

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Committee	05 September 2016	Unrestricted		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a renewal of a Sexual Entertainment Venue Licence for the Nags Head, 17-19 Whitechapel Road, London E1 1DU Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant:	Karpal Singh, Shamsher Singh and Manpal Singh
Name and Address of Premises:	The Nags Head 17-19 Whitechapel Road London E1 1DU
Licence sought:	Sexual Entertainment Venue Licence under Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a renewal of a Sexual Entertainment Venue Licence
Objectors:	None

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)
LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Mohshin Ali
020 7364 5498

3.0 Background

- 3.1 This is an application made by Karpal Singh and Shamsher Singh for a renewal of Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by reg 47 (4), Provisions of Services Regulations 2009 'the service regulations') and the Policing and Crime Act 2009 for The Nags Head, 17-19 Whitechapel Road, London, E1 1DU.
- 3.2 A licence from the Council is required for the use of a premise as a sex Establishment. A sexual entertainment venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant entertainment means:

- any live performance; or
- any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

- 3.3 The premises is currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended). A copy of the existing licence is enclosed as **Appendix 1**. The licence consists of the basic licence, plus additional conditions relevant to that premises only. In addition, the Tower Hamlets Standard SEV Conditions also apply and form part of the licence.

This licence was in force up to: 31st May 2016 or during the time that the licensee(s) is/are the occupier of the premises, whichever is the shorter period, or unless sooner surrendered or revoked.

The hours permitted are:

- The hours permitted are: Monday to Saturday from 11:00hrs to 03:00hrs (the following day)
- Sunday from 12:00hrs (midday) to 22:30hrs

The named management responsible for this premises are:

- Manpal Singh and Shamsher Singh - Managers
- Keith Harrington – Relief Manager
- Alcir Orlandi – Relief Manager

This licence is granted subject to conditions as follows:

1. The Standard Conditions of the London Borough of Tower Hamlets made under paragraph 13 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as revised on 23rd June 2015 and sent to the Licence Holder as part of the

Decision Notice dated 17th July 2015. It is the duty of the licence holder to be aware of and abide by those conditions;

2. The following additional conditions specific to this Premises:

42. The number of persons to be accommodated in the Premises at any one time shall not exceed 100 persons.

3.4 The current renewal application is to permit the premises to operate as a sexual entertainment venue with opening hours as follows:

- The hours permitted are: Monday to Saturday from 11:00hrs to 03:00hrs (the following day)
- Sunday from 12:00hrs (midday) to 22:30hrs

3.5 The premises also holds a licence under the Licensing Act 2003. A copy of the existing licence is enclosed for Members' information as **Appendix 2**. The licence was originally granted on 7th October 2005 and amended via a minor variation on 11th November 2010.

The licence grants the following licensable activities:

The sale by retail of alcohol (on and off sales) and the provision of regulated entertainment; consisting of recorded music, performance of dance (performed by striptease artists), anything of similar nature, the provision of facilities for making music and the provision of facilities for dancing (performed by striptease artists) and the provision of facilities for entertainment of a similar nature.

- Monday to Saturday from 11:00hrs to 03:00hrs (the following day)
- Sunday from 12:00hrs (midday) to 22:30hrs

The opening hours of the premises:

- Monday to Saturday from 11:00hrs to 03:30hrs (the following day)
- Sunday from 12:00hrs (midday) to 23:00hrs

3.6 A copy of the application is enclosed as **Appendix 3**.

3.7 Maps of the premises location are available in **Appendix 4**.

3.8 Members should note that the two regimes run concurrently therefore the premises licence granted under the Licensing Act 2003 could effectively run without the SEV in operation, if alcohol and regulated entertainment was solely taking place.

4.0 **Layout of the Premises**

- 4.1 Layout plan of the premises is available in **Appendix 5**. The premises was visited on Wednesday 22nd June 2016 by a Licensing Officer with one of the licence holders and his legal representative. The layout of the premises was confirmed to be the same as contained in the application. A checklist of questions was completed and a copy of that checklist used at the meeting is available in **Appendix 6**.

The checklist covered the following points:

- The Code of Conduct for performers
 - The House Rules
 - The Performer Safety Policy
 - Retention of performers' personal details
 - Details of Door Staff attending each evening
 - The venue interior and exterior (for example, whether the interior of the premises is visible from the outside)
 - Public access areas and approved access to dressing rooms
 - CCTV Coverage
 - Functionality of the CCTV
 - Advertising, both externally to the premises and online
 - Information on tariffs, including both dances and beverages
- 4.2 In conclusion from the visit, the Licensing Officer was satisfied that all conditions of the licence were met. Management were cooperative and records were kept in working order.

