

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Committee		Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Local Government (Miscellaneous Provisions) Act 1982 Revocation of a Sexual Entertainment Venue Licence for the Nags Head, 17-19 Whitechapel Road, London, E1 1DU Ward affected: Spitalfields and Banglatown
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1.0

Summary

Name and Address of Premises: **Nags Head Public House
17-19 Whitechapel Road
London
E1 1DU**

Application to revoke : **Local Government (Miscellaneous Provisions) Act 1982 (as amended)
Sexual Entertainment Venue Licence**

Application triggered by: **Licensing Authority**

2.0 **Recommendations**

2.1 That the Licensing Committee considers the application and then adjudicate 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

Tower Hamlets SEV Policy File

Corinne Holland
020 7364 3986

3.0 Application details

- 3.1 This is an application to revoke the Sexual Entertainment Venue (SEV) licence for the Nags Head Public House, 17-19 Whitechapel Road, London, E1 1DU. The revocation was applied for by the Licensing Authority.
- 3.2 A copy of the revocation application and supporting documents from the Licensing Authority are in **Appendix 1 – Appendix 14**

Request for Revocation letter dated 3 rd March 2023	Appendix 1
Witness Statement and notes – Officer A	Appendix 2
Witness Statement and notes – Officer B	Appendix 3
Witness statement Mohshin Ali (15 th May 2023)	Appendix 4
Exhibit MA/01: Witness Statement PC Morgan	Appendix 5
Witness Statement PC Guerra (2/1/23)	Appendix 6
PC Guerra – CCTV Transcript	Appendix 7
PC Guerra – CCTV Photo Evidence	Appendix 8
PC Guerra – Communication with Sols	Appendix 9
Exhibit MA/02: Companies House	Appendix 10
Table of Breaches CCTV 18 th August 2022	Appendix 11
Witness Statement Mohshin Ali (24 th August 2023)	Appendix 12
Exhibit MA/03: Westminster Committee Decision 25/5/2023	Appendix 13
Exhibit MA/04: LBTH Committee Decision 17/10/2017	Appendix 14

- 3.3 The solicitor acting for the premises made a request to the Licensing Authority to provide a list of visits made to the premises by officers from the Council from 1st June 2014 to present day. This list was provided and is attached in **Appendix 15**.
- 3.4 The solicitor acting for the premises provided the following documentation as the SEV Licence Holder's evidence.

Cover sheet and contents	Appendix 16
Witness Statement of Manpal Clair with exhibit list/exhibits	Appendix 17
Witness Statement of Bahadur Singh Binning with exhibit list/exhibits	Appendix 18
Report by Andy Bamber including exhibits and risk assessments/reviews/including overt visit 04/05/23 & covert visit 09/05/23	Appendix 19
Performers statements x 3	Appendix 20
CCTV Clips 18 th August 2022 23:00-00:00 hrs & 19 th August 2022 00:00 – 00:30 hrs	Appendix 21

4.0 The Premises

- 4.1 The premise has held an SEV licence since Tower Hamlets Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 in June 2014.
- 4.2 The SEV licence is held by NH License Ltd (No 12523134) and has done so since it was transferred to this company in April 2020. Mr Manpal Singh Clair is the sole director.
- 4.3 An SEV licence is valid for one year (or for such shorter period as the authority may determine) and therefore needs to be renewed each year. The current licence expires on 31st May 2023. A copy of the licence is attached in **Appendix 22**.
- 4.4 The Council has adopted Standard Conditions. These apply as default conditions that are attached to all SEV licences. These are attached in **Appendix 23**.
- 4.5 The plan of the premises submitted with the SEV renewal application in 2022 is attached in **Appendix 24**.
- 4.6 Maps of the premises' location are available in **Appendix 25**.
- 4.7 The premises are also licensed under the Licensing Act 2003. A copy of the existing Premises Licence is enclosed for information as **Appendix 26**. The licence was granted under "grandfather rights" in 2005 when the Licensing Act 2003 came into force. The licence is also held by NH License Ltd.

The licence permits the following licensable activities:

- The sale by retail of alcohol (on & off sales)
- The provision of regulated entertainment consisting of recorded music, performance of dance, anything of similar nature.
- Facilities for making music and dancing and similar nature.

- Monday to Saturday 11:00 hrs to 03:00 hrs the following day
- Sunday 12:00 hrs to 22:30 hrs

The opening hours of the premises:

- Monday to Saturday 11:00 hrs to 03:30 hrs the following day
- Sunday 12:00 hrs to 23:00 hrs

- 4.8 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.

5.0 Policy - Appropriate Number of Sexual Entertainment Venues

5.1 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.

5.2 The Council has adopted 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.

5.3 Members should consider the relevant legislation, the Council's SEV Policy and Standard Conditions (See **Appendix 27 and 23** respectively.)

