


Non-Executive Report of the: Licensing Committee 8th December 2015	 TOWER HAMLETS
Report of: Steve Halsey: Corporate Director of Communities, Localities and Culture	Classification: Unrestricted
Sexual Entertainment Venues – a Review	

Originating Officer(s)	John McCrohan, Trading Standards and Licensing Manager
Wards affected	All

1 **SUMMARY**

- 1.1 This report requested by the chair and vice chair of the Licensing Committee recounts the background to and updates upon the successful process the Council has recently completed to apply an updated Licencing regime to the sexual entertainment premises operating in the Borough.

2. **RECOMMENDATIONS**

- 2.1 That the Licensing Committee note, consider and comment on the activities that the Consumer and Business Regulations Service have taken in relation to sexual entertainment venue licensing.

3 **REASONS FOR THE DECISIONS**

- 3.1 This is a noting report. No decisions are requested.

4. **ALTERNATIVE OPTIONS**

- 4.1 See above. Not applicable.

5. **DETAILS**

- 5.1 Philip Colvin QC writes in the preface to his book *Sex Licensing* [published by the Institute of Licensing] the leading legal text on law governing the licensing of sex establishment

“For half a millennium, licencing law has swung on the pendulum of social policy. In the noughties, licencing legislation was largely driven by a neo-

liberal paradigm involving deregulation of the leisure sector to specific controls such as those necessary to prevent crime and disorder and protect children from harm.

By contrast, sex licensing has for decades placed its feet in two divergent and opposing camps. Sexual entertainment – still basking in the rays of the 1969’s sexual liberation following the Lady Chatterley trial and the abolition of the office of Lord Chamberlain has remained relatively unregulated. Sex shops and sex cinema, meanwhile, were swept up in Margaret Thatcher’s anti-permissive backlash, as local government was given a new array of new regulatory powers in the Local Government Miscellaneous Provisions) Act 1982.

That inherent tension – indeed inconsistency- was always liable to give in one direction or the other, and now sex licensing policy has swung firmly in favour of regulation. ...The reason has little to with political ideologies, as to the regulation or market enterprise. It arises with localism - the idea that local communities should have a greater say in the development of their own community assets.”

London Government Act 1963 – Greater London Council (General Powers) Act 1986 – striptease waiver

- 5.2 There was an existing system of regulating sexual entertainment premises in London separate from the rest of the UK. In the 1980s the regulation was about premises offering striptease to audiences. The striptease although mainly was female performers to male audiences, however, there were premises offering male striptease to male audiences, and male striptease to female audiences.
- 5.3 Striptease was a form of entertainment that required an entertainment licence under the London Government Act 1963. Licence holders had to comply with standards conditions and had to apply for “a striptease waiver”. The striptease waiver added extra conditions to the entertainment licence for the premises.
- 5.4 Entertainment licences were issued annually and premises had to re-apply each year. There was a “fit and proper” person test for example. Three of the existing operators had entertainment licences dating back to the 1980s and 1990s. They are:-
 - The Nags Head
 - The White Swan
 - Metropolis
- 5.5 In response to concerns about the activities of some premises in the West End, in 1986, the Greater London Council (General Powers) Act 1986 was brought in to law creating a new category of premises requiring a licence in the London

area: a sexual encounter premises. The Council adopted this provision in the early 1990s.

5.6 The 1990s saw the appearance of lap-dancing premises, an activity introduced from the United States and Canada.

5.7 Licensing Act 2003

The Licensing Act 2003 repealed the entertainment licensing regime replacing it with a market based system. Sexual entertainment was a form of regulated entertainment. Licences issued under the Licensing Act 2003 are issued in perpetuity unless surrendered or revoked under the Act. Conditions controlling the sexual entertainment were placed on premises licences regulating to the type of entertainment at a business but the legislation was seen by some as being too permissive.

5.8 Subsequent social and political campaigning for tighter regulation resulted in the passing of the Policing and Crime Act 2010 which included an amendment to the sex establishment licensing regime under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. A new category of sexual establishment requiring a licence was inserted into the licensing regime under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This afforded the power for local authorities to licence sexual entertainment venues. The Council adopted the legislation in 2014 and agreed, following legal advice, to a policy that provided for an exemption from the nil limit of sex establishments in the Borough for existing sexual entertainment venue premises. This did 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.

