

**Meeting of Gambling, Licensing & Regulatory
Committee**

15 July 2019

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 The Adult Shop,
70B Gillygate, York, YO31 7EQ**

Summary

1. This report seeks Members determination of an application to renew a Sex Establishment Licence for a sex shop which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of The Adult Shop, 70B Gillygate, York, YO31 7EQ.
2. Name of applicant: Lilacgrange Limited
3. Summary of Application: The application is to renew an existing Sex Establishment Licence which permits the premises to operate as a sex shop during the following times; Monday to Saturday 10:00 hours to 20:00 hours and Sunday 12:00 hours to 17:00 hours. 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 sex establishment, in this case a sex shop. A copy of the licence to be renewed is attached at Annex 2.

Recommendations

5. 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 Policing and Crime Act 2009.

Reason: To consider renewal of the sex establishment licence as required by the legislation.

Background

6. Sex shops are defined in the legislation as any premises, vehicle or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles; or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity.
7. These premises have operated as a sex shop since 1997. There have been no complaints received in relation to the premises since the initial licence was granted.
8. City of York Council's Licensing of Sex Establishments Licensing Policy was reviewed and a revised policy was adopted on 27 April 2017 with immediate effect. A copy of this policy can be found at https://www.york.gov.uk/downloads/file/2964/sexual_entertainment_venues_-_policy_and_procedurepdf.
9. A copy of City of York Council's Standard Conditions for Sex Shops is attached at Annex 3.

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 for renewal to be considered valid.
11. There were no objections received to the application.
12. A map showing the location of the premises is attached at Annex 4.

Relevant Legislation – Grounds for Refusal

13. 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.

Mandatory grounds for the refusal of an application

14. The mandatory grounds for the refusal of an application for a sex establishment licence are that the applicant:
 - a) is under the age of 18;
 - b) is for the time being disqualified from holding a sex establishment licence;
 - c) is not a body corporate, and is not in resident or has been resident in an EEA state for six months immediately preceding the date of the application;
 - d) is a body corporate which is not incorporated in an EEA state;
 - e) has in the period of twelve months preceding the date of application been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the reversal has been reversed on appeal.
15. There are no mandatory grounds for refusing this application.

Discretionary grounds for the refusal of an application

16. Discretionary grounds for the refusal of an application for a sex establishment licence are that:
 - a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or any other reason;
 - b) if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he made the application himself;
 - c) the number of sex establishments, or sex establishment of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - d) the grant would be inappropriate, having regard –
 - to the character of the relevant locality;
 - to the use to which any premises in the vicinity are put;

- to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
17. When considering the suitability of the applicant to hold a licence the council will take into account such matters it considers to be relevant.
 18. Guidance on relevant locality can be found at Annex 5, paragraphs 3.32 to 3.38.
 19. Within the licensing policy the council has determined a limit on the number of sexual entertainment venues permitted within the Authority area, however, this limit does not apply to sex shops. These applications must be dealt with on a case by case basis.

Options

20. 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:
21. Option 1: Grant a renewal of the licence as requested.
22. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
23. 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

24. The following could be the result of any decision made by this Committee:
25. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. Objectors could judicially review the decision.
26. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
27. 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

28. 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

29. 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 sex establishment 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 sex establishment licence and also discretionary grounds for refusal of a sex establishment 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 City of York Council Licensing of Sex Establishment Licensing Policy which can be found at https://www.york.gov.uk/downloads/file/2964/sexual_entertainment_venues_-_policy_and_procedurepdf.
- 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

30. 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.
31. 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.

Contact Details

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Report ✓ **Date** 4 July 2019
Approved

Wards Affected: Guildhall

Annexes

- Annex 1** - Copy of application for renewal
- Annex 2** - Copy of existing licence to be renewed
- Annex 3** - Standard Conditions for Sex Shop
- Annex 4** - Map showing location of premises
- Annex 5** - Legislation Extracts – Renewal Applications