6.0 Home Office Guidance

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

7.0 Licence Conditions

7.1 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 SEVs or particular types of SEV.

7.2 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.

- 7.3 Most SEVs will require a premises licence as well as an SEV licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on 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 an SEV licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the SEV licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.
- 7.4 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.
- 7.5 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.

8.0 Determination of applications

- 8.1 A licence from the Council is required for the use of a premise as a sex establishment. An SEV 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).

- 8.2 The Council has the power, at any time, to revoke a premises licence. This may be on one of the mandatory grounds on which a licence could be refused or on the basis of either of the discretionary grounds set out in Paragraph 12(3)(a) or (b), which relate to the suitability of the licence holder to continue to hold the licence or where the business is carried on for the benefit of another person who would be refused a licence in their own name.

9.0 Legal Comments

- 9.1 The Council has power to revoke a sex establishment licence under Paragraph 17(1) of Schedule 3 to the 1982 Act. This is on the basis of either the mandatory grounds on which a licence should be refused or on the first two of the discretionary grounds.
- 9.2 The mandatory grounds for refusal are:
- (a) the applicant is under the age of 18;
 - (b) that the applicant is for the time being disqualified from holding a licence;
 - (c) that the person is a person other than a body corporate, who is not resident in the U.K. or an EEA state or was not so resident throughout the six months preceding the date of the application;
 - (d) that the applicant is a body corporate which is not incorporated in the U.K or an EEA state; or
that the applicant has been refused the grant or renewal of a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.
- 9.3 The discretionary grounds for refusal (so far as relevant to this application) are:
- 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;
- 9.4 The Licensing Committee may, after giving the holder of an SEV licence under this Schedule an opportunity of appearing before and being heard by them, revoke the licence at any time on the basis of any of the grounds referred to in paragraphs 9.2 or 9.3.
- 9.5 If the licence is revoked, the authority must, if required to do so by the person who held the SEV licence, give a statement of reasons for their decision within seven days of being so required.
- 9.6 Where an SEV licence is revoked, the holder is disqualified from holding or obtaining a licence in the area of the authority for a period of twelve months beginning with the date of revocation.
- 9.7 The Council's SEV Licensing Policy made specific provision for those SEVs trading in the borough when the 1982 Act was adopted and

confirms it will not apply the nil SEV policy to existing businesses that were already trading as SEVs with authorisation, subject to certain requirements being satisfied. However, the policy similarly makes clear that if any of those venues cease to trade, there is no presumption that any new application will be treated more favourably.

9.8 Paragraph 27 of Schedule 3 to the 1982 Act provides the licence holder with a right to appeal to the magistrates' court. The decision of the magistrates' court may be further appealed to the Crown Court.

9.9 The Committee should only consider those comments within the written objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for revocation. Comments within the written application or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.

9.10 The Council's legal advisor will give further advice as required at the hearing.

10.0 Finance Comments

10.1 There are no material financial implications arising from the request to revoke the Sexual Entertainment Venue (SEV) licence. If the decision is to revoke the licence the Council will forego the licence income, and there are possible cost implications if the decision is appealed, however this will be managed within existing budget provision.

11.0 Appendices

Appendix 1	Request for Revocation letter dated 3 rd March 2023
Appendix 2	Witness Statement and notes – Officer A
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Appendix 4	Witness statement Mohshin Ali (15 th May 2023)
Appendix 5	Exhibit MA/01: Witness Statement PC Morgan (3/1/23) – sensitive photos - RESTRICTED
Appendix 6	Witness Statement PC Guerra (2/1/23)
Appendix 7	PC Guerra – CCTV Transcript (RGG/001/ RGG/002)
Appendix 8	PC Guerra – CCTV Photo Evidence (RGG/004-020) – sensitive photos - RESTRICTED
Appendix 9	PC Guerra – Communication with Sols (RGG/003)

Appendix 10	Exhibit MA/02: Companies House
Appendix 11	Table of Breaches CCTV 18 th August 2022
Appendix 12	Witness Statement Mohshin Ali (24 th August 2023)
Appendix 13	Exhibit MA/03: Westminster Committee Decision 25/5/2023
Appendix 14	Exhibit MA/04: LBTH Committee Decision 17/10/2017
Appendix 15	List of visits
Appendix 16	Licence Holder Cover sheet and contents
Appendix 17	Witness Statement of Manpal Clair with exhibit list/exhibits
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Appendix 21	CCTV Clips 18 th August 2022 23:00-00:00 hrs & 19 th August 2022 00:00 – 00:30 hrs
Appendix 22	A copy of the existing SEV Licence
Appendix 23	LBTH Standard Conditions
Appendix 24	Plan of the premises
Appendix 25	Maps of the premises showing the site location
Appendix 26	A copy of existing Premises Licence
Appendix 27	SEV Policy