Committee would nevertheless refuse this application. The Council's general policy is that it is inappropriate for there to be any sexual entertainment venues in its Borough. Allowing an existing sexual entertainment venue to more than double its capacity and substantially enlarge its operations would totally cut against the spirit of this policy and would undermine it. By way of concession to existing operators, who had made existing investments, and in recognition of existing jobs in such venues, the Council made an exception for existing venues which pre-dated the current licensing regime. That exception was not intended to allow or encourage the *expansion* of sexual entertainment venues in the Borough, and in the circumstances of this case it would not be justified to allow such an expansion.
26. Accordingly, the application is refused because the number of sex establishments in the Borough exceeds the number which is considered appropriate, and the expansion of an existing venue into substantially different premises with more floorspace undermines the policy that no such venues are appropriate.

Management and potential for nuisance, crime and disorder

27. The Committee has considered the character of the locality and the uses of premises in the vicinity, as described in the licensing officer's report (pp.26-29) and appendices 9 and 10 to that report. It notes in particular the residential units in close proximity including in Bishop's Way and Parmiter Street, comprehending student accommodation and flats. The Committee has had regard to the street layout and to the widths of the pavements and safety railings outside Metropolis, which are shown for instance on the plans at pages 102-104 and the photograph on page 117.
28. The Committee has carefully considered the potential impacts of the proposed operation. It was indicated that the premises are advertised in numerous popular magazines aimed at the target clientele (*Time Out*, *GQ*, *QX* and *Boys* were named), and that the capacity was

intended to more than double. Mr Martin said that at the moment, the venue was full up at 1:30 to 2 o'clock in the morning after the busiest nights, and Mr Hughes stated that "there has been considerable queuing". Mr Martin indicated at the hearing that the great majority of patrons attended nights aimed at the LGBT community, and that it was proposed in future to also extend the nights aimed at those customers from Friday and Saturdays to Sundays as well. Members were very concerned by Mr Martin's unfortunate statement that he would be 'hoping' the venue was full and 300 people were queuing up outside to get in. While this was made in the context of him asserting that such a scenario was unlikely, it suggested a glib and complacent attitude. While submissions were made that increasing the capacity would reduce the numbers queuing outside to gain admission, the Committee considered that it was likely that a bigger club would attract more patrons and hence that queues would increase in numbers, if not in queuing time, and that groups of revellers would concentrate nearby.

29. A document before the Committee (p.201-202) referred, without providing details, to previous attacks on queuing customers which necessitated erection of temporary barriers. The Committee was troubled by the lack of details volunteered about such attacks, and about the potential for increased incidences of disorder amongst or against larger numbers of patrons and would-be patrons attempting to get in, or congregating nearby.
30. The application sought to rely (p.77) on planning conditions, which it was said required 'that a detailed noise assessment shall be prepared and implemented prior to first use of the roof terrace area'. However, the planning conditions (pp.96-97) do not so provide. What they say is that 'the recommendations made in the Noise Assessment...shall be implemented'.
31. The Committee has considered the acoustic assessment provided by the Applicants. This did not appear to assess noise from people trying to obtain entry outside. It assumed (p.234) that the quietest background noise levels represented a 'worst case' and accordingly that the sound from the roof would be drowned out by, rather than cumulating with, such background noises. It is unclear why that conclusion was reached. The assessment assumed 'a small group of people' on the terrace, without stating how many (p.235), 'good management' of the terrace to prevent shouting (p.235) and said that there would have to be 'a maximum number of patrons allowed to use the external terrace at the same time' without specifying the number. Mr Martin stated that he was not able to comment on technical evidence and that the noise expert was not present at the hearing, so the Committee was left in some doubt as to what reliance could be placed on the assessment.
32. Mr Martin was questioned about the roof terrace. He was unable to provide floorspace figures although he thought 150 smokers could use the terrace without the roof (which was itself a concern to the

Committee in terms of noise and management of the venue), but stated that he considered that there would be no audible noise if the proposed retractable roof was in place. He also pointed out that the planning permission would not allow the roof to be used past midnight without the roof being drawn across. The Applicants also pointed to proposals from Environmental Health for a condition being imposed so that they would have to agree noise mitigation measures. The Committee does not consider it to be appropriate to license an expanded venue without it being clear how much noise would be generated by smokers, particularly when the extent to which patrons could use the terrace to smoke (if the roof was uncovered) would affect how many smokers required to use the street below.

