

Committee :	Date	Classification	Agenda Item No.
Licensing Committee	26 September 2017	Unrestricted	

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Kathy Driver Principal Licensing Officer	Title: Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a renewal of a Sexual Entertainment Venue Licence for Flamingos, 30 Alie Street, London, E1 8DA Ward affected: Whitechapel
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1.0 Summary

Applicants: **City Traders London Limited**
Name and Address of Premises: **Flamingos**
30 Alie Street
London
E1 8DA

Licence sought: **Local Government (Miscellaneous Provisions) Act 1982 (as amended)**
Application for a renewal of a Sexual Entertainment Venue Licence

Objectors: **Local Residents**

2.0 Recommendations

2.1 That the Licensing Committee considers the application and then adjudicates accordingly.

LOCAL GOVERNMENT 2000 (Section 97) LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only
Tower Hamlets SEV Policy

Kathy Driver
020 7364 5171

3.0 Background

3.1 This is an application made by City Traders London Limited for a renewal of a Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by reg. 47 (4), Provisions of Services Regulations 2009 'the service regulations') and the Policing and Crime Act 2009 for Flamingos, 30 Alie Street, London, E1 8DA. Details of the company history from Companies House are available in **Appendix 1**.

3.2 A licence from the Council is required for the use of a premise as a sex Establishment. A sexual entertainment venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant entertainment means:

- any live performance; or
- any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

3.3 The premises has held an SEV licence since 2015, the application for renewal on 31st May 2016 was refused by the Tower Hamlets Licensing Committee on 9th November 2016.

3.4 The Applicants appealed the decision at the Magistrates Court and applied for Judicial Review (JR). Due to the Appeal and JR the premises was closed for the period of 20th December 2016 until 6th June 2017. Both matters were resolved by agreement between the Council and the Applicant without the need for a court hearing. The Applicant agreed to the addition of two conditions to the SEV licence, namely;

1. Management of the Business

- a. At any time while this licence is in place, the person(s) appointed by the licence holder to manage the business MUST have a minimum of 2 years relevant experience in a supervisory or enforcement role within or dealing with the sexual entertainment industry. Relevant experience can only be gained through legitimate employment which ended not less than 2 years prior to being appointed by the holder of this licence.
- b. If the licence holder appoints a person(s) to manage the business the licence holder must notify the licensing authority in writing within 14 days of the appointment and provide the Licensing Authority with an up to date copy of the newly appointed manager(s) Curriculum Vitae.

2. Independent Compliance Audits

- a. An independent Compliance Auditor, to be Instructed and paid for by the licence holder, MUST carry out a minimum of four (4) compliance audits per year. The compliance audits must not be pre-arranged with the licence holder or any employee and/or agent of the licence holder and/or directors of the licence holder company.
- b. A copy of the completed assessment reports, signed and dated by the compliance auditor, MUST be kept at the premises (30 Alie Street) and made available to a police officer or an officer authorised by the licensing authority, on request.

3.5 The premises is currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended). A copy of the existing licence is enclosed as **Appendix 2**.

3.6 The licence consists of the basic licence, plus additional conditions relevant to that premises only. In addition, the Tower Hamlets Standard SEV Conditions also apply and forms part of the licence.

This licence was in force up to: 31st May 2017

The hours permitted are:

- Monday to Sunday from 11:00 hrs to 04:00hrs (the following day)

The named management responsible for this premises as quoted on the SEV licence are:

- City Traders London Limited (Santosh Nair– Company Director)
- Martin James McVitie – General Manager

This licence is granted subject to conditions as follows:

1. The Standard Conditions of the London Borough of Tower Hamlets made under paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as revised on 23rd June 2015.

