

APPENDIX 3

Agenda Item 9.2

Committee :	Date	Classification	Report No.	Agenda Item No.
Full Council	26 th March 2014	Unclassified		

Report of	Title
Consumer and Business Regulations	Consideration of the Adoption of the Sexual Entertainment Licensing Regime.
Originating Officer:	
David Tolley – Head of Consumer and Business Regulations	

1 SUMMARY

- 1.1 It is proposed that the Council adopt a legislative scheme for the control of lap dancing and striptease premises in Tower Hamlets, set out in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. If the Council determines that the scheme should apply in Tower Hamlets, then no person may operate a sex establishment (including a sexual entertainment venue) in the borough without first obtaining a licence from the Council.
- 1.2 The proposal was initially considered by the Licensing Committee on 8th October 2013, at which time the Committee was not in favour of adopting the scheme. Concerns were expressed regarding the treatment of premises known as the White Swan, should the scheme be adopted and the level of the application fee to be charged.
- 1.3 On the 8th January 2014 the matter of adoption of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 was brought before the Licensing Committee to enable a further exploration and discussion of the issues of concern.
- 1.4 At the meeting on 8th January 2014 the Licensing Committee resolved to recommend to full Council that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended, should apply to the London Borough of Tower Hamlets, along with the proposed standard conditions and fees. This will bring into effect the Sexual Entertainment Venues Policy, which applies a nil limit for new establishments but exempts current operators from the nil limit criteria.

2 RECOMMENDATIONS

Full Council is requested to –

- 2.1 Consider whether it is appropriate to reconsider whether to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.
- 2.2 Should Full Council consider it appropriate to adopt then to resolve that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 shall apply in the London Borough of Tower Hamlets area and which shall come into force on 1st June 2014.
- 2.3 Should Full Council pass the resolution in 2.2 then Full Council is also requested to agree the proposed standard conditions in Appendix 2 and to also agree the fee structure in Appendix 3.
- 2.4 Note that the policy in Appendix 1, which will apply on the application of Schedule 3 in Tower Hamlets, and which supports continued operation of existing premises, including the White Swan.

3 BACKGROUND

- 3.1 The legislation brought in by Government in 2009 allows Local Authorities the discretion to adopt the legislation to regulate sexual entertainment venues. Once the powers have been adopted the Council can, through its licencing processes:
 - (a) Control the number of premises
 - (b) Control the location of premises
 - (c) Give local people a greater say over sexual entertainment venues in their area.
- 3.2 If Full Council is of the view that the above activities are appropriate for the Council to undertake then it will adopt the relevant powers. This report requests consideration of the adoption of the provisions for regulating sexual establishments which cover licences for sex shops, sex cinemas and sexual entertainment venues (SEVs) as set out in the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') as amended by the Policing and Crime Act 2009.
- 3.3 If the framework legislation is adopted, Members sitting on the Licensing Committee will determine the relevant applications. A policy has been adopted by Cabinet (Appendix 1) that provides a decision making framework for the Licensing Committee to draw upon when making its decisions. It should be noted that the Licencing Committee remains free to and is obliged by law to consider each application on its merits. This flexibility provides Licencing Committee

Members with sufficient leeway to consider direct representations made by different communities within the Borough and to make decisions that are sensitive to residents' concerns, equalities issues and take into account the views of the sexual entertainment venues and those in the community that make use of its services on an application by application basis.

- 3.4 The proposed standard conditions are detailed in Appendix 2 and the schedule of fees at Appendix 3, are not Executive functions and Full Council can consider and approve.
- 3.5 A report relating to the adoption of the framework agreement as set out in the Local Government (Miscellaneous Provisions) Act 1982 was submitted to the Licensing Committee on the 8th October 2013.
- 3.6 Legal representatives from the Sexual Entertainment Venues attended the Licensing Committee on the 8th October 2013 and 8th January 2014 and made oral representations. They also made written representations and which are in Appendix 4.
- 3.7 At the Licensing Committee on the 8th October 2013 the committee was of the view that the framework legislation to enable licensing of sexual entertainment venues should not be adopted by the Council. It also moved to change the Policy to exclude a specific business from the Policy but as this is an Executive function this is not possible. The minutes of this meeting are at Appendix 5.
- 3.8 As requested, a report was prepared to be brought before full Council on the 27th November 2013 to reconsider the adoption of the legal framework. On advice from the Monitoring Officer, that report was pulled and presented to an Extraordinary Licensing Committee in the first instance to enable them to reconsider the matter and to focus on the key areas of concerns previously raised by the Licensing Committee.
- 3.9 The extraordinary Licensing Committee was held on the 8th January 2014 and further letters of representation from the legal representatives of local venues with a striptease waiver were received. Whilst these mainly dealt with what they considered to be the unlawfulness of the Licensing Committee sitting again to consider the matter, they did raise some additional matters. These letters are also contained in Appendix 4.
- 3.10 The Licensing Committee considered the circumstances of the White Swan, an iconic gay venue in Commercial Road. The White Swan currently holds a strip tease waiver on its licence and advertises professional strip tease nights on its website. The premises would be affected by adoption of the proposed licensing regime, because sexual entertainment is conducted at the premises.

- 3.11 Members had previously wished to exempt the White Swan from being required to apply for an SEV licence should the legislation be adopted.
- 3.12 The legal and policy position remained the same as it was when the Licensing Committee considered adoption of the scheme and may be summarised as following in relation to existing premises –
- If adopted the scheme will apply to all sexual entertainment venues, including the White Swan and all premises will need a licence from the Council.
 - The Council's policy provides an exemption from the nil limits for existing premises. This does not provide any guarantee that existing premises would be successful in obtaining licences under the scheme, as all applications must be considered on their merits.
 - The exemption from the nil limits would, however, remove the requirement for existing premises to demonstrate why the Council should depart from its nil policy.
 - The Policy is an Executive Function falling outside the remit of Licencing Committee to change.
- 3.13 It is considered that the nil policy with a limited exception for existing premises strikes the appropriate balance between human rights, the legal requirement to consider every application on its merits and the assorted views of those who do not support a nil policy.
- 3.14 The Licensing Committee was also concerned by the amount of the proposed application fee to be charged by the Council. A proposed fee of £9,000 per application has been proposed. The Committee considered a more detailed explanation of the charging approach and considered it to be consistent with relevant case law and justifiable. This fee has now been increased to £9,070 to take into account the legal fees are now estimated at £1,070 (see Appendix 6 for breakdown).
- 3.15 In calculating the fee for sexual entertainment venues in the Borough, the following costs have been estimated. As this is a new licensing regime a review of the fees will be undertaken at the end of the first licensing period to ensure that the fees are fair and equitable. The table below demonstrates predicted costs.

Activities/ Officer	Estimated time (hours)	Estimated cost (£)
Admin Officer	2	40
Licensing Officer	105	2625
Trading Standards and Licensing Manager	14	420

Compliance visits and costs		2625
Head of Service Reviews	7	245
Service Head – Safer Communities	1	45
Democratic Services/ Committee Hearings		2000
Legal Services	10	1000

- 3.16 A further breakdown of costs Licensing Officer time, compliance visits costs, Democratic Services costs and Legal Service costs are presented in Appendix 6.
- 3.17 Following the decision of the Court of Appeal in *R (Hemming) v Westminster City Council*, it has been made clear that the Council may only charge for authorisation procedures when setting its fees.
- 3.18 It is estimated that Licensing Officers will spend 15 working days on administering each application. Officers will have to –
- Examine the application forms
 - Examination of plans
 - Meeting with applicant
 - Visiting premises to determine accuracy of plans
 - Consideration of conditions and survey of premises
 - Liaison with responsible authorities
 - Liaise with the applicant and objectors.
 - Administer the consultation process
 - Prepare a committee report
 - Attend any licensing committee hearing.
 - Administration of determination
 - Costs associated with appeals
- 3.19 The cost of compliance monitoring and enforcement against an applicant who is given a licence can fall within the costs of 'authorisation procedures' and therefore can be included in the licence fee.
- 3.20 These are visits that take place during the course of the year to ensure that conditions are being maintained and that the premises are being managed in line with the licence. Due to the late night operation of these premises, compliance audits are undertaken in the evening and early morning, with more than one Officer in attendance. These audits will require reports to be written and discussion to be held with the licence holder to ensure that compliance with the licensing conditions continue.

- 3.21 There is a considerable amount of test purchasing monies that would need to be made available when undertaking compliance visits. Due to complaints received against a lap dancing club, in 2010, two officers had to spend over £1,000 in that premises to ascertain the veracity of the complaint and to establish whether licence conditions were being complied with.
- 3.22 Costs in relation to compliance visits results from;
- Overtime for overt visits – undertaken in pairs
 - Report writing and feedback to operator
 - Overtime for covert visits
 - Test purchase monies
 - Review costs
 - Committee Hearing costs
 - Investigation costs – e.g. examining CCTV footage
- 3.23 Due to the public interest in the Sexual Entertainment Venue consultation, there will be an expectation that compliance visits are undertaken throughout the regime. In subsequent years the fee structure will be reviewed to ensure that fees are recovered on a cost basis.
- 3.24 The Council must determine its fees on a cost-recovery basis, so comparison with fees in other boroughs is not a relevant consideration. Officers have, however, conducted a benchmarking exercise in respect of 13 other London boroughs and there is nothing to suggest that the Council's costs are excessive. Five London Borough's charge a lesser fee (£3,500 – £8,224) and eight London Boroughs charge more that the proposed £9,000 fee (£10,000-£22,523).The fees cannot be compared with those under the Licensing Act 2003 as this a different regime and the fees are set by statute.
- 3.25 The fees estimate the amount of time that Council Officers will spend on their part of the Licensing process.
- 3.26 The costs of convening the committee and legal oversight of the SEV process have also been estimated.
- 3.27 At the end of the first year of the SEV process, the actual cost of the new regime will be calculated and the fees will be adjusted accordingly. Should the amount collected be in excess of the actual cost of the SEV regime then the fees will be reduced for the coming year and where applicable refunds made.
- 3.28 Once again during the second year, the amount it costs to administer and ensure compliance with the SEV regime will be calculated and fees adjusted accordingly.

- 3.29 After considering further information the Licensing Committee resolved to recommend to full Council that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended, should apply to the London Borough of Tower Hamlets, Appendix 7.

Consultation

- 3.29 Consultation on the adoption of the sexual entertainment venues legal framework ran for six weeks from March 18th 2013 to April 29th 2013. The consultation was promoted through East End Life, press releases to all local and Bengali media and on the council's website. Emails notifying about the consultation were sent out, this included emails sent to the responsible authorities, the Licensing Committee, Faith groups, Community Safety Partnership, Women's Organisations, Networks and Forums, Advocacy Services and RSL and Housing Associations. All sexual entertainment venues and their registered owners received letters notifying them of the consultation.
- 3.30 The consultation was hosted online on the Council's website and paper copies were provided if requested. The consultation posed the question 'Do you think the council should adopt new powers to regulate sexual entertainment venues via an enhanced licensing regime?' A concern has been raised that the Council's system permitted only one response per computer, which may have restricted the representations that could be made. This is a possibility which may have affected representations for and against the scheme.
- 3.31 A total of 4,973 responses (526 online and 4,447 paper returns) were received, with 1,400 forms being returned from a single sexual entertainment premises within the Borough. The responses were as follows:
- 108 (2.2%) 'Yes' responses, in favour of adopting
4,865 (97.8) 'No' responses, not in favour of adopting
- 3.32 It is noted the some of the local venues ran a campaign to encourage persons to register their opposition to adoption of the scheme. There is nothing illegitimate about such a campaign. The representatives for these venues have asserted that there is no basis for concluding that this campaign skewed the outcome of consultation. Whether or not there were campaigns 'for' and 'against' which took place during consultation about adoption of the scheme, it must be recognised that there was a strong expression of public opinion against adoption.
- 3.33 However it should also be considered, the results are in contrast to the community response received to the Council's consultation on the policy approach that might be taken to control sex entertainment venues where there was up to 75% in favour of aspects of sex establishment policy (specifically delineation of localities) control and a 52% to 48% split in favour of a blanket nil

policy. The position on the nil limits was effectively split, when sampling error is taken into account.

3.34 In contrasting the two sets of consultation results, Members should bear in mind that the survey in respect of the Policy came first and as people were consulting on a policy they may have assumed that the Act was already in force and therefore did not respond to a consultation on adopting. It is fair to say that there was not an overwhelming support for a nil limit, which is why the Policy did not extend the "Nil" limit to existing operators.

3.35 The Committee should, take the consultation response into consideration when reaching a decision. Whilst the Council is required to undertake consultation on the adoption of the legislation, a strong 'No' response does not prevent adoption if there remain good reasons for regulation of sexual entertainment venues under the scheme established by Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Specifically if the Council considers that there are good reasons for the Council to

- (a) Control the number of premises
- (b) Control the location of premises
- (c) Give local people a greater say over sexual entertainment venues in their area.

In forming this view, the following should be taken into account –

- The overall consultation response represents only a small percentage of those who live and work in the borough. It is not possible to know whether those who did not make representations would have supported or been against adoption of the scheme.
- Adoption of the scheme will enable the Council to regulate the number, location and conduct of premises in the borough. Whilst this will apply to all premises, it will be particularly important when dealing with applications from new premises.
- A licensing scheme will give local people a greater say over venues in their areas.
- The adoption of the scheme will facilitate policy interventions that enhance the ability of the Council to limit impact of SEV's on the community and on particular groups at risk of exploitation.
- Each case will be considered by the Licensing Committee on its own merits, having regard to the Council's policy. The policy provides support for the continuation of existing premises which meet their licence considerations.
- The licensing regime will allow the Council to take broader policy implications into consideration when judging applications including limiting any negative impacts on local communities brought about by these venues.

- 3.36 Concerns were raised by Members in discussion, that operators may not be granted their annual licences. This concern is recognised, but in determining applications, members of the Licensing Committee should take account of the Council's policy and also existing operations and whether they have been well controlled.
- 3.37 These considerations are good reasons for the regulation of sexual entertainment venues under the scheme. On balance, and taking into consideration the outcome of the consultation exercise, it is considered preferable to adopt the scheme in Tower Hamlets and take into account the views of those in favour of sexual entertainment venues when considering each application and in any policy deliberations.

4. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 4.1 The adoption of the provision will introduce a new fee structure for sexual entertainment venues. They will need to hold two licences one for alcohol and another for the venue. The new fees for the SEV's are set out in Appendix 3. The number of SEV's that would be affected by the adoption of the new licensing regime is currently 11. If all apply and were granted SEV licenses this would achieve £99,000 in fees. This is the maximum that could be achieved and would be dependent on the relative number of refusals for which there is a partial return of the fee paid. The fee will need to be utilised to fund the administration of the new regime process and any potential legal challenge upon refusal.
- 4.2 With the threat of any legal challenge arising from adoption of the policy considerably reduced, the service will need to ensure that the policy can be adopted within existing budgeted resources.

5 LEGAL COMMENTS

- 5.1 On 6 April 2010, amendments to the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") came into effect which permitted local authorities to regulate sexual entertainment venues ("the SEV amendments") in addition to other sex establishments.
- 5.2 For the purposes of the 1982 Act a sexual entertainment venue ("SEV") means any premises at which entertainment of the following kind is provided before a live audience for the financial gain of the organiser or the entertainer-
- A live performance or a 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).

- 5.3 The following are not SEVs for the purposes of the 1982 Act –
- Sex cinemas and sex shops (which come within the more general definition of sex establishments).
 - Premises at which the relevant entertainment has been provided no more than 11 times in a 12 month period, provided that on each occasion the entertainment has not been provided for more than 24 hours and the occasions are at least a month apart.
- 5.4 Under section 2 of the 1982 Act the Council may decide that Schedule 3 to the Act, which contains a regime for controlling sex establishments, is to apply in Tower Hamlets. If the Schedule 3 regime is applied in Tower Hamlets, then no person may operate a sex establishment (including an SEV) in the borough without first obtaining a licence from the Council. The requirement for a licence is backed up by provision for offences, each of which carry a maximum penalty of £20,000.
- 5.5 If premises obtain a sex establishment licence under the Schedule 3 licensing regime, those premises will not also require a licence under the Licensing Act 2003 in respect of entertainment permitted by the sex establishment licence. The premises would still, however, require permission under the Licensing Act 2003 in respect of other licensable activities conducted at the premises (e.g. the sale of alcohol or the provision of regulated entertainment that is not permitted by the sex establishment licence).
- 5.6 Prior to the SEV amendments in 2010, the Council had determined that the scheme for licensing sex establishments in Schedule 3 of the 1982 Act should apply in Tower Hamlets. However, at the time of introducing the SEV amendments in 2010, the Policing and Crime Act 2009 put in place transitional arrangements (“the Transitional Arrangements”), which specified that a new resolution is required if a local authority wants the Schedule 3 licensing scheme to extend to SEVs in addition to other types of sex establishments such as sex cinemas and sex shops.
- 5.7 The procedure for deciding that Schedule 3 of the 1982 Act should apply in Tower Hamlets is as follows-
- The Council must consult local people about whether or not to apply the SEV licensing regime in Tower Hamlets. The Transitional Arrangements set up an initial 12-month period in which local authorities might resolve that the SEV amendments would apply in their areas. If an authority did not resolve to adopt the SEV amendments within the timeframe (i.e. by 5 April 2011), then the authority was then required to consult local people about whether to adopt the SEV amendments. The Council was caught

by this requirement to consult and the report sets out the results of that consultation.

