

Licensing & Regulatory Committee

16 January 2024

Report from the Director – Environment, Transport & Planning

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

Renewal of a Sex Establishment Licence for First Floor of Ziggy's (Known as Club 55), 53-55 Micklegate, York, YO1 6LJ Licence Number CYC-019257

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 Ziggy's (Club 55), 53-55 Micklegate, York, YO1 6LJ.
2. Name of applicant: Ziggy's Limited
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 with hours of opening Monday to Sunday 21:00 hours to 03:00 hours and 18:00 hours to 04:30 hours on York Racecourse Race Days only.
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. A copy of the licence to be renewed is attached at Annex 2.
5. The premises 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	Permitted Days & Hours
Films	Monday to Sunday 10:00 – 05:00
Live Music	Monday to Sunday 10:00 – 05:00
Recorded Music	Monday to Sunday 10:00 – 05:00
Performance of Dance	Monday to Sunday 10:00 – 05:00
Activities like Performance of dance	Monday to Sunday 10:00 – 05:00
Late Night Refreshment	Monday to Sunday 23:00 – 05:00
Supply of Alcohol (on and off sales)	Monday to Sunday 10:00 – 04:30
Opening Hours	Monday to Sunday 10:00 – 05:00
Non-Standard Timings	From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day. On York Racecourse race days 10:00 - 06:00 An additional hour on the morning clocks go forward.

Recommendations

- Members are asked to determine the application for the renewal 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.

Background

- 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.
- 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)'.

9. This Authority adopted the provisions of the legislation on 7 October 2010 when the resolution was approved by full council.
10. 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/213/sexual-entertainment-venues-policy-and-procedure>
11. A copy of City of York Council's Standard Conditions for Sexual Entertainment Venues is attached at Annex 4.

Consultation

12. 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, the applicant must:
 - Display a notice of the application on or near the premises for a period of 21 days.
 - Within seven days after the date of the application publish an advertisement in a local newspaper and send a copy of the application to the Chief Officer of Police.
13. Objections must be received within 28 days after the date of the application. No objections have been received.
14. A map showing the location of 53-55 Micklegate is attached at Annex 5.

Relevant Legislation – Grounds for Refusal

15. When considering the application, the Authority does not have an unfettered discretion as to whether to refuse an application or grant a renewal or transfer. 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

16. 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.
17. There are no mandatory grounds for refusing this application.

Discretionary grounds for the refusal of an application

18. 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 – the applicant has not declared any convictions on the application form and the police have not objected to this application;
 - 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 – this premises is the only licensed sexual entertainment venue within the determined suitable 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.

19. When considering the suitability of the applicant to hold a licence the council will consider such matters it considers to be relevant, this could include any issues identified with the operation of the premises and any complaints received.
20. When considering the suitability of the location of a premises the council will consider paragraphs 4.7 – 4.15 (appropriate numbers and localities) of the Licensing of Sex Establishments Licensing Policy, and the guidance on relevant locality which can be found at Annex 6, paragraphs 3.32 to 3.38.
21. Within the licensing policy the council has determined a suitable locality for sexual entertainment venues, an area within the city centre. A limit on the number of sexual entertainment venues permitted within this locality has also been determined; the appropriate number of sexual entertainment venues in the city centre area is a maximum of two, providing those premises are not too near and/or do not impact properties with sensitive uses or in sensitive locations. At the present time this is the only sexual entertainment venue within York.

Options

22. 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:
23. Option 1: Grant a renewal of the licence as requested.
24. Option 2: Renew the licence with modified/additional conditions imposed by the Licensing Committee.
25. Option 3: Refuse the application for renewal 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

26. The following could be the result of any decision made by this Committee:
27. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. Objectors could judicially review the decision.
28. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
29. 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

30. The Council are supporting new and existing licence trade, as well as local residents and businesses. The functions support the Council's Plan 'One City, for all'.

Implications

31. The implications arising directly from this report are:

- **Financial** –

N/A

- **Human Resources (HR)** –

N/A

- **Equalities** –

An Equality Impact Assessment was conducted in relation to the implementation of the Licensing of Sex Establishments Licensing Policy, and the Council believes that the granting of this application for the sexual entertainment venue licence renewal for Club 55 will not have an adverse impact or unlawfully discriminate against any protected characteristics.

- **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 a 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 a 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.
- The Council's Policy for the Determination of Applications for Sexual Entertainment Venues.
- 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].

The Human Rights Act 1998 and the general principles of natural justice apply to this matter. The Committee must act proportionately, consider the rights of all parties affected by the application and ensure that the hearing of the application is fair.

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

32. 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.
33. 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
Approved**



Date 28 November 2023

Wards Affected: Micklegate

Annexes

Annex 1 - Copy of application for renewal of SEV;

Annex 2 - Copy of current Sex Establishment Licence to be Renewed;

Annex 3 - Copy of Premises Licence issued under the Licensing Act 2003;

Annex 4 - Copy of CYC Standard Condition for Sexual Entertainment
Venues;

Annex 5 - Map showing location of premises;

Annex 6 - Legislation Extracts.