



**Notice of a public meeting of  
Gambling, Licensing & Regulatory Committee**

**To:** Councillors Lisle (Chair), Funnell (Vice-Chair), Boyce, Cullwick, Douglas, Hayes, Hunter, Mason, Mercer, Pavlovic, Reid, Richardson, D Taylor, K Taylor and Wells

**Date:** Monday, 17 September 2018

**Time:** 4.00 pm

**Venue:** The Auden Room - Ground Floor, West Offices (G047)

**AGENDA**

**1. Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

**2. Minutes**

(Pages 1 - 8)

To approve and sign the minutes of the meetings held on 18 June and 16 July 2018.

**3. Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00pm on Friday 14 September 2018**

**Filming or Recording Meetings**

Please note that, subject to available resources, this meeting will be filmed and webcast, or recorded, including any registered

public speakers who have given their permission. This broadcast can be viewed at <http://www.york.gov.uk/webcasts>.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting e.g. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at [http://www.york.gov.uk/download/downloads/id/11406/protocol\\_for\\_webcasting\\_filming\\_and\\_recording\\_of\\_council\\_meetings\\_20160809.pdf](http://www.york.gov.uk/download/downloads/id/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809.pdf)

**4. Renewal of Sex Establishment Licence for (Pages 9 - 58)  
Black Orchid (1st floor Tokyo), 3-5 Toft Green,  
York, YO1 6JT**

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 Black Orchid (1st floor Tokyo), 3-5 Toft Green, York, YO1 6JT.

**5. Council's Constitution - Licensing Appeals (Pages 59 - 64)**

This report is brought following the request of Gambling, Licensing and Regulatory Committee members at the meeting held on 21 May 2018. It outlines that York is the only authority in the region with 'two routes of appeal' for licence holders who are dissatisfied with an officer decision.

**6. Urgent Business**

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:  
Name: Angela Bielby  
Contact Details:

- Telephone – (01904) 552599
- E-mail – [a.bielby@york.gov.uk](mailto:a.bielby@york.gov.uk)

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

This page is intentionally left blank

City of York Council

Committee Minutes

---

Meeting	Gambling, Licensing & Regulatory Committee
Date	18 June 2018
Present	Councillors Lisle (Chair), Funnell (Vice-Chair), Cullwick, Hayes, Hunter, Reid, Richardson, D Taylor, K Taylor and Wells
Apologies	Councillors Boyce, Douglas, Mason, Mercer and Pavlovic

---

### **1. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. Councillors Lisle, Richardson, D Taylor and K Taylor declared a personal non prejudicial interest in item 4. No further interests were declared.

### **2. Minutes**

Resolved: That, subject to Cllr Lisle's declaration of interest being added in relation to item 4, the minutes of the meeting held on 21 May 2018 be approved, and signed by the Chair as a correct record.

### **3. Public Participation**

It was reported that Andrew Whinney (Applicant for the renewal of a Sex Establishment ) had registered to speak in relation to item 4.

### **4. Renewal of Sex Establishment Licence for Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ**

Members considered a report seeking determination of an application to renew a Sex Establishment Licence for a Sexual Entertainment Venue (SEV) which had 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.

The Licensing Manager advised that the application was for the renewal of a Sex Establishment Licence in line with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, which allowed local authorities to regulate lap dancing clubs and similar venues. She outlined the report and annexes, noting the opening hours of the venue. She reported that consultation had been carried out correctly and that one objection had been received from North Yorkshire Police (included at Annex 5 of the report).

The Licensing Manager clarified that North Yorkshire Police did not oppose the renewal of the Sex Establishment Licence, however, they were opposed to the extension of hours on York race days, especially allowing sexual entertainment to begin at 18:00 hours. In their objection, North Yorkshire Police had asked the Committee to adhere to the City of York Council policy and prevent sexual entertainment taking place prior to 21:00 hours. The Licensing Manager then outlined discretionary grounds for the refusal of an application for a sex establishment licence.

In response to questions raised, the Licensing Manager confirmed that the venue's current opening hours had been in place for the past three years and that there had been no complaints from members of the public to the Council concerning the venue.

