

Gambling, Licensing & Regulatory Committee

7 September 2015

Report of the Assistant Director – Housing & Community Safety

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

**Renewal of Sex Establishment Licence for Black Orchid (1st floor
Tokyo), 3-5 Toft Green, York, YO1 6JT**

Summary

1. This report seeks Members determination of an application for the renewal 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 Black Orchid (1st floor, 3-4 Toft Green, York, YO1 6JT).
2. Name of applicant: Tokyo Industries (Lincoln York Hull) Ltd
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 renewal of a Sex Establishment Licence which authorises hours of opening Monday to Sunday 21:00hrs to 03:30hrs, and 18:00hrs to 04:30hrs on York Racecourse Race Days only.
4. Members should note the applicant extended the existing operating hours on completing the application form. The applicant was advised this was an application to renew existing hours and an extension to operating hours would require an application to vary the licence. Such an application has not been received.
5. The premises currently has a premises licence issued under the Licensing Act 2003. A copy of the premises licence is attached at Annex 2 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 3.
9. A copy of the Standard Conditions Applicable to Licences Issued to Sex Establishments which were approved by Full Council is attached at Annex 4.

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. No objections to the application were received.

Other Relevant Information

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

Options

13. 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:
 14. Option 1: Renew the licence.
 15. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
 16. Option 3: Refuse the application.

Analysis

17. The following could be the result of any decision made by this Committee:
 18. 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.
 19. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
 20. Option 3: This decision could be appealed at Magistrates Court by the licence applicant.

Council Plan

21. 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

22. 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

23. 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.
24. The report details the options available to the Committee in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

Recommendations

25. 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: As required by the legislation.

Contact Details

Author:	Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director - Housing & Community Safety Ext 4016		
	Report Approved	√	Date 27/08/15

Wards Affected: Micklegate

Annexes

- Annex 1** - Copy of application
- Annex 2** - Copy of Premises Licence issued under the Licensing Act 2003
- Annex 3** - Copy of CYC Policy for the Determination of Applications for Sexual Entertainment Venues
- Annex 4** - Copy of Standard Conditions Applicable to Licences issued to Sex Establishments
- Annex 5** - Legislation and Policy Considerations