- The Council must pass a resolution specifying that the Schedule shall apply in Tower Hamlets. The resolution must specify the day on which the Schedule shall come into force ("the Specified Day"), which must be more than one month after the day on which the resolution is passed.
- The Council must then publish a notice that it is adopting the Schedule 3 regime. This must be published for two consecutive weeks in a local newspaper which is circulated in Tower Hamlets. The first publication of the notice must be at least 28 days before the Specified Day. The notice must state the general effect of Schedule 3.

5.8 The Council should have a rational basis for any resolution to adopt the sex establishment (including SEV) licensing regime in Tower Hamlets. The results of the consultation exercise must be taken into account. In this respect, the consultation conducted in relation to whether or not to adopt the sex establishment licensing regime (the 2013 consultation), is the more relevant of the two consultation exercises referred to in the report. If the Council intends to take a different approach than that indicated by the preponderance of views expressed in the 2013 consultation, then it will need to be satisfied there are good reasons for taking that approach. There is material in the report both in favour of and against the adoption of the SEV licensing regime. Before adopting the regime, the Licensing Committee will have to be satisfied that the reasons in favour of adoption are sufficiently cogent.

5.9 Standard conditions have been proposed that will be applied to all licensed SEVs (see Appendix 2). Paragraph 13(1) of Schedule 3 to the 1982 Act gives the Council power to make regulations prescribing standard conditions (i.e. the terms, conditions and restrictions on or subject to which licences under Schedule 3 to the 1982 Act are in general to be granted, renewed or transferred by the Council). Such conditions must be proportionate and must be precise so that everyone (Premises Licence holder, those charged with enforcing the conditions, and local residents) would know where they stand. These proposed conditions meet those criteria.

5.10 It is proposed to introduce application fees as set out in Appendix 3. Paragraph 1 of Schedule 3 to the 1982 Act allows the Council to set a fee. Such fee must be reasonable and should properly reflect the anticipated costs for the Council in administering the application, holding a hearing to consider the application (including legal costs) and the costs associated with licensing visits should a licence be granted. Fees should not therefore be set at an unreasonably high level to dissuade applications. Further, whilst such fees cannot include costs associated with enforcement of unlicensed venues. The breakdown as to calculation of those fees is in Appendix 6.

- 5.11 Before taking the proposed decisions in relation to the licensing of SEVs, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. Equality analyses have been conducted and are set out in Appendices 8 and 9.
- 5.12 The Council's Constitution provides that the power to licence sex shops and sex cinemas, as provided in section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 is delegated to the Licensing Committee. On one view, this delegation includes a power to decide that the licensing scheme should apply in Tower Hamlets, but another view is that this at best permits the Licensing Committee to express an advisory view about adoption of the scheme. Irrespective of the position concerning the Licensing Committee's role, two matters are clear:
- Full Council may determine whether or not the scheme should apply in Tower Hamlets.
 - Full Council is not prevented from determining whether or not the scheme should apply in Tower Hamlets by reason of any prior consideration by the Licensing Committee.
- 5.13 Determining the Council's policy in relation to licensing under the scheme (should it be adopted) is an executive function which is the responsibility of the Mayor. On 11 September 2013, the Mayor in Cabinet agreed that the policy in Appendix 1 should apply in the event that the scheme is adopted in Tower Hamlets.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Legislation gives local authorities the opportunity to control sexual entertainment venues. The legislation was drafted to allow communities to have a say about whether sexual entertainment venues should be allowed to operate in their community and it gives the local authority the power to determine limits on numbers and localities. An equalities impact assessment is provided at Appendix 5. In addition as the decision to adopt the framework legislation will bring the policy into effect. Members may wish to consider the equalities impact assessment at Appendix 6 in relation to the policy.
- 6.2 The adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 will enable this to happen.
- 6.3 It is important to note that, after adopting the above legislation, the Licencing Sub Committee remains free to and is obliged by law to consider each application on its merits. The Sexual Entertainment Venue policy provides flexibility for Licensing Committee Members, to consider representations made

by different communities within the Borough and to make decisions that are sensitive to equalities issues and where relevant to the needs of the sexual entertainment venues and those within the community who make use of its services.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

7.1 There are no adverse impacts identified.

8. RISK MANAGEMENT IMPLICATIONS

8.1 The Mayor in Cabinet has adopted the policy on sexual entertainment venues for the Borough. Full Council is being requested to re-consider the adoption of the legislation to enable the policy to take effect. There is potential for legal challenge to the Council's adoption of the licensing regime for sex establishments, which will have significant associated costs.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 Adoption of this legislative framework will complement the Crime and Drug Reduction Partnership Plan.

10. EFFICIENCY STATEMENT

10.1 There are no efficiency considerations arising from the report.

11. APPENDICES

Appendix 1 – The Sexual Entertainment Venue Policy

Appendix 2 – Standard Conditions for Sexual Entertainment Venues

Appendix 3 – Fee

Appendix 4 - Written Submissions to the Council

Appendix 5 – Minutes of the Licensing Committee 8th October 2013

Appendix 6 – Breakdown of Licence Fee estimates

Appendix 7 – Minutes of the Licensing Committee 8th January 2014

Appendix 8 - Equalities Impact Assessment – frame work

Appendix 9 – Equalities Impact Assessment – policy

Background Papers: Section 100D of the Local Government Act 1972

NONE

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Appendix One

Tower Hamlets Council

Sex Establishment Licensing Policy

Introduction

This policy sets out Tower Hamlets Council's proposed approach to regulating sex establishments and the procedure that it will adopt in relation to applications for sex establishment licences.

The policy of the Council is to refuse applications for sexual entertainment venues. This policy is intended to be strictly applied and will only be overridden in genuinely exceptional circumstances. Such circumstances will not be taken to include the quality of the management, its compliance with licence conditions, the size of the premises or its operating hours.

The policy is intended as a guide to applicants, licence holders, people who want to object to applications and members of the Licensing Committee who are responsible for determining contested applications. It also aims to guide and reassure the public and other public authorities, ensuring transparency and consistency in decision making.

When the decision making powers of the Council are engaged each application will be dealt with on its own merits but this policy gives prospective applicants an early indication of whether their application is likely to be granted or not. It also provides prospective applicants details of what is expected of them should an application be made.

The legal controls for sex establishment premises are contained in the Local Governmental (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

There are 3 types of sex establishments which fall into the licensing regime:-

Sex shops

Sex cinemas

Sexual entertainment venues

The role of the Council in its position as Licensing Authority is to administer the licensing regime in accordance with the law and not in accordance with moral standing. The Council recognises that Parliament has made it lawful to operate a sex establishment and such businesses are a legitimate part of the retail and leisure industries.

Policy Rationale

The policy has been developed that sets out how the legislation will be administered and applied. The policy identifies how the Council would exercise the licensing regime in relation to sexual entertainment venues.

The policy has been developed to reflect and complement existing Council plans and strategic approach, namely:-

- Tower Hamlets Community Plan.
- Tower Hamlets Crime & Drug Reduction Partnership Plan.
- Tower Hamlets Enforcement Policy.
- Tower Hamlets Core Strategy.
- TowerHamletsTown Centre Spatial Strategy.
- Tower Hamlets Statement of Licensing Policy (Licensing Act 2003).
- Tower Hamlets Statement of Licensing Policy (Gambling Act 2005).

The policy has also been prepared with regard to:

- Consultation responses
- Human Rights Act 1998
- Equalities Act 2010

The policy seeks to contribute to the "One Tower Hamlets" principle by fostering community cohesion, reducing inequalities and empowering communities. The public consultation that was undertaken concerning the adoption of a nil policy did not have overwhelming support. Therefore careful consideration has been given

to the policy response, given the balance that the consultation returns did not give overwhelming support.

Policy Considerations

Existing Licensed Premises

The Council has had the ability to licence sex shops and sex cinemas under the Local Government (Miscellaneous Provisions) Act 1982 for many years.

There are no licensed sex shops in Tower Hamlets.

The businesses that hold premises licences under the Licensing Act 2003 with permissions that will be affected by the adoption of the sexual entertainment venue licensing regime are as follows:-

NAME	ADDRESS
THE BEEHIVE	104-106 Empson Street, London, E3 3LT
EONE CLUB	168 Mile End Road, London, E1 4LJ
NAGS HEAD PUBLIC HOUSE	17-19 Whitechapel Road, London, E1 1DU
THE PLEASURE LOUNGE	234 Cambridge Heath Road, London, E2 9NN
WHITE SWAN	556 Commercial Road, London, E14 7JD
ASTON'S CHAMPAGNE AND WINE BAR BASEMENT & 1ST FLOOR	187 Marsh Wall, London, E14 9SH
CLUB PAISA	28 Hancock Road, London, E3 3DA
OOPS	30 Alie Street, London, E1 8DA
WHITE'S GENTLEMANS CLUB	32-38 Leman Street, London, E1 8EW
SECRETS	43-45 East Smithfield, London, E1W 1AP
IMAGES	483 Hackney Road, London, E2 9ED

Tower Hamlets Council has adopted schedule 3 Local Government (Miscellaneous Provisions) Act 1982 with effect from 1st June 2014 so that it can:

- set a limit on the number of sexual entertainment venues
- determine premises that are appropriate for the borough and
- licence sexual entertainment venues

Sexual entertainment venues are those that regularly provide lap dancing and other forms of live performance or live display of nudity.

Establishments that hold events involving full or partial nudity less than once a month may be exempt from the requirements to obtain a sex establishment licence and applicants are advised to contact the Licensing Team for advice.

Limits on the number of licensed premises

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.

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

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.

Location of premises

The Council's policy is that there is no locality within Tower Hamlets in which it would be appropriate to license a sex establishment. Accordingly, the appropriate number of sex establishments for each and every locality within Tower Hamlets is zero.

As previously stated in the policy the Council will treat each application on its own merits however applicants should be aware that the Council will take into consideration the location of the proposed premises and its proximity to:

- residential accommodation,
- schools,
- premises used by children and vulnerable persons
- youth, community & leisure centres,
- religious centres and public places of worship
- access routes to and from premises listed above
- existing licensed premises in the vicinity

Impact

In considering applications for the grant of new or variation applications the Council will assess the likelihood of a grant causing impacts, particularly on the local community.

The Council will take the following matters into account:

- the type of activity
- the duration of the proposed licence
- the proposed hours of operation
- the layout and condition of the premises
- the use of other premises in the vicinity
- the character and locality of the area
- the applicant's previous knowledge and experience
- the applicant's ability to minimise the impact of their business on local residents and businesses

- any evidence of the operation of existing /previous licences held by the applicant
- any reports about the applicant and management of the premises received from residents, Council officers or the police
- the ability of the proposed management structure to deliver compliance with licensing requirements, policies on staff training and the welfare of performers
- crime and disorder issues
- cumulative impact of licensed premises, including hours of operation
- the nature and concerns of local residents
- any evidence of complaints about noise or disturbance caused by premises
- planning permission and planning policy considerations

In considering applications for renewal the Council will take into account

- the applicant's ability to minimise the impact of their business on local residents and businesses
- any reports about the licensee and management of the premises received from residents, Council officers or the police
- whether appropriate measures have been agreed and put into place to mitigate any adverse impacts
- any evidence of complaints about noise or disturbance caused by premises

In considering applications for transfer the Council will take into account:

- the applicants previous knowledge and experience
- the applicants ability to minimise the impact of their business on local residents and businesses
- any evidence of the operation of existing /previous licences held by the applicant
- any reports about the applicant and management of the premises received from residents, Council officers or the police

- the ability of the proposed management structure to deliver compliance with licensing requirements, policies on staff training and the welfare of performers

Applicants

Where appropriate the Council expects applicants to:

- demonstrate that they are qualified by experience
- have an understanding of general conditions
- propose a management structure which will deliver compliance with operating conditions for example through
 - Management competence
 - Presence
 - Credible management structure
 - enforcement of rules internally – training & monitoring
 - a viable business plan covering door staff, CCTV
 - policies for welfare of performers
- demonstrate that they can be relied upon to act in best interests of performers through remuneration, facilities, protection, physical and psychological welfare
- have a transparent charging scheme with freedom from solicitation
- a track record of management compliant premises or employ individuals with such a track record

New applicants may be invited for interview by the Licensing Officer and /or Police Officer prior to the application being referred to the Licensing Committee for determination.

Applications from anyone who intends to manage the premises on behalf of third party will be refused.

Premises appearance and layout

The Council expects premises to:-

- have an external appearance which is in keeping with the locality
- prevent the display outside the premises of photographs or other images which may be construed as offensive to public decency

- adequate lighting to allow monitoring of all public areas
- surveillance by CCTV
- surveillance by CCTV of all private booths

Conditions

The council will prescribe, and from time to time revise, standard conditions which will apply generally to licences that the council will grant or renew.

Through standard conditions the council seeks to ensure that sexual entertainment venues are well managed and supervised, restrict the sexual entertainment activities and the manner in which they are permitted to be provided, protect performers, and control the impact of the venue and its customers in relation to its locality.

Specifically, standard conditions could include measures which are found in the appendix of this policy.

The Application Process

Making a new, renewal, transfer or variation application

The Act requires the Council to refuse all application if the applicant:

- Is under the age of 18 or
- Has had their licence revoked in the last 12 months or
- Is not resident in the UK, or has not been a UK resident for the last 6months
or
- Has been refused an application in the last 12 months or
- Is a corporate body which in not incorporated in the UK

Applications forms and details of current fee levels are available:

- on the Council's website (www.towerhamlets.gov.uk)
- from the Licensing Team on 020 7364 5008
- by email to licensing@towerhamlets.gov.uk

The Council prefers to receive electronic applications and *offers a choice off payment options the details of which are contained in the application pack.*

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.

In order for the application to be valid the applicant must:

- Submit the completed application form
- Pay the application fee
- Submit a floor plan, drawn to scale showing the layout of the premises (new applications only)
- Submit a location plan (1:1250) showing the location of the premises (NB. plans will not be required for transfers nor renewal applications)
- 2 passport size photos of the applicant where the applicant is an individual rather than a limited company
- 2 passport size photos of the manager if applicant is a limited company (NB: photos will only be required if there has been a change of applicant or manager since the last application)
- Display an A4 notice at the proposed premises for 21 days following the date that the completed application is submitted setting out the application details. The notice must be in a prominent position so that it can be easily read by passers-by. A notice template will be provided with the application form.
- publish a notice on at least one occasion in a local newspaper, during the period of ten working days starting on the day the application was given Council. The advert can be any size or colour but must be readable.

Applicants who wish to advertise the application in another local newspaper are advised to contact the Licensing Team beforehand, to confirm that it is acceptable.

On receipt of a valid application the Council will consult:

- The Police
- The Fire Brigade
- Building Control
- Health and Safety
- Ward Councillors

For new and variation applications the Council will also consult:

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

Authorised Officers from the Council, Fire Brigade and Police may choose to inspect the premises and require works to be carried out to bring the premises up to the required standard before the premises can be used for licensable activities.

The Council will not determine an application for a licence unless the applicant allows an authorised officer reasonable opportunity to enter the premises to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the sex establishment.

Representations

Anyone wishing to object to the application must submit a representation, in writing, within 28 days of the date that the valid application was received by the Council.

Representations can either be submitted via

- Our website: www.towerhamlets.gov.uk
- Email to: licensing@towerhamlets.gov.uk
- Post to: Consumer and Business Regulations, Licensing Team, 6th Floor, Mulberry Place, 5 Clove Crescent, E14 2BG.

A person making a representation must clearly state their name, address, and the grounds for objecting to the application and indicate whether they consent to have their name and address revealed to the applicant. Copies of representations will be made available to the applicant 14 days before the committee hearing.