5.9 Sexual entertainment venues operating in the Borough were now required to apply for an annual licence. Existing operators had to apply for a sexual entertainment venue licence by the 1st December 2014.

5.10 Concerns were expressed by industry and parts of civil society at the time that the Council may be influenced by factors that were not applicable in the Licensing process. The existing operators engaged expert Licensing Legal advice to advise and represent them during the new licensing process.

5.11 Five operators chose to apply for sexual entertainment venue licences. The premises subject to application were:-

- The Nag's Head, 17/19 Whitechapel road, E.1W 2SF
- Whites Gentleman's Club, 32/38 Leman Street, E1 8EW
- Metropolis/the Pleasure Lounge, Cambridge Heath Road,

- White Swan, 556 Commercial Road, E14 7JD
 - Charlie's Angels, 30 Ailie Street, E.1 8DA
- 5.12 The application process under the sexual entertainment venue licensing regime is far more detailed. There is a "fit and proper" person test. The vicinity and locality of the establishment are considered.
- 5.13 The vicinity was defined as a 100/120 metre radius of the premises. Licensing Officers walked around the defined vicinity and noted:-
- residential accommodation;
 - schools;
 - premises used by children and vulnerable persons;
 - youth;
 - community & leisure centers;
 - religious centers and public places of worship;
 - access routes to and from premises;
 - existing licensed premises in the vicinity.
- 5.14 The ward profiles where the businesses were operating were used to describe the locality.
- 5.15 Licensing officers visited the premises and conducted detailed inspections. For example, the Council's standard conditions (at that time) at condition 13 dealt with the CCTV coverage required. In effect, there should not be any blind/dark spots. It read:-
- 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.*
- 5.16 Licensing Officers ensured that the CCTV coverage met the requirements of the standard condition.
- 5.17 In addition, Licensing and Trading Standards Officers worked together to ensure price information complied with the Consumer Protection from Unfair Trading

Regulations 2008. Extra conditions were imposed, where appropriate, on the premises to require clearer pricing.

5.18 The Licensing Committee sat on the following dates:-

- 17th March 2015 – heard the application by Nags Head. A local resident had objected to the Licence
- 14th April 2015 - Whites Gentleman's Club application was heard following objections by local residents
- 28th April 2015 - Metropolis and White Swan applications were heard. No objections had been received but the process required a hearing.
- 12th May 2015- Charlie's Angels application was heard
- 23rd June 2015- the committee determined the applications and also listened to legal submissions about the Council Revised Standard Conditions from the operators. The standard conditions were not weakened, but tailored to cope with specific issues identified by the Council's Legal advisors and adjusted according to how individual particular premises operated.

5.19 On 17th July 2015, the Council issued the determination notices for the sexual entertainment venue licence applications. Four licences were granted to:-

- The Nag's Head, 17/19 Whitechapel road, E.1W 2SF
- Whites Gentleman's Club, 32/38 Leman Street, E1 8EW
- Metropolis/the Pleasure Lounge, Cambridge Heath Road,
- White Swan, 556 Commercial Road, E14 7JD

5.20 One application was refused: that of Charlie's Angels, 30 Ailie Street, E1 8DA. The determination notice for the Charlie's Angels to refuse the application stated:-

The Licensing Committee determined to refuse the grant of an SEV licence to London City Traders Ltd for the premises known as and operating as Charlie's Angels. The Licensing Committee took the view that the named applicant and named managers on the application form were not in sole control of the premises. The London Borough of Tower Hamlets Sex Establishment Licensing Policy states that: Applications from anyone who intends to manage the premises on behalf of third parties will be refused. Counsel for the applicant stated that the sole beneficiary of the premises was Mr Abdul Malik. None-the-less the conduct of the parties and the prominent role played by Mr Abdul Ali during the hearing raised

significant doubts in the mind of Members. It was clear to Members that Mr Abdul Ali played a significant and potentially controlling influence over Mr Abdul Malik and that his part-time managerial and / or consultancy role was central to the operation of the premises.

Furthermore it was determined that when questioned the applicant demonstrated lax and poorly considered standards of management, the management structures were vague, confused and lacked clarity. The Licensing Committee determined that the applicant did not demonstrate the ability to adhere to the revised Standard Conditions nor the high standards of management expected of it. The proposed conditions were not sufficiently clear and could not overcome the concerns that Members had.

