

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Committee</b>		<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Mohshin Ali</b> <b>Senior Licensing Officer</b>	Title: <b>Local Government (Miscellaneous Provisions) Act 1982 (as amended)</b> <b>Application for a Variation of a Sexual Entertainment Venue Licence for Metropolis, 234 Cambridge Heath Road, London E2 9NN</b>  Ward affected: <b>St. Peter's</b>
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## 1.0 Summary

Applicants: **Steven Victor Martin, Victor Martin and Melanie Jane Graham**

Name and Address of Premises: **Metropolis  
234 Cambridge Heath Road  
London  
E2 9NN**

Licence sought: **Local Government (Miscellaneous Provisions) Act 1982 (as amended)**  
**Application for a Variation of a Sexual Entertainment Venue Licence**

Objectors: **Local residents**

## 2.0 Recommendations

2.1 That the Licensing Committee considers the application and then adjudicates 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 Steven Victor Martin, Victor Martin and Melanie Jane Graham for a variation of a 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 Metropolis, 234 Cambridge Heath Road, London, E2 9NN.

3.2 This application seeks the following:

- to extend the area of the club to the roof terrace.
- to move existing activities from the current ground floor into the basement level which has not been used previously.
- to include internal works including refurbishment, new layout, raised flooring and a new staircase

3.3 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).

3.4 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: 31<sup>st</sup> 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. At the time of writing this report, the renewal application was due to be considered by the Licensing Committee. There were no representations against the renewal application.

The hours permitted are:

- Monday to Sunday from 09:00hrd to 05:00hrs (the following day)

The named management responsible for this premises are:

- Melanie Graham - Manager
- Wendy Kearey
- Michael Antick
- Faye-Marie Lyons

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 23<sup>rd</sup> June 2015 and sent to the Licence Holder as part of the Decision Notice dated 17<sup>th</sup> 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 the following: (a) Ground floor bar – 190 persons at any one time; (b) First and Second floors combined maximum of 80 persons at any one time; and (c) the overall capacity should not exceed 270 persons at any one time, excluding staff.
  43. The maximum number of members of the public permitted in the “screened off” segregated area on the ground floor (as shown on the attached plan) shall not exceed 12 at any one time.
  44. Notices will be displayed at each exit requesting customers to leave quietly and in an orderly fashion and staff are to ensure that patrons leaving the Premises do so in an orderly manner at all times.
  45. The two steel shutters sited at the exit doors shall be in the open position whenever the Premises is open to the public.
  46. The inward opening final exit door on the emergency exit route from the First Floor bar shall be locked in the open position whenever the Premises is open to the public.
  47. The pavement hatch exit flap should be kept clear and available whenever the Premises is open to the public.
  48. Standard Condition 27 is exempt in respect of the Shower Scene (/Car Wash Scenario) on the second floor of the Premises only in so far as audience participation shall be permitted but shall be limited to the use and operation of the toy spray guns which must be of such manufacture so as not to cause any injury or harm to the performers and be tested to the British Standard Kite Mark of Safety.

49. Clear signage shall be displayed forbidding the toy spray guns to be aimed or targeted towards the performers' genitalia, anus or eyes.

50. Performers must not encourage patrons to spray water at their genitalia or anus.

51. Performers must re-dress and / or have towels at the conclusion of a performance.

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

- Monday to Sunday from 09:00hrd to 05:00hrs (the following day)

3.6 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 24<sup>th</sup> August 2005.

The licence granted the following licensable activities:

Regulated Entertainment in the form of films, live music, recorded music, performance of dance (including striptease), entertainment of a similar description, provision of facilities for making music, dancing, or entertainment of a similar description:

- Monday to Sunday from 09:00hrs to 05:00hrs (the following day)

Late Night Refreshment:

- Monday to Sunday from 09:00hrs to 05:00hrs (the following day)

Sale by retail of alcohol (On and off sales):

- Monday to Sunday from 09:00hrs to 05:00hrs (the following day)

The opening hours of the premises:

- There are no restrictions on the hours during which this premises is open to the public

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

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

3.9 Members should note that the two regimes run concurrently therefore the premises licence could effectively run without the SEV in operation, if alcohol, regulated entertainment and late night refreshment was solely taking place.

#### 4.0 **Layout of the Premises**

- 4.1 Layout plan (showing position of CCTV cameras) of the premises is available in **Appendix 5**. The premises was visited on Monday 20<sup>th</sup> June 2016 by a Licensing Officer with one of the licence holders and a manager. A checklist of questions was completed for the renewal application and a copy of that checklist used at the meeting is available in **Appendix 6**. Following the variation application, a site meeting was conducted on the 9<sup>th</sup> August 2016 and the licence holder confirmed that the same measures are still in place as from the previous visit.

