

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Committee	28 April 2015	Unclassified		

Report of : David Tolley Head of Consumer and Business Relations Originating Officer: Andrew Heron Licensing Officer	Title: Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a Sexual Entertainment Venue Licence for the White Swan, 556 Commercial Road, London, E14 7JD Ward affected: Shadwell
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1.0 Summary

Applicants: **David Turner**
 Name and **White Swan**
 Address of Premises: **556 Commercial Road**
London
E14 7JD

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

Objectors: **None**

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

File Only

Andrew Heron
 020 7364 2665

3.0 Background

- 3.1 This is an application made by David Turner for 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 the White Swan, 556 Commercial Road, London, E14 7JD.
- 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 is currently granted a licence under the Licensing Act 2003 that permits sexual entertainment. A copy of the existing licence is enclosed as **Appendix 1**. The licence was originally granted on

The licence granted the following licensable activities:

Regulated Entertainment in the form of films, live music, recorded music, performance of dance (including striptease), entertainment of a similar description:

- Sunday to Thursday from 09:00hrs to 03:00hrs (the following day)
- Friday to Saturday from 09:00hrs to 05:00hrs (the following day)

Sale by retail of alcohol (on sales only):

- Sunday to Thursday from 09:00hrs to 03:00hrs (the following day)
- Friday to Saturday from 09:00hrs to 05:00hrs (the following day)

The opening hours of the premises:

- Sunday to Thursday from 09:00hrs to 03:00hrs (the following day)
- Friday to Saturday from 09:00hrs to 05:00hrs (the following day)

- 3.4 This application is made in accordance with the transitional provisions as set out in the Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) (England) Order 2010. The application is to permit the premises to operate as a sexual entertainment venue with opening hours as follows:

- Sunday to Thursday from 09:00hrs to 03:00hrs (the following day)

- Friday to Saturday from 09:00hrs to 05:00hrs (the following day)

3.5 A copy of the application is enclosed as **Appendix 2**.

3.6 Maps of the premises location are available in **Appendix 3**.

3.7 Members should note that the two regimes run concurrently therefore the premises licence 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 4**. The premises was visited on 27th January 2015, attended by a Licensing Officer and a Constable from the Metropolitan Police, Licensing Division. A checklist of questions was completed with the Applicant and his legal representative. The premises was mainly going through a full internal refit. A second compliance visit was conducted by the Licensing Authority on and 13th March 2015 to further reassess the premises, in particular, the workings of the CCTV. A copy of the checklist completed over both visits is available in **Appendix 5**.

The checklist covered the following points:

- Whether the interior of the premises is visible from the outside
- Approved access to dressing rooms
- External advertising
- CCTV Coverage
- Functionality of the CCTV

4.2 In conclusion from those visits, the Licensing Officer was unable to fully assess the premises on the first meeting as the majority of the internal layout was incomplete and CCTV was predominately incomplete. However, on the return visit, the Officer was suitably satisfied that there were no outstanding issues with the premises and that the CCTV was satisfactory.

4.3 A further inspection will be carried out at the premises before the licence is issued to ascertain that the retention period of recordings meets LBTH requirements.

4.4 Members may wish to note that the premises is split into two. To the western side of the premises, the White Swan is a bar aimed at the gay community. The eastern end of the premises is a strip club. There are different access entry points to each venue. Please see the plan of the premises.

4.5 Photographs of the premises are available in **Appendix 6**.

5.0 Adverts and Flyers

- 5.1 No adverts or flyers used to promote the premises have been included in the application.
- 5.2 The premises two website: <http://www.bjswhiteswan.com/> in relation to the gay venue, and <http://www.majingos.net/> in relation to the strip club.
- 5.3 There is no external advertising at the premises.

6.0 Standard Conditions

- 6.1 The Council has adopted Standard Conditions that act as default conditions that are attached to all Sexual Entertainment Venue Licences. The Standard Conditions are generally considered to be appropriate for Sexual Entertainment Venues, with leeway provided for these to be varied by Members of the Licensing Sub-committee, or an operator applying to vary those conditions to suit individual circumstances. These are appended at **Appendix 7**.

7.0 Codes of Conduct and Policies

- 7.1 The applicant has provided Codes of Conduct and policies as required by the Standard Conditions, which are:
 - Code of Conduct for Performers
 - House Rules governing the conduct of customers
See **Appendix 8** (which also includes the premises' Dancers Welfare Policy for Members' information)
- 7.2 During the compliance check visits, the Code of Conduct for Performers was not available in the dressing rooms. The Applicant advised that this would be resolved and also confirmed that the House Rules would be available in the public area of the premises.
- 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 **Appendix9** 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 vicinity as observed by Licensing Officer visiting the area on foot and using GIS maps:

Residential accommodation	<ul style="list-style-type: none"> • There is no residential accommodation above the White Swan. • 627-631 Commercial Road E14 • 1-14 Powlesland Court, 41 Whitehorse Road E14 • 595A Belgrave Street E14 • 2-4 Belgrave street • Flats 1-14, 5 Boulcott Street E1 • 2-4 Boulcott street E1 • Flats 1-3 10 Ratcliffe Lane E14 • Flats 1-4 12 Ratcliffe Lane E14 • John Scurr House E14
Schools	There are no schools within the vicinity.
Premises used by children and vulnerable persons	<ul style="list-style-type: none"> • Tower Project 45-55 Whitehorse Road, London, E1 0ND • Half Moon Theatre, 43 White Horse Road, London E1 0ND
Youthcommunity and leisure centres	<ul style="list-style-type: none"> • John Scurr Community Centre 1a Bekesbourne Street. E14 7JQ • Tower Project 45-55 Whitehorse Road, London, E1 0ND • Eastside Centre, 234-235 Railway Arches, Adjacent to 3 Boulcott Street E1 0HR • Royal Foundation of St Katherine Conference and Retreat House

<p>Religious centres and public places of worship</p>	<p>There are none in the vicinity.</p>
<p>Access routes to and from premises listed above</p>	<ul style="list-style-type: none"> • The premises sits on the A13 Commercial Road, one of London's busiest arterial roads linking Essex and Central London. • Commercial Road is busy 24 hours a day. • There are a number of bus routes, as well as night buses. • Limehouse Station (Mainline C2C and DLR) is a 2 minute walk away.
<p>Existing licensed premises in the vicinity</p>	<ul style="list-style-type: none"> • Off licence: Days News 568 Commercial Road, E14 7JD • Public House: Railway Tavern 576 Commercial Road, E14 7JD • Public House: Ca's Bar (Jacks Bar) 566 Commercial Road, E14 7JD • Restaurant: Rajboy Indian Restaurant, 564 Commercial Road, E14 7JD • Restaurant: Shan Shui Jian Chinese Restaurant, 562 Commercial Road, E14 7JD • Off licence: Costcutter 599-603 Commercial Road London E1 0HJ • Theatre: Half Moon Theatre, 43 White Horse Road, London E1 0ND • Public House: White Horse 48 White Horse Road London E1 0ND • Bookmakers: Ladbrokes, 546-548 Commercial Road London E1 0HY • Bookmakers: Paddy Power, 544 Commercial

	<p>Road London E1 0HY</p> <ul style="list-style-type: none"> • Off licence: Tanim540 Commercial Road London E1 0HY • Fast food: Hung Tou 538 Commercial Road London E1 0HY • Bookmakers: William Hill, 532-4 Commercial Road London E1 0HY • Off licence: Grocery Station, Arch, 242, Ratcliffe Lane E14 7JE • Public House: Archers, 42 Osborn Street, E1 6TD
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9.0 **Assessment and information for the Locality**

9.1 **Appendix 10** contains the Ward Profile of Shadwell to provide members with details in relation to the locality of the premise.

9.2 In regards to the “relevant locality” :

- The relevant locality was assessed as being within a 100 metre radius centred on the premises, 556 Commercial Road.
- The premises sits on the junction of Commercial Road (the A13) and Butcher Row (leading southwards to The Highway (the A1203)
- The vicinity is a mixture of residential, commercial and transport infrastructure

9.3 The character of the locality:

- The premises is within Shadwell Ward
- The ward has been assessed to have around 5% 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 for Sexual Entertainment Venues under the new licensing Regime

Charlie's Angels	30 Alie Street, London, E1 8DA
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 11**.

b) A press advert was placed in the Docklands and East London Advertiser on the Thursday 27th November 2014 by the Applicant, which again is appended as **Appendix 12**.

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
- Development Control Team
- Local residents living within 50m of the premises

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 Development Control Team were consulted, please find below a summary of their comments.

- None

13.0 **Local Residents**

13.1 Local residents living within 50m of the premises were consulted, please find below a summary of their comments.

- None

14.0 **Licensing Authority Recommendations Following Consultation**

14.1 As the application has received no valid representations from any consulted parties, the Licensing Officer makes a recommendation to Members to grant this application.

15.0 **Summary of Premises and Licence History**

15.1 A copy of the existing premises licence is available in **Appendix 1**.

15.2 The current licence holder is David Turner.

15.3 The current Designated Premises Supervisor is Munir Grami.

15.4 On 19th March 2015, LBTH Licensing Authority received an application for a new premises licence. At the time of this report going to print, the consultation period had not yet concluded and therefore the application

had not been determined. A copy of that application is appended for Members' information at **Appendix 13**.

15.5 This is notably a new application and not a variation of the existing licence. The new application mirrors much of the existing premises licence save for an extension of hours of licensable activities and the addition of off sales for alcohol. The hours now applied for are:

Regulated Entertainment in the form of films, live music, recorded music, performance of dance (including striptease), entertainment of a similar description:

- Monday to Sunday from 09:00hrs to 05:00hrs (the following day)

Sale by retail of alcohol (both on and off sales):

- Monday to Sunday from 09:00hrs to 05:00hrs (the following day)

The opening hours of the premises:

- Monday to Sunday from 09:00hrs to 05:00hrs (the following day)

Please note that the application has since been amended as the CCTV recordings retention time has been amended to 31days.