Following the Licensing Manager's update, the applicant, Andrew Whitney, then spoke in support of the application for the licence renewal. He explained that after taking over the premises he applied for a Sex Establishment Licence in 2012 which included opening at 18:00 hours on York race days. He outlined the contribution made by the venue to the race day economy and the three different types of race goers attracted to the venue on race days. He then noted that in the past five years of renewing the licence there had never been any objections from the Police and he outlined objections that had been made by other parties in the past at renewal stages. He added that this was the first objection under the new policy and suggested that had there have been any incidents at the venue between 18:00 hours and 21:00 hours, the Police would have raised an objection at the time of the previous renewal applications. He explained that opening at 18:00 hours on race days allowed staff the opportunity to start their shifts earlier or later.

Members asked Mr Whitney a number of questions to which he responded that:

- 30% of business was between 18:00 hours and 21:00 hours. He referred to an appeal in 2012 which the Licensing Manager then clarified related to a Premises Licence.

- The premises could open at 18:00 hours with the Sex Establishment Venue (SEV) in operation from 21:00 hours. He explained that the nightclub (Mansion) and SEV (Upstairs) were kept separate.

Members were reminded by the Senior Solicitor of the option to exclude the press and public when deliberating, however, as there was no exempt information before them Members could debate in public in this case. Members were content that the matter could be debated in public.

By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee had the following options available to them in making their decision:

Option 1: Grant a renewal of the licence as requested.

Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.

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).

Resolved: That, in accordance with Option 1, Members grant a renewal of the licence as requested.

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

## **5. Renewal of Sex Establishment Licence for The Adult Shop, 70B Gillygate, York, YO31 7EQ**

Members considered a report which sought the 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.

The Licensing Manager outlined the report and annexes.

By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local

Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee had the following options available to them in making their decision:

Option 1: Grant a renewal of the licence as requested.

Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.

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).

Resolved: That, in accordance with Option 1, Members grant a renewal of the licence as requested.

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

Cllr S Lisle, Chair

[The meeting started at 4.00 pm and finished at 4.37 pm].



---

Meeting	Gambling, Licensing & Regulatory Committee
Date	16 July 2018
Present	Councillors Lisle (Chair), Boyce, Hayes, Hunter, Mason, D Taylor and Wells
Apologies	Councillors Funnell, Cullwick, Douglas, Mercer, Pavlovic, Reid, Richardson and K Taylor

---

## **6. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

## **7. Public Participation**

It was reported that there had been two registrations to speak under the Council's public participation scheme. There had also been one written representation, which was circulated to the Committee.

Wendy Loveday, Chair of the York Private Hire Association, spoke in relation to the Taxi Licensing Knowledge test. She felt that the low pass rate was due to a lack of study by applicants, a lack of knowledge of the City and a lack of knowledge of taxi licensing legislation. She suggested people should revise from the booklet given out by taxi licensing.

Mike Palmer, a driver, spoke on unused ranks in the City. He felt that illuminated signs would highlight these ranks to the public and stop illegal pick ups from other, overused, ranks with large queues.

## **8. Unmet Demand Survey**

Members considered a report containing the findings of a recent unmet demand survey relating to the provision of hackney carriage services in the council's area. The Committee were asked decide whether to maintain or review the existing policy on the issuing of licences.

The Head of Public Protection was in attendance to present the report and answer member questions, along with the Director of Licensed Vehicle Surveys and Assessment (LVSA), who undertook the survey for the Council.

As a background to the report, the Head of Public Protection explained that in April 2012 there had been concerns that too many licences were being issued, given the economic climate at the time and on 20 October 2014 the Committee had decided a restriction should be placed on the number of Hackney Carriage licences issued. It was not considered best practice to restrict licences. Guidance issued by the DfT states it should be for the market to determine. However, Councils are able to restrict numbers if they can demonstrate there is no unmet demand.

The Director of LVSA explained to Members how the Unmet Demand Survey had been carried out.