2. Conditions as determined by the Consent Order.

3.7 The current renewal application is to permit the premises to operate as a sexual entertainment venue with opening hours as follows:

- Monday to Sunday from 18:30 hrs to 04:00hrs (the following day)

3.8 The premises also hold a licence under the Licensing Act 2003. A copy of the existing licence is enclosed for Members' information as

Appendix 3. The licence was granted on 10th March 2006, a transfer was made on 1st December 2016 to Santosh Nair and a variation of Designated Premises Supervisor on 22nd May 2017 to Martin McVitie.

The licence granted the following licensable activities:

The sale by retail of alcohol:

- Monday to Sunday from 11:00hrs to 03:30hrs (the following day)

Regulated Entertainment consisting of:

Recorded Music, Performances of dance:

- Monday to Sunday from 11:00hrs to 03:30hrs (the following day)
- On New Year's Eve all licensable activities may continue from the end of normal permitted hours to the commencement of permitted hours on the following day.

The opening hours of the premises:

- Monday to Sunday from 11:00 hours to 04:00 hours the following day.
- On New Year's Eve all licensable activities may continue from the end of normal permitted hours to the commencement of permitted hours on the following day.

3.9 A copy of the renewal application is enclosed as **Appendix 4.**

3.10 Maps of the premises location are available in **Appendix 5.**

3.11 Members should note that the two regimes run concurrently therefore the premises licence granted under the Licensing Act 2003 could effectively run without the SEV in operation, if alcohol and regulated entertainment was solely taking place.

4.0 **Layout of the Premises**

4.1 A layout plan of the premises is available in **Appendix 6.** The premises was visited on 23rd August 2017, attended by Kathy Driver, Principal Licensing Officer, Mr. Santosh Nair and Mr. Martin McVitie. The layout of the premises was confirmed to be the same as contained in the application. In addition, a checklist of questions was completed. A copy of the checklist completed during that visit is available in **Appendix 7.**

The checklist covered the following points:

- The Code of Conduct for performers
- The House Rules
- The Performer Safety Policy
- Retention of performers' personal details

- Details of Door Staff attending each evening
- The venue interior and exterior (for example, whether the interior of the premises is visible from the outside)
- Public access areas and approved access to dressing rooms
- CCTV Coverage
- Functionality of the CCTV
- Advertising, both externally to the premises and online
- Information on tariffs, including both dances and beverages

4.2 In conclusion from that visit, the Licensing Officer was fully satisfied that all conditions of the licence were met. Management were fully cooperative, records were kept in good working order.

4.3 A photograph of the exterior of the premises is available in **Appendix 8**.

5.0 Adverts and Flyers

5.1 No adverts or flyers used to promote the premises have been included in the application; however, Management informed the Licensing Officer at the inspection that they have found it difficult to promote the business due to the restrictions.

5.2 The premises has a website: www.clubflamingos.com. There is no content on the site that would necessitate age restrictions.

5.3 There is no external advertising at the premises.

6.0 Standard Conditions

6.1 The Council has adopted Standard Conditions that were revised on 23rd June 2015, which act as default conditions that are attached to all Sexual Entertainment Venue Licences. These are available as part of the licence in **Appendix 2**.

7.0 Codes of Conduct and Policies

7.1 The Applicant has provided Codes of Conduct and policies as required by the Standard Conditions, see **Appendix 9**, namely:

- Code of Conduct for Performers
- Code of Conduct of Customers
- Dancers' Welfare Policy

7.2 During the compliance check visits, the Code of Conduct for Customers was available throughout the premises, at the main bar and on tables. The Code of Conduct for Performer and the Dancers' Welfare Policy was also available.

7.3 If the application is granted subject to the Standard Conditions, the codes and policies will have to meet the requirements set out in the Standard Conditions.

7.4 Members have discretion to modify the standard conditions or add appropriate conditions.

8.0 Assessment and information for the vicinity

8.1 **Appendix 10** is a map of the Licensing Service’s determination of the vicinity around the premises, set at 100meters from the premises.