16.0 Complaints and Enforcement History

16.1 The premises has received the following complaints in the last 24 months:

Date	Complainant	Nature of Complaint
09/03/2015	Patron	<p>Complainant claims that the premises is regularly open until 05:00hrs outside of the hours currently permitted on the licence. Also complains that the premises is two separate venues and should have separate licences. Thirdly, complained that he was propositioned by a dancer to have kissing @ £240/half hour in a private room.</p> <p>The complainant was advised that we will visit and/or the premises to ensure compliance with current opening hours, but that there was a current application for a new licence that he could make representation to. He was advised that the Authority is satisfied with the layout at this time and that licensable activities can be carried out under a single licence. The matter regarding the proposition was referred to the Police for their information.</p>

16.2 The premises has received the following visits by the Local Authority:

Date	Authority (TS/Lic)	Nature of visit
13/03/2015	Licensing	SEV Compliance Visit – all OK, will return for additional spot check to confirm CCTV retention
27/03/2014	Licensing	SEV Compliance Visit – premises mainly under works at the moment, so arranged visit to do full inspection of CCTV.
15/09/2014	Licensing	SEV Notice Check
24/01/2014	Licensing	Visit with Police in relation to visiting all LGBT venues in the Borough with advice on how to deal with potential reports of Hate Crimes. Full licence inspection also carried out – all ok.
14/01/2014	Licensing	Gambling Act Visit – premises has a gaming machine. Not in operation at time of inspection.

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

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

17.0 Policy - Appropriate Number of Sexual Entertainment Venues

17.1 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.

17.2 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.

17.3 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.

18.0 Home Office Guidance

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

18.2 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.

18.3 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.

18.4 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.

19.0 Licence Conditions

19.1 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.

19.2 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.

19.3 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.

19.4 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.

19.5 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.

20.0 Sexual Entertainment Venues and Determination

20.1 Tower Hamlets Licensing Authority has received advice in relation to the determination of an application, Members would be wise to take a ten-point approach and provide answers to the following:

1. Determine the extent, nature and content of the “Relevant Entertainment”
2. Consider the Mandatory Grounds of refusal – are these engaged?
3. Discretionary Grounds (Internal): the ‘people’: Consider the suitability of the Applicant and other persons involved; are they suitable to hold and operate a Sexual Entertainment Venue licence?

4. Discretionary Grounds (Internal): the 'premises': Consider the suitability of the premises for a Sexual Entertainment Venue licence; is the premises suitable for the operation of the proposed relevant entertainment?
5. Discretionary Grounds (External): What is the "vicinity" in respect of the current application?
6. Discretionary Grounds (External): What are the uses of other premises in the vicinity in respect of the current application?
7. Discretionary Grounds (External): What is the "relevant locality" in respect of the current application?
8. Discretionary Grounds (External): What is the "character" of the relevant locality in respect of the current application?
9. Is a Sexual Entertainment Venue of the type contemplated in the application appropriate having regard to (i) the premises; (ii) the character of the relevant locality and (iii) the use of premises in the vicinity?
- 10.a Discretionary Grounds (External): What is the appropriate number – regardless of the LBTH/Policy Presumption – of Sexual Entertainment Venues (collectively & by type) in the relevant locality of the current application?
- 10.b Is the LBTH/Policy engaged by the current application? (b) Where the LBTH/Policy is engaged has the applicant established that the current application is an exception to that policy?

20.2 A copy of LBTH Sexual Entertainment Venue Policy is produced in **Appendix 14** for Member's information.

21.0 Legal Comments

21.1 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 para 12(1) LGMPA ('the Act'), as amended by reg 47 (4), Provision of Services Regulations 2009):

21.2 The mandatory grounds for refusal are as follows:

- (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 was not resident in the U.K. 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
- (e) that the applicant has been refused 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.

21.3 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.

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) the number of sex establishments exceeds the number or is equal to the number which the council 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 relation to premises, 'the relevant locality' means the locality where the premises are situated).

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

21.5 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. Comments contained within the letters of objection or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.

21.6 The Council's legal officer will give advice at the Hearing.

22.0 Finance Comments

22.1 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.

23.0 Appendices

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| Appendix 1 | A copy of the existing licence |
| Appendix 2 | A copy of the application |
| Appendix 3 | Maps of the premises showing the site location |
| Appendix 4 | Location plan and internal layout plans of the premises |
| Appendix 5 | Compliance Visit Checklist |
| Appendix 6 | Photographs of the premises |
| Appendix 7 | LBTH Standard Conditions list |
| Appendix 8 | Code of Conduct for Performers, House Rules, Dancers Welfare Policy |
| Appendix 9 | Vicinity Map |
| Appendix 10 | Ward Profile of Shadwell |
| Appendix 11 | Copy of Site Notice |
| Appendix 12 | Copy of Press Advert |
| Appendix 13 | Copy of new premises licence application |
| Appendix 14 | Copy of LBTH SEV Policy |