In response to Member questions they stated that:

- The date the survey was carried out was to allow students to return to university as that had a significant impact on use. The fact it fell on the same weekend as a race meeting was coincidental;
- The rank at Toft Green was not well used as it was often used for staff parking;
- Work was being done with the York BID team on placing marshals at ranks to reduce levels of anti social behaviour. This had already improved behaviour at Duncombe Place and St Saviourgate;
- Drivers tend to focus on ranks where they are more likely to get a fare and customers go where they know they have a good chance of getting a taxi quickly;
- There was work to be done to improve some ranks;
- The taxi environment had changed significantly since 2011 with the emergence of apps and companies such as Uber;
- The fact that Station Taxis controlled the rank at the Station meant there were artificial figures in some ways and issuing more licences would not necessarily have an impact on the wait times at the station; and
- Most large taxi companies have now developed apps as people were now less likely to want to walk and look for a taxi.

During the debate Members made some of the following points:

- That the policy before 2011 had been correct and licences should go first to vehicles that were environmentally or friendly or accessible for disabled passengers;

- That there was now a two tier system in York, with Hackney licences being seen as very valuable; and
- The knowledge test was an important tool for recruiting high quality drivers

Some Members felt that the report highlighted there was unmet demand and so, as per best practice, it should be left for the market to decide. Conversely other Members felt that the survey did little to suggest unmet demand in the City and that, in any case, the station rank skewed the figures and was out of the Council's control.

Resolved: That, in accordance with Option 2 of the report, Officers review the existing policy on the issue of hackney carriage vehicle licences and report back to Members after consultation with the trade and taxi users.

Reason: To consider the benefits and disadvantages of setting quantity restrictions.

, Chair

[The meeting started at 4.00 pm and finished at 5.10 pm].

This page is intentionally left blank



## Meeting of Gambling, Licensing & Regulatory Committee

17 September 2018

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 Black Orchid, 3-5 Toft Green, York, YO1 6JT

#### 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 Black Orchid, 3-5 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 authorised hours of opening Monday to Sunday 21:00 hours to 03:30 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:

<b>Licensable Activity</b>	<b>Permitted Days &amp; Hours</b>
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 and off sales)	Monday to Sunday 11:00 – 03:30
Opening Hours	Monday to Sunday 11:00 – 04:00
Non Standard Timings – All licensable activities	From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day.  An additional hour on the morning clocks go forward.

## Recommendations

- 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 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/2964/sexual\\_entertainment\\_venues\\_-\\_policy\\_and\\_procedurepdf](https://www.york.gov.uk/downloads/file/2964/sexual_entertainment_venues_-_policy_and_procedurepdf).
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.
13. An objection to the application to renew the licence has been received from North Yorkshire Police.
14. Condition 7 of the standard conditions applicable to Sexual Entertainment Venues states –  
***Except with the written consent of the council, the premises will only open to the public during the following hours:***  

<b><i>Monday 21:00 – 03:00</i></b>	<b><i>Friday 21:00 – 04:30</i></b>
<b><i>Tuesday 21:00 – 03:00</i></b>	<b><i>Saturday 21:00 – 04:30</i></b>
<b><i>Wednesday 21:00 – 03:30</i></b>	<b><i>Sunday 21:00 – 03:30</i></b>
<b><i>Thursday 21:00 – 03:30</i></b>	
15. The Police do not oppose the renewal of the Sex Establishment Licence, however, they are opposed to the extension of hours on York racedays, especially allowing sexual entertainment to begin at 18:00 hours.
16. The Police ask the licensing committee to adhere to the City of York Council policy and prevent sexual entertainment taking place prior to 21:00 hours. The Police objection is attached at Annex 5.

17. A map showing the location of the premises is attached at Annex 6.

### **Relevant Legislation – Grounds for Refusal**

18. 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**

19. 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.
20. There are no mandatory grounds for refusing this application.

### **Discretionary grounds for the refusal of an application**

21. 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.
22. When considering the suitability of the applicant to hold a licence the council will take into account such matters it considers to be relevant.
23. Guidance on relevant locality can be found at Annex 7, paragraphs 3.32 to 3.38.
24. 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.

## Options

25. 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:
26. Option 1: Grant a renewal of the licence as requested.
27. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
28. 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

29. The following could be the result of any decision made by this Committee:
30. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. Objectors could judicially review the decision.
31. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
32. 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

33. 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

34. 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 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].