The Council will not consider objections that are frivolous or vexatious or which relate to moral grounds (as these are outside the scope of the Act).

The Council prefers to receive electronic representations.

Late representations may be admissible at the discretion of the Council if there's sufficient reason to indicate that applicants will not be significantly prejudiced by the decision to allow a late objection to be considered. In making such a decision the Council will take into account:

- The length of the delay
- The amount of time that the applicant has to consider the representation before the hearing date
- If other representations have been received before the deadline

Determining an application

Applications with no representations will be approved under delegated authority to officers.

Applications with representations recommending that conditions be attached to the licence and which are acceptable to both the applicant and person making the representation can be approved under delegated authority to officers.

All other contested applications will be referred to the Licensing Committee for determination. The applicant, anyone making a representation and the ward Councillors will be notified the date, time and venue of the hearing and invited to attend to address the committee in person.

Applications can take up to 14 weeks to be determined. If an application is likely to take longer than 14 weeks to determine the Council will notify the applicant in writing before this deadline. Applications for sex establishment licenses are exempt from the tacit consent provisions of the EU Services Directive on the grounds of public interest and the legitimate interests of third parties.

The applicant will be notified in writing about the outcome of their application within 5 working days of the decision being made.

Sex Establishment licences are usually issued for 12 months, but can be issued for a shorter period if deemed appropriate.

In order to continue operating as a sex establishment the licence holder must make a renewal application prior to the expiry of the existing licence.

Appeals

Any applicant who is aggrieved by a decision to refuse an application or by the imposition of any conditions can appeal to the Magistrates Court within 21 days of receiving the decision in writing.

Grounds for refusing an application

1. The applicant is unsuitable to hold a licence by reason of having been convicted of any offence or for any other reason
2. That if the license 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 be refused the grant, renewal or transfer of such a license if he made the application himself
3. That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality
4. That the grant or renewal of the license would be inappropriate, having regard:-
 - a. to the character of the relevant locality
 - b. to the use to which any premises in the vicinity are put; or
 - c. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Transitional Arrangements

Broadly speaking, those existing sexual entertainment venues (lap dancing clubs etc) with a premises licence under the Licensing Act 2003, under which it is lawful to provide such entertainment, will continue to be able to operate for one year after the Council adopts the 2009 Act provisions or, if later, the determination of any application submitted during that year.

The 'transitional period' will last for 12-months beginning with the date that the Council resolves that Schedule 3 as amended by the 2009 Act will come into force in their area ('the 1st appointed day'). Six months following the 1st appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'

Existing Operators

To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Act licence and lawfully use premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later

For the purposes of the Transition a "2003 Act Licence" means a premises licence or club premises certificate under the Licensing Act 2003 under which it is lawful to provide relevant entertainment.

"Preparatory work" refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a sexual entertainment venue in the future. The operator will have been granted a 2003 Act licence before the 1st appointed day but will not have used the premises as a sexual entertainment venue by that date. It is likely that such operators will be

known to the Council. However, where a dispute arises between the Council and a licence-holder over whether the licence-holder qualifies as an existing operator by virtue of this provision the Council will need to seek evidence from the licence-holder to demonstrate that they clearly intended to operate a sexual entertainment venue in the future and work had been done to achieve this end.

For the purposes of the Transition a "2003 Act Licence" means a premises licence or club premises certificate under the Licensing Act 2003 under which it is lawful to provide relevant entertainment.

Appointed Days

1st Appointed Day

The day on which the Sexual Entertainment Venue regime comes into force in the Borough and the beginning of the transitional period (1st June 2014)

2nd Appointed Day

The day 6 months after the 1st appointed day (1st December 2014)

3rd Appointed Day

The day 6 months after the 2nd appointed day and the end of the transitional period (1st June 2015)

New Applications

New applicants are people who wish to use premises as a sexual entertainment venue after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sexual entertainment venue licence

Determining Applications Received On or Before the 2nd Appointed Day

Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards.

As the Council is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the 1st appointed day but on or before the 2nd appointed day shall be considered together. This will ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come first serve basis.

No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the appropriate authority shall decide what if any licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

Determining Applications Received After the 2nd Appointed Day

Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made on or before that date have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence.

As with applications received on or before the 2nd appointed day, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

Outstanding Applications

The Council will attempt where possible to determine outstanding applications made under the 2003 Act, which include an application for the provision of

relevant entertainment, before the date that Schedule 3 as amended by the 2009 Act comes into force in their area.

Where it has not been possible to determine application before the 1st appointed day, applicants will need to submit an application for a sex establishment licence as set out in Schedule 3 if they wish to provide relevant entertainment. From the 1st appointed day onwards outstanding applicants shall be dealt with as though they are new applicants

Additional information and advice

Please contact:

Consumer and Business Regulations
Licensing Team
6th Floor,
Mulberry Place,
5 Clove Crescent,
E14 2BG.
licensing@towerhamlets.gov.uk
020 7364 5008

Appendix Two

STANDARD CONDITIONS FOR SEXUAL ENTERTAINMENT VENUES

General

1. The Licensee must remain in personal control of the premises at all times that it is trading or nominate in writing an individual over the age of 18 with the authority to direct activities within the Premises.
2. The licensee shall notify the Council, in writing, of any change in directors, trustees, partners or other persons concerned in the management of the licensed activities within fourteen days of such change.
3. The Licensee shall provide in a timely fashion copies of any documents reasonably required by an authorised officer of the Council to prove compliance with this Licence.
4. The licensee must give written notice to the Council if s/he wishes to surrender the licence.
5. The Council reserves the right to amend or alter these conditions (provided that such change will not prevent the operators from viably carrying on the business of the premises) following consultation with licensees
6. The meaning of "sexual entertainment" is given in Section 27 of the Policing and Crime Act 2009.

Management

7. A suitable and sufficient number of door supervisors and trained staff will be employed (based on a risk assessment) when sexual entertainment is offered. Their duties will include monitoring customers and performers to ensure that the Code of Conduct for Dancers and the House Rules are being obeyed and enforcing if necessary.
8. The Licensee shall prepare and implement a Code of Conduct for Performers. The Code shall be approved by the council and will not be altered without their consent.
9. The Licensee shall prepare House Rules governing the conduct of customers. The Rules shall be approved by the council and shall not be altered without their consent.

Premises

10. The approved layout of the premises shall not be altered without prior consent of the council.

11. The Licensee shall ensure that the interior of the premises where sexual entertainment is offered shall not be capable of being seen from the outside of the premises, and that the exterior is maintained to a satisfactory level of decorum.

12. The sexual entertainment shall take place only in the areas designated by the Council and the approved access to the dressing room(s) shall be maintained whilst sexual entertainment is taking place and immediately thereafter.

13. CCTV shall be installed to cover the inside and the outside of the premises covering all areas to which the public have access, including private performance areas and booths, entrances and exits but excluding toilets. All cameras shall continually record whilst the premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer or a police officer together with facilities for viewing. The recordings for the preceding two days shall be made available immediately on request. Recordings outside this period shall be made available on 24 hours' notice.

Advertising

14. The Licensee shall not permit the display outside of the premises of photographs or other images, excluding trademarks or logos, which are unacceptable to the Council, and which indicate or suggest that sexual entertainment takes place on the premises.

15. Where the Council has given notice in writing to the Licensee objecting to an advertisement on the grounds that, if displayed, it would offend public decency or be likely to encourage or incite crime and disorder that advertisement shall be removed or not be displayed.

Admission to the Premises

16. No person under the age of 18 years shall be permitted on the premises when sexual entertainment is being offered, and a clear notice to this effect will be displayed at the entrance.

17. Customers who appear to be under the age of 21 must be asked to provide a Pass-Scheme approved photographic card, their passport or photographic driving licence to prove their age. Prominent notices must be clearly displayed to this effect at the entrance(s) to the premises.

18. The content of the House Rules will be made known to customers prior to their admission to the premises when sexual entertainment is provided.

19. Signs must be displayed at appropriate locations advising that any customer attempting to make physical contact with a performer will be asked to leave;

Performers

20. Entertainment will be given only by the performers engaged by or through the Licensee and there will be no audience participation.

21. The licensee shall keep a record of each performer, including their proper name and any aliases, and their residential address. With each record the licensee shall keep a copy of a photographic form of identity and proof of address of the performer.

22. On days when sexual entertainment is provided, the licensee, or their representative, shall keep a record of those performers working at the premises on that day in a daily record. The daily record shall be immediately available for inspection by authorised officers.

23. The licensee shall ensure that each performer signs the code of conduct in their proper name, acknowledging that they have read and understood and are prepared to abide by the code of conduct, and signed copies be kept on the premises for inspection by authorised officers.

24. During a performance there shall be no full bodied physical contact between the customer and the dancer other than the transfer of money or token at the beginning, during and conclusion of the dance.

25. During a performance there shall be no full bodied physical contact between dancers and they are not to touch each other's breasts and or genitalia.

26. Performers must remain fully dressed while on the premises, except while performing in areas approved by the Council for sexual entertainment and in the approved changing rooms.

27. Performers must redress at the conclusion of the performance.

28. Performers must never be in the company of a customer except in an area open to the public (excluding the toilets) within the premises.

29. The Licensee is to implement a policy for the safety of the performers when they leave the premises.

Customers

30. The House Rules regarding customer behaviour will be implemented at all times that the premises are operating with sexual entertainment.

31. No member of the public shall be admitted or allowed to remain in the dance area if they appear to be intoxicated or under the influence of illegal substances.

32. Customers may not be permitted to photograph film or electronically record any performance.

33. Customers shall not be permitted to enter non-public areas of the premises such as changing rooms.

Appendix Three

Sexual Entertainment Fees

Application type	Fee
New Application	£9070
Renewal Application	£9070
Refund if refused	£1500
Transfer of licence	£230
Variation	£3750

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Democratic Services Department
London Borough of Tower Hamlets

DX: 42656 ISLE OF DOGS

Our Ref: dd lb STE1-5

Your Ref:

8th January 2014

Simmi.Yesmin@towerhamlets.gov.uk

Dear Sirs,

Re: Adoption of the Sexual Entertainment Licensing Regime under Local Government (Miscellaneous Provisions) Act 1982

We write with reference to the above and confirm we are instructed on behalf of Whites Brasserie of 32-38 Lehman Street, London, E1 8EW to make further submissions to you in respect of the matter to be determined at the Licensing Committee hearing on 8th January 2014.

It is our opinion based on the information presently before us that the Extraordinary Meeting of the licensing committee is not constitutional and any decision it makes ultra vires.

The reason for this is that the council licensing committee meeting held on 8th October 2013 resolved not to adopt Schedule 3 of the Local Government (Miscellaneous provisions) Act 1982 as amended by Section 27 of the Police and Crime Act 2009. This decision of the licensing committee is a valid one and properly made.

As you will be aware the cabinet met on the 11th September 2013 and the Mayor resolved to ask the licensing committee to consider whether to adopt Schedule 3 as aforementioned. Please be aware of the decision of the Mayor in the Minutes of the meeting of the 11th September 2013.

Therefore the authority and delegation for the licensing committee to resolve to refuse to adopt has been made via the resolution of the Mayor.

We do not see on any information before us that the Cabinet has met since the 8th October 2013 decision and resolved any other resolution that would in effect ask the licensing committee to consider this matter again. We also note that previously the licensing committee were asked to resolve the matter in its entirety whereas the proposed resolution for the hearing of tonight, 8th January, just asks whether to recommend to full council to resolve and adopt Schedule 3 as aforementioned.

Dadds Solicitors

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Page 13

Page 251



Therefore the licensing committee are being asked to undertake a completely different task in any event and regardless of the adoption or not it would appear that would be a route for which this matter will then proceed to full council. Clearly this course of action has not been resolved by any Cabinet decision that we are aware of.

May we suggest that someone within the local authority, whether it be an officer or a political member, is not happy with decision of 8th October 2013 and wishes for that to be set aside and for the decision to be made again at full council. It is our opinion based on information before us and having regard to the Constitution, that any decision made by the licensing committee tonight would be ultra vires.

We draw your attention to previous correspondence where we set out our view in relation to overturning decisions made by the Council and its committees and the required procedure and signatures required.

Furthermore we are concerned that an Extraordinary Meeting has been called to discuss fee structure and whilst that has been discussed the officer sets out amongst other things that it is an opportunity for members to reconsider their decision of 8th October to refuse to adopt. We say this will be unlawful as the Council's procedure does not allow for other business to be discussed or decided upon at the Extraordinary Meeting.

The suggestion that the licensing committee requested an Extraordinary Meeting to discuss the fee structure for Sexual Entertainment Venues is misconceived because whilst concerns were raised regarding fees they were advised by Paul Greeno solicitor that if they did not choose to adopt Schedule 3 then there would be no need to discuss fees further.

We are surprised of the very short notice given just prior to Christmas and the way in which this matter, being of such importance to our client and many others, of having to respond to such an issue in short notice given the Local Authority as well as most businesses close for an extended period over the holiday period.

In relation to what the committee are being asked to consider this evening notwithstanding the aforementioned comments we say the following:

1. Mr Paul Greeno advised the committee that if they did not adopt Schedule 3 as aforementioned then there would be no requirement to consider the proposed standard conditions and fee structure. Therefore we are surprised that the Local Authority are proceeding to call this Extraordinary Meeting to discuss fee structure when its own Legal Adviser has made it clear that if the matter was not resolved in a positive way then they need not proceed to discuss fees, as the matter falls away in its entirety.

2. The matters raised regards to White Swan remain the same. in other words if it is deemed necessary they would have to apply for a licence had the Local Government (Miscellaneous provisions) Act 1982 as amended by Section 27 of the Police and Crime Act 2009 (Schedule 3) been adopted. The position remains the same that each application would have to be considered on its own merits and in accordance with the Council's own policy at that time. This remains to be the case and we can see no reason why that this matter is being considered again.
3. As mentioned in previous correspondence the main reason in our opinion that two members in particular voted not to resolve was because existing operators would not be assured that their applications would be renewed and having consequences upon their business and secondary trade, for example taxis, restaurants, other services and businesses that support the night time economy. This remains the same and as it was acknowledged by Mr Greeno on the night that even though there is a nil policy and exception for those existing businesses to apply, it does not mean those existing businesses will automatically receive a licence and in fact their applications would be judged by the new policy, and could be refused if the premises and its location are in conflict with the Policy which had been adopted by the Cabinet on the 11th September 2013.

We have had the opportunity to read the letter of Jeffrey Green Russell of 6th January and support the comments made within. For the reasons set out above we do not believe that the Cabinet resolved for the licensing committee to consider this evening to recommend to full council to adopt. Furthermore the council has already resolved not to adopt and we can see no lawful reason why that decision should be overturned and we would expect the council to be open and transparent in its dealings and if it is unhappy with the decision made 8th October 2013 then it should say so and start the process again to reconsider the point.

Therefore we do not believe it will be lawful for the licensing committee to reconsider its lawful decision of the 8th October 2013.

We ask that this letter be placed before members of the licensing committee and confirm as previously written our Mr Dadds will be in attendance.

Yours faithfully



DADDS LLP

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From: Julian Skeens [JMS@jgrlaw.co.uk]
Sent: 07 January 2014 20:22
To: David Tolley
Cc: Gareth Hughes; Simmi Yesmin
Subject: Extraordinary Meeting 8/1/14

Importance: High
Dear Mr Tolley

Thank you for indicating that this missive would be circulated to members of the committee prior to the hearing. I confirm that I shall be representing the Nag's Head 17-19 Whitechapel Road London E1 1DU that has provided nude entertainment at this site since 1982

I have had the benefit of reading my colleague Gareth Hughes' letter of the 6th January and adopt his representations and would make the following additional comments.

The Agenda papers record that the Council delegated power to the Licensing Committee to decide whether or not to adopt the legislative scheme to licence sexual entertainment in the Borough. The committee decided that, following due process, it should not be adopted.

In an apparent ruse to revisit that decision (see para 5.13 page 15), the committee is being asked to consider the appropriate level of fees for the licences that it has decided cannot be granted. If the Council wishes the decision to be revisited, due process requires that it should start the process afresh

The agenda papers record that the existing public consultation "must be taken into account" (para 5.8, page 14) but it was flawed and the papers go on to speculate what the result would have been without that flaw. The only way that issue can be resolved is, due process which requires it to consult afresh without that flaw

The agenda papers recite at 1.5 page 5 that "there is currently no control on the number of venues in the Borough" which is not true. The present licensing regime is controlled by the Licensing Act 2003. Any new application can be refused, any change in style of operation can be the subject of Review and revocation, see also paragraph 3.3 page 6 which correctly states that any application for a sexual entertainment licence must be decided "on its merits". The new regime does not allow councils to refuse licenses on moral grounds

The Nag's Head has provided sexual entertainment (as defined) under a licence since 1982 and the concerns expressed in relation to the White Swan apply equally here and raise the fundamental issue of the protection of human rights (as defined). The holders of licences are entitled to expect organs of government to protect their property, in this case a license (see *Tre Traktor Aktiebolag v Sweden* 1989). Adoption of the new legislation puts that in jeopardy (see White Swan arguments).

