

TOWER HAMLETS LICENSING COMMITTEE

26TH September 2023

NAGS HEAD, 17-19 WHITECHAPEL ROAD, LONDON E1 1DU

SKELETON ARGUMENT OF NH LICENSE LIMITED

Introduction

1. The Sub-Committee has before it two applications:
 - An application by NH License Limited (“the Licensee”) to renew its sexual entertainment venue (“SEV”) licence for 17-19 Whitechapel Road (“the Premises”).
 - An application by the licensing authority to revoke the licence.
2. In each case, the key issue is whether the Licensee is *“unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.”*
3. The Licensee acknowledges that breaches of the “no touching rule” were witnessed by covert inspectors on 18th August 2022. It apologises for these breaches.
4. These breaches occurred despite a proper system in place for preventing occurrences of that kind. The breaches were detected and dealt with (by dismissal of the performers in question) even before they were notified to the Licensee by the licensing authority.
5. The present position is:
 - (1) There is no evidence of any issue in the 13 months since August 2022.
 - (2) There is no allegation of breach of the premises licence.
 - (3) There are no complaints by members of the public against the premises.
 - (4) The Licensee has continued to commission its own independent, covert visits which have revealed no further issues.

- (5) The Licensee has produced independent expert evidence from Andrew Bamber, who concludes that the premises are compliant and the Licensee suitable.
6. The licensing authority has referred to a previous hearing in 2017, at which touching was established. That resulted in the current system for independent audit which operated successfully until the allegations of August 2022, which were noticed by the Licensee and dealt with quickly and effectively.
7. The licensing authority has also referred to a premises in Soho whose SEV licence was not renewed by Westminster City Council in 2023 following incidents of touching. The Licensee acknowledges that the ownership and directorship of the licence holder in Soho and here are the same. However, the circumstances are different, as will be shown below. The Licensing Committee will wish to deal with this case on its own merits. The views of Westminster City Council in another case do not determine the outcome of this case and are in any event subject to an appeal process.

History

8. The Nags Head has operated as a strip-tease venue since the late 1970s in the hands of the Clair family.
9. The sole Director of the Licensee is Manpal Clair, aged 40, who is the holder of a personal licence under the Licensing Act. He is a family man of good character, with no convictions (save one motoring conviction) or cautions, and who has worked in the family business since before he was a teenager. He has produced several references testifying to his good character and trustworthiness (Licensee's Bundle pages 932-937), and several performers working at the Nags Head and customers give evidence of the focus on the rules, including the no-touching rule (Licensee's Bundle pages 833-845).
10. The Nags Head has benefited from an SEV licence since 2014, when Tower Hamlets adopted the new regime under the Local Government (Miscellaneous Provisions) Act 1982.
11. In 2017, there were objections to renewal based on allegations of touching and an assault on a dancer. On 17th October 2017, the Licensing Committee decided to renew the SEV licence taking into account, among other things the "positive track record" of the premises. It also decided to add, at the suggestion of the Licensee, a condition

requiring a quarterly audit by an independent compliance auditor. (Decision at Supplementary Bundle page 677.)

12. Since that time, audits continued, and revealed that the premises are compliant with their licence conditions.

13. The Police have confirmed (Supplementary Bundle page 171) that:

- Police Licensing conducted a visit to the premises on 6th November 2015 and 12th April 2018 with no issues found.
- Police conducted a further visit to the premises on 21st November 2019 with no issues found.

14. The Licensing Authority has provided records of visits which reveal no touching breaches between 2017 and 2022.

15. Regrettably, five years after the hearing of 2017, there were touching incidents on 18th August 2022, which were being committed by three new performers.

16. Before the licensing authority notified the Licensee of the breaches, the Licensee itself had noted the conduct of the performers in question and dismissed them.

17. There have been no further breaches in the 13 months since.

18. In relation to the renewal application:

- There are no representations from the other consultees (see report para 14.0).
- The Licensing Authority has received no complaints about the premises in the last 24 months (para 16.1). In fact, the Licensee is unaware of any complaints about the premises since LBTH adopted the SEV licensing regime.
- The application received no negative representations from the public. There are two supporting representations from customers of the venue, who describe the premises as safe, well managed and a community asset (para 14.1).