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**

35. 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.

36. 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

**Author:**

Lesley Cooke  
Licensing Manager  
Ext 1515

**Chief Officer Responsible for the report:**

Michael Slater  
Assistant Director  
Planning & Public Protection  
Ext 1300

**Report**                      ✓      **Date** 02/08/2018  
**Approved**

**Wards Affected:** Micklegate

### Annexes

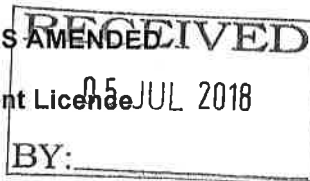
- Annex 1** - Renewal Application
- Annex 2** - Current Sex Establishment Licence
- Annex 3** - Premises Licence issued under the Licensing Act 2003
- Annex 4** - Standard Conditions for Sexual Entertainment Venues
- Annex 5** - Copy of Police Objection
- Annex 6** - Map showing location of premises
- Annex 7** - Legislation Extracts – Renewal Applications



CITY OF YORK COUNCIL  
Licensing Services, Hazel Court EcoDepot, James Street, York, YO10 3DS

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED  
SCHEDULE 3 – CONTROL OF SEX ESTABLISHMENTS

Application for the Grant / Renewal / Transfer of a Sex Establishment Licence



TYPE OF VENUE

- Sexual Entertainment Venue       Sex Shop       Sex Cinema

TYPE OF APPLICATION

- Grant       Renewal       Transfer

APPLICANT DETAILS

1. Is the applicant:

- An individual (please answer questions 2, 5 to 9)  
 A company or other corporate body (please answer questions 3, 5 to 9)  
 A partnership or other unincorporated body (please answer questions 4, 5 to 9)

2. Full name of applicant (individual):

Former or previous names: None

Home address:

Post town:

Post code:

Telephone numbers:

Date of birth:

3. Name of applicant (company name): Tokyo Industries (Lincoln York Hull) Ltd

Address of registered or principal office: 2<sup>Nd</sup> Floor 1 City Road East

Post town: Manchester Post code: M15 4PN

Registration number: UK 8171028

4. Name and address of applicant:

Names and addressed of applicant's partners (please use additional sheet):

5. Are there any other persons responsible for the management of the premises/business other than the partners? Please state their names and addresses:

- |   |    |
|---|----|
| 6. a. Has the applicant ever been known by any other name?          | NO |
| b. Has the applicant ever been convicted of a criminal offence?     | NO |
| c. Has the applicant ever been refused a sex establishment licence? | NO |
| d. Has the applicant ever had a sex establishment licence revoked?  | NO |
| e. Has the applicant ever been served with a winding up petition?   | NO |

If the answer to any of these questions is yes, please provide details:

7. Applicants' trading address or head office (other than the premises)

The trading address is restricted to just the application premises. The Company holds a Registered office at 201 Chapel Street Manchester. M3 5EQ, and an Accounts Office at Berkley House, 18-24 High Street, Edgware, London. HA8 7RP.

8. Will the business for which this licence is sought be carried on for the benefit of a person other than the applicant? NO

If the answer is yes, state the name, address, place of registration, registered number and the identity of all directors, company secretary and those with a greater than 10% shareholding (use separate sheet if necessary).

9. Does the applicant operate any other sex establishments, licensed or otherwise? Please state name, address, and type of sex establishment of each

Whiskey down  
25 crown st Leeds  
Lapdancing bar

**PREMISES DETAILS**

10. Please state the name the business will be known as: Black Orchid

11. Is the premises a  Building  Vehicle  Vessel  Stall

12. Where is it proposed to use the vehicle, vessel or stall?

13. Does the company propose to only operate on the internet? No  
(f yes answer Q14 to 19 only)

14. Premises address 3-5 Toft Green

Post town York

Post code Y01 6jt

Telephone number at premises

15. Which part of the premises is to be used as a sex establishment? The second floor

16. Is the applicant  owner  lessee  sub-lessee  other

17. If the applicant rents the property state:

a. Name and address of landlord: (the landlord is also the Managing Director of the incorporated applicant Tokyo Industries (Lincoln York Hull) Ltd

b. Name and address of the superior landlord: As Above

c. Total annual rental: £8,000

- d. Length of unexpired term: 3yrs
- e. Notice required to terminate tenancy: no termination

