

LICENSING SUB COMMITTEE
Monday 28 May 2012
Premises: Charlie's Wine Bar, 9 Crosswall, London EC3

Sub Committee

Alderman Simon Walsh MA (Chairman)
The Revd Dr Martin Dudley CC
Peter Dunphy CC

City of London Officers

Caroline Webb - Town Clerk's Department
Rakesh Hira - Town Clerk's Department
Michael Cogher - Comptroller & City Solicitor's Department
Peter Davenport - Department of Markets & Consumer Protection
Steve Blake - Department of Markets & Consumer Protection

The Applicant (The Commissioner of the City of London Police)
Represented by Mr Gary Grant of Counsel

Witness:
Inspector Rita Jones

The Licensee (Charlie's Bar)
Represented by Ms Clare Eames, Solicitor, Poppleston Allen

Witnesses:
Mr Tony Kiener, Director
Mr Lippy Laing, Manager of Charlie's
Ms Olga Evans, Assistant Manager of Charlie's

Others present:
Marianne Fredericks CC
Paul Homes, City of London Police
Steve Burnett, Poppleston Allen

Licensing Act 2003 (Hearings) Regulations 2005

1. A public hearing was held in the Committee Rooms, Guildhall, London, EC2, to consider an application for a review for the premises 'Charlie's', 9 Crosswall, London EC3 submitted by the Commissioner of the City of London Police.
2. The hearing commenced at 2:31pm.
3. The Chairman opened the hearing by introducing himself, the other Members of the Sub Committee and the Officers present.
4. It was noted that no members of the panel had any personal or prejudicial interest.

5. The Chairman made reference to the procedure that would be followed, which was set out in the Sub Committee papers.
6. All parties introduced themselves.
7. Mr Grant outlined briefly the history of the premises, particularly between 2008 and 2010 when there was a high level of incidents of crime and disorder. Two reviews had taken place with the second one upheld which had led to a reduction in crime and disorder, so much so that the premises was no longer a concern to the Police.
8. Charlie's had previously offered lap-dancing sessions for the entertainment of customers and had submitted an application for an SEV licence but had not paid the fee; therefore, the application had been deemed unsuccessful. Under the new legislation, Charlie's were able to offer a limited number of lap-dancing sessions a year without a licence but evidence had shown it was being offered far more often than was permitted. Mr Grant indicated that Mr Liang may have been aware of this.
9. Mr Grant informed the Sub Committee that Police licensing visits to the premises had not only established that lap dancing was occurring more often than permitted but that the sort of sexual entertainment that was on offer went far beyond what would have been permissible even if a SEV licence had been in place. He referred to the video evidence recorded at approximately 19:00 hours on 2 December 2011.
10. Inspector Jones described the positioning of the room that was showing on the CCTV recording and pointed out areas such as the bar, booths and the couch area. Although the video looked like it was recorded in black and white, it was recorded in full colour but the darkness of the premises made it difficult to distinguish.
11. The video evidence showed several females in various forms of dress and a number of males either standing or sitting in the same room, with close contact and touching evident. At approximately 7.05pm on the video, one of the females performed a strip routine moving around the room until completely nude.
12. Mr Grant continued to explain that the Police visited the premises the following week on 8 December 2011 and found that male customers had been entering the private booths, which were not monitored by CCTV, with females. This was a clear breach of Annex 3 Condition 8 which required the premises to have a comprehensive CCTV system in place to monitor all public areas of Charlie's. Mr Grant also highlighted that the CCTV footage was unobtainable on that day due to an apparent system fault.
13. Mr Grant explained the suggested conditions, which had been discussed between the Police and the Premises Licensing Holder before the hearing, which would promote the licensing objectives. He stated that the Police were not looking for a revocation of the licence. He accepted the Sub Committee's

concerns that the premises had not hesitated to breach conditions in the past but assured Members that since the second review decision had been upheld, the Police had had almost no cause for concern in relation to crime and disorder at the premises.

