

Report of the Assistant Director – Planning and Public Protection

**Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by Policing and Crime Act 2009 Renewal of Sex Establishment Licence for Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ**

**Summary**

1. This report seeks Members' determination of an application to renew a Sex Establishment Licence for a sexual entertainment venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ.
2. Name of applicant: Upstairs VIP Limited
3. Summary of Application: A copy of the renewal application is attached at Annex 1.
4. A Sex Establishment Licence is valid for 12 months, the licence holder must submit an application to renew the licence to the licensing authority before the existing licence expires if they wish to continue running a Sexual Entertainment Venue (SEV). A copy of the licence to be renewed is attached at Annex 2.

**Background**

5. On 6 April 2010, section 27 of the Policing and Crime Act 2009 was introduced. This legislation reclassified lap dancing clubs and other similar venues as 'sexual entertainment venues'; for which a sex establishment licence is required under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This allows Local Authorities who have adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops.
6. Sexual Entertainment Venues are defined in the legislation as 'any premises at which relevant entertainment is provided for a live audience

for the financial gain of the organiser or the entertainer'. The meaning of relevant entertainment is 'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)'.

7. This Authority adopted the provisions of the legislation on 7 October 2010 when the resolution was approved by full council. A copy of City of York Council's Policy for the Determination of Applications for Sexual Entertainment Venues is attached at Annex 3.

## **Consultation**

8. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application for renewal to be considered valid.
9. There were no objections received to the application.
10. A map showing the location of Upstairs, 53-55 Micklegate is attached at Annex 4.

## **Relevant Legislation – Grounds for Refusal**

11. When considering the renewal application, the Authority does not have an unfettered discretion as to whether to refuse an application or grant a renewal. The grounds on which an application could be refused are set out in paragraph 12 to Schedule 3 of the 1982 Act, which is attached at Annex 5.

## **Options**

12. By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee have the following options available to them in making their decision:
13. Option 1: Grant a renewal of the licence as requested.
14. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.

15. Option 3: Refuse the application for renewal on one of the mandatory grounds or on one or more of the discretionary grounds within paragraph 12 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

## **Analysis**

16. The following could be the result of any decision made by this Committee:
17. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. Objectors could judicially review the decision.
18. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
19. Option 3: With the exception of a decision to refuse an application on a ground specified in paragraph 12(3) (c) or (d) of Schedule 3 to the 1982 Act, the licence applicant may appeal against the decision made to the Magistrates' Court.

## **Council Plan**

20. The approved City of York Council Policy will support the Council's Plan for a prosperous city for all and a council that listens to residents.

## **Implications**

21. The implications arising directly from this report are:
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A
  - **Legal** – The Council has the ability to control the licensing of sexual entertainment venues having adopted Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

Paragraph 8 of Schedule 3 to the 1982 Act provides that where it determines to grant an SEV licence, the Council is empowered to impose such conditions or restrictions as it deems appropriate.

Paragraph 12 of Schedule 3 to the 1982 Act sets out a number of mandatory grounds for refusal of an SEV licence and also discretionary grounds for refusal of an SEV licence.

In considering this application the Committee should have regard to:

- Schedule 3 to the 1982 Act, as amended by Policing and Crime Act 2009 (Annex 5).
- The Council's Policy for the Determination of Applications for Sexual Entertainment Venues (Annex 3).
- The Home Office – Sexual Entertainment Licence – Guidance for England and Wales which states that “Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12” [of Schedule 3 to the 1982 Act].

In addition when making their decision Members must give consideration to the rights the applicant has under the European Convention on Human Rights. Article 1 (entitles every person to peaceful enjoyment of their possessions) and Article 10 (freedom of expression) are particular rights that may be relevant. Members should consider whether interference with these rights is necessary and proportionate for the prevention of crime or disorder, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, whether interference can be justified in the general interest.

Members of the Committee should not allow themselves to predetermine the application or to be prejudiced in favour or opposed to the licence and shall only determine the application on its own merit.

- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

## Risk Management

22. All Members are aware that any decision which is unreasonable or unlawful could be open to legal challenge resulting in loss of reputation and potential financial penalty.
23. The report details the options available to the panel in determining the application and recommends that a decision be reached. Provided the decision complies with the proper grounds for considering the application as set out within this report, there are no known risks involved with this recommendation.

## Recommendations

24. Members are asked to determine the application for the grant of the licence in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by the Policing and Crime Act 2009.

Reason: To consider renewal of the sexual entertainment licence as required by the legislation.

## Contact Details

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	<b>Report Approved</b>	√	<b>Date</b> 24/01/17

**Wards Affected:** Micklegate

## Annexes

- Annex 1** - Copy of application for renewal
- Annex 2** - Copy of existing licence to be renewed
- Annex 3** - Copy of CYC Policy on Sexual Entertainment Venues
- Annex 4** - Map showing location of premises
- Annex 5** - Grounds to Refuse
- Annex 6** - Legislation Extracts – Renewal Applications