8.2 Determination of the “use” of other Premises in the “vicinity” – “vicinity” is likely to be a narrower and smaller area than the “relevant locality” much will depend upon the physical location of the premises, its appearance and upon the nature and hours of its operation.

8.3 Below is a list of notable premises within the vicinity as observed by Licensing Officer visiting the area on foot and using GIS maps:

Residential accommodation	<p>The business is over two floors. It is unclear if residential is above.</p> <p>The locality is a mix of residential & business/office space.</p> <p>The vicinity is mix of office buildings and residential accommodation.</p> <p>Residential accommodation is situated at, West Tenter St; North Tenter St; East Tenter St; St Mark St; Scarborough Street Alie Street; Flats 1-11,22 Alie Street Flats 1-11, 57 Alie Street 1-23 Lattice House 1-6 Network House</p> <p>Leman Street; 1-59 Sterling Mansions, 75 Leman Street No. 65 Leman St houses 617 rooms for student accommodation (only partially within 100m boundary) Goodmans Fields Development, Leman Street Cashmere House,(Part of Goodmans Field development)</p>
Schools	<p>English Martyrs Catholic Primary School, St Mark St</p> <p>Royal College of Pathology (Under construction), 6-8 Alie</p>

	Street
Premises used by children and vulnerable persons	Job Centre, 83-85 Mansell Street with entrance at West Tenter Street
Youth community and leisure centres	Anytime fitness, 18 Alie Street David Lloyd fitness centre, 1 Alie Street Premier Inn, 66 Alie Street Grange Tower Hotel, 45 Prescott Street
Religious centres and public places of worship	St Georges German Lutheran Church, 55 Alie Street Church of English Martyrs, Prescott Street
Access routes to and from premises listed above	The premises sits on the southern side of Alie Street, Alie Street joins Mansell Street on western end and Leman Street on east. These routes are main transport routes to and from Central London. There are a number of bus routes, as well as night buses. Aldgate East Tube Station is a 3 minute walk away with Aldgate station and Tower Hill stations also nearby
Existing licensed premises in the vicinity	Leman Street Oliver Conquest, 70 Leman Street, E1 8EU Sainsbury, Unit 2, Southwest Block, Goodman's Fields, Leman Street, E1 8EJ Leman Street Tavern, Unit 3, North West Block, Goodmans Field, London E1 8PT The Old Dispensary, 19a Leman Street, E1 8EN Pizza Union, 29 Leman Street, E1 8PT Black Horse PH, 40 Leman St, E1 8EU Whites, 32-38 Leman Street E1 8EW Alie Street White Swan, 21 Alie Street, E1 8DA Thyme (Premier Inn), Goodmans Fields, Alie Street, E1 8DE St Mark Street Halal Restaurant, 2 St Mark Street, E1 8DJ

	City Food Store, 8 St Mark St, E1 8DJ
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9.0 **Assessment and information for the Locality**

9.1 **Appendix 11** contains the Ward Profile of Whitechapel produced by Corporate Research Unit in May 2014 to provide members with details in relation to the locality of the premise. It should be noted that although this was produced in 2014 it is the most up to date available.

9.2 In regards to the “relevant locality” :

- The relevant locality was assessed as being within a 100 metre radius centred on the premises, 30 Alie Street.
- The premises sits close to the A1202 (Leman Street) to the East, which junctions with Commercial Road and Whitechapel High Street which are red routes and sit on one of the main routes into Central London and out to the East. To the West is the A1211 (Mansell Street) which leads to Tower Bridge in the South and A major Aldgate junction in the North.
- The vicinity is a mixture of residential, commercial and transport infrastructure

9.3 The character of the locality:

- The premises is within Whitechapel Ward
- The ward has been assessed to have around 5.9% of the Borough’s residents.
- The Wards profiles downloaded from the Council’s website are appended.