18. Please provide details of the building management company (if appropriate):

19. State the current use of the premises: Same as application

20. Has planning permission, or a certificate of lawful use, been obtained for the use of the proposed premises? YES

21. Can members of the public access the premises:

- a. Directly from the street? YES
- b. From other premises? NO
- c. Not at all? (internet sales only)

22. Are the premises currently being used as a sex establishment?  
Please provide details of the business currently operating the business: Same as application

**OPERATING SCHEDULE**

23. Opening hours: (If internet sales only please tick here  and continue to Q 26)

Monday	Tuesday	Wednesday	Thursday	Friday
9pm till 3.30am	9pm till 3.30am	9pm till 3.30am	9pm till 3.30am	9pm till 3.30am

Saturday	Sunday
9pm till 3.30am	9pm till 3.30am

Any non-standard timings: York Race days only 18:00 to 04:30

24. Has the applicant entered into any written or oral agreement in connection with the business, for example a management agreement, partnership agreement or profit share arrangement? Please provide details.

a. Please provide details of any lender, mortgage or others providing finance:

b. Please provide details of any merchandising agreements:



**PREMISES MANAGEMENT**

25. Please state the name of the person who will be in day to day control of the premises (the manager).  
Paul Sinclair

- a. Will the manager be based at the premises YES
- b. Will the management of the premises be the manager's sole occupation YES

26. Who will be in control of the premises in the manager's absence (relief manager)?

- a. Will the relief manager be based at the premises in the absence of the manager? YES

If you have ticked no to any of the above please provide details.

**EXTERNAL APPEARANCE AND ADVERTISING – DO NOT COMPLETE FOR RENEWAL APPLICATION**

27. Please describe the proposed exterior signage and advertising. Please include nature, content and size of each sign and any images to be used:

Please note that a drawing of the front elevation is required to be submitted with this application.

28. Please describe how the interior of the premises is obscured to passersby:

29. Please describe any proposed window displays:

30. Please describe how the business is to be advertised, ie business cards, billboard advertising, personal solicitation, advertising on motor vehicles, radio or television advertising:

**APPLICATIONS FOR SEXUAL ENTERTAINMENT VENUES ONLY**

31. Is the proposal for full nudity? YES

32. Describe the nature of the entertainment eg lap-dancing, pole dancing, stage strip tease:

Lap dancing

33. State measures to ensure employees age and right to work in the UK:

Passport and NI number are taken and copied and kept on file for each employee.

34. Describe training and welfare policies:

Please enclose a copy of the welfare policy for performers (or equivalent document).

35. Please set out any further information you wish the authority to take into account.

The premises have traded without issue or problem for almost 12mths since trade began. The management team and operational standards were regarded as the 'Best in the West Yorkshire' by inspecting SEV officials.

36. Is there any information on this form you do not wish to be seen by members of the public? If so state which information and the reasons why you do not wish it to be seen.

**CHECKLIST & ENCLOSURES**

Enclosures

- I have made or enclosed payment of the fee
- I have enclosed three sets of plans of the premises
- I have enclosed a drawing of the street elevation of the premises
- In the case of an application to transfer the licence, include the completed Consent to Transfer form

**DECLARATION**

I declare that I have served notice of this application on North Yorkshire Police.

I declare that a public notice advertising this application has today been displayed upon the proposed premises where it may be conveniently read by the public and will remain thereon for a period of 21 days. A copy of the notice and the standard declaration is enclosed.

I declare that within seven days of the date of this application a public notice advertising this application will be publicised in the legal notices column of the local press.

A copy of the relevant press edition will be forwarded to the City of York Council Licensing Section.

I understand that if I do not comply with the above requirements my application will be rejected.

Any person who, in connection with an application for a grant, renewal or transfer of a sex establishment licence, makes a false statement which he knows to be false in any material respect of which he does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

**SIGNATURES**

Signature of applicant or applicant's solicitor or other duly authorised agent, If signing on behalf of the applicant please state in what capacity.