19. There is no suggestion of breach of the other 47 conditions on the SEV licence.

20. There is no suggestion of breach of the premises licence.

21. Clearly, while the breaches of 18th August 2022 are regrettable, the history does not suggest a licensee which is routinely neglectful of its licensing obligations. To the

contrary, the Licensee has put in places measures to prevent breach of the licence and, without waiting to be asked, acts appropriately when the rules are breached.

22. The issue in this case concerns a discrete matter of touching 13 months ago in August 2022. In the remainder of this skeleton argument, the system to prevent touching is described, as is the response to the breaches which occurred.

Prevention of no touching at Nags Head

23. The Licensee employs an experienced manager Mr Binning, who is the holder of a personal licence. In his witness statement (Licensee's Bundle page 503) he explains that the premises experiences very few issues.
24. So far as the no touching rule is concerned, he explains that new performers are given full inductions on the rules, are given copies of policies and are taken through them point by point. They are even shown by other performers what conduct is and more importantly is not acceptable. They have to sign for their acceptance and understanding of the rules. To ensure comprehension, inductions are given on an individual basis.
25. The performers also receive daily briefings, including on the code of conduct and the no touching rule. A briefing log is kept to ensure that all performers are repeatedly reminded of their responsibilities.
26. As the customer enters, they are reminded of the rules by door staff.
27. When in the premises, they see notices posted around the premises informing them of the rules.
28. The dance booths are fully covered by CCTV and are supervised by security staff who sit outside the booth area and inspect periodically.
29. Breaches by customer and dancers are dealt with appropriately.
30. The Committee is referred to the reports of Andrew Bamber, an independent consultant who has led compliance auditing at the premises since 2017 through regular overt and covert inspections and dip sampling CCTV. The Committee is invited to read his reports (first report at Supplementary Agenda page 248, second report at Licensee's Bundle page 529).
31. As Mr Bamber explains, the inspection regime has been as follows:

- 2017: 10 covert and 8 overt visits.
- 2018: 9 covert and 10 overt visits.
- 2019: 4 covert and 2 over visits.
- 2020: Covid
- 2021: 2 covert visits post-reopening.
- 2022: 5 covert and 1 overt visit.
- 2023: 9 covert and 2 overt visits.

32. Full visit reports stretching back to 2017 have been disclosed for the benefit of the Committee (Licensee’s Bundle pages 939-1263).

33. In his first report Mr Bamber explains that the processes at the premises following his own risk assessment work. He considers that the *“Premises employs a robust and rigorous risk-based approach to achieve compliance with the Sexual Entertainment Licence conditions”* (para 11) and *“I have no doubt at all that the current owner and management are fit and proper persons to hold a Sexual Entertainment Venue Licence and that the compliance structure that is in place at the premises is fit for purpose”* (para 12). He explains that *“the breaches of the licence conditions were highlighted as part of the compliance process and immediate action was taken to rectify the problem”* (para 13). There is no reason to challenge Mr Bamber’s conclusions and, in fact, they have not been challenged.

34. In his second, updated, report Mr Bamber concludes as follows:

18. The Premises is a well-run Sexual Entertainment Venue that operates a robust compliance regime.

19. It is important for the Committee to understand that no compliance regime, and no premises, can be 100% compliant, 100% of the time. Issues can and will occur. What is vitally important is that there are processes and procedures in place to identify and manage those risks and to deal with them when they arise.

20. The processes and procedures are in place at The Nags Head.

35. The Committee is invited to accept Mr Bamber’s conclusions.

The conduct of the performers

36. Mr Clair has made two witness statements in relation to this application, which are (in chronological order) at pages 38 and 5 respectively of the Licensee's Bundle.
37. Mr Clair deals with how he learned that he had two non-compliant performers working at the club and how he responded.
38. On 19th August 2022, he was told by his manager that, following reports from other performers, he had concerns regarding three of the performers.
39. Mr Clair asked his manager to conduct dip sampling of CCTV footage.
40. The manager did so and reported breaches by three performers.
41. Mr Clair confirmed that the three performers had received induction training (including the no touching rule) and also daily briefings regarding the rule. They had.
42. Mr Clair therefore:
 - suspended the performers forthwith;
 - conducted a full investigation, which revealed breaches by the performers in question, but not by other performers. Specifically:
 - In the case of Performer A, breaches extended from 23:10 – 23:34. These breaches were persistent, intentional and sexual in nature.
 - In the case of Performer C, breaches extended from 23:46 – 23:59. These breaches were persistent, intentional and sexual in nature.
 - There were milder and less frequent breaches by Performer B (e.g. touching arm).
 - No other breaches by any performer were revealed.
 - In summary, in a generally compliant venue, these dancers set out to break the rules.
 - The full CCTV has been disclosed, confirming the above.
 - as a result, Mr Clair dismissed the performers in question;