10.0 **Other Sexual Entertainment Venues**

10.1 The following premises have applied to renew their Sexual Entertainment Venue licence.

- **Metropolis** 234 Cambridge Heath Road, London, E2 9NN
- **Nags Head** 17-19 Whitechapel Road, London, E1 1DU
- **Whites Gentleman’s Club** 32-38 Leman Street, London, E1 8EW

- **White Swan**

556 Commercial Road, London, E14 7JD

11.0 Consultation

11.1 The application has been consulted on in accordance with the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and the Tower Hamlets Sexual Entertainment Policy.

This has included:

a) A site notice at the premises displayed by the applicant during the required period. A copy of the notice is appended as **Appendix 12**.

b) A press advert was placed in East London Advertiser on 8th June 2017 by the Applicant, which again is appended as **Appendix 13**.

11.2 The following is a list of those also consulted in regards to the application:

- The Police
- The Fire Brigade
- Building Control
- Health and Safety
- Ward Councillors

12.0 Responses to the Consultation

12.1 The Police were consulted, please find below a summary of their comments.

- None

12.2 The Fire Brigade were consulted, please find below a summary of their comments.

- None

12.3 The Council expects the premises to have planning consent for the intended use and hours of operation, or otherwise have lawful planning status before making an application for a new licence. Building Control were consulted, please find below a summary of their comments.

- None, therefore it is assumed that all planning permissions are acceptable.

12.4 Health and Safety were consulted, please find below a summary of their comments.

- None

12.5 Ward Councillors were consulted, please find below a summary of their comments.

- None

12.6 Local residents made a number of written representations. Members should note that no written public consultation is required for the renewal process. These are available in **Appendices 14-19**. Copies of the representations have been supplied to the Applicants legal representative with all personal details redacted. Please find below a summary of their comments:

- On-going issues with waste from the premises
- Noise from customers on egress
- Noise from mini cabs outside the venue
- Anti-social behaviour from patrons of the venue, including harassment, nuisance, urination, vomiting and verbal abuse
- The proximity to a growing number of residential premises and a school and the resulting changing demographics of the area

13.0 Licensing Authority Recommendations Following Consultation

13.1 The previous renewal for the SEV was refused by the Licensing Committee of which that decision was Appealed and Judicially Reviewed. Both cases were settled by consent.

Members should note that the premises has been closed for a significant period between 20th December 2016 until 6th June 2017.

No representations have been made by the Responsible Authorities, therefore Members are asked to consider the weight of the representations made by the local residents. Members should also consider point 19.3 of Legal Comments of the grounds of refusal.

14.0 Complaints and Enforcement History

14.1 The premises has received the following complaints in the last 12 months:

Date	Complainant	Nature of Complaint
1/5/17	Local resident	Complaint of Noise from event on Sunday night through to 4am Monday. Emptying of rubbish into street at 4am.
3/10/16	Business	Enquiry from business who supply alcohol stating they are owed money by the company

14.2 The premises has received the following visits by the Local Authority in the past 12 months:

Date	Authority (TS/Lic)	Nature of visit
23/8/17	Lic	Compliance visit to check records and Logs. Record. No issues
26/6/17	Lic	Notice Check revisit due to resident stating no notice, notice up
9/6/17	Lic	Notice Check visit, all ok
14/11/16	Lic	Visit following covert visit to check details of dancers, receipts and drink prices. All supplied.
1/11/16	Lic	Visit to request CCTV
28/06/16	Licensing	SEV compliance visit. Licensing Officer Licensing Officer was fully satisfied that all conditions of the licence were met. Management were fully cooperative, records were kept in good working order. However, the premises was closed to the public at the time of inspection and had been shut for some weeks; at the time of inspection there was no indication of when the venue would reopen.

14.3 The premises has been subject to the following enforcement actions:

Date	Authority (TS/Lic)	Nature of Enforcement
None	N/a	N/a

15.0 Policy - Appropriate Number of Sexual Entertainment Venues

15.1 The Council has determined that there are a sufficient number of sex shops, sex cinemas and sexual entertainment venues currently operating in the borough and it does not want to see an increase in the numbers of premises that are currently providing these activities.

