

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>	Title: <b>Application for a Waiver under Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 (as amended)</b>
Originating Officer: <b>Kathy Driver</b> <b>Principal Licensing Officer</b>	Ward affected: <b>St Katharines and Wapping</b>

## 1.0 Summary

Applicant: **Jack Oliver Henry**  
Name and Address of Premises: **E1/Studio Spaces Ltd**  
**110 Pennington street**  
**London**  
**E1 8EW**

Licence sought: **Waiver under Schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 (as amended)**

## 2.0 Recommendations

2.1 That the Licensing Committee considers the application and 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

Tower Hamlets S.E.V Policy

**Kathy Driver**  
**020 7364 5171**

### 3.0 Background

- 3.1 This is an application made by Jack Oliver Henry trading under the business name of Studio Spaces Ltd for 110 Pennington Street, London E1 8EW. The application seeks to waive the requirement for a licence for a sex establishment, as per Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”).
- 3.2 A licence from the Council is required for the use of a premises as a sex establishment, known as a Sexual Entertainment Venue (SEV). 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 Schedule 3 of the 1982 Act makes provision for the Council to grant a waiver from the requirement to hold a Sexual Entertainment Venue licence in any case where it considers that to require a licence would be unreasonable or inappropriate. A waiver may be for such a period as the Council thinks fit.

A copy of the section of the above legislation that details this waiver provision is included in **Appendix 1** to this report.

- 3.4 This application seeks to waive the requirement for an SEV licence for certain events, which are held at the venue. These events are held at the venue via an external promoter, who hires the venue for events catering to the queer, kink, fetish and similar communities.
- 3.5 The nature of these events are that patrons attend the venue dressed in “kink” or “fetish” clothing of which the following may be visible; breasts, nipples, genitalia and buttocks. The applicant states that the clothing is an integral part of the nature of these events.
- 3.6 Some of the events have arrangements in place so as to facilitate sexual activities between consenting adults and activities varies between promoters. These often occur in a separate designated area of the venue.

### 4.0 Waiver application

- 4.1 A copy of the application is attached to **Appendix 2**

4.2 The hours applied are:  
Monday to Sunday from 08:00 hours to 07:00 hours

#### 5.0 **Consultation**

5.1 No consultation is required for making an application to waive the requirement for having an SEV licence.

5.2 There is no requirement to advertise the application.

#### 5.3 **Premises Licence**

5.4 The premises also hold a licence under the Licensing Act 2003. A copy of the existing Premises Licence is enclosed as **Appendix 3**. The licence was originally granted on 19<sup>th</sup> December 2011 the current licence holder, Studio Spaces Ltd, has been in place since 12<sup>th</sup> June 2012 and the DPS, Mr Yuval Hen, since 11<sup>th</sup> February 2013.

The hours permitted under the premises licence are:

##### **The sale by retail of alcohol – On sales only**

- Sunday to Thursday, from 08.00 hours to 00.00 hours (midnight)
- Friday and Saturday, from 08.00 hours to 07.00 hours the following day

##### **The provision of late night refreshments - Indoors**

- Sunday to Thursday, from 23.00 hours to 00.00 hours (midnight)
- Friday and Saturday, from 23.00 hours to 07.00 hours the following day

##### **Provision for Regulated Entertainment - Indoors**

(Plays and Films, Live Music, Recorded Music, Performance of Dance and Anything of a Similar Description.

- Sunday to Thursday, from 06:00 hours to 00:00 hours (midnight)
- Friday and Saturday, from 06.00 hours to 07.00 hours the following day

##### **Non-standard timings**

Licensable activities, from the beginning of permitted hours on New Year's Eve to the end of permitted hours on New Year's Day and on all days preceding a Bank Holiday until 07:00hrs the next day.

##### **Conditions for Garden area (outdoor space)**

###### **The sale by retail of alcohol**

Monday to Sunday 08:00 hours to 20:30 hours with half an hour drink up time until 21:00 hours.

###### **The provision of regulated entertainment – Outdoors**

**Recorded music outdoors for garden area only**

Monday to Sunday 08:00 hours to 21:00 hours

**Photographic Studio:**

A small indoor photographic studio area 120 meter squared to operate as per the existing hours permitted on the premises licence.

**The opening hours of the premises**

Sunday to Thursday, from 06:00hrs to 00:30hrs (the following day)

Friday and Saturday, from 06.00 hours to 07.00 hours the following day

**The opening hours of the outdoor space**

Monday to Sunday from 08:00 hours to 21:30 hours.

**Non-standard timings**

Licensable activities, from the beginning of permitted hours on New Year's Eve to the end of permitted hours on New Year's Day and on all days preceding a Bank Holiday until 07:30hrs the next day.

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

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

**6.0 Layout of the Premises**

6.1 A layout plan of the premises is available in **Appendix 5**.

6.2 Photograph(s) of the exterior of the premises is available in **Appendix 6**.

**7.0 Assessment and information for the vicinity**

7.1 **Appendix 7** is a map of the Licensing Service's determination of the vicinity around the premises, set at 100 metres from the premises.

7.2 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.