Should the committee decide to recommend adoption of the legislation (and it is difficult to understand how it could recommend that given that the Council has delegated the decision to the committee) the Nag's Head should not have any additional conditions as is proposed by the standard conditions

Page 9

Page 255

Should the committee adopt the standard conditions may I suggest that the word "drunk" is substituted for "intoxicated" in condition 31. Most customers where alcohol is sold are intoxicated to some degree, it is only when they become drunk that intervention is required

The course of conduct or process recommended by the Agenda papers is fundamentally flawed. The strength of argument and the strength of feeling expressed elsewhere, would suggest that, if the legislation is adopted, it will be the subject of costly challenge. The appropriate way for the Council to reconsider its previous decision is not to fudge it as suggested, but to apply due process, give local democracy a fair hearing by re-consultation and armed with that voice of democracy, reconsider the matter afresh with open minds

Thank you once again for agreeing to circulate this missive

Julian
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Mr David Tolley
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5 Clove Crescent
London E14 1BY

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Direct Fax No: 020 7307 0252
Direct Dial No: 020 7339 7012

6 January 2014

By email and post
Our Ref: GBH/SECLIC1/14970.00001

Dear Mr Tolley

Adoption of the Sexual Entertainment Venue Licensing Regime under Local Government (Miscellaneous Provisions) Act 1982

I have been requested by my clients at Metropolis and at Astons (Majingos) Champagne Bar to make further submissions to you in respect of matters to be determined at the Licensing Committee Hearing on 8 January 2014. I would be grateful if a copy of this letter could be placed in front of members prior to the meeting in the same way as you did on the previous Licensing Committee and Council Meeting Agenda.

I would ask that my two previous letters to the Council and both to the Licensing Committee dated 7 October and to full Council dated 27 November 2013 be included within the correspondence as well.

There are several comments which we would seek further to add with regard to the latest report to the Licensing Committee both in terms of procedure and content.

Procedure

It is submitted that the Licensing Committee on 8 October did not request an Extraordinary Meeting to be held to discuss the proposed fee structure for Sexual Entertainment Venues as is suggested in paragraph 1.1. This was certainly a matter considered at that meeting but, of course, the eventual decision was to reject the proposal altogether so accordingly there would be no requirement for any report back on the fees in circumstances where the Committee had rejected the proposal outright in any event.

It is therefore submitted that there is no lawful basis for this Extraordinary General Meeting because the Committee which sat in October rejected the proposal outright, and the necessity, therefore, to consider fees was rendered otiose.

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[REDACTED]
[REDACTED]
[REDACTED]
Solicitors

Mr David Tolley

6 January 2014

In our respectful submission the decision of the Committee on 8 October 2013 must stand as a valid decision. The revised report at paragraph 3.5 recognises that:

"A properly made decision not to adopt the framework legislation to enable licensing of Sexual Entertainment Venues was made (on 8 October 2013)".

Given that the author of the report and the Council's legal advisor clearly take the view that the decision in October was "properly made" no legal authority is presented to the Committee which sets out its status in determining this matter in light of the valid previous decision.

Furthermore, the full Council sought to call in this matter for further consideration in December but this was subsequently withdrawn from its consideration by the Council's legal advisor and monitoring officer. There has therefore been no overriding of the October decision.

The monitoring officer of the Council meeting in December agreed that there was no mechanism for tabling this matter before a meeting of the full Council.

In the new report of this meeting the recommendations are ones which involve further recommendation to full Council. Whilst this may be the correct way of removing a matter such as this into a meeting of a full Council there is still the obstacle in the way of the initial rejection properly determined by the Licensing Committee under delegated authorities on 8 October 2013.

Furthermore, whilst the report states that this Extraordinary Meeting was requested by 8 October 2013 Committee it is to be noted that such an Extraordinary Meeting was only suggested in order to discuss the issue of the proposed fee structure which is made clear in paragraph 1.1. It did not recommend an Extraordinary Meeting of the Committee in order to discuss the validity of the decision which it is was taking to reject the proposals outright on the 8 October. The lawfulness of the Committee meeting to discuss this matter is therefore in question on this ground.

As a further point, we would ask the Committee to note that it apparently has no power in any event to consider the issue of fees in respect of Sexual Entertainment Venue licences under the Local Government (Miscellaneous Provisions) Act 1982.

Paragraph 3.3.7 of the scheme of delegations in the Council's constitution sets out the powers of the Licensing Committee and the Committee can determine fees and charges in respect of a number of licensing consents and approvals for which it already has responsibility.

Paragraph 1, referring to its functions, does not include matters under the Local Government (Miscellaneous Provisions) Act 1982 and it is currently therefore unable to make any such recommendation to the full Council.



Solicitors

Mr David Tolley

6 January 2014

We would further submit that there is no documented evidence that the 8 October Licensing Committee formally requested an Extraordinary Meeting on the issue of fees. There is no signed Minute of the Meeting of the Licensing Committee on that occasion and it is not clear, therefore, on what basis it is suggested that such an Extraordinary Meeting was sought. In any event, as we have submitted above, no Extraordinary meeting could have been sought in circumstances where the Committee rejected the adoption of the legislation outright.

With specific regard to Extraordinary Meetings of Committees the Council's constitution sets out clearly the procedure for so doing in Part 4 which is entitled "Rules of Procedure". Paragraph 3 refers to the calling of Extraordinary Meetings and indicates that this may only be done by the Council or the Chairman of the Council as well as the monitoring officer and any five members of the Council or relevant Committee if they have signed a requisition presented to the Chairman of the Council and he has refused to call a meeting within 7 days of the presentation of the requisition.

There is no reference in the Committee report as to why the meeting is an Extraordinary Meeting other than the suggestion in paragraph 1.1 that the Licensing Committee suggested such a meeting on 8 October 2013. However, that may only be done if 5 members of the relevant committee have signed a requisition which has been presented to the Chairman of Council and the Chairman of Council has refused to call a meeting within 7 days of the presentation of the requisition.

The Council is now put to proof and we request sight of the relevant requisition document signed by 5 members of the Council set out in paragraph 3.1.1 of the Rules and Procedure and the nature of the subject matter contained within the resolution, request or requisition which led to the Extraordinary Meeting being called.

Finally, if the report of the Licensing Committee is correct at paragraph 1.1 and the Extraordinary Meeting has been called in order to discuss the issue of fees then it is clear from the Council's constitution at paragraph 3.3 of the Rules of Procedure that no other business may be conducted at the Extraordinary Meeting other than that specified in the Resolution which led to its being called. There are clearly other matters set out in the report which officers are seeking the Committee to consider which were not part of the original request of the Extraordinary Meeting which was based upon fees only.

In summary, the Committee may not deliberate on the issue of the adoption of the legislation at this meeting and this is without prejudice to our contention that the adoption was, in any event, rejected at 8 October hearing.

Treatment of Existing Premises

Paragraph 3.9 of the report now acknowledges that there is no guarantee that existing premises would be successful in obtaining licences under an adopted scheme as all applications must be considered on their merits. This was clearly an issue which concerned

Mr David Tolley

6 January 2014

members of the Committee sitting on 8 October and was one of the reasons why the adoption was rejected. We make the same submissions that we made on that occasion in respect of this point and that is that the legislation should not be adopted in circumstances where operators who have been based in the area in, for example, in the case of the Pleasure Lounge for 40 years without any significant incident should face the removal of its ability to operate in the way it has done for that period of time. All of the premises in question have been subject to annual renewals in the past without incident and have been subject to the Licensing Act 2003 regime which provides for the review of such licences in the event of any breach of conditions.

That reasoning still applies and we would invite Committee members to consider it at their hearing on 8 January 2013.

Fees

Despite further elaboration in the Committee report it is still not made clear precisely how the fees are comprised.

We make the same point as previously set out in the letter to both the Licensing Committee and the full Council, that 210 hours is an excessive amount to be able to spend upon one application with possible enforcement costs added in.

At paragraph 3.17 the report states that times required for overtime in both covert and overt visits are undertaken by two officers. It is presumed that these are the officers listed in the table on page 8 of the report as "licensing officer" and "compliance enforcement visits". However, there is a total number of hours set out at 210 which at one 2 hour visit would add up to over 100 visits per annum when currently operators are experiencing not a single visit per annum.

It is not clear why given the history of the premises for which this firm acts, and their good records, why a licensing enforcement office visit would be required once every 3 days. Even if each visit were between 4 and 5 hours this would still add up to 42 separate visits and this seems vastly excessive in the circumstances. Our clients currently report to us that they are not even aware of one visit per annum.

The processing of the application also appears to be somewhat excessive given that there is built in an estimate of 15 working days at 8 hours a day on administering one application. This would add up to some 120 hours of officer time simply to process an application which again seems vastly excessive. It should also be remembered that all of the premises named are already subject to the Licensing Act 2003 regime meaning that officers will already be aware of those premises and compliance with plans and surveys. In order to maintain their current status as premises licence holders under the Licensing Act 2003 they are under a duty to ensure that the premises are suitable in terms of public safety and if there is any doubt

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6 January 2014

about this then officers will be aware of such matters under the existing regime. This is not a brand new regime where all matters with which officers have to be familiar are new.

It is accepted that officers may have to spend time liaising with applicants and objectors during the consultation process and preparing report for Committee and attending those hearings. However, it is again suggested that the time in this respect is excessive.

At the moment, under the Licensing Act 2003 regime premises pay between £315 and £635 for the renewal of their premises licence.

The figures set out in the recent report represent something like a 2,500% increase on fees compared with those under the 2003 Act.

Accordingly, without prejudice to the argument set out above about the validity of this process, the Committee is invited not to impose fees of this level but at a substantially lower rate.

Consultation

We refer to the points we have previously made in letters to both the Licensing Committee and full Council with regard to the consultation. We invite members to consider the points that we have raised in respect of the consultation in those previous letters. Reference is again made to the "industry" running a campaign. In this case, the "industry" consisted of a handful of local premises licence holders arranging for themselves a doorstep campaign as anyone is entitled to do on any issue. No vast amounts of money were spent on this campaign which consisted merely of the voluntary efforts of those in support of the premises in question. In contrast to the 4 or 5 operators in question there has been a significant national campaign with significant financial backing run by both Object and Fawcett Society who have been present in the debate with regard to the adoption of this legislation in nearly all Boroughs where it is being considered. It was entirely open to them, and it is assumed that this has happened, to run their own doorstep campaign.

It is submitted that just under 5,000 responses to a local government consultation is a significant number and one which councillors will have to take seriously into consideration. The results within the total vote with 97.8% indicating that they do not wish the Act to be adopted in this area is in our submission an overwhelming number.

In paragraph 3.30 it is suggested that the overall consultation represents only a small percentage of those who live and work in the Borough and that it is not possible to know whether those who did not make representations would have supported or were against adoption of the scheme. This would be an argument against having consultation at all on the basis that one could never know how those who did not vote would have voted had they done so. It is submitted that if a local authority decides to consult then it has to take on board the views of the significant number of people who did actually take time to participate in that

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Solicitors

Mr David Tolley

6 January 2014

exercise rather than make assumptions about how the rest of the population might have voted. There is no way of knowing, without a 100% consultation, how those other people would have voted in the circumstances and accordingly this should not be a matter taken into consideration in this context. There is further a reference to the fact that the adoption of a scheme could "facilitate policy interventions that enhance the ability of the Council to limit the impact of SEVs on the community and on particular groups at risk of exploitation" but it does not go on to say what such "policy interventions" might be or who the groups are who are at risk of exploitation. There is no evidence within the report of any group that is exploited or facing exploitation and whilst this may be an argument for the future in terms of subsequent adoption of the legislation it cannot be submitted as an argument here for such issues that might arise at some non-distinct time in the future.

Further reference is made to the proposed policy providing "support" for the continuation of existing premises but it is submitted that this is not what is proposed with that policy. It only indicates that existing operations will not be subject to the nil policy but it does not provide any protection for existing premises who will still be subject to an application process hearing and to representations that may be made. Such representations may persuade Councillors sitting on the Licensing Committee not to grant the Sexual Entertainment Venue Licence.

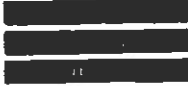
Finally, there is a reference in paragraph 3.30 of a new licensing regime "limiting the negative impact on local communities brought about by these venues". However, there is no reference at any point in the report to what these "negative impacts" might be. There is no broad concern expressed in the report from any source about the so called "negative impact" on local communities and it is therefore submitted that this is not a ground or a reason for adopting a policy on this occasion.

Finally, paragraph 5.8 which contains the comments on the legal directorate indicates that the consultation which took place on the adoption of the Sex Establishment Licensing Regime is "the more relevant of the two consultation exercises referred to in the report".

It goes on to advise the Council that if it wishes to take a different approach to that expressed in the consultation then there would need to be good reason for

that approach and then points out that reasons are set out in the report both for and against. However, we can see no reasons set out in the report for or against the adoption of the legislation and have set out our views in this respect in the above paragraphs.

We would be grateful for the ability to elaborate on these points at the Licensing Committee on 8 January 2014 as we did before 8 October hearing and we would respectfully ask that this letter and two previous letters which we submitted both to the October Licensing Committee and to the full Council are attached to this submission.



Solicitors

Mr David Tolley

6 January 2014

We are grateful for your consideration of these matters.

Kind regards.

Yours sincerely

GARETH HUGHES
Barrister and Director
for Jeffrey Green Russell Limited

Enclosure(s)

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Mr John S Williams
Service Head Democratic Services
London Borough of Tower Hamlets
DX: 42656 ISLE OF DOGS

Our Ref: dd/1b ST/1-5

Your Ref:

27th November 2013

e-mail: johns.williams@towerhamlets.gov.uk

Dear Sirs,

**Re: Consideration of the adoption of the Sexual Entertainment Venues
Licensing Regime in Tower Hamlets**

Further to your email of yesterday's date we take the view that there was insufficient time in which to respond fully before 2pm today however we have taken our client's instructions and we are of the view that the decision whether or not to adopt the policy was properly delegated to the Licensing Committee on the 11th September 2013. They have resolved not to adopt the Policy and that is the decision from the resolution of the council.

We would need to reconsider the point on quashing the decision of the council. It is our understanding briefly looking at the Constitution, that there is a mechanism for doing such, however your note suggests this only applies to Full Council and not council meetings. If we are wrong on this point please let us know, i.e. have we misunderstood. We see no provision, or been directed to any decision to allow for the decision to be made again, given the clear democratic rule made by the Licensing Committee.

We note that the council report has not been written in a way that reflects the meeting of the licensing committee. Our Mr Dadds was present along with other solicitors, barrister and members of the public. It was clear, as far as this firm is concerned, that a decision was made.

The salient point why the decision was refused was because there could be no guarantee that the existing trades and business that held a licence would be guaranteed to obtain a new licence. A legal advisor said each application would be made on its own merits subject to policy of the existing Cabinet, and there was the possibility that the existing licence may not be reissued and it was that reason in our opinion the two particular members of Committee decided against the resolution.

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We ask that this matter be deferred from tonight's council meeting to allow those who may be affected by the decision time to consider the report and its contents and make appropriate representations if necessary. We remind you that we wrote to the licensing authority on 15th October 2013 asking for an update. We enclose a copy of our letter for your reference. We do not believe it is appropriate that we should be asked to comment and only given short notice of this matter being revisited.

In the absence of the deferral we seek permission from the Speaker of tonight's meeting to make oral representations and make reference to this letter. Our Mr Dadds could be in attendance if permission is given.

We look forward to hearing from you as a matter of urgency.

Yours faithfully



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Attention: Mr David Tolley
Head of Consumer and Business Regulations Service;
and
All Council Members
London Borough of Tower Hamlets
Mulberry Place
PO Box 55739
5 Clove Crescent
London E14 1BY

Direct Email: gbh@jgrlaw.co.uk
Direct Fax No: 020 7307 0252
Direct Dial No: 020 7339 7012

27 November 2013

Our Ref: GBH/SECLIC1/14970.00001

Dear Mr Tolley and Councillors

Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009

We note that the Council has now been asked to adopt the provisions of Local Government (Miscellaneous Provisions) Act 1982 in respect of Sexual Entertainment Venues which we understood had been rejected by the Licensing Committee at its meeting in October 2013. Notwithstanding that decision, officers have chosen to bring this matter back to full Council and we would ask the Council to adopt the same view as its delegated Licensing Committee.