14. Ms Eames informed the Sub Committee that she had not been instructed by Charlie's for the previous two reviews. She confirmed that her client accepts that an SEV licence was not currently in place but that during the changeover in legislative provisions, they were mistakenly under the belief that the premises could carry on offering lap dancing as per the old legislation.
15. Ms Eames explained that her client was unaware of incidents of a sexual nature taking place in the booths, away from the public view. In answer to a question from a Member, Ms Eames highlighted that the premises had not returned to a high level of crime and disorder since the second review decision was upheld and that they wished to remove lap dancing from the premises altogether. Charlie's would endeavour to continue to operate as they had done, without any sexual entertainment. It was also noted that no sexual entertainment had taken place at Charlie's since January 2012.
16. The Sub Committee then considered each of the current conditions on the premises licence, with the following comments noted:
 1. Although the door supervisor premises register had not been brought to the hearing, Mr Liang and Mr Kierner assured the Sub Committee that it was maintained as per Annex 2 Condition 5.
 2. Annex 2 Condition 7. Additional security was provided in the way of CCTV and a member of security staff.
 3. Annex 2 Condition 11. Mr Liang confirmed that staff operated an 'entry, departure and behaviour code' which had been agreed by the Police but not, as required, with the City of London Corporation. Mr Liang was unable to recall any part of the code and the Sub Committee concluded that this condition had never been adhered to.
 4. Annex 3 Condition 2. Mr Liang confirmed that regular customers were not searched and, on some nights, no searches were conducted at all. The condition that stated for every person and their property to be searched (with the exception of employed staff) when entering or re-entering the premises after 21.00 hours was not always adhered to; clearly breaching the condition. Mr Liang stated that dangerous weapons were searched for using a pat search and metal wand on approximately 80% of the searches, even though the condition stated a functional metal detecting wand should be used at all times.
 5. Annex 3 Condition 3. Mr Liang informed Members that the ID checker installed could detect if a single ID had been used more than once on any given night. Inspector Jones confirmed that she had never been asked to provide ID on a Thursday or Friday night or seen the scanner in use and the witness

statements concurred with the observation. The condition stated that the ID scanner should be used on all persons (except employed staff).

6. The Sub Committee referred to the CCTV footage seen earlier in the hearing. Mr Liang pointed out the member of security staff who was present in the room and, in answer to a question from a Member, confirmed that on that occasion, that member of staff forgot to put on his high visibility armband at 21.00 hours, breaching Annex 3 condition 4.

7. The Sub Committee referred to the previous comment from Mr Grant regarding the CCTV footage not being available during a licensing visit (paragraph 12). There were no entries in the incident book regarding a fault with the CCTV system or how long it was out of operation, a requirement of Annex 3 condition 5. Mr Liang informed the Sub Committee that the CCTV system was now operational and fitted with an alarm system to alert staff should the hard drive fail again.

8. The Sub Committee noted that Mr Grant had stated earlier in the hearing that the CCTV did not cover all public areas of the premises, a breach of Annex 3 condition 8. Mr Liang conceded that he had not thought to install CCTV in the booths.

17. Mr Liang confirmed that there was always at least one of the three personal licence holders on duty when Charlie's was open. The premises was open to the public whilst the lap dancing events were taking place.
18. Mr Liang informed the Sub Committee that there were a couple of different operators in place who ran the lap dancing entertainment events at Charlie's but none of the entertainment was run directly by Charlie's. The operators hire out the venue and provide the dancers. There was no written agreement between the premises and the operator, although Mr Liang confirmed the operators relied on them to ensure their licence was complied with.
19. In answer to a question from a Member of the Sub Committee, Mr Kierner stated that they had applied for an SEV licence in May 2011 but had not paid the required fee. Mr Liang confirmed that he had been led to believe by a journalist operating in Tower Hamlets that a 'grace period' would be granted to allow the lap dancing business to wind down and both Mr Liang and Mr Kierner were under the impression that such entertainment could continue within the premises until December 2011 or January 2012.
20. Mr Kierner highlighted that they had renewed the premises licence for Charlie's in September and wrongly assumed that an SEV licence was included as the fee was the identical. He had also expected to receive a notice either from the Police or the City of London Corporation to inform him that sexual entertainment on a regular basis should cease as they did not have an SEV licence.
21. Ms Eames informed the Sub Committee of Mr Liang and Ms Evans' roles at the premises, highlighting that they run the day to day business and that both are

personal licence holders. Mr Stephen Kierner, who was absent from the review hearing, was the designated premises supervisor. However, it transpired that he had been appointed as the DPS by default and did not want the job. Ms Eames indicated that the opportunity to apply for a change of DPS would be considered if the Sub Committee felt it appropriate, however no reference or criticism of the DPS had been made in the review application.