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, some of the works to the premises had started but the remaining works were due to be completed in due course and subject to the grant of the variation application.
- 4.3 Photographs of the premises are available in **Appendix 7**.

#### 5.0 **Adverts and Flyers**

- 5.1 The applicant has stated on the form that they have “no business cards or flyers” and they “drive billboard around non London Borough of Tower Hamlets Road.
- 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: <http://www.metropolisstripclub.com/> . There is no ‘Over 18’ entry tab.

#### 6.0 **Standard Conditions**

- 6.1 The Council has adopted Standard Conditions that were revised on 23<sup>rd</sup> 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
- Dancers' Welfare Policy

7.2 During the compliance check visit (Monday 20<sup>th</sup> June 2016), 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	<ul style="list-style-type: none"><li>• Cambridge Court on the corner of Parmiter Street and Cambridge Heath Road</li><li>• Seth Court, Parmiter Street</li><li>• Charmeuse Court, Parmiter Street</li><li>• Bethnal Student Living, Parmiter Street</li><li>• First floor accommodation above 2 storey premises 3 to 15 Bishop's Way</li><li>• 2 Bishops Way, 2 storey premises flat 1-10.</li></ul>
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Schools	None
Premises used by children and vulnerable persons	<ul style="list-style-type: none"> <li>• Edward Gibbons House, 1 Parmiter Street, part of Providence Row Housing Association, a hostel providing temporary accommodation for single homeless men and women with high support needs connected to drinking.</li> <li>• Drug Intervention Centre, 228 Cambridge Heath Road,</li> </ul>
Youth community and leisure centres	<ul style="list-style-type: none"> <li>• Bethnal Student academy (private language school), Bishop's Way.</li> </ul>
Religious centres and public places of worship	None
Access routes to and from premises listed above	<p>Corner of cross roads – Hackney Road/Bishop's Way and Cambridge Heath Road.</p> <p>Cambridge Heath Overground station is opposite</p> <p>There a number of bus routes including night buses</p> <p>Bethnal Green tube station is about 5 to 10 minutes' walk away.</p>
Existing licensed premises in the vicinity	<p><b>Cambridge Heath Road same side as premises</b></p> <ul style="list-style-type: none"> <li>• <b>Takeaway</b> Lemon Spice, 240 Cambridge Heath Road</li> <li>• <b>Wholesaler</b> Bestway Cash &amp; Carry Ltd, 260-278 Cambridge Heath Road</li> </ul> <p><b>Cambridge Heath Road opposite side as premises</b></p> <ul style="list-style-type: none"> <li>• <b>Mini-grocer</b> Shop and Savers, 475-477 Cambridge Heath Road,</li> <li>• <b>Restaurant</b> Al Amin Tandoori Restaurant, 483 Cambridge Heath Road,</li> <li>• <b>Café:</b> The Café Chantant, Arch 300, Cambridge Heath Road, London E2 9HA</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Chicken shop:</b> Perfect Chicken, 491 Cambridge Heath Road, London E2 9BU</li> <li>• <b>Mini-Market/off licence:</b> Kivre Food Centre, 497- 499 Cambridge Heath Road, London E2 9BU</li> </ul> <p><b>Hackney Road</b></p> <ul style="list-style-type: none"> <li>• <b>Takeaway</b> Perfect Fried Chicken, 509 Hackney Road</li> <li>• <b>Restaurant</b> Raizes, 460 Hackney Road,</li> </ul>
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## 9.0 Assessment and information for the Locality

9.1 **Appendix 10** contains the Ward Profile of St Peters 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, 234 Cambridge Heath Road.
- The premises sits on corner of the cross roads – Hackney Road/Bishop’s Way and Cambridge Heath Road. Hackney Road/Bishops Way is a major route through to the East London and Essex suburbs.
- Cambridge Heath road is part of the A107 that runs from Hackney south through Bethnal Green. It is a busy north south route.
- The vicinity is overwhelming commercial, with a smattering of accommodation.

9.3 The character of the locality is predominately commercial:

- The premises are in St Peter’s ward and a ward profile has been downloaded from the Council’s web site.
- St Peter’s Ward has about 7.3% of the Borough’s residents.
- The area has been assessed as:-



- Around the premises it has a predominately commercial character.
- Away from the main roads, it changes character to more residential
- Opposite the premises are businesses operating in the arches underneath the viaduct carrying trains into Liverpool Street.
- The premises sits at a busy cross roads.
- The street level premises are mainly retail units.
- There is residential accommodation as described.
- There is accommodation catering for homeless single men and women who have support needs on account of problem drinking in the block adjoining the premises.

