

Committee :	Date	Classification
<b>Licensing Committee</b>	<b>15<sup>th</sup> November 2016</b>	<b>Unrestricted</b>

Report of : <b>David Tolley</b> <b>Head of Consumer and Business Relations</b>	Title: <b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a renewal of a Sexual Entertainment Venue Licence for the White Swan/Majingos, 556 Commercial Road, London, E14 7JD</b>
Originating Officer: <b>Andrew Heron</b> <b>Licensing Officer</b>	Ward affected: <b>Shadwell</b>

## 1.0 Summary

Applicant: **David Turner**  
Name and Address of Premises: **White Swan/Majingos**  
**556 Commercial Road**  
**London**  
**E14 7JD**

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

## 2.0 Recommendations

2.1 That the Licensing Committee considers the application and additional information 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

**Andrew Heron**  
**020 7364 2665**

### 3.0 Background

3.1 This report is an addendum to a previous report made by for a renewal 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 the White Swan/Majingos – 556 Commercial Road, London, E14 7JD.

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).

3.4 The application was first heard by the Tower Hamlets Licensing Sub Committee on 7<sup>th</sup> September 2016.

3.5 Members have previously been provided with comprehensive documents relating to the renewal application, including:

1. Copies of existing licences, both Sexual Entertainment and Licensing Act and the LBTH Standard Conditions list
2. A copy of the application for renewal
3. Maps of the premises, vicinity and locality and layout plan of the premises
4. A compliance visit checklist
5. Photographs of the premises
6. Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and the Dancers' Welfare Policy
7. The relevant Ward Profile
8. A copy of the site notice
9. A copy of the press advert
10. Any relevant representations
11. A Copy of the LBTH SEV Policy

3.6 Additional information has come to light regarding the premises which Members may wish to consider whilst making their decision on the renewal application.

#### 4.0 Covert Test Purchase

4.1 On Friday 30<sup>th</sup> September and Thursday 6<sup>th</sup> October 2016, covert test purchases took place at Majingos, 556 Commercial by the Metropolitan Police. Copies of the statements of the undercover Officers are attached as **Appendix 1 – Exempt Material**.

#### 4.2 Exempt Material - See Report Addendum

#### 5.0 CCTV

5.1 The premises was written to in order to request that their CCTV was retained in line with the LBTH Standard Conditions. The first letter was sent on 17<sup>th</sup> October 2016. This was hand-delivered to the premises and sent via email to the Applicant's legal representative. A second on 18<sup>th</sup> October 2016 via email to the Applicant's legal representative. A third letter was sent on 20<sup>th</sup> October 2016 and hand-delivered to the premises and sent via email to the Applicant's legal representative. Copies of all three letters are available in **Appendix 2**.

5.2 Copies of correspondence between the Licensing Authority and the Legal representative are available in **Appendix 3**.

5.3 The premises has stated that it is unable to provide the recordings as requested by the Council because of their duties under the Data Protection Act 1998 (Correspondence dated 21<sup>st</sup> October 2016 found in Appendix 3). Legal advice provided to the Council is that provision of these CCTV recordings does not breach the requirements of the Data Protection Act 1998. This is detailed in our letter to the premises dated 20<sup>th</sup> October 2016 found in appendix 3.

5.4 The premises has since informed us that they have had an electrical power surge that has effectively wiped all previous recordings. However the premises has since advised the Council in their letter dated 21<sup>st</sup> October 2016 that due to a power surge on 13<sup>th</sup> October 2016 all data stored on their CCTV units up until this date was lost. They advised that they are willing to provide the Council with their two CCTV units if we wish to have them analysed to try to retrieve the recordings. Although they have stated this would require the premises to purchase new CCTV units and considerable expense. The Council has decided not taken these units for any such analysis. Please note that this correspondence refers to an additional letter from 'UK Power Networks', however, at the time this report was published, that additional correspondence had not been forthcoming from the licence holder's legal representative.

## 6.0 Legal Comments

- 6.1 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):
- 6.2 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.
- 6.3 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).

- 6.4 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.

6.5 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.

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

## 7.0 Finance Comments

7.1 There are no financial implications arising from this report. The cost arising from the licensing of Sexual Entertainment Venues is met from existing budgets.

## 8.0 Appendices

**Appendix 1** Copies of statements of undercover Metropolitan Police Officers – **Exempt Material**

**Appendix 2** CCTV Request Letters dated 17<sup>th</sup>, 18<sup>th</sup> and 20<sup>th</sup> October 2016

**Appendix 3** Copies of correspondence between the Licensing Authority and the Applicant's legal representative