

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 10.00 A.M. ON TUESDAY, 17 OCTOBER 2017

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

Members Present:

Councillor Rajib Ahmed (Chair)
Councillor Khales Uddin Ahmed
Councillor Shah Alam
Councillor Dave Chesterton
Councillor Candida Ronald
Councillor Shiria Khatun

Other Councillors Present:

Apologies

Councillor Peter Golds
Councillor Suluk Ahmed
Councillor Andrew Cregan
Councillor Md. Maium Miah
Councillor Joshua Peck
Councillor Rachael Saunders

Others Present:

Philip Kolvin QC	– (Counsel for Nags Head)
Juilan Skeens	– (Legal Representative for The Nags Head)
Luke Elford	– (Legal Representative for The Nags Head)
Andy Bamber	– (Compliance Consultant)
Manpal Singh	– (Applicant)
Ms A	– (Performer (and potential witness to the assault on 4 th May 2017))
PC Mark Perry	– (Metropolitan Police)
Officer P	– (Covert Police Officer)

Officers Present:

Mohshin Ali	– (Senior Licensing Officer)
Victoria Fowler	– (Legal Services)
Tom Lewis	– (Team Leader - Licensing Services)

Simon O'Toole
Simmi Yesmin

– (Counsel)
– (Senior Committee Officer,
Democratic Services)

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

Councillor Shiria Khatun and Councillor Rajib Ahmed declared a person interest on item 3.1, Application for a renewal of a Sexual Entertainment Venue for the Nags Head, 17-19 Whitechapel Road, London E1 1DU on the basis that they had worked with Mr Andy Bamber, Compliance Consultant, in his previous capacity as an ex-employee of the Council.

2. RULES OF PROCEDURE - LICENCES FOR SEXUAL ENTERTAINMENT VENUES

The rules of procedure were noted.

3. ITEMS FOR CONSIDERATION

3.1 Application for a Renewal of a Sexual Entertainment Venue Licence for the Nags Head, 17-19 Whitechapel Road, London E1 1DU

The Chair exercised his power to exclude the press and public from the meeting.

It was agreed that;

“Pursuant to Public Bodies (Admission to Meetings) Act 1960, and the Local Government Act 1972 the members decided that exceptionally a Licensing Committee hearing on Tuesday October 17th at 10 o'clock should be closed to the public because it was likely that exempt information would be disclosed in the course of a full hearing to determine the application for a renewal of a sexual entertainment venue licence. The exempt information related to action taken or to be taken in connection with the investigation or prosecution of a serious sexual assault at the licensed premises on May 4th 2017, and that there was also a risk that information would have been disclosed which identified the victim or witnesses which may have prejudiced the investigation or prosecution of the offence.

At the request of the Chair, Mr Mohshin Ali, Licensing Officer, introduced the report which detailed the application for a renewal of the Sexual Entertainment Venue licence for The Nags Head, 17- 19 Whitechapel Road, London E1 1DU. It was noted that the licence consists of the basic licence, plus additional conditions relevant to the premises only. In addition, the Tower Hamlets standard SEV conditions also apply and form part of the licence. It was noted that the Licensing Authority had objected to the application and this had been supported by the Police.

At the request of the Chair, Mr Philip Kolvin QC, acting on behalf of the Applicants, gave apologies on behalf of Mr Adrian Studd, Licensing Consultant, and Mr Saab Binning, Manager, and asked that there evidence is accepted as hearsay.

Mr Kolvin explained that the premises had been run by the Singh family for the past 30 years, and that it was their third year for applying for a SEV licence, it was noted that there had been no objections from local residents, local businesses or objections based on the environment or character of the area. Mr Kolvin explained that he would address the two issues that had been referred to in the objection, the first one was of the reported assault on 4th May 2017 and the second one was the conduct of dancers on 11th May 2017.

Mr Kolvin explained that there had been a rigorous process and effort to ensure compliance measures were in place to improve procedures. It was noted that as a result of these incidents a number of compliance visits had been conducted and all had shown that the venue was fully compliant.

Mr Kolvin stated that since the adjournment at the previous meeting on 2nd October 2017, Mr Singh now accepted that touching had occurred on 11th May 2017 this was detailed on page 6 of the Supplemental Agenda 2. Mr Singh unreservedly expressed his apologies for this incident and wanted to highlight that this was not an example of how the venue was run. It was noted that measures were now in place to prevent this from ever happening again.