## 10.0 Other Sexual Entertainment Venues

10.1 The following premises have applied for Sexual Entertainment Venues under the new licensing Regime

- **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 21<sup>st</sup> July 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
- Development Control Team
- Local residents living within 50m of the premises

## 12.0 Responses to the Consultation

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

- None

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

- None

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

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

- None

12.6 Development Control Team were consulted, please find below a summary of their comments.

- None

### 13.0 Local Residents

13.1 Local residents living within 50m of the premises were consulted, please find below a summary of their comments (redacted copies all representations are available in **Appendix 13**). In summary, the two objectors have stated the following:

- Variation will increase foot fall to a busy premises & encourage antisocial behaviour in a residential area.
- The area immediately surrounding the premises is a densely populated residential area with many families with children.
- The venue does not currently control dispersal of customers effectively.
- Customers frequently leave the venue and make lots of noise in the early hours as they walk from the venue to taxis and/or their own cars.
- The venue is not a good neighbour.
- If the venue is to continue running it would be much more appropriate for the hours to be reduced from those sought in the current application.

13.2 A person making a representation must clearly state their name, address, and the grounds for objecting to the application. Copies of redacted representations were available to the applicant prior to the publication of this report.

13.3 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). All the representations received have been included in this report; Members may wish to assess the validity of the content of the two objections.

### 14.0 Licensing Authority Recommendations Following Consultation

14.1 There have been no representations from any of the authorities that have been consulted. The application has received representations from two local residents. Members are asked to consider these representations when determining the variation application.

### 15.0 Summary of Premises and Licence History

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

15.2 The current licence holders are Steven Victor Martin, Victor Martin and Melanie Jane Graham.

15.3 The current Designated Premises Supervisor is Melanie Graham.

## 16.0 Complaints and Enforcement History

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

Date	Complainant	Nature of Complaint
09/11/2015	Police	Allegation of male assaulted by bouncers at the Metropolis Club on 8 <sup>th</sup> November 2015. Police on scene. Complaint dealt with by Police.
16/09/2014	Local Resident	Complaint of noise of premises. CCTV looked at by PLH believe noise was from people from a nearby hostel.

16.2 The premises has received the following visits by the Local Authority:

Date	Authority (TS/Lic)	Nature of visit
9/08/2016	Licensing	Variation application site meeting. Licence holder confirmed that all the previous measures are still in place. Some works have started but the remaining to be completed in due course.
20/06/2016	Licensing	SEV renewal application inspection visit. A Licensing Officer met with the licence holder and the manager and found the premises to be compliant with the SEV and the Licensing Act.
02/06/2016	Licensing	SEV notice check, satisfactory
06/11/2015	Licensing, Trading Standards and Police	Licence compliance check, all ok
10/02/2015	Licensing	SEV Compliance Visit, all ok.
27/01/2015	Licensing	SEV Compliance Visit, mainly ok, some minor CCTV blind spots.

16.3 The premises has been subject to the following enforcement actions:

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

## **17.0 Policy - Appropriate Number of Sexual Entertainment Venues**

17.1 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.

17.2 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.

17.3 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.

## **18.0 Home Office Guidance**

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

18.2 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.

18.3 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.

18.4 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.

#### **19.0 Licence Conditions**

19.1 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.

19.2 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.

19.3 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.

19.4 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.

19.5 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.

## 20.0 Sexual Entertainment Venues and Determination

20.1 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?

20.2 A copy of LBTH Sexual Entertainment Venue Policy is produced in **Appendix 14** for Member’s information.

## 21.0 Legal Comments

- 21.1 This report is asking the Licensing Committee to consider an application for the variation of a SEV Licence at premises trading as Metropolis at 234 Cambridge Heath Road, London E2 9NN. Members will be aware that such licences are granted in accordance with Schedule 3 to the London Government (Miscellaneous Provisions) Act 1982 (as amended).
- 21.2 As this is an application relating to an SEV Licence, Members are aware that frequently in such applications they are confronted with moral objections. Members are reminded that they must not take into account any moral objections, as the Licensing Committee is not a tribunal of morals. The decision whether or not to grant a licence must be based solely on either legal or administrative grounds and not on any other grounds such as moral ones. An example of this is seen in the judgement given in *R v Somerset County Council ex parte Fewings (1995) 1 WLR 1037*. Although the *Fewings* case was not a licensing case – in fact, it dealt with hunting - it was a case where a Local Authority acted on moral rather than administrative grounds. The Court advised that such was unlawful and therefore it is an indicator of how the Courts consider such cases.
- 21.3 Members are therefore advised that any objections along the lines that striptease etc. is morally wrong or that it is degrading to women or that it is an undesirable activity are not relevant considerations as far as determining whether to grant the licence are concerned and must be disregarded. If a Member therefore has a moral objection to striptease and that this moral objection means that they do not consider that they will be able to determine the application on legal or administrative grounds only then they should not participate in the meeting.
- 21.4 As this is an application for a variation, Members are not making a decision as to the current licence but merely on grant of a licence for the extension requested. 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.