33. Questions were directed to Mr Martin with regard to current arrangements for smokers. He stated that 'around' 25 smokers would gather in a designated area outside the club, although there was no policy as such to limit numbers, and they would be stamped so that they could be re-admitted. Members considered it reasonable to assume that if about 25 smokers had to be accommodated at Metropolis' current capacity, more than 50 patrons would wish to smoke at once if the extended venue were filled to capacity.
34. There was limited space on the pavement outside the venue for queuing and for smokers to congregate. While there was apparently a small outside area to the rear of the club (facing the student accommodation block) that was shown within its boundary on the plan on page 102 as part of the courtyard area, the proposed ground floor plan (p.106) did not show any such area and did not appear to show any doors giving access to the rear. It was not suggested that smokers would be encouraged to gather at the rear of the premises in the courtyard behind the residential accommodation.
35. If, as the planning permission required after midnight, the smokers could not use the roof terrace, it therefore appeared that they would have to congregate outside in the street. There was potential for nuisance and disturbances arising from such numbers of smokers, who might be difficult to control. The Committee was not satisfied that this had been demonstrated to be manageable.
36. The Committee has had regard to the proposed dispersal policy of the Applicants (p.240) and to the proposed conditions that it is suggested would, if imposed on the 2003 Act licence, address street issues. It is suggested that smokers be enclosed by 6ft high balustrades, their numbers 'limited', no drinks be taken outside, and there be a 'high door staff to customer ratio'. The Committee noted that the dispersal policy did not address queuing. It was not persuaded that it would be appropriate or effective in noise-mitigation terms. The Committee considered it likely that patrons would simply leave the club to smoke, or smoke before going in, if numbers outside were restricted to an area within the control of the club. It is proposed to station 'Quiet Marshals' in the street. However, it has not been demonstrated to the satisfaction

of the Committee that such marshals, without police powers, would effectively control noise levels or behaviour of substantial numbers of persons in the street. The Committee is not satisfied that people outside the venue could be satisfactorily controlled by conditions. The venue's only sanction against rowdy behaviour would be non-admittance to the premises, and it could in practice be very difficult to monitor and police large numbers of people.

37. Two objections have been entered. An e-mail of objection (p.145) contends that there would be an increase in footfall to busy premises and that the application would encourage antisocial behaviour in a residential area already blighted by late night activity. A second e-mail of objection (p.144) asserts that 'the venue does not currently control dispersal of customers effectively; customers frequently leave the venue and make lots of noise in the early hours'. The objectors were not present at the hearing to elaborate on or defend these unspecific comments and this limits the weight that can be placed on them. Nevertheless, the Committee considers that having regard to the nature of the proposals and of the vicinity, it cannot discount the very real risk that the increased numbers of patrons and prospective patrons would cause unacceptable disturbance of neighbours either before gaining entry, after leaving, or having being refused entry. Although the general locality is predominantly commercial, there are numerous units of living accommodation nearby.

38. Members were accordingly of the view that the Applicants had not adequately considered and addressed the potential impacts of the premises in their application, and that these considerations further pointed against granting the application.

39. Consequently, having regard to the character of the locality, the uses to which premises in the vicinity were put and to the layout and character of the proposed premises, it was inappropriate for the application to be granted.