7.3 Below is a list of notable premises within vicinity.

Residential accommodation	Brockmer House – Residential residential Bloc Orchid Apartments - residential Chi Building, Crowder st - residential Sun House, 22 The Highway
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and commercial use	49 Pennington Street – Offices/work/Studio 120 Pennington Street – Workshops 1 Pennington Street = Workshops
Schools	Mace Green Gables Montessori School
Premises used by children and vulnerable persons	The Strangers Rest Mission Evangelical Church 131 The Highway
Religious centres and public places of worship	St George in the East Church The Strangers Rest Mission Evangelical Church 131 The Highway
Existing licensed premises in the vicinity	Tobacco Dock, Porters Avenue.

## 8.0 **Assessment and information for the Locality**

8.1 **Appendix 8** contains the Ward Profile of St Katharines and Wapping produced by Corporate Research Unit in May 2014 to provide members with details in relation to the locality of the premise. It should be noted that though this was produced in 2014 it is the most up-to-date available.

8.2 What is the “relevant locality”:

- The relevant locality was assessed as being the being the Ward area in which the premises is situated.
- The premises sits on the Pennington street which runs parallel to The Highway (A1203) which is red routes and links to A13 is one of the main routes into Central London and out to the East.
- The locality is a mix of commercial and residential accommodation

8.3 The “character” of the locality:

- The premises is in St Katherines and Wapping Ward.
- The Ward Profiles downloaded from the Council’s website are appended.

- The Ward abuts the City of London. The area is mixed residential/commercial and has around 4.2% of Borough's resident population.

## 9.0 Policy

9.1 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.

9.2 The Council has adopted 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.

9.3 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.

9.4 Members should note, however that the current Policy makes no reference to waiver applications. Further, a waiver is not a licence.

## 10.0 Enforcement and Compliance

### Complaints/Enquiries:

16/3/22-7/7/22	131 emails expressing the Council take a positive approach to their community by continuing to hold events within LBTH venues.
3/3/22	Reports of sexual activities taking place contrary to licence
20/1/22	Blocking pavement and urination in the area
18/12/21	Blocking pavement to public by using queue barriers for patrons.

## Enforcement Visits:

13/4/22	Visit undertaken to investigate allegations of events of sexual nature taking place which may fall within the 1982 Act.
	Regular visits are undertaken by the Late Night Levy Police of which no issues have been raised

### 11.0 Sexual Entertainment Venues and Determination

11.1 Members should consider the relevant legislation and Council's SEV Policy.

11.2 A copy of LBTH Sexual Entertainment Venue Policy is produced in **Appendix 9** for Member's information.

11.3 The action available for Members is to either grant or refuse the waiver.

11.4 The waiver may be for such period as the Authority thinks fit.

11.5 The waiver can be brought to an end at any time by giving at 28 days' notice. If the Committee thinks fit, it may grant the waiver for a specified period of time. There is, strictly speaking, no ability for the imposition of conditions if a waiver is granted. The applicant may nonetheless undertake voluntarily to operate certain conditions when events to which the waiver applies are held. Moreover, if those voluntary conditions are not complied with, that may justify a revocation of the waiver.

11.6 There is no statutory right of appeal against a decision to grant or refuse a waiver. However, such a decision can be appealed by way of a claim for judicial review.

11.7 Members should note that premises can provide sexual entertainment without the need for a licence, if

- i. There have not been more than 11 occasions on which relevant entertainment has been provided, which fall (wholly or partly) within the 12 months ending with that time,
- ii. No such occasion has lasted more than 24 hours, and
- iii. No such occasion has begun within the period of 1 month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasions fall within the 12 month period mentioned above.

### 12.0 Legal Comments

12.1 Paragraph 6 of Schedule 3 to the 1982 Act, in general terms, provides that premises shall not be used as a sex establishment except under and in accordance with the terms of a licence granted by the authority.

However, paragraph 7 allows for a waiver application to be made, either alone or in conjunction with an application for an SEV licence. The application must be in writing and contain certain information that would be needed in respect of an application for an SEV licence, such as the name, age and address of the person seeking the waiver.

12.2 Paragraph 7(4) allows the authority to waive the requirement of a licence in any case where they consider that to require a licence would be unreasonable or inappropriate. This may be for such period as it thinks fit or be open-ended. A waiver, if granted, may be terminated on 28 days' notice to the holder of the waiver notice.

12.3 The Council's SEV Licensing Policy does not address waivers. This application therefore falls outside of the Policy.

12.4 Section 149 of the Equality Act 2010 requires the authority, in the exercise of its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act, to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between those who share a relevant protected characteristic and those who do not. The relevant protected characteristics are age; disability gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The duty must be complied with at the time that the decision under consideration, but it is not a duty to achieve a particular result.

### 13.0 Finance Comments

13.1 There are no material direct financial implications emanating from the recommendation made in this report.

### 14.0 Appendices

<b>Appendix 1</b>	Extract of legislation
<b>Appendix 2</b>	Waiver application
<b>Appendix 3</b>	Premises Licence
<b>Appendix 4</b>	Maps of the premises showing the site location
<b>Appendix 5</b>	Internal layout plans of the premises
<b>Appendix 6</b>	Photographs of the premises including public notice
<b>Appendix 7</b>	Vicinity Map
<b>Appendix 8</b>	Ward Profile



<b>Appendix 9</b>	Copy of LBTH SEV Policy
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