21.5 The Committee has discretion to refuse the application if any of the following grounds for refusal apply :

- (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).

21.6 In considering the objections Members are advised that if such objections are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then they carry no weight whatever and must be ignored. Further Members are advised that it has been held that the mere number of objections irrespective of their content can never be a good reason for refusing an application.

21.7 Also in considering the objections, it may well be that hearsay evidence is presented. Members are advised that the strict rules of evidence do not apply in licensing applications and therefore hearsay is admissible before a Licensing Committee. Indeed, it has been held that hearsay might by its source, nature and inherent probability carry a greater degree of credibility than first hand evidence. What must be discounted however, are gossip, speculation and unsubstantiated innuendo. In considering hearsay evidence, it should only be admitted where it can fairly be regarded as reliable although Members must give the other side a fair opportunity of commenting on it and contradicting it.

21.8 Finally as to objections, Members should only consider those comments within the letters etc. of objection or made orally at the hearing which are relevant to the mandatory and/ or discretionary grounds for refusal.

21.9 The rules governing applications and which are contained at the introductory papers to this report cover this determination of the application. Members are also advised that these proceedings must also comply with Article 6(1) of the European Convention of Human Rights. This is an 'absolute' right and provides that '*In the determination*

*of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'*

- 21.10 It has been held that a licence can be a 'civil right' (see *Tre Traktoer Aktiebolag v Sweden* (1989) 13EHRR309 and *Axelsson v Sweden* (1990) 65DR99) and therefore an application for a licence or for the grant of a licence would be a determination within the meaning of this Article.
- 21.11 As to what is a 'fair hearing' before an 'independent and impartial tribunal', the rules of natural justice would apply. There are two principles to the rules of natural justice. Firstly, all parties must be given a chance to put their case and under conditions that do not put one party at a substantial disadvantage to the other party. This means that all parties should be given sufficient notice of the hearing. The applicant should have disclosure of the nature of the objections as well as who is objecting. Objectors would have the right to cross-examine applicants and vice versa. Members would also have the right to question both applicants and objectors and any witnesses they may call.
- 21.12 Secondly, a person who has an interest in a matter must be disqualified from considering it. In essence there can be no subjective bias. In considering this both the European Courts and the English Courts have held that it is not necessary to show that there was actual bias but that a person could perceive that bias might have taken place. This means that it is not necessary to show that there was actual bias but that a person could perceive that bias might have taken place (see *R v Diggines ex parte Rahmni* (1985) 2 WLR 611; the decision of the House of Lords in the Pinochet case; and *Taylor and another v Lawrence and another* [2002] 2 All ER 353; *Georgiou v Enfield London Borough Council (Cygnet Healthcare Ltd. and others, interested parties)* [2004] LGR 497).
- 21.13 In view of the above, the Committee must be impartial both subjectively, the lack of actual bias, and objectively, the lack of appearance of bias. Indeed in the Georgiou case it was held that in considering the question of apparent bias, it was necessary to look beyond pecuniary or personal interest and to consider in addition whether, from the point of view of the fair-minded and informed observer, there was a real possibility that the Committee, or some of its members, were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant issues.

21.14 If a Member therefore considers that they cannot consider the application in an unbiased way or that they have some form of relationship or interest that could give rise to an apparent bias then they should declare it and not participate in the meeting. This would include retiring with Members when determining whether or not to renew the license.

21.15 The Committee meeting should be in public except that Members can retire in private when considering their decision. Once the decision has been reached then it is to be given in public and the Committee should also give full reasons for its decision

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

## **22.0 Finance Comments**

22.1 The Chief Finance Officer has been consulted and there are no direct financial implications arising from this report.

## 23.0 Appendices

<b>Appendix 1</b>	A copy of the existing SEV Licence (including the LBTH Standard Conditions)
<b>Appendix 2</b>	A copy of the existing Premises Licence
<b>Appendix 3</b>	A copy of the application
<b>Appendix 4</b>	Maps of the premises showing the site location
<b>Appendix 5</b>	Location plan and internal layout plans of the premises
<b>Appendix 6</b>	Compliance Visit Checklist
<b>Appendix 7</b>	Photographs of the premises
<b>Appendix 8</b>	Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and Dancers Welfare Policy
<b>Appendix 9</b>	Vicinity Map
<b>Appendix 10</b>	Ward Profile of St Peters
<b>Appendix 11</b>	Copy of Site Notice
<b>Appendix 12</b>	Copy of Press Advert
<b>Appendix 13</b>	Representations by Members of the Public
<b>Appendix 14</b>	Copy of LBTH SEV Policy