22. A Member of the Sub Committee highlighted that there had been concern raised by the Licensing Authority in 2010 over Mr Stephen Kierner's ability to run the premises which was later the subject of specific criticism by the District Judge in 2011.
23. Discussion took place over whether a change in DPS would have a significant impact on the way the premises was managed. The Sub Committee were concerned that the recent lower levels of crime and disorder had been a result of the premises offering lap dancing entertainment and that if the lap dancing ceased, crime and disorder levels would rise again.
24. In answer to a question from a Member of the Sub Committee, Mr Liang confirmed that a completed 696 Police Risk Assessment Form would be submitted to SCD9 and the City of London Police Licensing Officer at least 14 days prior to every "relevant event" at the premises. Mr Liang felt that the crime and disorder experienced in the past could mainly be attributed to a younger clientele at the premises and, after briefly closing the premises on Friday nights, it would now be operating an over 30's disco on Friday's.
25. Mr Liang indicated that there was a stronger, more frequent communication relationship between Charlie's and Inspector Jones in regards to the events being organised at the premises.
26. Ms Evans informed the Sub Committee that she had been told that Charlie's had an SEV licence, although she had never seen the paper licence. As Ms Evans was the Assistant Manager, she trusted the Manager to have the correct licences in place and believed what she had been told, without questioning it. Ms Evans stated that she had been surprised to find out that sexual entertainment beyond what would have been permissible even if a licence have been in place.
27. All parties were given an opportunity to sum up their cases before the Members of the Sub Committee withdrew to deliberate and make their decision, accompanied by the representatives of the Town Clerk and the Comptroller and City Solicitor.
28. The Chairman thanked all parties for attending the hearing and informed them that the decision of the Sub Committee would be circulated to all parties within the next five working days.

The meeting closed at 4.13pm

CHAIRMAN

Contact Officer: Caroline Webb
Tel. no. 020 7332 1416
E-mail: caroline.webb@cityoflondon.gov.uk

Decision of the Sub Committee circulated to all parties on 6 June 2012

THE COMMON COUNCIL OF THE CITY OF LONDON
LICENSING SUB-COMMITTEE

Alderman Simon WALSH (Chairman)
Rev'd Dr Martin DUDLEY CC
Peter DUNPHY CC

Monday 28 May 2012 (2.00-4.40) [adjourned from 2 May 2012]

IN RE:

'CHARLIES'
9 Crosswall, London EC3
Ward of Tower

At today's hearing the sub-committee was addressed by Mr Gary Grant of Counsel on behalf of the applicant. He was supported by Insp Rita Jones. The Premises Licence Holder ('PLH') was represented by Clare Eames, of Poppleston Allen, who was supported by Tony Kiener, Olga Evans and Lippy Liang. The Designated Premises Supervisor ('DPS') did not attend and no explanation was offered for this.

No documents were provided to us beyond those appearing in the public bundle of papers for the hearing but we did have the benefit of being shown a video clip (produced by the applicant but actually first provided by the PLH – and, therefore, something all parties accepted as being wholly accurate) of an incident in the premises on 2 December 2011 and noted in the police application.

1. On 13 March 2012 the Commissioner of Police for the City of London, in his capacity as a responsible authority, applied under s51 of the Licensing Act, 2003

for a review of Charlies bar at 9, Crosswall, London EC3. The grounds for the application were the prevention of crime and disorder.

