

In the matter of s 34 Licensing Act 2003: application to vary premises licence

And in the matter of Studio Spaces Ltd (aka E1), Unit 2, 110 Pennington Street, London E1W 2BB (Licence No: 142897)

OUTLINE SUBMISSIONS
OF THE APPLICANT

These submissions are submitted to the Licensing Authority as responsible authority in advance of any hearing of the variation application. Fresh Submission will be prepared for the Licensing Sub-committee once the further representations have provided to the Applicant.

Further, the applicant welcomes a round table discussion between itself and the Licensing Authority along with our respective legal advisors.

Background

1. The E1 Studio Spaces venue at 110 Pennington Street E1W 2BB has the benefit of a premises licence under the Licensing Act 2003 (Lic No 142879) Annex 2 Condition 1 of the premises licence contains the following:

“No nudity or semi nudity permitted.” This is a variation application to remove this condition.
2. The condition is too vague to be enforceable, it is disproportionate to the aims of the Licensing Act 2003, it is moralistic, constitutes censorship, and potentially undermines the PSED (s 149, Equality Act 2010). (See Klub Verboten Press Release dated 16.03.2022, attached)
3. Furthermore, the condition interferes, undermines and potentially negates the statutory right of venues to host infrequent events pursuant to Sch 3 para 2A(3)(b) of the Local Government (Miscellaneous Provisions) Act 1982 – this constitutes an interference with Article 1 of Protocol 1 (Protection of Property) (HRA 1998).
4. See advice note (dated 18.03.2022) attached to these submissions.
5. The E1 studio space operates as a nightclub – it is **not** a sexual entertainment venue. Sexual entertainment venues are regulated by a distinct and separate regime pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. In any event the effect of para 2A(3)(b) is to exempt venues from the requirement of a sexual entertainment venue licence where this takes place infrequently.

6. Occasionally E1 is hired out to independent promoters. Some of these promoters organise and present queer, fetish and / or kink events. The Licensing Authority as a responsible authority refers to these type of events as “KINK” nights’ (see LA representation). These are events to which consenting adults *may* present themselves in an array of fetish or kink clothing (commonly referred to as fetish or kink “gear”). The nature of queer, fetish and kink clothing / gear is such that breasts, pecs, nipples, genitalia and buttocks may be visible. Such visibility is intentional and integral to the particular queer, fetish and kink lifestyle or scene. This clothing / gear is integral to the expression of queer individuals to present their particular fetish and / or kink.
7. At some of these events arrangements are made by the organiser so as to facilitate sexual activities between consenting adults. The arrangements for these events are made by the promoter who has contracted to operate the venue for their events.
8. The s 182 Guidance recognises that premises licensed under the 2003 Act may host ‘adult entertainment’ on the premises – see para 2.22. Adult entertainment on premises licensed under the 2003 Act may or may not be ‘relevant entertainment’ and therefore a sex establishment for the purposes of Schedule 3 of the Local Government (Miscellaneous) Provisions Act 1982. There is currently no case law on the extent and scope of the definition of ‘adult entertainment’ for the purposes of the 2003 Act nor of ‘relevant entertainment’ for the purposes of the 1982 Act.
9. Paragraph 2.27 of the s 182 Guidance sets out example of appropriate conditions for a premises licence where adult entertainment is taking place on premises. All these conditions are concerned with ensuring that no person under the age of 18 is permitted on to the premises. The existing licensing conditions ensure that no person under the age of 18 is permitted on the premises.

Licence Conditions – general principles

10. Paragraph 1.16 of the s 182 Guidance states that ‘Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:
 - Must be appropriate for the promotion of the licensing objectives;
 - Must be precise and enforceable;
 - Must be unambiguous and clear in what they intend to achieve;
 - Should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - Must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - Should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;

- Should not replicate offences set out in the 203 Act or other legislation;
- Should be proportionate, justifiable and be capable of being met;
- Cannot seek to manage the behaviour of customers once they are located beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in prescriptive format.

11. The Licensing Sub-committee will be addressed in respect of each of these points.
12. Section 18(4)(a) and 35(3)(a) set out the legal test that require that conditions are ‘appropriate’ to the promotion of the licensing objectives.