## **DANCERS AND PERFORMERS WELFARE POLICY**

- Dancers and performers shall be provided with secure and private changing facilities.
- Dancers and performers shall be provided with private toilet/hand washing facilities.
- Dancers and performers can deposit any valuables with the management by way of a sealed/signed envelope, to be kept in a safe upon their arrival at the club and returned at the end of their shift.
- Each new dancer and/performer will be given a full and detailed induction upon their commencement of employment at the club. This will include all club rules, conduct, code of conduct, unit familiarity, fire evacuation procedures and health and safety. This will be documented by way of the company dancer/performers contract.
- Any dancer or performer who expresses a grievance with a fellow dancer or performer or a member of management or staff from the company will have the matter dealt with by way of the company's grievance policy as set out in the company manual.
- At the conclusion of a shift all performers will be provided with a company nominated taxi or escorted to their own transport by a member of security staff or management.
- All entrances to private areas to which members of the public are not permitted access shall have clear signage stating that access is restricted and/or a coded digital lock.
- Any exterior smoking area for use by performers shall be kept secure and separate to any public smoking areas.

- Private booths must not be fully enclosed. There must be a clear sight line from outside the booth so that the paid performance for sexual entertainment can be directly monitored.
- There must be a minimum of one member of security staff and or management on any floor where performance of sexual entertainment is taking place.
- All private booths should be fitted by panic buttons/security alarms.

No: CYC/MAU023407/17



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982  
SCHEDULE 3 AS AMENDED BY POLICING AND CRIME ACT 2009

**SEX ESTABLISHMENT LICENCE**

The City of York Council hereby grant a Sex Establishment Licence to:

Tokyo Industries (Lincoln York Hull) Ltd  
201 Chapel Street  
Manchester  
M3 5EQ

to use the premises known as:

Black Orchid  
(First Floor Tokyo York only)  
3-5 Toft Green  
York  
YO1 6JT

for the purposes of a sex establishment comprising a sexual entertainment venue as defined in Schedule 3 to the above Act.

This Licence is granted subject to the City of York Council Standard Conditions Application to Sex Establishment Licences and to the additional conditions set out in the schedule below.

A fee of £924.00 (36617) has been paid for the grant of this licence.

This licence shall continue in force from the date hereof until 20 July 2018 unless previously revoked.

Signed  
For and on behalf of the Director of  
Economy & Place

Dated: 6 September 2017

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Phone: 01904 552512  
Fax: 01904 551590  
Email: [licensing.unit@york.gov.uk](mailto:licensing.unit@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)

## Special Conditions

1. Any external indication of the nature of the business is prohibited.
2. The creation of any new windows or other openings in the external structure of the building is prohibited.
3. This licence only covers the premises known as Black Orchid (First Floor of Tokyo York), 3-5 Toft Green, York, YO1 6JT.
4. That the hours of opening be limited to:  
Monday to Sunday 21:00 hours to 03:30 hours.

Non-standard hours of opening to be extended on York Racecourse Race Days only;  
18:00 hours to 04:30 hours.

**Extract from the Local Government (Miscellaneous Provisions) Act 1982**

**APPEALS** (*Sched.3, para.27*)

27. - (1) Subject to sub-paragraphs (2) and (3) below, any of the following persons, that is to say -
- (a) an applicant for the grant, renewal or transfer of a licence under this Schedule whose application is refused;
  - (b) an applicant for the variation of terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
  - (c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
  - (d) a holder of any such licence whose licence is revoked.

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the relevant area.

(2) An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in paragraph 12(1) above shall not have a right to appeal under this paragraph unless the applicant seeks to show that the ground did not apply to him.

(3) An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 12(3) or (d) above shall not have the right to appeal under the paragraph.

(4) In this paragraph -

'the relevant area' means-

- (a) in relation to premises, the petty sessions area in which they are situated; and
  - (b) in relation to a vehicle, vessel or stall, the petty sessions area in which it is used or, as the case may be, desired to be used as a sex establishment;
- and

'the relevant date' means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be.

