


Non-Executive Report of the: Licensing Committee 28 April 2015	 TOWER HAMLETS
Report of: Legal Services	Classification: Unrestricted
Sexual Entertainment Venues	

Originating Officer(s)	Gurwinder Kaur Olive, Senior Lawyer
Wards affected	Shadwell , Whitechapel, St Peter's & Spitalfields & Banglatown

1. SUMMARY

- 1.1** This report sets out the terms of reference, Membership, and Quorum of the Licensing Committee and the process for the determination of Sexual Entertainment Venues (SEVs) transitional applications by existing operators under the statutory scheme.

2 TERMS OF REFERENCE, MEMBERSHIP & QUORUM

- 2.1** The terms of Reference, Membership, and Quorum are set out in Appendices 1 and 2 to this report.
- 2.2** The function for determining SEV applications was reserved to the Licensing Committee by the Council when the legislation for licensing of SEVs was adopted on 26 March 2014. A copy of the report extract and decision are set out in Appendices 3 and 4 to this report.

3 INTRODUCTION AND BACKGROUND:

- 3.1** The London Borough of Tower Hamlets has adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('LGMPA') in relation to the licensing of sex establishments, as amended by Section 27 Policing and Crime Act 2009, which came into force in Tower Hamlets on 1 June 2014.
- 3.2** The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Savings Provisions) (England) Order 2010 ('the Order') makes special transitional provisions in relation to SEVs.

- 3.3** The transitional period lasts for 12 months starting from the ‘first appointed day, which is the day when the LGMPA comes into force in the local authority’s area (which in Tower Hamlets was 1 June 2014). The day six months following the ‘first appointed day’ is known as the ‘second appointed day’ (1 December 2014), and the day on which the transitional period ends is known as the ‘third appointed day’ (1 June 2015).

4 APPLICATIONS FOR SEVS

- 4.1** Applicants have been able to submit their applications for a SEV licence from the first appointed day onwards.
- 4.2** Since the first appointed day, new applicants –that is, people wishing to use premises as a SEV who did not already have a premises licence or club premises certificate to operate as such under the 2003 Act, or did have such a licence but had not taken any steps towards operating as such immediately before 1 June 2014 - have not been able to operate as a SEV without a SEV licence.
- 4.3** An existing operator who immediately before the first appointed day had a Licensing Act 2003 premises licence, and lawfully used premises as a SEV under that licence or was undertaking preparatory work to use the venue in that way, has been allowed to continue to provide relevant entertainment until the third appointed day (1 June 2015), or the determination of any application they submit before 1 June 2015 (including any appeal against refusal to grant a licence), whichever is later. This special transitional provision was designed so that they would not suddenly have to close pending determination of their licence application, and to give them time to react to the new regime if any application was refused.
- 4.4** As the Licensing Authority is able under the statutory scheme to refuse applications by having regard to the number of SEVs that they consider appropriate for a particular locality, all applications made on or after the first appointed day but on or before the second appointed day (i.e. between 1 June and 1 December 2014 inclusive) will be considered together prior to a determination being made in respect of any of the applications. This is required by article 7(2) of the Order and will ensure that all applications received are considered fairly and on their individual merit, and not on a ‘first come first served’ basis.
- 4.5** New applications made *after* the second appointed day cannot be determined until all the previous applications have been determined.

4.6 The Tower Hamlets Sex Establishment Licensing Policy proposes 'nil' as the appropriate number. The Policy provides that the Council will not apply this limitation when considering applications from existing operators 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 SEVs

4.7 Article 7(3) of the Order provides that if an existing operator who made one of the applications referred to in paragraph 4.4 above is granted a licence before the third appointed day that licence does not take effect until the third appointed day, 1 June 2015.

4.8 Applications have been received from the following existing operators:

NAGS HEAD PUBLIC HOUSE 17-19 Whitechapel Road, London, E1 1DU
METROPOLIS 234 Cambridge Heath Road, London, E2 9NN
WHITE SWAN 556 Commercial Road, London, E14 7JD
WHITE'S GENTLEMANS CLUB 32-38 Leman Street, London, E1 8EW

5 PROCEDURE

5.1 Licensing Committee Hearings for the applications at 4.8 above have been listed separately to allow the members sufficient time to consider the separate applications.

5.2 A Licensing Committee Hearing took place on 17 March 2015 in respect of Nag's Head. A further Licensing Committee Hearing took place on 14 April 2015 in respect of White's Gentleman's Club.