- 4.3 Photographs of the premises are available in **Appendix 7**.

5.0 **Adverts and Flyers**

- 5.1 No adverts or flyers used to promote the premises have been included in the application; however, Management informed the Licensing Officer at the inspection that advertising is done outside of Tower Hamlets.

- 5.2 It was noted that there were no adverts at the exterior of the premises. The premises does however have a website, available at www.nagsheadgentlemensvenue.com/. There is no 'Over 18' entry tab.

6.0 **Standard Conditions**

- 6.1 The Council has adopted Standard Conditions that were revised on 23rd June 2015, which act as default conditions that are attached to all Sexual Entertainment Venue Licences. These are available as part of the licence in **Appendix 1**.

7.0 Codes of Conduct and Policies

7.1 The applicant has provided Codes of Conduct and policies as required by the Standard Conditions, see **Appendix 8**, namely:

- Code of Conduct for Performers
- Code of Conduct of Customers (Customer House Rules)
- Performer Welfare Policy

7.2 During the compliance check visit, it was confirmed that the Code of Conduct for Performers was available in the dressing rooms. It was also confirmed that the House Rules was available in the public area of the premises.

7.3 Members have discretion to modify the standard conditions or add appropriate conditions.

8.0 Assessment and information for the vicinity

8.1 **Appendix 9** is a map of the Licensing Service's determination of the vicinity around the premises, set at 100meters from the premises. It is noted that there has been no significant changes since the original application.

8.2 Determination of the "use" of other Premises in the "vicinity" - vicinity" is likely to be a narrower and smaller area than the "relevant locality" much will depend upon the physical location of the premises, its appearance and upon the nature and hours of its operation.

8.3 Below is a list of notable premises within vicinity as observed by Licensing Officer visiting the area on foot and using GIS maps:

Residential accommodation	<p>There is no obvious residential accommodation above the Nags Head.</p> <p>The floors above the Whitechapel Road premises within the vicinity are primarily used for commercial purposes.</p> <p>There are residential developments accessed from Old Montague Street: Kings Arms Court, Green Dragon Yard and Black Lion House.</p> <p>Naylor Build Yard, residential accommodation next to Altab Ali Park, is on the edge of the vicinity.</p>
Schools	<p>There are no schools within the vicinity.</p>

Premises used by children and vulnerable persons	There is a medical centre (The Spitalfields Practice) in Old Montague Street.
Youth community and leisure centres	There are none in the vicinity.
Religious centres and public places of worship	There are none in the vicinity.
Access routes to and from premises listed above	<p>The premises sits on the north side of the A11, Whitechapel Road, one of London's busiest arterial roads.</p> <p>Whitechapel Road is busy 24 hours a day.</p> <p>There are a number of bus routes, as well as night buses.</p> <p>Aldgate East Tube Station is a 5 minute walk away.</p>
Existing licensed premises in the vicinity	<p><u>Whitechapel Road same side as applicant premises</u></p> <ul style="list-style-type: none"> • Off licence Best Star One, 23 Whitechapel Road, E1 • Off Licence Tesco Stores Ltd 45 Whitechapel Road E1 1DU • Hotel Adagio London 45 Whitechapel Road E1 1DU <p><u>Whitechapel Road opposite side from applicant premises</u></p> <ul style="list-style-type: none"> • Restaurant Haji Nanna Biryani, 14 Whitechapel Road E1 1EW • Bar/night club Rhythm Factory Cafe Bar & Jazz Club 16-18 Whitechapel Road, E1 1EW <p><u>Adler Street</u></p>

	<ul style="list-style-type: none"> • Hotel QBIC London City Hotel, 42 Adler Street, E1 1EE <p><u>Osborn Street</u></p> <ul style="list-style-type: none"> • Bar and function space: City Hotel, 12-20 Osborn Street, E1 6TE • Restaurant Shahi Karahi 22 Osborn Street, E1 6TD • Bar Apples and Pears, 26 Osborn Street, E1 6TD • Restaurant Sonargaon Restaurant, 32-38 Osborn Street, E1 6TD • Public House: Archers, 42 Osborn Street, E1 6TD <p><u>Whitechapel High Street</u></p> <ul style="list-style-type: none"> • Restaurant and function space: Whitechapel Art Gallery, 80 Whitechapel High Street, E1 7QX • Fast food Restaurant, KFC Express, 84 Whitechapel High Street, E1 7QX • Restaurant: Sushino En, 2 White Church Lane, E1 7QR • Restaurant: Khushbu, 74 Whitechapel High street, E1 7QX • Public House: Bar Locks, 21 White Church Lane, E1 7QR
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9.0 **Assessment and information for the Locality**

9.1 **Appendix 10** contains the Ward Profile of Spitalfields and Banglatown to provide members with details in relation to the locality of the premise. It should be noted that this is the most up-to-date available, though it dates to 2014.

