

	
Meeting of Gambling, Licensing & Regulatory Committee	21 July 2014
Report of the Assistant Director – Housing & Community Safety	

**Local Government (Miscellaneous Provisions) Act 1982
Schedule 3 as amended by Policing and Crime Act 2009**

**Grant of Sex Establishment Licence for Tokyo York (First Floor), 3-5
Toft Green, York, YO1 6JT**

Summary

1. This report seeks Members determination of an application for the grant of 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 Tokyo York (First Floor only), 3-4 Toft Green, York, YO1 6JT.
2. Name of applicant: Aaron Mellor
3. Summary of Application: A copy of the application is attached at Annex 1 of this report and is summarised as follows: This is an application for the grant of a Sex Establishment Licence to authorise hours of opening Monday to Sunday 21:00hrs to 03:30hrs, and 18:00hrs to 04:30hrs on York Race Days only.
4. A copy of the proposed plans of the premises is attached at Annex 2.
5. The premise currently has a premises licence issued under the Licensing Act 2003. A copy of the premises licence is attached at Annex 3 and is summarised as follows:

Licensable Activity	Current Days & Hours
Films	Monday to Sunday 11:00 – 03:30
Boxing or Wrestling	Monday to Sunday 11:00 – 02:00
Live Music	Monday to Sunday 11:00 – 03:30
Recorded Music	Monday to Sunday 11:00 – 03:45
Performance of Dance	Monday to Sunday 11:00 – 03:30
Late Night Refreshment	Monday to Sunday 23:00 – 03:45
Supply of Alcohol (On sales only)	Monday to Sunday 11:00 – 03:30
Opening Hours	Monday to Sunday 11:00 – 04:00
Non Standard Timings for all activities	From the end of permitted hours on New Year's Eve until the start of permitted hours New Year's Day. An additional hour on the day British Summertime commences.

Background

6. 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'; a sex establishment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This allowed Local Authorities who adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops.
7. Sexual entertainment venues are defined 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)'.
8. 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 9.
9. A copy of the Standard Conditions Applicable to Licences Issued to Sex Establishments which were approved by full Council is attached at Annex 10.

Consultation

10. 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 to be considered valid.
11. As a result of the consultation eleven objections have been received: four represent three local businesses. Two objections from the management of the Hilton Hotel on Toft Green, are concerned that existing noise issues and anti-social behaviour attributed to Tokyo's will increase if the Sex Establishment Licence is granted. They are concerned that the hotel will become known as 'a hotel opposite a Sexual Entertainment Venue' and this will have a negative impact on the hotel's family friendly reputation; many of the family rooms face onto the venue. They also felt that it would have a negative impact on York as a tourist destination.
12. One objection was received from Safestay Tourist Hostel, 88-90 Micklegate. These premises back directly onto Tokyo which overlooks the rear of the hostel. Users of the hostel are UK and foreign tourists, school groups and teenagers. The objector is concerned that 'parents place their children and adults bring their families into the safe custody of the [hostel's] facilities in the full expectation that the premises live up to their name and destination'. It is felt the grant of the licence 'jeopardises the status quo and will generally bring the area into disrepute'.
13. One objection was received from a local residential business located within the vicinity of Tokyo. The clients of this business include families with young children. The objector claims that complaints from guests concerning noise issues and anti-social behaviour relating to Tokyo have 'increased dramatically in recent months'. The nature of the complaints include music from the venue, 'sound of brawling, vomiting, shouting, smashing bottles, and even committing lewd acts'. The objector is concerned that these incidents will increase if the licence is granted. They are also concerned for the safety of children who stay in their establishment.
14. Five objections were received from individual representatives of York Feminist Network (these letters were identical); and two objections from local residents (these two letters were identical to the letters received from York Feminist Network excluding the final paragraph). The Network objects to the grant of the licence on the following grounds;

- Tokyo is located near to premises of 'sensitive use'. Within less than half a mile of Tokyo there are a number of places of worship, schools, nurseries, community centres, women's refuges, vulnerable groups' services and residential properties.
 - Given the existence of a lap-dancing establishment nearby in Micklegate, it would not be appropriate to allow another such venue to operate within close proximity.
 - Sexual Entertainment Venues impact negatively on the character and reputation of York as a city of culture and tourism.
 - Sexual Entertainment Venues promote unfair and unequal working practices which do not act in the best interests of the performers.
15. The list of objectors is attached at Annex 4 (Confidential).
16. Details identifying the objectors have been redacted from the letters of objection where express permission was not given to the licensing authority to disclose personal details. Copies of these objections are attached at Annex 5.
17. Schedule 3, paragraph 10(17) of the 1982 Act (as amended) states "The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant."
18. A map showing the location of Tokyo in relation to the objections from businesses is attached at Annex 6 (Confidential).
19. A map showing the 'sensitive' properties within the vicinity of Tokyo, referred to in the objections received from York Feminist Network is attached at Annex 7. A key to this map is attached at Annex 8.

Other Relevant Information

20. There are no planning implications in relation to this application.

Options

21. 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:

22. Option 1: Grant the licence.
23. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
24. Option 3: Refuse the application.

Analysis

25. The following could be the result of any decision made by this Committee:
26. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. The only route to challenge the decision is by way of Judicial Review in the High Court.
27. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
28. Option 3: This decision could be appealed at Magistrates Court by the licence applicant.

Council Plan

29. The approved City of York Council Standard Conditions Applicable to Licences issued to Sex Establishments will support the Council's priority to protect vulnerable people and create jobs and grow the economy.

Implications

30. The implications arising from this report are:
 - **Financial** - N/A
 - **Human Resources (HR)** – N/A
 - **Equalities** – N/A
 - **Legal** – Dependant upon the option agreed, the decision could be appealed through either Judicial Review in the High Court or Magistrates Court by the applicant.
 - **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

31. All Members are aware that any decision which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
32. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

Recommendations

33. Members 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 address the objections received as required by the legislation.

Contact Details

Author:	Chief Officer Responsible for the report:		
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	Report Approved	√	Date 9 th July 2014

Wards Affected: Micklegate

Annexes

- Annex 1** - Copy of application
- Annex 2** - Copy of plan of premises
- Annex 3** - Copy of Premises Licence issued under the Licensing Act 2003
- Annex 4** - List of objectors (**Confidential**)
- Annex 5** - Copy of objections received (redacted)
- Annex 6** - Map showing addresses of Business Objectors in relation to Tokyo (**Confidential**)
- Annex 7** - Map of 'sensitive' premises in relation to Tokyo
- Annex 8** - Key to Annex 7

Background Papers

- Annex 9** - Copy of CYC Policy for the Determination of Applications for Sexual Entertainment Venues
- Annex 10** - Copy of Standard Conditions Applicable to Licences issued to Sex Establishments
- Annex 11** - Legislation and Policy Considerations