He then went on to explain that the Singh family had no history of bankruptcy, had no convictions and had other venues in London that were compliant and licensed venues. He referred Members to page 232 of the Supplemental Agenda 1, the Entertainer's Daily Briefing which was explained to the performers on a daily basis. Customer house rules were on page 230 and it was confirmed this was displayed all around the venue.

It was noted that Mr Andy Bamber, Compliance Consultant had been appointed by the Singh Family to help with compliance, measures and controls. Mr Andy Bamber, gave a brief introduction and a summary of his experience to date. He confirmed that his appointment was independent and had started work with the venue from Feb/Mar 2017. It was noted that Mr Bamber had arranged a number of covert/compliance visits and reported his findings to management after each visit.

It was further noted that Mr Bamber had arranged nine compliance visits and all nine visits found the venue to be compliant. A dip sampling process had also been introduced, where random samplings of CCTV footage would be checked, so a three layer check was now in place, overt, covert and dip sampling. Mr Bamber confirmed that he visited the venue on a regular basis and confirmed to his best knowledge that there wasn't another venue as compliant as the Nags Head in London.

Mr Kolvin then highlighted the sequence of events leading up to alleged assault on 4th May 2017. **(Restricted)**

Members then heard about the incidents on 11th May 2017, where covert officers undertook test purchases and found significant breaches of the conditions on the licence. When a further visit was made on 15 June 2017 the premises was found to be fully compliant. It was noted that Mr Singh was not informed of these allegations on 11th May until 50 days after the incident, if this had been within 31 days (according to the conditions) then this could have been verified by the CCTV footage that is kept for 31 days. Management and performers had initially denied that this took place, however it was clear from Members that they wanted to hear from the Covert Police Officers who carried out the test purchases, and with no CCTV footage as evidence, Mr Singh accepted what the Police had said in terms of the number of breaches that were made on 11th May and would give the dancers involved final written warnings as there was clear misconduct and instructions were not adhered to.

Members were referred to pages 49 & 62 where further compliance visits were made and the venue was found to be compliant. Mr Kolvin then went on to detail the conditions that had been drafted between Licensing Services, Police and the Applicants. He believed that these conditions were sufficient to prevent these incidents from happening again and was satisfied that these conditions would be adhered to.

Mr Kolvin concluded by referring to the discretionary grounds for refusal and highlighted that the standard of fitness was obviously met, with high standard of management, there had been no objections on vicinity, no changes to demographics and the layout of the venue was small, neat and tidy.

Mr O'Toole, through the Chair asked questions on the layout of the premises, the availability of incident log and questioned whether the Licensing Officers would be able to access CCTV footage. It was confirmed that Licensing Officers and Police Officers would be able to view CCTV footage, even on a random check, but not be able to download and take it away unless there was a criminal investigation or breach of conditions as the Applicant said this would infringe guidance from the Information Commission Office and the Data Protection Act.

The Chair adjourned the meeting at 11.55am for a short comfort break and reconvened at 12.10pm.

At the request of the Chair Mr Tom Lewis, Licensing Team Leader briefly explained the two main issues which were of concern i.e. the assault on 4th May 2017 and the conduct of the dancers and the breach of conditions on 11th May 2017. Mr Lewis then detailed the incidents in full. Mr Lewis informed Members that one of the officers who conducted the covert visit was present at the meeting and available to answer any questions and asked that his identity remain anonymous and be referred to as Officer P.

It was noted that a meeting (without prejudice) was arranged and all interested parties met and agreed on a draft set of proposed conditions, which were robust and better enforceable. Mr Lewis confirmed that his objection was supported by the Police.

Members then heard from PC Mark Perry, Metropolitan Police who explained that SEV licences required a greater amount of monitoring and he was concerned about the inappropriate behaviour of dancers at the venue. PC Perry then referred Members to page 28 of the supplemental agenda 1 and explained the series of events which took place in relation to the assault on 4th May 2017.

PC Perry (**Restricted**) the incidents on 11 May did support the culture of inappropriate touching at the venue. He also believed that the additional conditions proposed would help alleviate concerns.

PC Perry welcomed the efforts made on behalf of the Applicant and was pleased and reassured that information would be available on request. He explained that the Police had the power to seize evidence if required. PC Perry concluded that he welcomed the fact that the applicants had accepted that the incidents on 11th May had occurred and had offered conditions and were working with officers.