- arranged a full briefing for performers on the importance of the rules;
 - raised the matter with his independent compliance consultant Andrew Bamber and arranged for the risk assessment for the premises to be reviewed and further covert visits to take place.
43. On 9th September 2022, the Council notified the Licensee of the covert visit on 18th August 2022. The Licensee was unaware of the visit until then, but had already dealt with the non-compliant performers.
44. On 16th September 2022, the Licensee’s Solicitor replied to explain that the misconduct had already been discovered and dealt with.
45. The Licensee has co-operated with the Council in relation to its investigation, including by supplying the CCTV footage.
46. In the circumstances, it will be clear to the Sub-Committee that the Licensee responded appropriately to the discovery of misconduct, and had dealt with it even before being notified of it by the Council.
47. Since 18th August 2022, the system of induction, briefings, dip sampling and audits have continued. There have been no further issues.
48. However, in addition to the above, as explained in his second statement, Mr Clair has taken further measures since May 2023, including:
- Undertaken personal training via Westminster City Council.
 - Ensured that all his management, staff, performers, and SIA undertook Welfare and Vulnerability Engagement (“WAVE”) training.
 - Conducted a bespoke training exercise through the Licensee’s Solicitor (see PowerPoint at page xxx).
 - Updated all the Premises’ policies and procedures.
 - Introduced a Performer Manager at the Premises.
 - Hired an operations director to have day-to-day oversight of the Premises and his Soho venue, Sapphire. A statement from the operations director Mr Wilmot

is at page xxx. Mr Wilmot is an experienced manager, including of SEVs, having managed Stringfellow in Covent Garden for 7 years.

- Increased the number of covert visits arranged through Mr Bamber.
- Introducing a second company to conduct covert visits: Mr Hicks; statement describes covert visits on 14th and 31st August 2023 which revealed no breaches.

49. The Licensee has disclosed statements from performers explaining how rigorously the rules are enforced. Obviously, they are distressed and concerns that their own livelihood could be destroyed by deliberate breaches on the part of a small number of newly inducted performers.

50. The Licensee has also disclosed evidence from customers who testify to the compliance and good management of the venue.

51. The Licensee has further disclosed character references from a number of senior friends and associates explaining that he is an honest, conscientious and trustworthy individual.

Soho

52. Mr Clair owns an SEV premises in Soho through a different company. A renewal of its licence was opposed by the licensing authority and police and refused by Westminster City Council's Licensing Sub-Committee on 25th May 2023 on the basis of breaches of the no touching rule.¹

53. Unlike in that case, there was what the Sub-Committee termed a "widespread culture of disregard for the conditions on the SEV licences" because the photographs of the CCTV footage "indicated brazen breaches from multiple [in fact most of the] dancers not individuals in full view of security and management staff with no action being taken."

54. Mr Clair accepted that as an accurate description. He explained that he had taken his eye off the ball at the premises following covid and the birth of his new baby, but had a long-standing management team at the venue who had completely let him down. He also accepted that he had stopped using an independent compliance team because of the company's debts amassed during the pandemic.

¹ Other concerns raised were not substantiated.

55. The problems in Westminster did involve touching, but it was a more serious case: a) the breaches were being committed by more dancers over a longer period; b) the independent compliance monitoring system had lapsed; c) the breaches were revealed by the authorities rather than being identified and remedied by the Licensee. Further, at Nags Head, there has been compliance over a full licensing cycle since.
56. The Licensee Committee is invited to note the history in Westminster, but to treat the case of the Nags Head on its own merits.

Conclusion

57. Since 2017, the premises has operated a strong system of compliance, which proved robust until breaches in August 2022 were discovered and rapidly remedied.
58. The Licensee has taken further measures since, which have had the desired effect, for there have been no further breaches in the 13 months since these breaches occurred. Those measures will continue.
59. The criticisms in this case concern the no touching conditions. There is no suggestion that the Licensee is in breach of the other conditions on its licence, or that it breaches its premises licence or the general law, or that it is generating local complaints.
60. In the circumstances, the Committee is invited not to accept a suggestion that the Licensee is *“unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason”*. It is respectfully asked to renew the SEV licence accordingly.

Philip Kolvin KC
19th September 2023

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