(5) An appeal against the decision of a magistrates' court under this paragraph may be brought to the Crown Court.

(6) Where an appeal is brought to the Crown Court under sub-paragraph (5) above, the decision of the Crown Court shall be final; and accordingly in section 28(2)(b) of the Supreme Court Act 1981 for the words 'or the Gaming Act 1968' there shall be substituted the words 'the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982'.

(7) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.

(8) Subject to sub-paragraph (9) to (12) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.

(9) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (5) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

(10) Where a licence is revoked or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force -

- (a) until the time of bringing an appeal under this paragraph has expired and, if such an appeal is brought, until the determination or abandonment of the appeal; and
- (b) where an appeal relating to the refusal of an application for such a renewal is successful and no further appeal is available, until the licence is renewed by the appropriate authority.

(11) Where -

- (a) the holder of a licence makes an application under paragraph 18 above; and
- (b) the appropriate authority impose any term, condition or restriction other than one specified in the application, the licence shall be deemed to be free of it until the time for bringing an appeal under this paragraph has expired.

(12) Where an appeal is brought under this paragraph against the imposition of any such term, condition or restriction, the licence shall be deemed to be free of it until the determination or abandonment of the appeal.

This page is intentionally left blank





## LICENSING ACT 2003

### PREMISES LICENCE

#### Schedule 12

#### Part A

#### Part 1 Premises details

Premises licence number CYC - 009396
---

Postal address of premises:

**3-5 Toft Green**

Post town: **York**

Post code: **YO1 6JT**

Telephone number: 01904 620203

**Expiry date:** This licence has no expiry date.

#### Licensable activities authorised by the licence:

Films  
Boxing or Wrestling  
Live Music  
Recorded Music  
Performances of Dance  
Late Night Refreshment  
Supply of Alcohol

**The times the licence authorises the carrying out of licensable activities:**

## FILMS

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

## BOXING OR WRESTLING

Indoors

Monday 11:00 - 02:00	Tuesday 11:00 - 02:00	Wednesday 11:00 - 02:00	Thursday 11:00 - 02:00
Friday 11:00 - 02:00	Saturday 11:00 - 02:00	Sunday 11:00 - 02:00	

## LIVE MUSIC

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

## RECORDED MUSIC

Indoors

Monday 11:00 - 03:45	Tuesday 11:00 - 03:45	Wednesday 11:00 - 03:45	Thursday 11:00 - 03:45
Friday 11:00 - 03:45	Saturday 11:00 - 03:45	Sunday 11:00 - 03:45	

## PERFORMANCES OF DANCE

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

## LATE NIGHT REFRESHMENT

Indoors

Monday 23:00 - 03:45	Tuesday 23:00 - 03:45	Wednesday 23:00 - 03:45	Thursday 23:00 - 03:45
Friday 23:00 - 03:45	Saturday 23:00 - 03:45	Sunday 23:00 - 03:45	

SUPPLY OF ALCOHOL

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

Non Standard Timings for Films, Boxing or Wrestling, Live Music, Recorded Music, Performances of Dance, Late Night Refreshment and Supply of Alcohol:

From the end of permitted hours New Years Eve to the start of permitted hours New Years Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

**The Opening Hours of the Premises**

Monday 11:00 - 04:00	Tuesday 11:00 - 04:00	Wednesday 11:00 - 04:00	Thursday 11:00 - 04:00
Friday 11:00 - 04:00	Saturday 11:00 - 04:00	Sunday 11:00 - 04:00	

Non Standard Timings:

From the end of permitted hours New Years Eve to the start of permitted hours New Years Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

**Where the licence authorises supplies of alcohol whether these are on and/or off supplies:**

On the premises

**Part 2**

**Name, (registered) address, telephone number and email (where relevant) of holder of premise licence:**

Name: Tokyo Industries (Lincoln York Hull) Ltd

Address: 201 Chapel Street  
Manchester  
M3 5EQ

Telephone number: None

Email address: None

**Registered number of holder, for example company number, charity number (where applicable):**

08171028

## **Annex 1 – Mandatory conditions**

### MANDATORY CONDITIONS IN RELATION TO THE SUPPLY OF ALCOHOL

1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
2. The first condition is that no supply of alcohol may be made under the premises licence -
  - (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
  - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
3. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.  
(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -
  - (a) games or other activities which require or encourage, or are designed to require or encourage individuals to -
    - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
    - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
  - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
  - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
  - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
  - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either –