Following a detailed discussion, Members asked a number of questions to which the following was noted;

- That the incident on 4th May (**Restricted**)
- That there was a financial contract between the performers and the owners of the venue as they had to pay to work at the venue.
- It was the applicant's view that management acted accordingly and in line with procedures and did what was right based on the information given.
- Concerns were raised as to blame culture on women (dancers)
- That the Entertainer's Daily Briefing was read out and explained to all performers before the venue opened each day.
- The customer conduct was displayed all around the venue.
- That there had been eleven compliance visits in total over the last six months, and all were found the venue to be compliant.
- It was noted that the victim on the 4th May (**Restricted**).
- Witness statements from other performers state that if sexually assaulted then the dance is immediately stopped and the customer is asked to leave the venue.
- (**Restricted**)
- That the CCTV footage taken on 4th May also showed that there was a breach of condition where a performer was seen to be hugging a customer.

At 1pm the Chair closed the meeting.

The second meeting started at 2pm.

The Chair welcomed everyone.

In response to further questions from Members the following was noted;

- Authorised Officers referred to in the proposed draft conditions included Police Officers and Licensing Officers.
- The Applicant maintained that officers would be able to view CCTV footage but would not be allowed to download footage or be handed over footage unless it was associated to criminal proceedings or to investigate a breach of conditions.
- That the Entertainers Daily Briefing and Customer Rules had been rewritten in order to make the rules more robust and enforceable and clear that you must not touch the dancer.
- SIA door staff also explained the rules to customers when they come into the venue.
- That there were 12 dancers performing on 11th May
- That during the 30 years of trading, there had only been one complaint of sexual assault.
- That there was a further need to educate customers and dancers.
- That dip sampling meant that 4-5 CCTV footage slots would be randomly picked and checked to see that everything was compliant.
- That there was no sign outside the venue, no advertising, and there were no staff outside touting, that SIA door staff stand inside the entrance.

At this stage the Chair formally asked that Police Officer P who was present at the meeting could be released as there were no questions to ask of him.

Cllr Shiria Khatun asked if questions could be asked of one of the performers who was in attendance at the meeting but was not a witness.

The Chair adjourned the meeting at 3.20pm to seek legal advice and reconvened at 3.27pm.

The Chair announced that they would not ask Mr Kolvin to call the performer.

Mr Kolvin then asked the Chair if he could voluntarily call the performer as his witness and asked her questions despite the fact she had not made a witness statement. The Chair sought legal advice and consulted the Committee (without adjourning) and then said that exceptionally the Committee would agree to the performer being called to give evidence at this stage. The performer confirmed the following;

- That her name was **(Restricted)** (Ms A) and that she had worked at the Nags Head for 12 years.
- That she was part of the East London Strippers Union Collective
- That Nags Head was the safest place to work in where dancers felt protected.
- That she had a good relationship with managers and staff
- That she had never been sexually assaulted at the premises.
- That dancers do not permit any sexual contact and can easily protect themselves if they were being assaulted
- That she had been working on the night of 4th May, **(Restricted)**.

- That she was also working on 11th May and she did not engage or see anything that was described by Police Officers
- That dancers were given a daily briefing.
- That she did not see everything that goes on in the venue.

The Chair invited all parties to make final submissions.

Mr Kolvin concluded by saying that no touching is allowed, dancers are protected. That policy and procedures had been scrutinised and revised with great care. He highlighted that the venue was a good family run business, with a dedicated Compliance Manager. The applicants expressed their apologies for the breaches in May. Mr Kolvin said that they accept the conditions and felt that the imposing of the conditions would be a proportionate response as the venue was a compliant business. He highlighted that there was a total of 80 staff working at the venue, the venue had been trading for decades, there was a commitment to work with the responsible authorities and that there had been 11 compliance visits within the last 6 months and all had been found to be fully compliant.

Members then heard from Mr Lewis and PC Perry who stated that they were happy with the conditions and if agreed by Members then this would help alleviate the concerns they had. They were also pleased that the police evidence on 11th May had been accepted by the applicants.

Mr O'Toole for clarity confirmed that the Applicant expressly agreed that authorised officers could review CCTV footage although not ask for a copy unless investigating a breach of conditions or criminal offence.

Members adjourned the meeting at 3.40pm for deliberations and reconvened at 4.50pm.