We would make the following points about the Report submitted to the full Council meeting, whilst relying on all those points made in our previous letter of 7 October 2013 which was before the Licensing Committee.

1. Fees

- 1.1. It is still not clear that fees have been properly calculated either mathematically or in accordance with law. The figures set out at 3.9 of the Report to Council are based upon one establishment and add up to £9,000. However, it is not made clear why a licensing officer should take 105 hours to process an application at a cost of £2,625. 105 hours to administer an application for a sexual entertainment venue licence seems excessive and extreme. Further, it is not made clear as to why it is suggested that a further £2,625 is required under the heading "Compliance Visits and Costs". It is suggested at paragraph 3.10 that certain test purchasing monies are required to pay for lap dancing session for licensing officers. The average cost of a 3 minute dance from a dancer is about £20 so it is difficult to see how a licensing

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Page 1

Page 267

Mr David Tolley

26 November 2013

officer visiting such a premises would require 130 lap dances before deciding whether there was compliance with or breach of licensing conditions.

- 1.2. As we made clear in our previous letter to the Licensing Committee in October 2013 the recent case of Hemings v Westminster City Council (2013) makes clear that the costs of paying for enforcement are not recoverable by way of a licence fee.
- 1.3. It is hard therefore, to see how there can be such a dramatic difference in licence fees under the Licensing Act 2003 as those which Tower Hamlets are seeking to impose under the Local Government (Miscellaneous Provisions) Act 1982. The difference is that between what is currently a £600 fee for a premises licence to that which is proposed of a £9,000 fee for an SEV licence.
- 1.4. The Licensing Committee expressed grave concern over the level of fees and before they rejected the adoption of the Act in their area had asked for a review to be carried out of the fee rates. In our submission, this has not been answered by paragraphs 3.9-3.11.

2. The Consultation

- 2.1. With regard to the consultation we make the same points that we made in our letter of 7 October 2013 referring to paragraph 3.7, 3.8 and 3.9 of the Licensing Committee Report and would invite the Council to adopt that reasoning.
- 2.2. In essence, it is inappropriate for Council officers to refer to the fact that the participation in the democratic process has somehow "undermined the consultation". Anyone in the United Kingdom has the right to canvass for support for a particular proposition which stands to be decided in front of a Council Committee or for that matter Parliament. There has certainly been a coordinated campaign run by members of Object and the Fawcett Society society to adopt the provisions of the Act and it was entirely open to those who wished to support the adoption of the Act to themselves canvass local residents to ascertain their views. In this particular incident a decision was taken by the very concerned operators of establishments which have been located in this Borough for many years to conduct a door to door campaign to see how people felt about the adoption of the Act. They obtained responses and submitted these responses with the agreement of all parties to the Council as part of the process.
- 2.3. A point was raised in the Licensing Committee that 4,973 respondents opposing the policy was a fraction of the total population of Tower Hamlets, and whilst this may have been true it is a fraction which is far in excess of the miniscule total in comparison that supported the adoption of the Act, namely 108 people.

- 2.4. It is totally denied, therefore, that the inappropriate remarks contained within the Report about a campaign which has produced a significant number of people opposed to the policy which officers seek to introduce has somehow skewed the process. In our submission it should inform the process and the nearly 5,000 people who oppose the adoption of the Act within the London Borough of Tower Hamlets will clearly be monitoring the Council Committee meeting to see if their views are taken into account. The officers within paragraph 3.15 seek to compare a consultation on the adoption of the Act within the London Borough to a consultation which took place on the adoption of the Policy. However, that consultation was evenly split and give or take the differentials could have resulted in a majority against the adoption of the Policy.
- 2.5. It should be pointed out that the individual operators within Tower Hamlets carried out the same exercise with regard to the adoption of the Policy as they did with regard to the adoption of the 1982 Act. It is interesting to note that officers do not suggest that the results have somehow been skewed in that particular case which appears to be inconsistent thinking.
- 2.6. In any event, a survey on the adoption of the Policy is a very different survey to one on the adoption of the Act. It might be assumed that people thinking about the adoption of the Policy may already assume that the Act has been adopted and that therefore there would have to be a policy of some nature operating underneath that Act. It is then open for people to say that if there has to be a Policy because the Act has been adopted then there will be a greater percentage of support for that Policy given that some form of policy is to be introduced in any event.

3. Further reason for Licensing Committee Decision

- 3.1. There is a singular omission in the Report to Council Committee which is that there was a third reason why the Licensing Committee chose not to adopt the 1982 Act and that is that members were concerned, by a majority, that there was still no guarantee that the existing operators, many of whom have been in the Borough for decades, would retain their licences under the new system.
- 3.2. Whilst officers make clear in the Report that existing operators will not be subject to the "Nil" Policy that is no guarantee that Sexual Entertainment Venue Licences will be granted to those operators. It merely exempts them from one part of the policy. This was of significant concern to some of the members on the Licensing Committee and it was this that eventually led to the dismissal of the option to adopt.
- 3.3. Accordingly, paragraph 2.5 of the Report to Council is misleading when it suggests that the Policy "supports the continued operation of existing premises including The White Swan." The Policy singularly does not support the continued operation of

Mr David Tolley

26 November 2013

the existing premises but merely indicates that they should be exempt from the "Nil" Policy. That is not, a guarantee of their continued existence under the new regime. Given that this is a significant risk the operators for which this firm acts would oppose the adoption of the Act within the Borough.

- 3.4. It is clear that to date the premises for which this firm acts, namely Majingos and Metropolis, have operated without any issues or intervention from the Police or the Local Authority in many years, and that they are well controlled by way of conditions under the premises licence already in existence granted to them under the Licensing Act 2003.

This completes the further submissions that we would make on behalf of our clients in respect of the adoption of the 1982 Act by full Council, and we would ask that members take these matters into account as well as those which we still seek to rely upon set out in our letter of 7 October 2013, a copy of which is also attached.

We would respectfully ask that this letter be placed before members prior to the meeting of Full Council on 27 November 2013.

Kind regards.

Yours sincerely



GARETH HUGHES
Barrister and Director
for Jeffrey Green Russell Limited

Enclosure(s)

Mr Paul Greeno
Senior Advocate (Deputy Team Leader)
Tower Hamlets Legal Department
DX: 42656 ISLE OF DOGS

Our Ref: dd lb STE1-5

Your Ref:

15th October 2013

Dear Sirs,

Re: Sexual Entertainment Licensing

We write further to the Council Licensing Committee Meeting held on 8th October 2013, where it was resolved not to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009.

Please confirm what steps, if any, our client will need to undertake following the above decision, also please confirm if this concludes matters for this municipal year?

We look forward to hearing from you.

Yours faithfully


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7 October 2013

By Post
Our Ref: GBH/SECLICI/14970.00001

Dear Mr Tolley

Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009

I refer to the report which is due to go to Licensing Committee on the evening of 8 October 2013, and would indicate here that we would, given, the Chairman's leave, intend to say a few words about the adoption of this policy to that Committee on Tuesday evening.

However, in the meantime, we would be grateful if you could kindly forward to the Chairman and members some further comments about the report which is drafted, and which will be before them at the Hearing.

As you know, this firm acts for the Pleasure Lounge, known as the Metropolis in Cambridge Heath Road, and for the Majingos Club in Canary Wharf. Both premises have operated as lap dancing venues for a number of years and the Metropolis, in particular, has operated as a dancing venue, and striptease club for decades, and since at least the 1970s.

We have already made our views known as part of the submissions to the consultation exercise which took place with regard to the adoption of the Act, and would refer the Committee to those submissions and we trust that they will be before it on Tuesday evening.

However, we make the following comments on the Report with specific regard to referenced numbered paragraphs within the Report as follows:

Paragraph 3.7

It is indicated that the consultations hosted online on the Council's website and paper copies would be provided if requested. This is not the case insofar as our client's experiences is concerned, or that of the campaign team who found it almost impossible to find paper copies even when asking Council officers, and eventually had to run off copies of the online screens in order to act as the questionnaire. We also

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David Tolley

7 October 2013

pointed to the Council, on several occasions during the consultation process, that only one reply could be sent from one computer. This prevented, for example, groups of people in residential care homes or old people's homes who may all have wished to respond to a consultation but could not do so because the computer in their place of residence only allowed for one reply. This problem was highlighted during the consultation process to Council officers by my firm. Copies of the relevant emails are available for inspection by the Committee.

Paragraph 3.8

This paragraph asserts that whilst 4,973 responses were received, some 1,400 forms were received from a single sexual entertainment premises within the Borough. In our submission, this is perfectly acceptable. It is true that a campaign was formed in order to illicit support for the venues arguments that the provisions of the 1982 Act should not be adopted in the Borough. The 1,400 forms collected from the premises were signed by people who either lived in the area or visited the premises regularly. The consultation process did not distinguish between those who lived in the area and those who did not, so there can be nothing wrong with the submission of 1,400 forms from individuals who were interested in responding to this consultation survey.

Paragraph 3.9

There is a reference in this paragraph to the fact that "it is probable" that some of the sexual entertainment venues have coordinated a response to the consultation. It is not probable – it is true. As we have indicated previously, at least three or four of the venues in this area felt under threat after decades of operation, and decided amongst themselves to mount a doorstep campaign which is perfectly legitimate in a democratic society in order to gather support to place before elected decision makers. Paragraph 3.9 seems to suggest that the coordination of the response is to such an extent that it has undermined the consultation as being one that can provide an accurate picture of wider community opinion.

It is unclear what is meant by this statement.

Leaving aside the 1,400 forms returned from one of the premises (which we still say should be included within the consultation) there are still left some 3,500 responses, all of which indicate that the provisions of the 1982 Act should not be adopted in the Borough. These responses have been raised as a result of a doorstep campaign as is perfectly proper and mounted by three of the four premises operating in the Borough. It is not clear why it is suggested that this has somehow "undermined the consultation" when, in fact, it can only serve to support the consultation given the numbers that have taken part. It was perfectly legitimate for those who supported the introduction of the legislation in the Borough to mount their own campaign and indeed Object the campaign group has been a vociferous part of the debate within the Borough. They

were perfectly entitled also to mount a doorstep campaign in the same way as our clients, and in the same way as any other campaign group concerned about any other issue in which the Council is involved. It is all part and parcel of the legitimate process of persuading Councillors by gathering in public opinion.

In our submission, it is not open to the Council to somehow assume what the "wider community opinion" is in this respect when the response to the consultation has been quite enormous and far more substantial than to many Council consultations that would normally take place where one may be lucky if one received a handful of replies.

Paragraph 3.9 also goes on to suggest that these results are in contrast to the community response received at the Council's consultation exercise on the adoption of the policy. However, the consultants used by the Council in scrutinising the results of that consultation came to the view that there was a 50:50 split on the adoption of the policy allowing for a plus or minus variation in numbers. It is incorrect to suggest, as this paragraph does, that there was a 52% vote in support of the policy and a 48% vote against it. The SMSR Report commissioned by the Council to analyse the results of the consultation indicated that there was a sampling error of approximately plus/minus 2% in the figures, and that, accordingly, their conclusion was that, insofar as the nil sexual establishment policy was concerned, opinion was split. They conclude that the survey has produced an inconclusive split result.

While it is correct to say in the report that, in one case, 75% of consultees were in favour of aspects of the sexual establishment policy, it must be pointed out that this figure only relates to the delineation of localities within the policy. An expression in favour of the manner in which the Council has defined the localities contained within the policy is clearly not an expression in favour of the policy itself as the figures reflect in the 50:50 split. In our submission that 75% figure should not be used as a reason for adopting the legislation which is the concern of this Report. That figure arose in the context of the adoption of a policy.

It is not agreed that the results obtained on the Sexual Entertainment Policy Consultation are in contrast necessarily to those obtained on the adoption of the legislation consultation. It would be quite open for someone to suggest that the legislation ought not to be adopted but then to take a different view on the question of whether, if it is adopted, the policy suggested is the right one. It does not necessarily follow that because 98% of respondents were against the adoption of legislation that 98% of respondents should be against the proposed policy.

In our submission, there is therefore no inconsistency with regard to the consultation on the adoption of the legislation. A full, and proper, democratic exercise has been carried out with which the Council has found no fault. There is no allegation by Council officers, nor should there be, that there has been any wrong doing in the

gathering in of support. As indicated above, it is a perfectly correct exercise in a democratic society that proponents of particular arguments on either side may approach members of the public to gauge their support. The response is not misleading or inaccurate if 98% of respondents take a particular view and only 2% take the opposite view.

Accordingly, it is clear to those making this submission that, in the absence of any other indications to the contrary the Council should take on board the views of nearly 5,000 of its own residents or 3,500 of its residents (if one excludes the 1,400 forms from the venue) which is still an enormous majority against the adoption of the legislation.

Paragraph 3.10

The paragraph fairly states what we have set out in our submissions above. That it is for elected members to determine whether a campaign which involves knocking on doors to obtain support for a particular view is legitimate or illegitimate in a democratic society. It is clear that elected politicians, during elections, do exactly the same in order to obtain votes for their own parties on the basis of the attractiveness of the policies offered, and elected members will readily recognise this legitimate function. The same is also true of those who choose to campaign on particular issues whether it be, for example, the closure of a local hospital, the abolition of a school bus service, or a planning development located near to a particular group of residents. All of these issues would engender concerns, both for and against, amongst members of the community, and it would be perfectly valid for those on either side of the argument to gather in support for those arguments. This is exactly the case with regard to the adoption of the provisions of the 1982 Local Government (Miscellaneous Provisions) Act.

Whilst it is true that a strong "no" response does not prevent adoption by the elected members, and it is perfectly legitimate for them to find in the alternative, it must be right that such a substantial response of 4,973 responses, as set off against 108 in favour of the policy, should weigh heavily in elected members decisions. It is clear, that certainly 3,500 of those submitting submissions are local residents who will be keen to test whether elected members come to a view fairly based upon what those individuals have expressed in consultation and will bear this in mind during Council elections in 2014. That is the democratic process.

Paragraph 3.11

We are told in paragraph 3.10 that a strong "no" response does not prevent adoption if there remain good reasons for the regulation of sexual entertainment venues. However, it is submitted that paragraph 3.11 and 3.12 do not go on to provide those "good reasons". Paragraph 3.11 merely says that the scheme gives local people a

greater say over venues in their area. However, it is clear that many of the venues have been operating for many years in Tower Hamlets without causing any problems to the local community, and there has not been, over the last 40 years operation of the Metropolis in Cambridge Heath Road, any individuals coming forward to say that the premises should not be in this area. All premises are well controlled already under the Licencing Act 2003, and are subject to strict conditioning about the performances that take place at the premises and the conduct of both dancers and customers. The Police have not expressed any concerns with regard to crime and disorder that is often alleged outside any of the premises and there is no great well of opinion that would demonstrate that, under the Licensing Act 2003, any of these premises are causing any of the problems set out by objectors.

Paragraph 3.11 simply asserts that there are "negative impacts on local communities brought about by these venues" but does NOT provide any evidence of what those negative impacts are. There has certainly been no great campaign over many, many years from members of the public demonstrating against the existence of the current licensed premises, setting out what are the "negative impacts on their local communities". The Council is invited to list these negative impacts. A mere assertion that there are such impacts is, in our submission and before the adoption of legislation, insufficient.

Members are invited to consider the evidence of what it is alleged are the "negative impacts" on the local communities in reaching this decision. It is submitted by this firm that there is no such evidence presented in this Report that could persuade members to run counter to the expressed views of almost 5,000 people in that area.

Paragraph 4.1

This paragraphs relates to the fees of £9,000 per application as set out in the Appendix to the Report. However, it is not clear how this figure is to be comprised, and the Council will be aware of the recent decision involving Westminster City Council and Hemmings which was decided in the Court of Appeal, which indicated that costs of enforcement could not be recovered under this heading and that it was in fact only the cost of the administration of the licence application system that could be so recovered. The Appendix to the Report does not set out the basis upon which the figure of £9,000 is worked out, and it is, therefore, submitted that without that detailed explanation of how the figures are comprised the licensing committee run the risk of falling foul of the Hemmings decision in seeking to recover monies in respect of which there is no right of recovery.

JEFFREY
GREEN
RUSSELL
Solicitors

David Tolley

7 October 2013

We would be grateful if these submissions could be placed before the members of the Committee prior to, or at the hearing, on Tuesday evening. We would also seek an opportunity of a few minutes to present such arguments before that Committee.