5.3 The Committee did not make a decision on either of the above dates. The meeting on each occasion was concluded with applicants being advised that matters will be determined after consideration of all applications. The background documents and minutes of those hearings will be before the Committee for determination of the applications once all applications have been considered.

5.4 The applications for White Swan and Metropolis will be considered by the Licensing Committee sitting on 28 April 2015. These applications are to be considered on paper in the first instance, as there are no objections or history of complaints.

5.5 The LGMPA requires that applicants receive an opportunity of appearing before and of being heard by a committee before their application is refused.

5.6 The consideration of these applications may therefore be followed by one or more oral hearings if Members wish to hear from the applicants, if they are minded to refuse any application, or have any questions that they must put to

applicants to ensure a fair hearing and consistency in determining the applications.

- 5.7** If any Members present and determining the applications were minded to refuse an application relating to Nag's Head or White's on any new ground which those applicants had not already had a fair opportunity to deal with, then a further hearing would need to be set for them to address that ground before the applications could be finally determined.
- 5.8** Once all four applications have been considered and there are no further hearings required, the members must determine the applications. The options open to this Committee in respect of each application are:
- Grant the licence as applied for, attaching the standard conditions; or
 - Grant the licence, varied from what was applied for and/or attaching expressly varied conditions instead of or in addition to the standard conditions; or
 - Refuse the application.
- 5.9** The Committee are advised that the final decisions should be based on the individual merits of the applications, in light of their local knowledge and all the evidence before them, including the minutes from the previous hearings where relevant.
- 5.10** Consideration should be given to the mandatory and discretionary grounds for refusal specified in the LGMPA as set out in the Legal Implications section in each individual report, and the Sex Establishment Licensing Policy. The Home Office Guidance on Sexual Entertainment Venues should also be considered, where relevant to particular applications.
- 5.11** Where relevant, the Committee should have regard to Human Rights Act considerations including the justification for restrictions on freedom of expression; freedom of assembly and association; or the use of property. It must have due regard to the need to eliminate discrimination, harassment, or victimisation on grounds related to age, disability, race, sex, gender reassignment or orientation, maternity and pregnancy, religion or belief ('protected characteristics'); the need to advance equality of opportunity; and the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.12** In determining the applications the Members should set out clearly the reasons for their decisions. Any departures from the Policy should be explained by clear and compelling reasons. The LGMPA provides the ability for conditions to be attached to a licence that is granted and Members should be clear as to what conditions are to be imposed on each licence and the justification for imposing them.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 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.

7. LEGALCOMMENTS

- 7.1 Legal Information is set out in the main body of this report. The relevant law for the consideration of applications is set out in the 'Legal Comments' section of each of the four Licensing Committee reports made under the LGMPA for a SEV licence appended hereto.
- 7.2 The decisions made by the Committee could be subject to an appeal to the Magistrates' Court, as set out in paragraph 27 of Schedule 3 of LGMPA.

8 BACKGROUND PAPERS USED IN PREPARING THIS REPORT

- The Local Government (Miscellaneous Provisions) Act 1982
- The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Savings Provisions) (England) Order 2010
- Home Office Guidance on Sexual Entertainment Venues
- Tower Hamlets Council Sex Establishment Licensing Policy

9. APPENDICIES

Appendix 1 – Terms of Reference for Licensing Committee
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Appendix 2 – Membership of Licensing Committee
Page 13 – Agenda Pack 1

Appendix 3 – Council Report on Consideration of the Adoption of the Sexual Entertainment Licensing Regime.
Page 15 – Agenda Pack 1

Appendix 4 – Decisions of Full Council Meeting – 26 March 2014
Page 119 – Agenda Pack 1

Appendix 5 – Application for a Sexual Entertainment Venue Licence for the White Swan, 556 Commercial Road, London, E14 7JD
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Appendix 6 - Application for a Sexual Entertainment Venue Licence for Metropolis,
234 Cambridge Heath Road, London, E2 9NN
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Appendix 7 - Application for a Sexual Entertainment Venue Licence for the Nags
Head, 17-19 Whitechapel Road, London, E1 1DU
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Appendix 8 – Minutes of the Extraordinary Licensing Committee meeting held on 17
March 2015
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Appendix 9 - Application for a Sexual Entertainment Venue Licence for Whites
Gentleman's Club, 32-38 Leaman Street, London, E1 8EW
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Appendix 9a – Restricted Document – By virtue of Part 1 Schedule 12a Local
Government Act 1972

Appendix 10 - Minutes of the Extraordinary Licensing Committee meeting held on 14
April 2015 – TO FOLLOW