

Non-Executive Report of the:  <b>Licensing Committee</b>  16 June 2015	
<b>Report of:</b> Legal Services	<b>Classification:</b> Unrestricted
<b>Determination of Applications for Sexual Entertainment Venues</b>	

<b>Originating Officer(s):</b>	Gurwinder Kaur Olive, Senior Lawyer
<b>Wards affected:</b>	(1) Shadwell (2) Whitechapel (3) St Peter's and (4) Spitalfields & Banglatown

## 1 SUMMARY

- 1.1 This report briefly explains the terms of reference, Membership, and Quorum of the Licensing Committee and sets out the process for the determination of Sexual Entertainment Venues (SEVs) and the imposition of conditions on SEV licenses.

## 2 TERMS OF REFERENCE, MEMBERSHIP & QUORUM

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

## 3 INTRODUCTION AND BACKGROUND:

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

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

#### **4 APPLICATIONS FOR SEVS**

4.1 Since the first appointed day, new applicants, i.e. people wishing to use premises as a SEV who did not already have a premises licence or club premises certificate to operate as such under the Licensing Act 2003 Act, or did have such a licence but had not taken any steps towards operating as such immediately before 1 June 2014, have not been able to operate as a SEV without a SEV licence.

4.2 Existing operators who immediately before the first appointed day had a Licensing Act 2003 (‘the 2003 Act’) premises licence, and lawfully used premises as a SEV under that licence or were undertaking preparatory work to use the venue in that way, have been allowed to continue to provide relevant entertainment until the third appointed day (1 June 2015), or the determination of any application they submit before 1 June 2015 (including any appeal against refusal to grant a licence), whichever is later.

4.3 As the Licensing Authority is able under the statutory scheme to refuse applications by having regard to the number of SEVs that they consider appropriate for a particular locality, all applications made on or after the first appointed day but on or before the second appointed day (i.e. between 1 June and 1 December 2014 inclusive) must be considered together prior to a determination being made in respect of any of them, as required by article 7(2) of the Order.

4.4 New applications made *after* the second appointed day cannot be determined until all the previous applications have been determined.

4.5 The Tower Hamlets Sex Establishment Licensing Policy proposes ‘nil’ as the appropriate number of SEVs for the borough. The Policy provides that the Council will not apply this limitation when considering applications from existing operators if they can demonstrate in their application:

- High standards of management
- A management structure and capacity to operate the venue and
- The ability to adhere to the standard conditions for SEVs

- 4.6 Article 7(3) of the Order provides that if an existing operator who made one of the applications referred to in paragraph 4.4 above is granted a licence before the third appointed day that licence does not take effect until the third appointed day, 1 June 2015.
- 4.7 Five applications in total have been received for the grant of a SEV Licence between the first appointed day and the second appointed day in respect of the following venues:
- Charlie's Angels, 30 Alie Street, E1
  - Metropolis, 234 Cambridge Heath Road, E2
  - Nag's Head, 17-19 Whitechapel Road, E1
  - White Swan. 556 Commercial Road, E14
  - White's Gentleman's Club, 32-38 Leman Street, E1
- 4.8 Charlie's Angel's was accepted as an application by a new operator and the remaining four as applications from existing operators. In order to allow sufficient time to determine the applications a waiver for a SEV License was granted to Charlie's Angels until 1 July 2015, which allows it to continue to operate for the short-term.
- 4.9 Applications in each matter were referred to the Licensing Committee for determination in accordance with the London Borough of Tower Hamlet's Scheme of Delegation.
- 4.10 The Committee held hearings as follows:
- Nag's Head Public House on 17 March 2015
  - White's Gentleman's Club on 14 April 2015
  - Charlie's Angels on 12 May 2015
- 4.11 A hearing was not required in respect of Metropolis and White Swan applications, which were initially considered on paper, as there were no objections or history of complaints. A Committee Meeting took place on 28 April to consider these two application as well as the standard conditions for all applicants.
- 4.12 On 28 April 2015, for each application the Committee outlined any concerns that it had in respect of the specific applications concerning the character of the applicant, the layout etc. of the proposed SEV premises, the use of other premises in the vicinity and the character of the relevant locality, along with the Council's Sex Establishment Licensing Policy. The Committee discussed the existing standard conditions, the proposed additional conditions and those conditions offered at the hearings. During this discussion it became apparent that there was a lack of clarity to some existing conditions. It was also considered that in the key areas of performer welfare, customer tariffs and advertising that there was a lack of clarity, consistency and a failure to meet the objectives of the SEV policy in the Borough. The Committee accordingly approved a fresh set of draft standard conditions reflecting the applications, submissions and policy consideration and provided these to the applicants for comment prior to any final decision being taken.

- 4.13 The minutes for the above hearings are set out in Appendices 5 to 8 to this report.
- 4.14 Agenda Packs in respect of each of these applications and the relevant hearings can be found on the Council's website at the following link:  
<http://edemoc2ksrv:8070/ieListMeetings.aspx?CId=324&Year=0>  
The Agenda Packs have not been reproduced as this Meeting will be dealing with Conditions only.