Kind regards,

Yours sincerely



GARETH HUGHES
Barrister and Director
for Jeffrey Green Russell Limited

APPENDIX 5

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 7.00 P.M. ON TUESDAY, 8 OCTOBER 2013

**COMMITTEE ROOM C1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5
CLOVE CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Carli Harper-Penman (Chair)

Councillor Peter Golds (Vice-Chair)

Councillor Khales Uddin Ahmed

Councillor Rajib Ahmed

Councillor Denise Jones

Councillor David Snowdon

Councillor Ann Jackson

Other Councillors Present:

Nil

Speakers

Gareth Hughes

- Barrister, attending for agenda item 4.1

David Dadds

- Barrister, attending for agenda item 4.1

Insp. Kevin Wheeden

- Metropolitan Police, attending for agenda item 4.3

PC Mark Perry

- Metropolitan Police, attending for agenda item 4.3

Officers Present:

Paul Greeno

- (Senior Advocate, Legal Services, Chief Executive's)

Andy Bamber

- (Service Head Safer Communities, Crime Reduction Services, Communities, Localities and Culture)

Kathy Driver

- (Principal Licensing Officer)

Chris Lovitt

- (Associate Director of Public Health)

Andrew Weaver

- (Head of Environmental Protection, Communities Localities and Culture)

David Tolley

- (Head of Consumer and Business Regulations Service, Safer Communities, Communities Localities & Culture)

Alan Ingram

- (Democratic Services)

COUNCILLOR CARLI HARPER-PENMAN (CHAIR), IN THE CHAIR

1. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of the following Members:

- § Councillor David Edgar
- § Councillor Marc Francis
- § Councillor Md. Maium Miah
- § Councillor Joshua Peck

Apologies for lateness were submitted on behalf of Councillor Denise Jones.

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of Disclosable Pecuniary Interests.

The Chair declared a personal interest in that she had received multiple representations regarding agenda item 4.1 – “Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009”, specifically in favour of adopting the new regime, although she had also received some representations against its adoption. However, whilst noting the representations her opinion had not been influenced by them.

Councillor Peter Golds declared a personal interest in the same agenda item on the basis that he would be speaking in favour of the White Swan Public House, 556 Commercial Road, and had visited the premises on occasion.

3. MINUTES**RESOLVED**

That the minutes of the Licensing Committee meeting held on 4 June 2013 be confirmed and signed as a correct record by the Chair.

4. ITEMS FOR CONSIDERATION

The Chair indicated that the order of business of the meeting would be varied so as to consider agenda item 4.4 after item 4.2. However, for ease of reference the order of business in these minutes remains as set out on the original agenda.

4.1 Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009

At the request of the Chair, David Tolley, Head of Consumer and Business Regulations, introduced the report requesting the Committee to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009, which would allow the licensing of sexual entertainment venues (SEVs) and bring into effect the

policy for control of sexual entertainment premises as adopted by Cabinet on 11 September 2013.

Mr Tolley pointed out that 11 existing businesses held premises licences under the Licensing Act 2003 with permissions that would be affected by the adoption of the SEV legislation and these businesses could submit applications to operate under the new legislation. Such licences would be reviewed annually.

The Chair indicated that she would allow two persons, who had requested speaking rights, to address the Committee. The speakers would be allowed three minutes each, in line with the time limits for speaking at full Council meetings.

Gareth Hughes, speaking on behalf of Aston's Champagne and Wine Bar, 187 Marsh wall, London, E14 9SH, stated that supporters of the premises had experienced difficulties during the consultation on SEV legislation in obtaining paper copies of documents to allow representations. There had also been problems in sending electronic representations from premises where there was only one computer.

Mr Hughes added that the report indicated that 4,973 responses had been received, with 1,400 being submitted from one establishment in the Borough. However, his Clients considered this perfectly acceptable as the forms garnered were signed by local residents or people who visited the premises regularly. This also meant that some 3,500 responses had been received indicating that the SEV regulations should not be adopted and these had been raised as a result of a doorstep campaign by premises operating in the Borough. He made the point that supporters of the SEV legislation (the group "Object") had also led their own campaign in favour of adopting the legislation. He expressed the view that the amount of replies submitted supported non-adoption of the legislation and there had been no hint of foul play in conducting the campaign. There had been no abuse of the consultation process and the Committee should take account of the resulting outcome. Whilst the "no" response did not prevent the Committee from adopting the SEV legislation, there was no evidence to suggest it should be adopted.

David Dadds, speaking on behalf of White's Gentleman's Club, 32-38 Leman Street, London, E1 8EW, stated that he supported all the previous speaker's comments and felt that the Officer request in the report to support adopting the legislation was an undemocratic approach, as the Committee should take account of the results of consultation and give this appropriate weight. In addition, there was an issue relating to staff and job protection, as some 2,000 people in the Borough were employed by establishments affected by the legislation. Businesses should not have to apply annually for licences, as proposed if the new regime were adopted. Mr Dadds expressed concern that the SEV policy had already been adopted and there could be pre-determination of the matter accordingly. He referred to the Chair's remarks that she had not been unduly influenced by representations and asked whether the Committee might have been influenced by the policy.

The Chair stated that it was not unusual for councillors to receive representations from residents on many issues. She had received representations from both sides of the argument but this had not influenced her responsibilities under the Councillor Code of Conduct.

Paul Greeno, Senior Advocate, legal Services, added that the SEV policy had been adopted by Cabinet but none of the Licensing Committee was a Cabinet Member and it was confirmed that none had spoken in favour of the legislation at the Cabinet meeting.

The Chair then invited Members to put questions to the speakers, who responded that:

- § The consultation representations were very significant in that almost 5,000 people felt aggrieved enough by the proposals to say that the legislation should not be adopted. This far outweighed the number in favour.
- § No specific details of claimed negative impact of the premises affected by the SEV legislation had been given.
- § The Cabinet report had raised concerns over women's safety but contained no further details and the current Licensing Act provisions provided satisfactory regulation of licensed premises.

The Chair invited Members to put questions to Officers, who responded that:

- § There had been initial problems in the consultation problem with no more than one response being allowed from any individual computer. However, people had been advised that paper documents were available and the computer bar had been removed later. No complaints had been received from retirement home or care home residents in this connection.
- § There was no way of knowing whether responses had been made by Tower Hamlets residents.
- § The consultation had contained no reference to adverse impacts of SEV premises and simply asked whether or not the legislation should be adopted.
- § The Committee was not obliged to follow the results of the public consultation but must be satisfied in their own minds that it would be appropriate to adopt the SEV legislation. There could be challenge by judicial review, should the legislation be adopted and this could eventually be referred to the European Court of Appeal. However, a decision not to adopt could likewise be challenged.

Councillor Peter Golds asked why the White Swan Public House was included as a SEV establishment as it provided no entertainment such as lap dancing or pole dancing. An amateur strip night was held once per week and people disrobed to their underwear – this was simply burlesque. Like many gay venues in the Borough, the White Swan was experiencing hard times and the proposed £9,000 annual licence fee could put it out of business. The inclusion of the White Swan in this legislation had elicited a world-wide response.

Mr Tolley commented that this pub had been included with all premises that had existing licences containing the provision for regulated sexual entertainment. All such premises would be assessed to see whether they would be covered by the SEV regime. If it were determined that they were not covered, they would only be monitored as usual. There would be an all-encompassing process to examine whether businesses were affected by the legislation and the White Swan was included in this process due to the terms of its current licence.

Councillor Golds expressed concern that the consultation procedure had been launched originally at the London Mosque, where there was unlikely to be much favour for SEV establishments. He felt that the White Swan should be excluded from the SEV policy as it was by no means such a venue. There had never been any complaints about the premises made by responsible authorities or residents during its existence for the best part of a quarter of a century. It was being put forward to be included in the policy on the basis of an event lasting about an hour and a half each Wednesday night. The White Swan was one of the last gay venues in the Borough and he was convinced that the SEV policy would put it out of business. There had been discussions about the premises a year and a half ago and he could not understand why it was included unless due to latent homophobia.

Mr Tolley replied that relevant conditions were already on the premises licence but if sexual entertainment were not offered, it would not be included in the proposed new regime.

Mr Greeno added that the Committee did not have the remit to decide the SEV policy, which had already been decided by Cabinet, but had to consider whether or not to adopt the legislation under which the policy could be implemented. The Committee could not place any premises outside the SEV policy and Officers would have to carry out an assessment to determine whether or not the White Swan was included in that policy.

Councillor Peter Golds then proposed a motion, seconded by Councillor David Snowdon: "That the White Swan Public House be excluded from the proposed SEV policy."

The motion was put to the vote and was **agreed** unanimously. The Chair indicated that she would confer with Councillor Golds on how best to bring this decision before full Council.

Discussion then ensued on the proposed level of SEV licence fees, with Councillor David Snowdon asking how the proposed £9,000 fee had been decided.

Mr Tolley replied that this had been benchmarked with other London Councils who already operated the SEV regime. The fee included compliance time, incorporating premises visits and assessing applications, legal costs and bringing such matters to committee. This was a new fee and could be reviewed, including a downward adjustment. There was a potential for work equivalent to an additional one to one-and-a-half full time posts. In response

to queries, Mr Tolley added that the current liquor licensing fee was in the region of £300.

Councillor Khales Ahmed felt that an increase from £300 to £9,000 could not be justified, especially when there had only been 5,000 consultation responses, and felt that there should be a cap on the 11 SEV premises which were proposed and these should be excluded from the new policy. If this were done, an annual licence review should not be needed.

The Chair commented that the SEV policy would have the effect of applying a cap and the annual review was required by the new legislation.

Members put forward the view that the proposed fee was very high compared to other annual fees that were already charged and no financial analysis was contained in the report to justify this. Mr Tolley referred to his previous comments on matters that had been taken into consideration in deciding the licence fee and stated that benchmarking showed that the proposal was about on parity with neighbouring local authorities that had adopted the policy. The Licensing Committee could review the fee annually and the next review would allow more details of the elements comprising it.

The Chair indicated that a decision on the actual licence fee could be deferred but this would have an impact on the start date for the SEV policy and would potentially require an extraordinary meeting of the Committee. If there were to be further discussion on the proposed fee, members were not best placed to try and set an alternative amount at this meeting.

Councillor David Snowdon proposed a motion, seconded by Councillor Peter Golds: "That any decision on a fee level for a SEV licence be deferred for consideration at an extraordinary meeting of the Licensing Committee to be held prior to a Licensing Sub-Committee this year and contain details of a breakdown of related costs and the outcome of the benchmarking process."

The motion was put to the vote and was agreed unanimously.

The Chair indicated that she would confer with Officers on how best to proceed with the matter and added that it would be necessary to hold the extraordinary meeting within the next few weeks to allow a policy implementation date of 1 January 2014.

Councillor Rajib Ahmed referred to the earlier comments of Councillor Khales Ahmed relating to the capping of the number of premises allowed by excluding the 11 premises mentioned in the report. Mr Greeno stated that it would not be possible to adopt new legislation whilst excluding some premises that were affected. He added that, if the Committee did not adopt the legislation, SEV licensing would not apply in Tower Hamlets and premises would continue to be regulated under existing Licensing Act provisions.

The Chair then put to the vote the Officer recommendation to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended

by section 27 of the Policing and Crime Act 2009, whilst excluding a decision on the licence fee to be charged.

On being put to the vote, with three votes for and four against, it was –

RESOLVED

That the Officer recommendation in the report to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009, be **NOT AGREED**.

The Chair indicated that the report, therefore, fell.

4.2 Fees Review - London Local Authorities Act 1991& Gambling Act 2005

At the request of the Chair, David Tolley, Head of Consumer and Business Regulations, introduced the report advising Members of a review that had taken place regarding licence fees that could be set locally and proposing revised levels thereto.

After a short discussion, it was unanimously –

RESOLVED

1. That the fee for Massage and Special Treatment Fees be increased by RPIX 3.1%.
2. That the fee for both a new application and an application for Renewal for Intense Pulse Light laser treatment shall be £500.
3. That the fee for a Betting Shop Licence shall be £500.
4. That the fee for an Adult Gaming Centre Licence shall be £650.
5. That all fees are non refundable once an application has been submitted due to the commencement of processing the licence.
6. That, where a business operates a selection of beauty treatments, only the higher fee is payable.
7. That these fees will commence on the 1st November 2013 and will apply to all new and renewed licences applications received from on or after that date.

4.3 Licensing Act 2003 - Responsible Authorities

The Chair indicated that a document from the Metropolitan Police had been provided for the meeting on a restricted basis and might result in Members asking follow-up questions of the Police in the next few days. Inspector Kevin Wheeden confirmed that Members could retain the paper but asked that its contents be regarded as confidential.

In introducing the report, David Tolley, Head of Consumer and Business Regulations, indicated that relevant Service Heads and Metropolitan Police representatives were in attendance to provide details of the evidential basis on which representations or reviews were brought to the Licensing Sub-Committee.

The Chair then invited those present to address the Committee.

Inspector Wheeden commented that his report showed that:

- § 500 calls complaining of anti-social behaviour were being made each week, although these were not necessarily related to licensed premises.
- § A tri-borough partnership was being set up to include the Tower Hamlets wards of Spitalfields & Banglatown and Weavers. This was currently in the planning stage. He invited suggestions for the best way to present information so as to be of most use to councillors.
- § Theft from the person cases in those wards were very high and much of this related to licensed premises.
- § A monthly licensing visit was undertaken, that included all licensed premises, not only liquor licences. Checks were made that numbers SIA staff were provided in accordance with licence requirements.

Andrew Weaver, Service Head Environmental Protection, presented the information contained in the circulated agenda pack and stated that a 10 year database was available concerning complaints and requests for intervention. When a new application was received, its management plan was examined and Members advised accordingly.

Chris Lovitt, Associate Director of Public Health, presented the information contained in the circulated agenda pack and added that, whilst only the Director of Public Health was able to make representations, bodies such as Barts NHS Trust were invited to make contributions. He added that:

- § Health was not yet a licensing objective, with its closest link being to the public safety objective.
- § London Ambulance Service data around binge drinking callouts was provided in the report, showing a substantial increase over the last year. LBTH had the 5th highest such callout of all London Boroughs and all wards except four had higher such callouts than the average in England.
- § The service was looking at means of highlighting possible problems such as the situation of licensed premises near homeless hostels and the NHS was very supportive of the saturation policy around the Brick Lane area.

Kathy Driver, Principal Licensing Officer, presented the information contained in the circulated agenda pack and indicated that:

- § Her service acted to provide evidence at such time as licence reviews were triggered and it was unlikely they would object to a licence unless another Responsible Authority did so. However, more activity was expected as the saturation policy came into play.
- § Operation Dimmock was an enforcement operation that had started in August this year and targeted instances of complaints from residents and other Responsible Authorities.

The Chair commented that she was particularly interested in noise complaints against pub and takeaways and was staggered by the incidence of such report in the Bow East ward, which had relatively few such premises. She felt that it would be helpful to differentiate between domestic and other premises.

Replies to questions from Members, included the following Officer comments:

- § The location of the Shoreditch triangle resulted in drunken people from other areas entering Tower Hamlets.
- § Operation Dimmock used Officers from other services for test purchases, etc., as Licensing staff were well known locally.
- § Premises selling food were almost exempt from framework hours and any proposal for policy change in this respect would need to be heavily evidence-based.

The Chair then thanked those present for their contributions to the report.

4.4 Legal Review

At the request of the Chair, Paul Greeno, Senior Advocate, Legal Services, introduced the first quarterly report setting out details of prosecutions and appeals relating to licensing enforcement activity.

The Chair thanked Mr Greeno for the information provided.

Councillor Golds thanked Mr Greeno particularly for information regarding 93 Feet East, which demonstrated that decisions made by members at Licensing Sub-Committee were fully justified.

RESOLVED

That the report be noted.

5. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

Nil items.

The meeting ended at 9.00 p.m.