9.2 In regards to the “relevant locality” :

- The relevant locality was assessed as being within a 100 metre radius centred on the premises, 17-19 Whitechapel Road
- The premises sits on the A11, one the capital’s busiest roads
- The vicinity is overwhelming commercial, with a smattering of accommodation
- Opposite the premises is Altab Ali Park. The Council’s maps show the area as St Mary’s Gardens

9.3 The character of the locality:

- The area has been assessed to have a commercial character with about 11% of the Borough’s residents across the two wards: Spitalfields and Banglatown and Whitechapel
- The premises is in Spitalfields and Banglatown ward, albeit on the boundary with Whitechapel ward
- The wards profiles downloaded from the council’s website are appended
- Both wards abut the City of London and have a commercial character, and have about 11% of the Borough’ s population - according to their profiles

10.0 Other Sexual Entertainment Venues

10.1 The following premises have applied for Sexual Entertainment Venues under the new licensing Regime within Tower Hamlets:

- **Club Enviee (now Flamingos)** 30 Alie Street, London, E1 8DA
- **Metropolis** 234 Cambridge Heath Road, London, E2 9NN
- **Nags Head** 17-19 Whitechapel Road, London, E1 1DU
- **Whites Gentleman’s Club** 32-38 Leman Street, London, E1 8EW
- **White Swan** 556 Commercial Road, London, E14 7JD

11.0 Consultation

11.1 The application has been consulted on in accordance with the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and the Tower Hamlets Sexual Entertainment Policy.

This has included:

a) A site notice at the premises displayed by the applicant during the required period. A copy of the notice is appended as **Appendix 11**.

b) A press advert was placed in the Docklands and East London Advertiser on the Thursday 26th May 2016, by the applicant, which again is appended as **Appendix 12**.

11.2 The following is a list of those also consulted in regards to the application:

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

12.0 Responses to the Consultation

12.1 The Police were consulted, please find below a summary of their comments.

- None, no response received.

12.2 The Fire Brigade were consulted, please find below a summary of their comments.

- None, no response received.

12.3 The Council expects the premises to have planning consent for the intended use and hours of operation, or otherwise have lawful planning status before making an application for a new licence. Building Control were consulted, please find below a summary of their comments.

- None, therefore it is assumed that all planning permissions are acceptable.

12.4 Health and Safety were consulted, please find below a summary of their comments.

- None, no response received.

12.5 Ward Councillors were consulted, please find below a summary of their comments.

- None, no response received.

12.6 Local residents (Members should note that no written public consultation is required for the renewal process), please find below a summary of their comments.

- None

13.0 Licensing Authority Recommendations Following Consultation

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

14.0 Summary of Premises and Licence History

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

14.2 The current licence holder is Karpal Singh and Shamsher Singh.

14.3 The current Designated Premises Supervisor is Karpal Singh.

15.0 Complaints and Enforcement History

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

Date	Complainant	Nature of Complaint
12/2/2016	Public to Trading Standards	<p>The complainant claims that during a visit on 9th February 2016 that he was charged extra for a strip dance that was advertised on their website and on premises as £10.</p> <p>He states he understood that he would be charged £20, plus £4 (a 40% charge for paying by card). However, when he checked his receipt he found he had been charged £240. The venue have refused a refund.</p> <p>The complaint was investigated by TS. Licence holder clarified the £10 offer has lapsed and their website was due to be updated. The venue do not believe overcharging has occurred but willing to refund £40 as a goodwill gesture.</p>
01/04/2015	Public to Licensing	<p>Complaint of ongoing noise issues. Alleging drugs and anti-social behaviour is linked to the premises. Complainant advised on review process and contact details for Environmental Protection and Police given.</p>

15/10/2014	Public to Trading Standards	Claimed to have ordered double vodka, but the drink was watered down. The complaint is being investigated by TS
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15.2 The premises has received the following visits by the Local Authority in the last 24 months:

Date	Authority (TS/Lic)	Nature of visit
22/06/2016	Licensing	SEV renewal application inspection visit. A Licensing Officer met with the licence holder and his legal representative and found there to be no issues under either the SEV or the Licensing Act.
02/06/2016	Licensing	SEV renewal notice check. All ok
04/03/2016	Trading Standards	Visit to investigate a complaint of overcharging on 09/02/2016.
06/11/2015	Licensing, Trading Standards and Police	Conditions check – All complied with (including pricing)
24/04/2015	Licensing	Re-visit compliance check
02/03/2015	Licensing	SEV Compliance Visit – all OK, except for current CCTV positions
08/12/2014	Licensing	SEV Notice Check

15.3 The premises has been subject to the following enforcement actions in the last 12 months:

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

16.0 Policy - Appropriate Number of Sexual Entertainment Venues

16.1 The Council has determined that there are a sufficient number of sex shops, sex cinemas and sexual entertainment venues currently operating in the borough and it does not want to see an increase in the numbers of premises that are currently providing these activities.

16.2 The Council intends to adopt a policy to limit the number of sexual entertainment venues in the borough to nil however it recognises that there are a number of businesses that have been providing sexual entertainment in Tower Hamlets for several years. The Council will not apply this limitation when considering applications for premises that were already trading with express permission for the type of entertainment which is now defined as sexual entertainment on the date that the

licensing provisions were adopted by the authority if they can demonstrate in their application:

- High standards of management;
- A management structure and capacity to operate the venue;
- The ability to adhere to the standard conditions for sex establishments.

16.3 The Council will consider each application on its merit although new applicants will have to demonstrate why the Council should depart from its policy. Furthermore if any of the existing premises cease trading there is no presumption that the Council will consider any new applications more favourably.

17.0 Home Office Guidance

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

17.2 The Council can refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of Sexual Entertainment Venues, or Sexual Entertainment Venues of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a Sexual Entertainment Venue would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

17.3 The decision regarding what constitutes the 'relevant locality' is a matter for the Council. However, such questions must be decided on the facts of the individual application.

17.4 Once the Council has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, Sexual Entertainment Venues, or Sexual Entertainment Venues of a particular kind, it considers appropriate for that relevant locality.

18.0 Licence Conditions

18.1 Once the Council has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, or standard conditions applicable to all Sexual Entertainment Venues, or particular types of Sexual Entertainment Venues.

18.2 Where the Council decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

18.3 Most sexual entertainment venues will require a Licensing Act 2003 licence as well as a Sexual Entertainment Venue licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on the each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licences or clubs premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.

18.4 In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.

18.5 In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.

19.0 Sexual Entertainment Venues and Determination

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

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

licence; is the premises suitable for the operation of the proposed relevant entertainment?

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

19.2 A copy of LBTH Sexual Entertainment Venue Policy is produced in **Appendix 13** for Member’s information.

20.0 Legal Comments

20.1 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified below (Sch 3 para 12(1) LGMPA (‘the Act’), as amended by reg 47 (4), Provision of Services Regulations 2009):

20.2 The mandatory grounds for refusal are as follows:

- (a) the applicant is under the age of 18;
- (b) that the applicant is for the time being disqualified from holding a licence;
- (c) that the person is a person other than a body corporate, who is not resident in the U.K. or was not resident in the U.K. throughout the six months preceding the date of the application;
- (d) that the applicant is a body corporate which is not incorporated in the U.K; or

- (e) that the applicant has been refused a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.

20.3 The Committee has discretion to refuse the application if any of the following grounds for refusal apply under para. 12(3) of Schedule 3 of the Act.

The discretionary grounds for refusal are as follows:

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

(In relation to premises, 'the relevant locality' means the locality where the premises are situated).

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

20.5 The Committee should only consider those comments within the letters of objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for refusal. Comments contained within the letters of objection or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.

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

21.0 Finance Comments

21.1 The Chief Finance Officer has been consulted on this report and has no additional comments to make.

22.0 Appendices

Appendix 1	A copy of the existing SEV Licence (including the LBTH Standard Conditions)
Appendix 2	A copy of the existing Premises Licence
Appendix 3	A copy of the renewal application
Appendix 4	Maps of the premises showing the site location
Appendix 5	Location plan and internal layout plans of the premises
Appendix 6	Compliance Visit Checklist
Appendix 7	Photographs of the premises
Appendix 8	Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and Dancers Welfare Policy
Appendix 9	Vicinity Map
Appendix 10	Ward profile for Spitalfields and Banglatown
Appendix 11	Copy of Site Notice
Appendix 12	Copy of Press Advert
Appendix 13	Copy of LBTH SEV Policy