15.2 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 the type of entertainment which is now defined as sexual entertainment on the date that the licensing provisions 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.

15.3 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.

16.0 Home Office Guidance

16.1 The Home Office issued guidance to local authorities in March 2010 to assist local authorities in carrying out their functions under the Act.

16.2 The Council can refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of Sexual Entertainment Venues, or Sexual Entertainment Venues of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a Sexual Entertainment Venue would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

16.3 The decision regarding what constitutes the 'relevant locality' is a matter for the Council. However, such questions must be decided on the facts of the individual application.

16.4 Once the Council has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, Sexual Entertainment Venues, or Sexual Entertainment Venues of a particular kind, it considers appropriate for that relevant locality.

17.0 Licence Conditions

17.1 Once the Council has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, or standard conditions applicable to all Sexual Entertainment Venues, or particular types of Sexual Entertainment Venues.

17.2 Where the Council decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or

transferred by the authority unless they have been expressly excluded or varied.

17.3 Most sexual entertainment venues will require a Licensing Act 2003 licence as well as a Sexual Entertainment Venue licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on the each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licences or clubs premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.

17.4 In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.

17.5 In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.

18.0 Sexual Entertainment Venues and Determination

18.1 Members should consider the relevant legislation, the Council's SEV Policy and Standard Conditions (See **Appendices 20** and **2** respectively.)

19.0 Legal Comments

19.1 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified below (Sch 3 of the LGMPA 1982 as amended ('the Act')).

19.2 The Committee has to refuse the application if any of the following grounds for refusal apply under para. 12(2) of Schedule 3 of the Act.

19.3 The mandatory grounds for refusal are as follows:

- (a) to a person under the age of 18; or
- (b) to a person who is for the time being disqualified under paragraph 17(3) below; or

- (c) to a person, other than a body corporate, who is not resident in an EEA state or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA state 1 ; or
- (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

19.4 The Committee has discretion to refuse the application if any of the following grounds for refusal apply under para. 12(3) of Schedule 3 of the Act.

19.5 The discretionary grounds for refusal are as follows:

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would have been refused a licence if they had applied themselves;
- (c) that the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality; or
- (d) the grant or renewal of licence would be inappropriate because of:
 - i. the character of the relevant locality;
 - ii. the use to which the premises in the vicinity are put; or
 - iii. the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

(In relation to premises, 'the relevant locality' means the locality where the premises are situated).

19.6 There is a right of appeal to the Magistrates' Court, as set out in para. 27 of Schedule 3 of the Act. In addition, the decision of the Committee may be appealed on established public law principles.

19.7 The Committee should only consider those comments within the letters of objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for refusal.

19.8 The Council's legal advisor will give advice at the Hearing.

20 Finance Comments

20.1 There are no direct financial implications arising directly from the report. However, there are possible cost implications if the Decision was appealed to the Magistrates' Court, Crown Court or if a Judicial Review was lodged. Licence fees are expected to cover the cost of administration and compliance.

19 Appendices

Appendix 1	Companies House Details
Appendix 2	A copy of the existing SEV Licence (including the LBTH Standard Conditions)
Appendix 3	A copy of the existing Premises Licence
Appendix 4	A copy of the renewal application
Appendix 5	Maps of the premises showing the site location
Appendix 6	Location plan and internal layout plans of the premises
Appendix 7	Compliance Visit Checklist
Appendix 8	Photographs of the premises
Appendix 9	Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and Dancers Welfare Policy
Appendix 10	Vicinity Map
Appendix 11	Ward Profile of Whitechapel
Appendix 12	Copy of Site Notice
Appendix 13	Copy of Press Advert
Appendix 14-19	Representations of local residents and community groups
Appendix 20	Copy of LBTH SEV Policy