Chair, Councillor Carli Harper-Penman
Licensing Committee

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Appendix 6

Activity Analysis for Licensing Team

Administration of Application

Activity	Time (hrs)
Examination of application	7
Examination of plans	3
Meeting applicant	5
Visiting premises - plans	7
Survey of area and consideration of conditions	14
Liaison with responsible authorities	14
Liaison with applicant and objectors	21
Administration of the consultation process	10
Prepare committee report	14
Attend Committee Hearing	6
Administration of determination	4
Total Estimated Hours	105

Compliance Visits

Activity	Time (hrs)
Overtime for two overt visits - pairs	28
Report writing and feedback to operator	10
Overtime for Covert visits (complaints against licence)	14
Investigation costs – CCTV footage, complaint investigation	21
Total Estimated Hours	73
Test Purchase monies	£800
Estimated financial cost	£2625

Hourly rate based at £25

Additional costs not quantified:

Costs associated with appeals
Licence Review costs

Cost Analysis for a Licensing Committee

Licensing Committee	Cost (£)
Meeting room and Refreshments	150
Printing of Agendas	120
Delivery of Agenda's from Print	30
Delivery of Agendas to Members	100
Admin Officer	200
Democratic Staff	1400
<ul style="list-style-type: none">- organising and arranging meeting- agenda planning- preparations for the meeting- correspondences- Chair's briefing- Minutes & Decisions- Members	

Cost Analysis for a Legal Services

SEV Licensing – Legal Costs	Cost (£)
General Advice regarding Licensed Premises – 2 hours	214
Advice on application and preparation – 3 hours	321
Committee Attendance – 3 hours	321
Post committee work – 2 hours	214
Total	1,070

APPENDIX 7

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 6.30 P.M. ON WEDNESDAY, 8 JANUARY 2014

**ROOM MP701, 7TH FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE
CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Peter Golds (Vice-Chair, in the Chair)
Councillor David Edgar
Councillor Marc Francis
Councillor Ann Jackson
Councillor Denise Jones
Councillor David Snowdon

Other Councillors Present:

None

Officers Present:

Paul Greeno – (Senior Advocate, Legal Services)
John McCrohan – (Trading Standards & Licensing Manager)
David Tolley – (Head of Consumer and Business Regulations
Service, Safer Communities, Communities
Localities & Culture)

Simmi Yesmin – (Senior Committee Officer, Democratic Services)

Guests Present:

Gareth Hughes – (Jeffery Green Solicitors)
David Dadds – (Dadds Solicitors)
Julian Skeens – (Jeffery Green Solicitors)

1. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of the following Members:

- § Councillor Carli Harper-Penman
- § Councillor Khaled Ahmed
- § Councillor Rajib Ahmed
- § Councillor Md. Maium Miah
- § Councillor Joshua Peck

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of Disclosable Pecuniary Interests.

3. ITEMS FOR CONSIDERATION**3.1 Consideration of the Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009 -Update**

At the request of the Chair, David Tolley, Head of Consumer and Business Regulations, introduced the report and explained that the Licensing Committee on 8th October 2013, had requested for an extraordinary meeting to be held to discuss the proposed fees structure for Sexual Entertainment Venues (SEV). It was noted that the report covered a cost analysis of the fees structure and gave the Licensing Committee the option of reconsidering its decision not to adopt the legal framework to licence sexual entertainment venues by proposing recommendations to Full Council.

It was noted that the issues which were of concern were the exclusion of the White Swan Public House from the Sexual Entertainment Policy, the reconsideration of the fees and not to adopt the framework legislation to permit a licensing regime for SEVs.

It was further noted that there was no specific licensing regime in place for SEV's and therefore there is currently no control on the number of venues permitted in the Borough. Mr Tolley explained that 11 existing businesses held premises licences under the Licensing Act 2003 with permissions that would be affected by the adoption of the SEV legislation and these businesses could submit applications to operate under the new legislation and such licences would be reviewed annually.

It was noted that venues including the White Swan as an existing operator would benefit from the exemption of the "nil limit" provided for existing premises in the SEV policy. Mr Tolley stated that it was not possible to withdraw or waiver the White Swan from the policy. However it would benefit from the nil limit as an existing premises.

Mr Tolley then explained the breakdown of the £9000 fee and detailed the costs in relation to compliance visits. He explained that the Council must determine its fees on a cost recovery basis so comparison with fees in other boroughs was not a relevant consideration. However it was noted that compared to 13 other London boroughs there was 5 boroughs charging below Tower Hamlets and 8 boroughs charging higher than Tower Hamlets ranging from £10,000 - £22,523.

Mr Tolley concluded by highlighting the consultation process that took place and was noted that the overall consultation response represented only a small percentage of those who worked and lived in the borough.

The Chair indicated that he would allow three persons, who had requested speaking rights, to address the Committee. The speakers were allowed three minutes each, in line with the time limits for speaking at full Council meetings.

Mr Gareth Hughes, speaking on behalf of Metropolis and Aston's Champagne and Wine Bar, stated that the decision made at the previous Licensing Committee on 8th October 2013 was a valid decision and still stands, he explained that there had been an attempt to take a report to full Council on this matter, which was withdrawn on the night due to legalities.

Mr Hughes questioned the procedure and process which was followed to call the extraordinary meeting as he believed that an extraordinary meeting was not requested at the previous meeting and that the consideration of fees did not allow discussion for the adoption of the legislation. He concluded by asking Members to consider his previous concerns stated in his representations.

Mr David Dadds, speaking on behalf of White's Gentleman's Club, stated that he supported all comments made by the previous speaker. He highlighted the findings from the consultation process and expressed concerns around the fees. He stated that a decision was made on 8th October 2013 not to adopt the legislation and this was valid.

Mr Dadds believed to have had concerns of pre-determination as this meeting was to re-visit the previous decision and to re-open that decision to reconsider the option to adopt the legislation.

Members then heard from Mr Julian Skeens, representing Nag's Head, he also supported the comments made by his colleague Mr Gareth Hughes and added that the agenda papers recorded that Council had delegated power to the Licensing Committee to decide whether or not to adopt the legislative scheme to licence sexual entertainment in the Borough and the Committee had decided that following due process it should not be adopted, therefore the decision was valid.

The Chair then invited Members to put questions to the speakers. There were no questions for the speakers.

The Chair asked Mr Paul Greeno, Senior Advocate to provide legal advice to Members in response to the concerns raised. Mr Greeno explained that issues had been raised in relation to the lawfulness of the Licensing Committee in considering this matter.

It had been stated that the Licensing Committee on 8th October 2013 did not request an extraordinary meeting. This was not correct. He explained that the extraordinary meeting had not been called as a result of that request. It had been called by the Monitoring Officer. This was following the report that

was to go to full Council on 27th November 2013. That report was pulled and following that, the Monitoring Officer advised that a report be re-submitted to full Council dealing with the same matters raised in the full Council report but via an extraordinary meeting of the Licensing Committee.

In respect of calling of an Extraordinary Meeting, Mr Greeno stated that Part 4 of the Council's Constitution set out the Rules of Procedure and which includes the Council Procedure Rules. Paragraph 3.1 of those Rules lists those persons who can request an Extraordinary Meeting. This list is to be read disjunctively as opposed to conjunctively. Paragraph 3.1.3 referred to the Monitoring Officer and the Chair. Following the Monitoring Officer's advice, contact was made with the Chair of the Licensing Committee and he had been advised that The Chair was happy for an extraordinary meeting to be called to consider this matter.

As the Monitoring Officer and the Chair were engaged in the context of the pulled report to full Council then the business on the agenda was not just restricted to merely fees and charges. Further as the Monitoring Officer and Chair were involved there is no need for a requisition document to be signed by five Members of the Council.

It was correct that the mechanism of calling the meeting was not addressed within the report but it was not realised that this was an issue until the representations were received.

It has also been stated that the Licensing Committee had no power to deal with the matters in the report. This was incorrect. Part 3 of the Council's Constitution deals with responsibility of functions and 3.1.1.2B provides for Licensing and Registration Functions. Paragraph 15 provides that the functions under The Local Government (Miscellaneous Provisions) Act 1982, section 2 and schedule 3 have been delegated to the Licensing Committee.

Part 3.7.7 sets out the Terms of Reference of the Licensing Committee and paragraph 4 gives to the Licensing Committee the power to determine fees and charges for the issue, approval, consent, license, permit or other registration for functions for which the Committee has responsibility. Pursuant to Part 3.1.1.2B paragraph 15, this is a function for which the Licensing Committee has responsibility.

Given the matters for which the Committee has responsibility it is reasonable for the Committee to be consulted before a report is then presented to full Council.

As to the fact that the Licensing Committee previously decided not to adopt the framework legislation does not stop the Committee from considering this matter afresh. A decision not to adopt a regime, or not to take some other administrative action, is not binding in the sense that the Council is stopped from revisiting it. At the end of the day, all Members are being asked to do is recommend to full Council and it will be for full Council to take the final decision whether to adopt.

As to the reasons why Members made their decision on the last occasion, as members did not give reasons for their decision (and are not required to do so) to suggest what was in Members minds when they made the decision is speculation. At the end of the day, Members were entitled to consider the matter afresh.

Mr Greeno concluded that there was no need for the matter to go firstly to the Mayor in Cabinet. The decision to adopt and in relation to fees and conditions was a non-executive function and as to notice of the meeting, the statutory time limits were met.

The Chair invited Members to put questions to Officers, who responded that:

- The Licensing Committee was not making a decision but had the option to refer recommendations to Full Council.
- That the minutes of the meeting held on 8th October 2013 would be available on the agenda of the Full Licensing Committee meeting scheduled for 11th March 2014.
- That case law provided that one could look forward in relation to fees that would be needed therefore the costs of monitoring an applicant's continued suitability can be included in the calculation for the fee for the licence.
- That costs for compliance can often be very costly as test purchases were necessary.
- That the proposed fee had been benchmarked with other London Councils who already operated the SEV regime. The fee included compliance time, incorporating premises visits and assessing applications, legal costs and bringing such matters to committee. This was a new fee and could be reviewed.

On being put to the vote, with five votes for and one vote against, it was –

RESOLVED

1. That Full Council is recommended that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended, shall apply in the London Borough of Tower Hamlets in the London Borough of Tower Hamlets with regards to sexual entertainment venues.
2. That Full Council is recommended that the said Schedule 3 shall apply in the London Borough of Tower Hamlets from 31st March 2014, with regard to sexual entertainment venues.
3. That the proposed Standard Conditions for Sexual Entertainment Venues set out in Appendix 2 of the report is recommended to Full Council.

4. That the Sexual Entertainment Fee Structure set out in Appendix 3 of the report is recommended to Full Council.
5. That the Sex Establishment Licensing Policy set out in Appendix 1 be noted and applied in the application of Schedule 3 in London Borough of Tower Hamlets and supports continued operation of existing premises.

The meeting ended at 7.15 p.m.

Vice Chair, Councillor Peter Golds
Licensing Committee

Appendix 8 - Full Equality Analysis

Section 1 – General Information

Name of policy or function:

Adoption of the Sexual Entertainment Licensing Regime, Policing and Crime Act 2009

Business Unit:

CLC, Safer Communities, Consumer and Business Regulations

Is this a policy or function?

Licensing functions

Is this a new or existing policy or function?

New

Is the policy or function strategic, developmental or operational/functional?

Operational/Functional

Date when the original policy/function was initiated: N/A

Date on which the policy/function is to be reviewed: Licensing Committee 8/10/13

Names and roles of the people carrying out the Equality Analysis:

David Tolley: Head of Consumer and Business Regulations Service (CLC)

Section 2 – Aims and Objectives

What are the aims, objectives or purpose of the policy/function?

Legislation gives local authorities the opportunity to control SEV's. The legislation was drafted to allow communities to have a say about whether sex establishments should be allowed to operate in their community and it gives the local authority the power, through its licensing arrangements, to determine limits on numbers and localities.

The Council's Sex Entertainment Policy was developed with "One Tower Hamlets" as a key part of its rationale and was adopted by Cabinet on the 11th September 2013. To enable the Policy to be brought into effect the provisions under the schedule 3 of the Local Government (miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009 must be applied to the London Borough of Tower Hamlets area.

What are the main activities of the policy/function?

The adoption of the legislation enables the agreed policy to be applied: The policy establishes a cap on the total number of SEV premises that will be licensed, and it provides a basis for agreeing or refusing licenses with reference to:

- The suitability of any given location
- The management of the establishment
- The conduct within, and in the vicinity of (i.e., associated with) the establishment.

The policy includes both statutory and discretionary conditions that protect performers and help control the management of the premises.

Who is expected to benefit from the policy/function?

The adoption of the legislation will enable the agreed policy to be implemented (Note; a separate EQIA has been undertaken in relation to the setting of the policy framework).

The adoption of the legislation will affect the whole borough and potentially everyone that lives in, works in or visits the area and whom might be affected by the existence and operation of Sexual Entertainment Venues in the locality. Consultation has identified additional considerations in relation to cohesion amongst the LGBT community which have taken into account in developing the policy that this legislation enables.

Section 3 – Consideration of data and research Identifying Differential / Adverse Impacts

Question -

A policy/function can aim to treat all people fairly but unless you analyse data and stats and speak to the people it is going to affect how do you really know?

Evidence Base -

For each of the equality strands in the table below please now evidence how you came to the conclusions around differential and negative impacts in relation to the policy or function.

Please use the evidence prompts below to form an evidence base to justify your claims around differential impacts. If there is limited evidence we **strongly recommend** undertaking consultation

Please note – during consultation, if you identify a differential impact it may be advantageous to discuss whether this impact is also negative and record your findings accordingly. If no differential impact is identified there will be NO negative impact.

Evidence Prompt

1 List all qualitative and quantitative evidence

List all examples of quantitative and qualitative data available

(include information where appropriate from other directorates, Census 2001 etc)

2 Equalities profile of users or beneficiaries

Use the Council's approved diversity monitoring categories and provide data by target group of users or beneficiaries to determine whether the service user profile reflects the local population or relevant target group or if there is over or under representation of these groups

3 Equalities profile of staff

Indicate profile by target groups and assess relevance to policy aims and objectives e.g. Workforce to Reflect the Community. Identify staff responsible for delivering the service including where they are not directly employed by the council.

4 Barriers

What are the potential or known barriers to participation for the different equality target groups? Eg, communication, access, locality etc

5 Recent consultation exercises carried out

Detail consultation with relevant interest groups, other public bodies, voluntary organisations, community groups, trade unions, focus groups and other groups, surveys and questionnaires undertaken etc. Focus in particular on the findings of views expressed by the equality target groups. Such consultation exercises should be appropriate and proportionate and may range from assembling focus groups to a one to one meeting.

6 Additional factors which may influence disproportionate or adverse impact

Management Arrangements - How is the Service managed, are there any management arrangements which may have a disproportionate impact on the equality target groups?

7 The Process of Service Delivery

In particular look at the arrangements for the service being provided including opening times, custom and practice, awareness of the service to local people, communication

Please Note -

Reports/stats/data can be added as Appendix – Please send any reports/consultation findings/data and stats to the One Tower Hamlets team

Target Groups	Impact – Positive or Adverse What impact will the 'new' or 'significantly' amended policy or function have on specific groups of service users or staff?	Reason(s) <ul style="list-style-type: none"> • Please add a narrative to justify your claims around impacts and, • Please describe the analysis and interpretation of evidence to support your conclusion as this will inform members decision making • Can the negative impact be justified on the grounds of promoting equality?
Page 300	Neutral	There have been two consultations in relation to the establishment of regulatory controls on sexual entertainment venues. The first, a more detailed consultation was held on the policy direction and the second a basic consultation on the adoption of the legislation which was a Yes/No response. Impacts of the policy can be viewed in the Cabinet report on the 1 st September 2013. The adoption of the legislation would have a neutral impact' it is the policy that would have relevant impacts.
Race	Neutral	
Disability	Neutral	
Gender	Neutral	
Gender Reassignment	Neutral	
Sexual Orientation	Neutral	
Religion or Belief	Neutral	

Age	Neutral	
Socio-economic	Potential adverse	SEV's are businesses and any policy or licensing decision that results in the cessation of an existing operation would have economic consequences for employees and the self-employed persons who work at the venues. Actual numbers and backgrounds are not known, however the nature of the establishments means that adverse economic impact would specifically fall upon female performers and their economic dependents. By establishing a policy position that allows existing operations to continue, there is no immediate adverse impact on this group*.
Marriage and Civil Partnerships.	Neutral	
Pregnancy and Maternity	Neutral	
Other staff	Potential adverse	<p>The implementation of more stringent licensing policy and conditions is likely to require additional monitoring, evidence gathering and enforcement action to be undertaken by council staff. Appropriate training and support should be provided to protect staff engaged in these areas from any adverse impacts.</p> <p>The consultation carried out for the adoption of the legislation was a basic Yes/No response. The information detailed in the grid has been drawn from the consultation that has come from the provision of a policy – thus demonstrating the community interest in the enactment of a policy.</p> <p>The consultation for adoption was 97.8% not in favour of adopting the powers, but as discussed in the report, sexual entertainment venues had canvassed their supporters, which is their right, but may have skewed the community response.</p>

Section 4 – Conclusions and Recommendations

Is there any evidence of or view that suggests that different equality or other target groups have a disproportionately high/low take up of the service/function?