## **5 GRANT AND REFUSAL OF SEV LICENSES**

- 5.1 The options open to this Committee in respect of determining each application are:
- Grant the licence as applied for, attaching the standard conditions; or
  - Grant the licence, varied from what was applied for and/or attaching expressly varied conditions instead of or in addition to the standard conditions; or
  - Refuse the application.
- 5.2 Once the Committee has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 to the LGMPA or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3 of the LGMPA.
- 5.3 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:
- The hours of opening and closing
  - Displays and advertisements on or in sex establishments
  - The visibility of the interior of a sex establishment to passers-by
  - Any change of use from one kind of sex establishment to another
- 5.4 The Council has adopted standard conditions that act as default conditions attached to SEV licenses. The standard conditions are considered by the Licensing Authority to be appropriate for the type of venue but they provide leeway for some variation in consultation with Licensees. The original standard conditions prepared by the Council are set out at Appendix 9.
- 5.5 In consideration of the applications, a revised set of standard conditions to be attached to those licenses that the Committee determines to grant was prepared. This set of revised conditions incorporated and mostly reflected the previous standard conditions but where relevant conditions were reviewed and amended in light of the applications and submissions made and Councillor comments and concerns. The revised standard conditions were sent out to the applicants and their Legal Representatives for comment on 11 May 2015 for the four existing operators. In addition they were put to the applicant and his legal representatives for Charlie's Angels at the hearing on 12 May 2015. The Revised Standard Conditions are set out at Appendix 10.

- 5.6 Minor matters, were raised in correspondence on 18 May by Dadds Solicitors acting for White Swan and White's Gentleman's Club, whereby it was asked that the Committee consider the revised wording for condition 31 and delete the words "or clearly advertised discounts to the tariff" as a discount should not give rise to any misunderstanding or complaint. Copies of the letters received from Dadds Solicitors are at Appendices 11 and 12.
- 5.7 Matters were raised in respect of Nag's Head and Metropolis by Jeffrey Russell Grant Ltd on 15 May 2015 with Legal Services which the applicants had not had the opportunity to deal with before the Committee.
- 5.8 There was correspondence in March and April between Licensing Officers and Julian Skeens of Jeffrey Russell Grant in respect of conditions for the Nag's Head Public House. Amendments to the Council's standard Conditions were submitted as a tracked changes document and a clean copy of the same. These changes can be summarised broadly as:
- Removal of standard conditions 3 – 6 of the LBTH Standard Conditions for SEVs.
  - Amended wording from standard condition 11 on the basis that "a satisfactory level of decorum" was deemed by Jeffrey Russell Grant as being too subjective and imprecise.
  - Removal of standard condition 14 and substitution with Additional Condition 4.
  - When making the application (which was before the publication of the LBTH Standard Conditions for SEVs came out);
  - The proposal of additional conditions dealing with drink/dance tariffs.

Further to on-going communication between officers and solicitors for the applicant, a revised set of conditions was offered whereby Jeffrey Russell Grant honed the conditions previously submitted. These revised conditions for Nag's Head are set out at Appendix 13 together a new proposed plan in draft form for approval.

- 5.9 Gareth Hughes of Jeffrey Russell Grant acting for Metropolis asked that documents previously not before the Committee for Metropolis be considered in the determination of their clients' applications. The additional documents for Metropolis are set out at Appendix 14.
- 5.10 Further/revised conditions have also been put forward in respect of Charlie's Angels, following the Committee hearing of that matter. A copy of correspondence sent in by Fletcher Day, the Legal Representative, is attached as Appendix 15.
- 5.11 The LGMPA requires that applicants receive an opportunity of appearing before, and of being heard by, a Committee before their application is refused. In addition it has been determined by the Licensing Authority that where operators propose large-scale variations from the standard conditions representations in that regard must go before the Committee as being outside the delegated powers to settle the wording of conditions.

- 5.12 In light of paragraphs 5.6 to 5.10 above a further Extraordinary Committee Meeting has been convened to consider their further representations before determination of the grant.

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 There are no direct financial implications arising directly from the report. However, there are possible cost implications if the Decision was appealed to the Magistrates' Court, Crown Court or if a Judicial Review was lodged. Licence fees are expected to cover the cost of administration and compliance.

## **7 LEGAL COMMENTS**

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

## **8 BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

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

## **9 APPENDICES**

Appendix 1 - Terms of reference for Licensing Committee

Appendix 2 - Membership of Licensing Committee

Appendix 3 - Council report for consideration of the adoption of the SEV licensing regime

Appendix 4 - Decision of Full Council Meeting – 26 March 2014

Appendix 5 - Minutes of meeting held on 17 March 2015 re Nag's Head

Appendix 6 - Minutes of meeting held 14 April 2015 re White's Gentleman's Club

Appendix 7 - Minutes of meeting held on 28 April 2015

Appendix 8 - Minutes of meeting held on 12 May 2015 re Charlie's Angels

Appendix 9 - Original Standard Conditions

Appendix 10 - Revised Standard Conditions

Appendix 11 - Letter from Dadds Solicitors for White Swan

Appendix 12 - Letter from Dadds Solicitors for White's Gentleman's Club

Appendix 13 - Further documents for consideration for Nag's Head Public House

Appendix 14 - Further documents for consideration for Metropolis

Appendix 15 - Further conditions for consideration for Charlie's Angels