2. The background to the application can be quite briefly summarised. Prior to the recent introduction of changes to the laws governing sexual entertainment in public places¹ Charlies had quite lawfully offered 'lap-dancing' sessions for the entertainment of customers. After the changes such entertainment required a specific licence but Charlies had not applied for one. This did not mean that no such entertainment could take place but its frequency, in the absence of a licence, was severely limited. Information reached the police that lap-dancing was being offered at Charlies far more often than was permitted.
3. Some time was taken up in the hearing exploring the reasons why PLH carried on providing sexual entertainment when it was clearly no longer lawful to do so. At one point it seemed as if everyone was relying on Mr Liang who seems to have taken his legal advice on this important point from a journalist operating in Tower Hamlets. However, for the reasons that follow, there is little point in exploring this much further.
4. In the event, licensing visits were undertaken and it was established that not only was lap-dancing indeed being offered more often than the statute permitted but that the sort of 'lap-dancing' on offer went far beyond what would have been permissible even had a licence been in place. We need not dwell in detail on exactly what was going on but one short and edited extract from the statement of police visiting in the early evening (about 7pm) of 8 December 2011, with something similar graphically illustrated to us in a video, will suffice to set the tone:

'A male had his jeans around his ankles with his pants on top of them. Straddled on top of him was a female. I could clearly see her buttocks and they were pressed firmly skin to skin high up the legs of (the male). Her legs were either side of (him) spread quite wide and she was pulling herself into him in a rocking motion. I could

¹ Policing and Crime Act, 2009 amending the Local Government (Miscellaneous Provisions) Act, 1982

see some black lingerie which had been pulled up above her waist and pulled down at the top below her breasts. The female was pressed very tightly against (him) and there was no space under her buttocks or between her breasts and his chest. The female was barefooted with her feet off the floor pressed up towards him so that the only support her body had was where she was sat on top of him. It was clear to me that the two were engaged in sexual intercourse.'

5. There can be no doubt that this sort of behaviour at this sort of time of the evening in the City merits our intervention. The PLH must agree with this because prior to today's hearing an agreement was reached between the applicant and the PLH offering 3 new licence conditions to put, it is suggested by them, matters back on an even keel. These conditions, in summary, would have the effect of removing the statutory exemptions to the requirement for a sex entertainment licence (and, thus, completely prohibiting any sexual entertainment on the premises), preventing anyone being naked on the premises and requiring the PLH to give prior notice of any promoted events to the police.
6. We do agree that the first 2 of these conditions at least would, if adhered to, prevent a recurrence of the disgraceful behaviour that has taken place on these premises recently. However, we feel that this is an insufficient response to the problems at Charlies. In reaching this conclusion we feel obliged to take notice of the recent licensing history of these premises and the fact that this is the third time these premises have been before us for review on an application by the police in less than 4 years. The history is illuminating:
 - a. On 26 August 2008 we decided that the PLH was not promoting the licensing objective of preventing crime and disorder due to unacceptable levels of violence at the club on Thursday and Friday nights. Amongst other things we reduced the hours on those nights to 02.00;
 - b. Some 7 months later the City Magistrates allowed an appeal against this decision and the original later terminal hours (04.00 on Thu/Fri and 05.00 on Fri/Sat) were reinstated. The Magistrates' reasons for allowing the appeal were *inter alia* that matters had improved significantly, that

appropriate and necessary security infrastructure (such as CCTV imposed as one of our original conditions not under appeal) was in place and that the PLH appeared to show a commitment to maintain the improvement;

- c. On 20 May 2010 the second review application provided clear evidence that much of the improvement noted by the Magistrates and so influential on their decision had fallen away. The premises were once again experiencing unacceptable levels of violence, especially on Friday night. In addition, the security infrastructure was often not working in breach of the clear conditions on the licence. We made it clear then that we felt we had grounds to revoke the licence but followed the police lead and again only reduced the hours;
 - d. On 24 January 2011 DJ Roscoe, sitting at Westminster Magistrates' Court, refused the PLH's appeal. She noted that in the past the PLH had offered voluntary restrictions that had greatly influenced the decision of the first appeal tribunal but that those restrictions had been dispensed with by the PLH once the appeal had been granted. She noted that the DPS was an unimpressive witness whose credibility she had to doubt. She noted that the premises were 'not well run' and that this was a matter of concern in the context of their history.
7. Our remit is wider than that of the applicant for this review and we are in no way limited under s52 of the Licensing Act in the matters we can take into consideration in seeking to promote the licensing objectives. Specifically, we are not bound by any agreement between any applicant and a PLH. We therefore asked many further questions about the operation of the premises, making it clear that we were asking such questions because we feared that if the sexual entertainment were prohibited, commercial pressures might mean the premises would again revert to their old ways and once more become a source of trouble at the weekends.