Accordingly, the Sub Committee unanimously

RESOLVED

That the application for a renewal of a Sexual Entertainment Venue Licence for The Nags Head, 17-19 Whitechapel Road, London E1 1DU be **GRANTED an identical licence with additional conditions.**

At a hearing of the London Borough of Tower Hamlets Licensing Committee on Tuesday October 17th 2017 the Committee unanimously resolved to grant the renewal of a Sexual Entertainment Venue Licence to the Nags Head at 17-19 Whitechapel Road, London E1 1DU subject to the Standard Conditions, and additional conditions set out below.

The Committee imposed additional conditions after determining that the Licensees had committed serious breaches of the Standard Conditions, and that in May and June 2017 the management did not have the ability to adhere to the Standard Conditions for sex establishments.

The SEV Licence will expire on 31st May 2018.

In reaching its decision the Licensing Committee had regard to the Act, Tower Hamlets' Sex Establishment Licensing Policy made pursuant to Schedule 3 of the Act (the Policy), the information contained in the Agenda (white papers), Supplemental Agenda 1 and Supplemental Agenda 2 (pink restricted papers). Over the course of two meetings the Committee heard submissions on behalf of the Applicant and the Licensing Authority as Objector, and evidence from Mr Bamber and Ms A (a performer at the premises) on behalf of the Objector. The Applicant and Objector agreed that all the other witness statements on behalf of both parties could be admitted as hearsay statements.

The Committee decided to conduct a full hearing review into the application for renewal of the SEV Licence because the Licensing Authority had objected on the basis that the Licensees were unsuitable to hold a licence pursuant to paragraph 12(3) of Schedule 3 of the Act, ie that they were unsuitable "for any other reason".

The events which gave rise to the full hearing review occurred on May 4th and May 11th 2017.

The Committee accepted PC Mark Perry's unchallenged evidence that by May 2017 there had, in all probability, developed among some of the performers at the premises a culture of consensual inappropriate touching which was in breach of the Standard Conditions. One such incident ("the hug") was recorded on CCTV on May 4th between a performer and member of the public. PC Perry went on to say that this culture was not safe and it was "a slippery slope because if you say it is ok to hug they [the members of the public] may then take it further especially if they had had something to drink." Mr Colvin QC on behalf of the Applicant conceded that the May incidents were not acceptable and that they "exposed a fault line" about how the premises were managed

Alleged sexual assault

On May 4th 2017 a performer at the premises, referred to as Ms Y, was allegedly assaulted by a member of the public (referred to as Mr X) during a private dance. **(Restricted)**

The Committee accepted all the hearsay evidence regarding how performers responded if touched during a private dance and carefully analysed the agreed CCTV recording timeline of the incident on May 4th. **(Restricted)**

(Restricted)

(Restricted), the Committee found that the management failed to take the matter sufficiently seriously, or properly investigate it. The management also failed to protect Ms Y on May 4th, and had failed to provide appropriate support to Ms Y at the time of the alleged sexual assault or afterwards.

The position was aggravated by what the Committee considered was the Licensees' generally dismissive approach to the matter, especially when it knew beyond doubt that the allegation was that of a serious sexual assault. It was compounded by the Licensees' subsequent obstruction of, and failure to cooperate with the licensing officers in the investigation of the incident. The Committee did not accept the Licensees' reasons for refusing to provide a copy of the CCTV of the incident to the licensing officer (redacted as necessary) and this was a serious breach of Standard Condition 12. The Committee found that the Licensees' failure to cooperate promptly with the licensing officers request for a copy of the incident book was inconsistent with the high standard of management stipulated by the Policy.

Intentional sexual contact between performers and covert police officers

On May 11th 2017 two police officers, acting on behalf of the Licensing Authority, carried out covert test purchases. These purchases confirmed that performers were making repeated intentional sexual contact with customers. The nature of the sexual contact is summarised below.

- Grinding of buttocks onto officers groin, this occurred on several occasions with all performers, and on one occasion one performer was grinding their vagina on officer's groin.
- Placing of the breast into the officers faces. This was mostly only light contact (slight brushing across the face). However on one occasion one of the performers in putting their breast in the officer's face made contact with the officer's closed mouth with their nipple.
- Squeezing of officer's penis, this occurred on two occasions by one performer who reached behind her with one hand and squeezed the officer's penis through their clothing.
- Rubbing of forehead on penis, this occurred with one performer where they knelt between the legs of the officer and rubbed their forehead back and forth on the officer's penis through their clothing.
- Breast being in open hands of the officers whilst seated, which occurred once with one performer.
- One performer asked one of the Officers to put their hand on the performer's buttocks, which they did.
- One performer placed one of the Officer's hand on her exposed pubic area.
- During one of the private dances one of the performers kissed one of the Officers with a closed mouth.

