

	
Meeting of Gambling, Licensing & Regulatory Committee	23 February 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
Variation of Sex Establishment Licence for
Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ**

Summary

1. This report seeks Members determination of an application for the variation 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 Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ.

2. Name of applicant: Upstairs VIP Limited

3. Summary of Application to Vary the Sex Establishment Licence: A copy of this application is attached at Annex 1 of this report and is summarised as follows: This is a variation of a pre-existing Sex Establishment Licence which allows the premises to operate as a Sexual Entertainment Venue (SEV). The licence authorises the standard hours of opening Monday to Sunday 21:00hrs to 03:00hrs, and non-standard hours of opening to be extended on York Racecourse Race Days only 18:00hrs to 04:30hrs. A copy of this licence is attached at Annex 2.

4. The variation seeks:-
 - To amend the hours for the provision of sexual entertainment such that sexual entertainment is permitted until 05:00hrs Monday to Sunday inclusive.
 - To permit sexual entertainment on the ground floor bar area and front room on race days only.

5. This proposal would involve installing temporary booths in the ground floor areas when these areas are used for sexual entertainment. A copy of the plan of the proposed layout of the premises is attached at Annex 3.

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 4 (attached as Annex 2 of the renewal report).
9. Standard conditions for the licensed sex shops were amended to include sexual entertainment venues and were approved by full Council. A copy of the conditions is attached at Annex 5 (attached as Annex 3 of the renewal report).

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.

11. As a result of the consultation an objection has been received from North Yorkshire Police. This is attached at Annex 6 and the main points in relation to this application are summarised as follows:-
12. North Yorkshire Police oppose the application to vary the licence in respect of both extending the existing hours and the proposal to use the ground floor of the premises for SEV activities on race days. The police question how a number of the standard conditions can be adhered to if the variation were to be granted. During a licensing compliance visit at the premises on 24 October 2014, it was noted by the police that not all the areas used for the provision of SEV dancing were covered by CCTV as stipulated in Condition 8.7.
13. Also at the time of the visit the CCTV was unable to be viewed and it was unknown which cameras, if any, were recording or working in compliance with Condition 8.7. Condition 8.7 states "CCTV for both monitoring and recording shall be installed, maintained and operated in accordance with Data Protection guidelines and will cover all areas where dancing takes place. All cameras shall continually record whilst the premises are open to the public and recordings shall be kept for a period of 28 days with times and dates indicated. These recordings shall be kept secure and shall be made available to an authorised officer of the Local Authority or a Police Officer on request".
14. The police consider the provision of CCTV within every booth necessary to protect the dancers should the customers breach the "customer code" rules and to ensure the no contact rules are enforced. CCTV footage also provides evidential quality material for use during criminal investigations and prosecutions. The police question if the applicant is unable to comply with the standard CCTV conditions within the controlled area where SEV licensable activities take place on a daily basis, how will they provide the necessary coverage in the temporary setting on race days.
15. Condition 8.10 states "SIA (Security Industry Authority) registered door supervisors shall be positioned at all entrances to the premises throughout the performance and shall be present in the room/area in which the performance takes place". The applicant makes no reference to additional door supervisors, which would be required if extra booths and areas are to be made available on race days on the ground floor bar and front room area, in order to comply with this condition.

16. Also it is not clear from the application whether SEV dancers from the licensed first floor parts of the premises would have to walk through public area of the venue (none SEV) to use the proposed ground floor area or whether additional changing / bathroom facilities would be provided on the ground floor. It is imperative whenever sexual entertainment takes place on the premises there is clear separation between those using the SEV areas of the premises and the general public using other parts of the establishment. The police believe it would be difficult to provide the necessary separation when using both the ground and first floor for SEV activities intertwined with nightclub activities all using the same off street entrance.
17. In relation to the proposed extension to existing hours to allow it to operate until 05:00 daily, the police include a spreadsheet to support their objection which highlights the calls for police services in the Guildhall Inner, Micklegate Inner and the Groves areas between the hours of 03:00 and 06:00. Between these hours the police state that there are still a significant number of violent crimes and reports of anti-social behaviour.
18. The premises are located within the City of York Council's Cumulative Impact Zone which was identified and established under the Licensing Act 2003. The police believe to allow an increase of licensable activities by 2 hours per night, 7 nights a week would add to the existing cumulative impact experienced in this area and would have a detrimental impact on the city.
19. Members should note that whilst the concerns of the police are capable of being a relevant factor to take into account when determining the application under the Local Government (Miscellaneous Provisions) Act 1982, the 2003 Act Licensing Policy is not directly applicable to an application under the 1982 Act.
20. Further objections have been received from five local residents and a joint objection from the Micklegate Ward Councillors. The list of objectors is attached at Annex 7 (Confidential). A copy of the objections is attached at Annex 8. These objections are summarised as follows:-

- The premises are situated within a residential area which is already subject to late night noise disturbance and anti-social behaviour.
 - It is believed these problems will be exacerbated by an extension to the operating hours.
21. 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.
22. Schedule 3, paragraph 10(17) of the 1982 Act (as amended) states that “The appropriate authority shall not without the consent of the person making the objection reveal his name or address to the applicant.”
23. A map showing the location of Upstairs, 53-55 Micklegate is attached at Annex 9 (attached as Annex 5 of the renewal report).

Other Relevant Information

24. Licensing Officers have concerns that the proposal to use the ground floor front room as part of the SEV on racedays will contravene the following conditions:-
- 7.6 - (a) Access to the premises may only be through 2 or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises.
 - 7.7 - The external doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.
25. The premises has a front door leading directly from the street into the hall, there is no lobby. The front door to the premises must remain open when the premises are open to the public in order to comply with the Regulatory Reform Fire Order 2005. Therefore there is nothing to screen SEV dancers moving from the changing rooms on the second floor to the ground floor front room from the view of the public outside the premises.

Options

16. 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:

Application to vary the Sex Establishment Licence

17. Option 1: Vary the licence as applied for.
18. Option 2: Vary the licence with modified/additional conditions imposed by the licensing committee.
19. Option 3: Refuse the requested variations.

Analysis

20. The following could be the result of any decision made by this Committee:

Option 2 & 3: These decisions could be appealed to the Magistrates Court by the 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 direct implications arising from this report are:
 - **Financial** - N/A
 - **Human Resources (HR)** – N/A
 - **Equalities** – N/A
 - **Legal** – A decision to refuse the application or impose additional conditions could be appealed at the 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 panel in determining the application and recommends that a decision be reached. Provided the decision complies with paragraph 23 above there are no known risks associated with the recommendation.

Recommendations

25. Members determine the application for the variation 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 the objections received as required by the legislation

Contact Details

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	Report Approved	√	Date	13 th Feb 15
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Wards Affected: Micklegate

Annexes

Annex 1 - Copy of application

Annex 2 - Copy of current Sexual Entertainment Licence

Annex 3 – Copy of plans of premise

Annex 4 - Copy of CYC Policy (attached as Annex 2 of the renewal report on this Agenda)

Annex 5 - Copy of Standard Conditions (attached as Annex 3 of the renewal report on this Agenda)

Annex 6 - Copy of police objection

Annex 7 (Confidential) - List of objectors

Annex 8 - Copy of other objections

Annex 9 - Map showing location of premises (attached as Annex 5 of the renewal report on this Agenda)

Annex 10 - Legislation and Policy Considerations