8. As any Licensing Authority would do we looked first to the DPS, Stephen Kiener (the son of Tony Kiener). His ability to run these premises had been a source of concern to us in 2010 and the subject of specific criticism by the District Judge in 2011. We were surprised at his absence but even more surprised to be told that he was only the DPS 'by default' and did not want the job anyway. As PLH had not taken any steps to have him replaced as the DPS after either the 2010 or 2011 hearings we wonder what the commitment is of the PLH to having a DPS who has any meaningful managerial control over the operation of the premises. An offer at this hearing by Ms Eames to apply for a change of DPS was welcome but probably too little too late.

9. It appeared to us that Charlies was being run by Tony Kiener who answered many of the questions we asked. This was the same Tony Kiener with whose management style we so firmly disagreed in 2008 and whose 'retirement' from running Charlies had been noted in a positive light by the City Magistrates in 2009. He appeared to us to have been at least passively complicit in the mistakes that allowed Charlies to advertise itself to customers and to business partners as having a sex entertainment licence and we were, once again, not encouraged by what he said to us to believe that with him in charge Charlies would in the future be run under the tight rein it so clearly needs.

10. Not wanting to concentrate merely on personalities, we then looked with the PLH to see if the current licence conditions that had no direct bearing on sexual entertainment were being complied with:
 - a. Annex 2 Condition 11: No one could produce the agreed 'entry, departure and behaviour code' and Lippy Liang, a long-standing manager of Charlies, was wholly unable to tell us what it might contain. We were forced to conclude that this condition, which had been in place for many years, had never been adhered to;
 - b. Annex 3 Condition 2: Although it is a requirement for every patron entering after 21.00 (and their property) to be searched Lippy Liang confirmed that regular customers were not searched and that there was

no searching at all on some nights. The police evidence was that no searches had taken place when they visited – although we accept that many of these visits were before 21.00. We are again forced to conclude that the management of Charlies apply this long-standing and important condition only when they want to. This is all the more disappointing since DJ Roscoe made specific criticism of lax search procedures in 2011 pointing out then in unequivocal terms that this was a breach of the conditions of the licence;

- c. Annex 3 Conditions 8 and 5: There is a requirement for a comprehensive CCTV system at Charlies. Any faults are to be logged in the Incident Book. As Mr Liang and Ms Evans had to admit, the CCTV still does not cover parts of these (small) premises. What CCTV there is, is not always working. The PLH may well not be to blame for the CCTV breaking down but an inspection by us of the Incident Books covering 2011 and 2012 showed no entries detailing the discovery of such faults. There are some brief logs for repairs and/or invoices for repairs but nothing to tell us for how long the CCTV was faulty on any of those occasions. Again we are driven to conclude that there is a cavalier disregard for the letter and spirit of this very important licence condition.

11. Mindful of the provisions of the Licensing Act, 2003, the licensing objectives, the guidance from the Secretary of State under s182 of the Act and, of course, of our own Licensing Policy we have regretfully concluded, after much detailed consideration of everything that was said to us (but with particular praise for the forceful representations on behalf of the PLH from Ms Eames), that we can not have the confidence that we feel we are fully entitled to expect on a third review that Mr Kiener, Mr Liang or Ms Evans would be able to run these premises properly in the future based on their track record and on what they said to us. It therefore follows that no new condition, no temporary suspension of the licence or of a licensable activity under it, nor the removal of the reluctant and absent Stephen Kiener as DPS will assist in sufficiently promoting the licensing objectives. We are satisfied that in order to fulfil our duty under the Act, it is necessary for us to revoke this premises licence.

12. If any party is dissatisfied with this decision they are reminded of the right to appeal, within 21 days, to a Magistrates' Court. Any party proposing to appeal is also reminded that under s181(2) of the Licensing Act, 2003 the Magistrates' Court hearing the appeal may make any order as to costs as it thinks fit.

13. This decision will not take effect until 21 days have elapsed after it is communicated to the parties or, should there be an appeal, until that appeal is heard and determined.