3.4 Licensing Act 2003, Application for a Premises License for Metropolis, 234 Cambridge Heath Road, London E2 9NN

In attendance for this Item

David Tolley, Head of Environmental Health and Trading Standards

Mohshin Ali, Senior Licensing Officer

David Graham, Counsel for the Committee

Agnes Adrien, Legal Services

Antoinette Duhaney, Democratic Services

Gareth Hughes, Applicant's Legal Representative

Steven Martin, Applicant

This report was considered in conjunction with item 3.3 above.

RESOLVED – That the application for a Premises Licence for Metropolis, 234 Cambridge Heath Road, London E2 9NN be refused. Detailed reasons for the refusal are set out below.

Reasons for refusing an application for a new premises licence pursuant to sections 17, 18 and 23 of the Licensing Act 2003

1. The officer's report to Committee stated that this application was for a variation, but the Applicant's barrister Mr Hughes confirmed, as is clear from the application form, that this was an application for a new premises licence. Mr Hughes confirmed that the Applicants' position was that a variation under section 34 of the 2003 Act would not be the correct procedure as the variation to the premises was 'substantial'.
2. Mr Hughes' oral submissions at the hearing were addressed to both the 2003 Act and the 1982 Act applications.
3. The Committee has had regard to the proposed nature and layout of the venue, but has considered only management of and impacts from such activities as are licensable under the 2003 Act regime for the purpose of this application. It has considered the 2003 Act application on its own merits and independently of whether any sexual entertainment would be permitted at the premises as proposed to be extended and remodelled.
4. The Committee has had regard to all the submitted documentation in support of this premises licence application, as well as the oral submissions and statements made by Mr Martin and his counsel at the hearing, the Section 182 guidance produced by the Home Office, and to the extent considered below- the Council's own statement of licensing policy.
5. The Committee is mindful that by section 18 of the 2003 Act, where relevant representations have been received it 'must...take such of the steps mentioned in subsection (4) (if any) as it considers [appropriate] for the promotion of the licensing objectives.' The steps are to grant the licence subject to conditions modified as the authority considers appropriate for the promotion of the licensing objectives; to exclude from the scope of the licence any licensable activities to which the application relates; to refuse to specify a person as the premises supervisor; or to reject the application.
6. The Committee reiterates paragraphs 27 to 38 (see item 3.3 above)
7. The statement of licensing policy states at section 18, 'The Licensing Policy does not deal with Sexual Entertainment Venues'. For other venues, the Borough expects applicants to demonstrate in their operating schedules that they have satisfactorily addressed the issues of prevention of public nuisance and the prevention of crime and

disorder (see in particular paragraphs 6.2 and 10.1-10.2 of the statement of licensing policy). While its licensing policy does not apply to Metropolis as a sexual entertainment venue, the Committee notes that the 2003 Act regime applies to sexual entertainment venues to regulate entertainment which is not exempted by paragraph 11A of Schedule 1 to the 2003 Act, late-night refreshment and supply of alcohol. The Committee considers that it would be wrong and unfair to hold sexual entertainment venues to any lower standards than other licensed premises insofar as they are regulated by the 2003 Act. The Committee therefore expects applicants to address the four licensing objectives in their operating schedules so far as is relevant, just as it would if there was no sexual entertainment proposed.

8. It appeared that the proposed new premises would be liable to generate substantially higher numbers of visitors to the venue and to its immediate area. Queuing and management of smokers were particular concerns in terms of noise, cigarette smoke, obstruction of the pavement and potential disorderliness. The application did not give confidence that the impacts of such people on the proposed terrace and/or in the street could be managed so as to prevent the creation of public nuisance, crime and disorder.
9. It appeared likely that large queues or groups of people (including smokers) would build up, and if they did, the Committee was not persuaded that the operator of the premises would be able to maintain peace and good order in the street. The Committee did not consider that enforceable and effective conditions could be imposed to prevent nuisance and crime or disorder occurring.
10. For those reasons, the Committee considered that the appropriate course to promote the prevention of public nuisance, crime and disorder would be to refuse the application.

4. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

There was no urgent business.

The meeting ended at 8.55 p.m.

Will Tuckley
CHIEF EXECUTIVE