Alternative Condition

13. The Licensing Authority acting as a Responsible Authority suggests that the condition could be amended to read:

No nudity by either performance (*sic*) [performers] or customer (*sic*) [customers] shall be permitted on the premises. Nudity shall be defined by paragraph 2A(14) of Local Government Miscellaneous Provisions) Act 1982.

14. The 1982 Act is a separate and distinct licensing regime with its own aims and objects. The 1982 Act does not define nudity but ‘displays of nudity’ for the purposes of relevant entertainment. Under the 1982 regime ‘display of nudity’ means – ‘(a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and (b) in the case of a man, exposure of his pubic area, genitals or anus;’
15. Paragraph 2A(14) was introduced by the Policing and Crime Act 2009 which removed lap dancing and similar venues from the scope of licensing control under the 2003 Act and amended the 1982 Act to establish a distinct and separate regime for sex establishments.

Separate regimes

16. It is well established that planning permission, building control approval and the licensing regimes ought to be properly separated to avoid duplication and inefficiency. The s 182 Guidance states that ‘The planning and licensing regimes involve consideration of different (albeit related) matters’ (para 14.64). Equally, the *sex establishment* and licensing regimes involve consideration of different (albeit related) matters.
17. Where there are overlapping statutory regimes it may not always be possible to determine where one control ends and another begins (see *R (Blackwood) v Birmingham Magistrates* [2006] EWHC 1800 (Admin)) in the present circumstances it is clear that the 2003 Act control is concerned with the licensing objective of the protection of children from harm

generally accessibility of children to premises where adult entertainment is taking place (including external visibility and advertising). The 2003 Act is not concerned with regulating the dress, conduct or lawful behaviour of consenting adults.

18. Attempts to regulate activities that might amount to relevant entertainment – a matter which remains moot generally and has not been determined vis-à-vis these particular premises – is a matter that falls within the scope of the sex establishment regime.

Equality Act 2010 – s 149, the Public Sector Equality Duty

19. The provisions of the 2003 Act and the 1982 Act are subject to the duties contained in the Equality Act 2010. It is unclear whether the Licensing Authority as responsible authority has conducted and considered an Equality Impact assessment in adopting a definition of nudity for the purposes of the proposed condition in its representation.
20. It is unclear whether the Licensing Authority itself as administrator and regulator of the licensing regime has conducted an Equality Impact assessment on conditions which purport to restrict consent adults in respect of types of clothing, degrees of clothing and varying degrees of bodily display. Further, the extent to which such restrictions impact upon consenting communities to assemble together to express themselves within like-minded consensual social communities. These are matters which the members of the licensing sub-committee, in due course, are required to personally grapple with ‘in substance, with rigour and with an open mind’ (*R (Brown) v Secretary of State for Work & Pensions* [2008] EWHC 3158).
21. Essentially, why are men permitted to remove their t-shirts, shirts etc and be able to drink, dance and otherwise enjoy themselves and socialise with their nipples exposed yet women, in the present circumstances, are being denied the same privileges women in the same self-regulating consensual environment? What is being proposed amounts to a general moralistic judgment that fails to consider the particular circumstances within which Kink nights operate and is discriminatory.
22. Further, this “Kink” nights support queers persons and communities which is broadly defined to include non-binary, trans, lesbian, gay, intersex and bisexual people. The binary biological definition of the 1982 Act is inappropriate to the circumstances of adult entertainment within 2003 Act licensed premises; it is ill considered and discriminatory.
23. Both the objection to the variation and the proposed amendment by the Licensing Authority as responsible authority demonstrate a failure by the Authority to have a proper regard to the extent and scope of the Licensing Act 2003, the Local Government (Miscellaneous Provisions) Act 1982 and the Equality Act 2010.
24. The existing condition and the proposed amendment by the Licensing Authority is vague and unenforceable, it ignores the clear general principles of conditions under the 2003 Act, it is moralistic, constitutes censorship and is discriminatory.

25. The condition should be removed entirely and not otherwise re-placed.

Leo Charalambides
Kings Chambers
9th June, 2022