The applicant failed to demonstrate that its application was within the policy exemption and for the reasons given the applicant was found to be unsuitable to hold the licence pursuant to paragraph 12(3)(a) of Schedule 3 of the 1982 Act and accordingly the refused an SEV licence.

- 5.21 Charlie's Angel has exercised its right to appeal to the Magistrates' Court and during the appeal process, the business can operate. The appeal will be heard at a two day trial at Waltham Forest Magistrates' Court in the New Year.
- 5.22 The Council has successfully completed the initial round of sexual entertainment venue licensing in a professional manner with the Licensing Team, Legal Services and Democratic Services supporting members in their decision making. There is now an annual licensing process, with a robust compliance regime in place, regulating the sexual entertainment venue premises in the Borough.
- 5.23 Members will note that the fee for applying for a sexual entertainment venue licence was set at £9000. The £9000 fee was spent on the use of expert counsel, the costs from Democratic Service and the licensing process. There are no proposals to increase the fee.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 6.1 The costs of administration and compliance are covered by the sexual entertainment venue licence fee. In the cases where decisions are appealed to the Magistrates' Court, Crown Court or if a Judicial Review is lodged additional costs will arise. As there is no specific Council provision to meet these costs above the budget provision provided by the licence fee, the extent to which sufficient resources can be identified will need to be considered in the light of the impact on the Council's Medium Term Financial Plan.

7 LEGAL COMMENTS

- 7.1 The options open to the Committee in respect of determining each application were:
- 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.
- 7.2 The Legal position is that 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 Local Government (Miscellaneous Provisions) Act 1982 ('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.
- 7.3 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
- 7.4 The Council had adopted standard conditions that acted as default conditions attached to SEV licenses. The standard conditions were to be appropriate for the type of venue but provided leeway for some variation in consultation with Licensees. During the process licensees provided their own offerings for standard conditions and requests to amend, vary or dis-apply various conditions which led the Licensing Authority to re-draft the standard conditions and issue revised standard conditions that covered the spirit and intention of the first draft but which incorporated consultation with the Licensees.
- 7.5 In terms of a refusal of a licence, the Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified in paragraph 12 LGMPA (as amended by reg. 47(4), Provision of Services Regulations 2009):
- 7.6 The mandatory grounds for refusal under paragraph 12(1) are as follows:
- (a) the applicant is under the age of 18;
 - (b) the applicant is for the time being disqualified from holding a licence;
 - (c) the person is a person other than a body corporate, who is not resident in the U.K. or was not resident in the U.K. throughout the six months preceding the date of the application;

- (d) that the applicant is a body corporate which is not incorporated in the UK;
or
- (e) that the applicant has been refused a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.

7.7 The discretionary grounds to refuse the application under paragraph 12(3) are as follows:

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would have been refused a licence if they had applied themselves;
- (c) the number of sex establishments exceeds the number or is equal to the number which the council consider is appropriate for that locality; or
- (d) the grant or renewal of licence would be inappropriate because of:
 - i. the character of the relevant locality;
 - ii. the use to which the premises in the vicinity are put; or
 - iii. the layout, character or condition of the premises, vehicle, vessel or stall.

7.8 Charlie's Angels was refused on grounds of suitability of the application under paragraph 12(3)(a). There is an appeal underway in respect of this matter - as referred to at paragraph 5.21 - which the Council is defending on the basis that the decision was sound.

8. ONE TOWER HAMLETS CONSIDERATIONS

8.1 No adverse impacts have been identified

9. BEST VALUE (BV) IMPLICATIONS

9.1 The Council endeavours to achieve its full cost recovery through the licence fee and where enforcement action is taken, the Council seek to recover its full costs through the Courts.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

10.1 There are no adverse impacts identified

11. RISK MANAGEMENT IMPLICATIONS

11.1 The Council will be at risk of legal challenge if its decision making process on determining applications is not transparent and evidentially based.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

12.1 One of the key licensing objectives is to prevent licensed premises from being a source of crime and disorder. This report supports and assists with crime and disorder reduction by controlling those who manage premises open to members of the public and imposing conditions on relevant premises licences.

11. APPENDICES

None

**LOCAL GOVERNMENT ACT, 1972 Section 100D (as amended)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

None