Yes

If yes, please detail below how evidence influenced and formed the policy? e.g. why things were added/removed.

O&S review findings
Consultation on adopting the policy
Campaign group responses
LGBT response
Consultation on adopting the legislation
Employment issues
Human Rights issues

Does the policy/function comply with equalities legislation?

Yes

If there are gaps in information or areas for further improvement, please list them below:

Scientific research in relation to SEV's is not sufficiently developed in relation to their impact on protected groups to support more detailed impact assessment.

How will the results of this Equality Analysis feed into the performance planning process?

The SEV project and this associated EA have been incorporated into the Service Plan for Business Regulation and Consumer Protection along with appropriate measures and milestones for delivery, performance monitoring and review.

Section 5 – Action Plan and Monitoring Systems

As a result of these conclusions and recommendations what actions (if any) will be included in your business planning and wider review processes (team plan)? Please consider any gaps or areas needing further attention.

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress
Example				
1. Better collection of feedback, consultation and data sources	1. Create and use feedback forms. Consult other providers and experts	1. Forms ready for January 2010 Start consultations Jan 2010	1.NR & PB	
2. Non-discriminatory behaviour	2. Regular awareness at staff meetings. Train staff in specialist courses	2. Raise awareness at one staff meeting a month. At least 2 specialist courses to be run per year for staff.	2. NR	

Page 30

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress
Further consideration of equalities impacts on protected groups are recommended in situations where licensing decisions are due to be taken that could result in removal of that license.	Undertake EA's to accompany applications for SEV licences as and when these are presented to the Licensing Committee	Target dates are dependent upon license expiry and application dates.	David Tolley	
Appropriate training and support should be	Service Plan and PDR process actions	Service Plan and PDR cycle	David Tolley	

provided to protect staff engaged in these areas from any adverse impacts.				
Maintain ongoing review of SEV related research	Continue to monitor research to further inform analysis of equalities impacts	Ongoing	David Tolley	

Have monitoring systems been put in place to check the implementation of the policy/function and recommendations?

Yes

How will the monitoring systems further assess the impact on the equality target groups?

A set of operating conditions form an intrinsic part of the Policy and associated licensing controls. These include controls that have been specifically designed to improve protection of the public in external areas and performers inside the establishments. Breaches of these conditions (and therefore likely to have a negative impact on protected groups) will result in the implementation of enforcement controls and any breaches will form part of the material considerations for the Licensing Committee at the point at which applications for licence renewals are considered and determined.

Section 6 – Completed Equality Analysis

The draft Equality Analysis will be peer assessed and recommendations made (if needed)

Once any recommendations have been made to the equality analysis – it will be sent back to the author to be signed off by the relevant service head/manager. The equality analysis will then be sent to the One Tower Hamlets Team to be published on the council website.

Name: (signed off by)	
Position:	

Date signed off:
(approved)

Section 7 Appendix – FOR OFFICE USE ONLY

This section to be completed by the One Tower Hamlets team

Policy Hyperlink:

Equality Strand	Evidence
Race	
Disability	
Gender	
Sexual Orientation	
Religion and Belief	
Age	
Socio-Economic	
Other	

Link to original EQIA	Link to original EQIA
EQIAID (Team/Service/Year)	

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Full Equality Analysis

Section 1 – General Information

Name of policy or function:

Sexual Entertainment Venues Policy

Business Unit:

CLC, Safer Communities, Consumer and Business Regulations

Is this a policy or function?

Policy with associated licensing functions

Is this a new or existing policy or function?

New

Is the policy or function strategic, developmental or operational/functional?

Operational/Functional

Date when the original policy/function was initiated: N/A

Date on which the policy/function is to be reviewed: Cabinet tbc

Names and roles of the people carrying out the Equality Analysis:

Oscar Ford: Strategy & Business Development Manager (CLC Equalities Lead)
David Tolley: Head of Consumer and Business Regulations Service (CLC)
Frances Jones: OneTower Hamlets Service Manager (Scrutiny & Equality)

Section 2 – Aims and Objectives

What are the aims, objectives or purpose of the policy/function?

Legislation gives local authorities the opportunity to control SEV's. The legislation was drafted to allow communities to have a say about whether sex establishments should be allowed to operate in their community and it gives the local authority the power, through its licensing policy arrangements, to determine limits on numbers and localities.

The Council's draft Sex Establishment Policy was developed with "One Tower Hamlets" as a key part of its rationale and it is drafted to establish a clear and unambiguous position on Sexual Entertainment Venues.

What are the main activities of the policy/function?

The policy establishes a cap on the total number of SEV premises that will be licensed, and it provides a basis for agreeing or refusing licenses with reference to:

- The suitability of any given location
- The management of the establishment
- The conduct within, and in the vicinity of (i.e., associated with) the establishment.

The policy includes both statutory and discretionary conditions that protect performers and help control the management of the premises.

Who is expected to benefit from the policy/function?

The policy affects the whole borough and potentially everyone that lives in, works in or visits the area and whom might be affected by the existence and operation of sexual Entertainment Venues in the locality. It has particular relevance for people who own, work in or frequent SEV's.

The policy is based on a consideration of the potential impact of SEV's on these groups as well as the wide community and is aimed at ensuring that any negative impacts on individuals or the community that might arise as a consequence of the operation of SEV's are minimised or negated.

Section 3 – Consideration of data and research Identifying Differential / Adverse Impacts

Question -

A policy/function can aim to treat all people fairly but unless you analyse data and stats and speak to the people it is going to affect how do you really know?

Evidence Base -

For each of the equality strands in the table below please now evidence how you came to the conclusions around differential and negative impacts in relation to the policy or function.

Please use the evidence prompts below to form an evidence base to justify your claims around differential impacts. If there is limited evidence we **strongly recommend** undertaking consultation

Please note – during consultation, if you identify a differential impact it may be advantageous to discuss whether this impact is also negative and record your findings accordingly. If no differential impact is identified there will be NO negative impact.

Evidence Prompt

1 List all qualitative and quantitative evidence

List all examples of quantitative and qualitative data available

(include information where appropriate from other directorates, Census 2001 etc)

- Tower Hamlets Community Plan.
- Tower Hamlets Crime & Drug Reduction Partnership Plan.
- Tower Hamlets Enforcement Policy.
- Tower Hamlets Core Strategy.
- TowerHamletsTown Centre Spatial Strategy.
- Tower Hamlets Statement of Licensing Policy (Licensing Act 2003).
- Tower Hamlets Statement of Licensing Policy (Gambling Act 2005).

2 Equalities profile of users or beneficiaries

Use the Council's approved diversity monitoring categories and provide data by target group of users or beneficiaries to determine whether the service user profile reflects the local population or relevant target group or if there is over or under representation of these groups

The current premises that are offering some form of sexual entertainment are:

NAME	ADDRESS
THE BEEHIVE	104-106 Empson Street, London, E3 3LT
EONE CLUB	168 Mile End Road, London, E1 4LJ
NAGS HEAD PUBLIC HOUSE	17-19 Whitechapel Road, London, E1 1DU
THE PLEASURE LOUNGE	234 Cambridge Heath Road, London, E2 9NN
WHITE SWAN	556 Commercial Road, London, E14 7JD – LGB venue
ASTON'S CHAMPAGNE AND WINE BAR BASEMENT & 1ST FLOOR	187 Marsh Wall, London, E14 9SH
CLUB PAISA	28 Hancock Road, London, E3 3DA
OOPS	30 Alie Street, London, E1 8DA
WHITE'S GENTLEMANS CLUB	32-38 Leman Street, London, E1 8EW
SECRETS	43-45 East Smithfield, London, E1W 1AP
IMAGES	483 Hackney Road, London, E2 9ED

3 Equalities profile of staff

Indicate profile by target groups and assess relevance to policy aims and objectives e.g. Workforce to Reflect the Community. Identify staff responsible for delivering the service including where they are not directly employed by the council.

4 Barriers

What are the potential or known barriers to participation for the different equality target groups? Eg, communication, access, locality etc

5 Recent consultation exercises carried out

Detail consultation with relevant interest groups, other public bodies, voluntary organisations, community groups, trade unions, focus groups and other groups, surveys and questionnaires undertaken etc. Focus in particular on the findings of views expressed by the equality target groups. Such consultation exercises should be appropriate and proportionate and may range from assembling focus groups to a one to one meeting.

The Consultations carried out involved Legal Submissions, Focus Groups and questionnaires. The following background of respondents was reviewed.

Gender	Number of Responses	Percentage of responses
Male	1,026	23.8%
Female	2,203	51.3%
Transgender	12	0.3%
Prefer not to say	113	2.6%
Not stated	948	22.0%

Age	Number of Responses	Percentage of responses
12-19	120	2.8%
20-25	519	12.1%
26-34	1,028	23.9%
35-43	742	17.2%
44-52	454	10.6%
53-59	206	4.8%
60-64	96	2.2%
65+	104	2.4%
Prefer not to say	115	2.7%
Not stated	918	21.3%

Ethnicity	Number of Responses	Percentage of responses
Asian or Asian British	1,467	34.0%
Black or Black British	154	3.6%
Mixed/Dual Heritage	128	3.0%
White	1,201	28.0%
Other	0	0.0%
Prefer not to say	312	7.2%
Not stated	1,040	24.2%

Religion	Number of Responses	Percentage of responses
None	558	13.0%
Buddhist	40	0.9%
Christian	616	14.3%
Hindu	32	0.7%
Jewish	43	1.0%
Muslim	1,286	29.9%
Sikh	27	0.6%
Other faith	76	1.8%
Prefer not to say	542	12.6%
Not stated	1,082	25.2%

Disability	Number of Responses	Percentage of responses
Yes	136	3.2%
No	2,577	59.9%
Prefer not to say	351	8.2%
Not stated	1,238	28.8%

Sexual Orientation	Number of Responses	Percentage of responses
Bisexual	147	3.4%

Gay man or lesbian/gay woman	161	3.7%
Heterosexual	2,123	49.3%
Other	579	13.5%
Not stated	1,292	30.0%

6 Additional factors which may influence disproportionate or adverse impact

Management Arrangements - How is the Service managed, are there any management arrangements which may have a disproportionate impact on the equality target groups?

7 The Process of Service Delivery

In particular look at the arrangements for the service being provided including opening times, custom and practice, awareness of the service to local people, communication

The Sexual Entertainment Policy covers the detail of how to apply etc,

Please Note -

Reports/stats/data can be added as Appendix – Please send any reports/consultation findings/data and stats to the One Tower Hamlets team

Target Groups	Impact – Positive or Adverse What impact will the 'new' or 'significantly' amended policy or function have on specific groups of service users or staff?	Reason(s) • Please add a narrative to justify your claims around impacts and, please describe the analysis and interpretation of evidence to support your conclusion as this will inform members decision making • Can the negative impact be justified on the grounds of promoting equality?
Race	Positive	The consultation response identifies distinct differences in views between people of different racial backgrounds. 74% of Asian/Asian British respondents were in favour of a total Nil policy, whereas 72% of Black/Black British respondents, 90% of Mixed/Dual Heritage respondents and 76% White respondents were against the proposed nil policy.
Disability	Neutral	
Gender	Positive	Just under half of female consultation respondents (47%) were supportive of the 'Nil' policy proposal. Research findings from another Borough indicate that women may in particular avoid areas around to SEV's at night. A broader consideration is the impact that SEV's may have on attitudes towards women through the 'normalisation' of male-oriented sexual entertainment and the encouragement or reinforcement of sexist attitudes. In the Borough we are not aware of people trafficking and that performers work in venues freely. Personal incomes would be affected if premises closed. The organisations OBJECT (a human rights organisation specifically set up to challenge the sexual objectification of women) and CAPE (Communities Against People Exploitation) presented written responses to the consultation supporting a nil policy on the basis that SEV's have a negative impact on the safety of women. OBJECT argued associations with prostitution and trafficking, along with the negative impact on attitudes towards women and the negative impact on aspirations of young women and girls as key drivers for their support.
Gender Reassignment	Neutral	

Sexual Orientation	Potential adverse	Consultation response from the local LGBT community forum Rainbow Hamlets highlighted a potential detrimental effect that might arise should a Nil policy be implemented, identifying an existing establishment as having a positive impact on community cohesion, especially amongst the LGBT community. By establishing a policy position that allows existing operations to continue, there is no immediate adverse impact on this group*.
Religion or Belief	Positive	The consultation response identifies distinct differences in views between people of different religious backgrounds. 82% of Muslim respondents were in favour of a total Nil policy, whereas 81% of Christian respondents and 75% of those who said they had no religious belief were against a nil policy.
Age	Neutral	
Socio-economic	Potential adverse	SEV's are businesses and any policy or licensing decision that results in the cessation of an existing operation would have economic consequences for employees and the self-employed persons who work at the venues. Actual numbers and backgrounds are not known, however the nature of the establishments means that adverse economic impact would specifically fall upon female performers and their economic dependents. By establishing a policy position that allows existing operations to continue, there is no immediate adverse impact on this group*.
Marriage and Civil Partnerships.	Neutral	
Pregnancy and Maternity	Neutral	
Other inc staff	Potential adverse	The introduction of more stringent licensing policy and conditions is likely to require additional monitoring, evidence gathering and enforcement action to be undertaken by council staff. Appropriate training and support should be provided to protect staff engaged in these areas from any adverse impacts.

Section 4 – Conclusions and Recommendations

Is there any evidence of or view that suggests that different equality or other target groups have a disproportionately high/low take up of the service/function?

Yes

If yes, please detail below how evidence influenced and formed the policy? e.g. why things were added/removed.

O&S review findings
Consultation on adopting the policy
Campaign group responses
Consultation response from Rainbow Hamlets
Consultation on adopting the legislation
Employment issues
Human Rights issues

Does the policy/function comply with equalities legislation?

Yes

If there are gaps in information or areas for further improvement, please list them below:

Research in relation to SEV's is inconclusive as to the impact of the establishments on protected groups.

How will the results of this Equality Analysis feed into the performance planning process?

The SEV project and this associated EA have been incorporated into the Service Plan for Business Regulation and Consumer Protection along with appropriate measures and milestones for delivery, performance monitoring and review.

Section 5 – Action Plan and Monitoring Systems

As a result of these conclusions and recommendations what actions (if any) will be included in your business planning and wider review processes (team plan)? Please consider any gaps or areas needing further attention.

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress
Example				
1. Better collection of feedback, consultation and data sources	1. Create and use feedback forms. Consult other providers and experts	1. Forms ready for January 2010 Start consultations Jan 2010	1. NR&PB	
2. Non-discriminatory behaviour	2. Regular awareness at staff meetings. Train staff in specialist courses	2. Raise awareness at one staff meeting a month. At least 2 specialist courses to be run per year for staff.	2. NR	

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress
Further consideration of equalities impacts on protected groups are recommended in situations where licensing decisions are due to be taken that could result in removal of that license.	Undertake EA's to accompany applications for SEV licences as and when these are presented to the Licensing Committee	Target dates are dependent upon license expiry and application dates.	David Tolley	
Appropriate training and support should be	Service Plan and PDR process actions	Service Plan and PDR cycle	David Tolley	

provided to protect staff engaged in these areas from any adverse impacts.				
Maintain ongoing review of SEV related research	Continue to monitor research to further inform analysis of equalities impacts	Ongoing	David Tolley	

Have monitoring systems been put in place to check the implementation of the policy/function and recommendations?

Yes

How will the monitoring systems further assess the impact on the equality target groups?

A set of operating conditions form an intrinsic part of the Policy and associated licensing controls. These include controls that have been specifically designed to improve protection of the public in external areas and performers inside the establishments. Breaches of these conditions (and therefore likely to have a negative impact on protected groups) will result in the implementation of enforcement controls and any breaches will form part of the material considerations for the Licensing Committee at the point at which applications for licence renewals are considered and determined.

Section 6 – Completed Equality Analysis

The draft Equality Analysis will be peer assessed and recommendations made (if needed)

Once any recommendations have been made to the equality analysis – it will be sent back to the author to be signed off by the relevant service head/manager. The equality analysis will then be sent to the One Tower Hamlets Team to be published on the council website.

Name: (signed off by)	
Position:	

Date signed off: (approved)	

Section 7 Appendix – FOR OFFICE USE ONLY
 This section to be completed by the One Tower Hamlets team

Policy Hyperlink:

Equality Strand	Evidence
Race	
Disability	
Gender	
Sexual Orientation	
Religion and Belief	
Age	
Socio-Economic	
Other	

Link to original EQIA	Link to original EQIA
EQIAID	
(Team/Service/Year)	