Officers describe in their statements that there were a number of occasions performers touched their vagina's and parting the lips of their vagina's. Furthermore on one occasion a performer simulated acts of personal stimulation by parting their vagina with her fingers exposing their labia and with their other hand rubbed their inner vagina from the base up to the clitoris.

The Licensees admitted that two of its performers had committed the above intentional sexual behaviour.

The Committee found that the above intentional sexual behaviour of two performers was a serious and persistent breach of Standard Condition 26 (implementation and enforcement of House Rules), Conditions 35 and 36 (no intentional physical contact - save for specified exceptions) and Condition 38 (no other form of sexual activity, including but not limited to acts or the simulation of acts of personal stimulation).

The Committee found that the lack of effective enforcement of the Standard Conditions and compliance with the House Rules was likely to be directly affecting the safety of performers as evidenced by the alleged sexual assault on May 4th.

The Committee decided that in May and June 2017 the Licensees' clearly did not have a high standard of management. The management structure was such that it lacked the capacity to operate the venue, or the ability to ensure adherence to the Standard Conditions for sex establishments. As such, it was arguable that, at that time, the Licenses were unsuitable "for any other reason" to hold a SEV Licence.

After careful consideration the Committee decided to grant the renewal of the SEV Licence after taking full account of the following matters.

- 1 The admissions by the Licensee, their apology for the breaches, their positive track record, and their full commitment in the future to enforce the Standard Conditions, and strict adherence to, and compliance with the House Rules and Code of Conduct, and any other conditions the Committee might impose.
- 2 The Committee accepted the Licensees' promise to fully cooperate with licensing officers in the future and in particular not to obstruct the viewing of CCTV footage (including the viewing of CCTV in the course of random checks by the licensing officers).
- 3 That PC Mark Perry, and Mr Tom Lewis (Team Leader, Licensing and Safety Team Environmental Health and Trading Standards) considered that the imposition of additional stringent conditions would mitigate the risks of similar problems occurring at the premises in the future.
- 4 The significant efforts already made by the Licensees to ensure that the premises operated in a way which was fully compliant with the Standard Conditions, and the additional conditions that the Committee were going to impose.

The Committee imposed the following additional conditions.

- 42 Documents to prove compliance with the Licence pursuant to Standard Condition 3.

An incident log shall be kept at the premises, and made available on request to authorised officers immediately. It must be completed within 3 hours of the incident and shall record the following

- (a) all crimes reported to the venue by a member of the public, a performer or member of staff;
- (b) any breach or alleged breach of either the House Rules made by a member of the public or the Code of Conduct made by a performer, and the action taken by the management;
- (c) when a person is removed from the premises;
- (d) any faults in the CCTV system;
- (e) any visit by a relevant authority or emergency service.

- 43 In the event that a performer alleges that they have been sexually assaulted the management will immediately ensure that

- (a) the police (and, where appropriate, the London Ambulance Service) are called without delay;
- (b) all measures that are reasonably practicable are taken to apprehend a suspect pending the arrival of the police;
- (c) the crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and
- (d) such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.

- 44 In the event that during a performance the management or security either witness a member of the public making intentional physical contact with a performer (save as permitted by Standard Conditions 35 or 36) or a performer makes a similar allegation to management or security, that member of the public shall be removed from the premises without delay. The management or security may use their discretion to allow that member of the public a supervised 10 minute drink up time prior to being removed from the premises.

- 45 Without prejudice to Standard Conditions 12 and 13, at all times the private performance areas and booths are occupied by performers and members of the public trained staff shall regularly monitor the CCTVs which cover that area.

46 Independent Compliance Audit

- (a) An independent compliance auditor, to be instructed and paid for by the Licensees, must carry out a minimum of four (4) compliance audits per year of the private performance areas and booths when sexual entertainment is offered at the premises. The compliance audits must not be pre-arranged with the Licensees or any employee or agent of the Licensees.
- (b) A copy of the compliance audit, signed and dated by the Compliance Auditor, must be kept at the premises (The Nags Head Public House, 17-19 Whitechapel Road E1 1DU) and made available to authorised officers without delay.

The meeting ended at 4.50 p.m.

Chair, Councillor Rajib Ahmed
Licensing Committee