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must ensure that –

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
- (iii) still wine in a glass: 125ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

#### MANDATORY CONDITION - ALCOHOL PRICING

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1 –

(a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) “permitted price” is the price found by applying the formula –

$$P = D + (D \times V)$$

where –

(i) P is the permitted price,

(ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence –

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

**MANDATORY CONDITION: DOOR SUPERVISION**

1. In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must -
  - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
  - (b) be entitled to carry out that activity by virtue of section 4 of that Act.
2. But nothing in subsection (1) requires such a condition to be imposed -
  - (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
  - (b) in respect of premises in relation to -
    - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or
    - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
3. For the purposes of this section -
  - (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and
  - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

**MANDATORY CONDITION: EXHIBITION OF FILMS**

1. In accordance with section 20 of the Licensing Act 2003, where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.
2. Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
3. Where -
  - (a) the film classification body is not specified in the licence, or
  - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question, admission of children must be restricted in accordance with any recommendation made by that licensing authority.
4. In this section - 'children' means persons aged under 18; and 'film classification body' means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

## **Annex 2 – Conditions consistent with the operating schedule**

### **Licensing Objectives**

#### Prevention of Crime & Disorder

1. Digital CCTV will be installed to cover the premises and will include all areas to where public have access to consume alcohol and where licensable activities are undertaken.
2. CCTV will be maintained, working and recording at all times when the premises are open.
3. The recordings will be of evidential quality in all lighting conditions and will be of sufficient quality to be produced in court or other such hearing.
4. Copies of the recordings will be kept available for any responsible authority for 28 days.
5. Copies of the recordings will display the correct time and date of the recording.
6. A member of staff trained to use the CCTV system shall be on duty at all times so as to ensure the recorded images are made available for inspection and downloading immediately upon request to any responsible authority.
7. All images downloaded from the CCTV system must be provided in a format that can be viewed on readily available equipment without the need for specialist software.
8. Clear notices shall be prominently displayed requesting customers to leave the premises and the area in a quiet and orderly manner.
9. The only acceptable proof of age identification shall be a current passport, photocard driving licence or identification carrying the PASS logo.
10. Drinking vessels of any type shall not be allowed to enter or leave the premises whilst under the customers care; save for movement into the outside drinking area attached to the venue.
11. Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence; and the opening times of the venue.
12. Such records (referred to in condition 11) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
13. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.
14. Both documents (referred to in condition 13) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
15. The venue shall partake in the York night-time economy radio system.
16. There shall be no consumption of alcohol by patrons queuing to enter the premises.

17. When any entrance is being used by members of the public door supervisors shall be positioned at every entrance to the premises in accordance with conditions 18, 19 and 20. For the purpose of clarity the entrances to the venue are the door leading to the main club; the door leading to the bar area (ie the middle entrance); the door leading to the Sexual Entertainment Venue; (the total number of door supervisors is applicable across the licensed area not necessarily two per door at all times unless customer numbers dictate such deployment).

18. An adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue from 21:00hrs until the venue closes for business on the following occasions:-

- i) every Friday and Saturday evening
- ii) the evening before a Bank Holiday
- iii) the evening of race meetings held at York Racecourse (save for the family meeting held in September and the first meeting held in May).

19. Save for occasions when the audience is less than one hundred customers an adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue whenever live music (that does not fall under the definition laid out in the Live Music Act) is being undertaken at the venue; their deployment being at least one hour prior to the start of any concert until the venue closes for business.

20. An adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue from 23:00hrs until the venue closes for business on all other occasions.

21. So as to ensure the licensing objective the prevention of crime and disorder is not undermined, there shall be a total capacity limit of 860 people.

22. If a DJ is used on any night they will ask customers to leave quietly.

23. Any person who appears to be intoxicated or who is behaving disorderly will not be allowed entry to the venue. Any person within this venue who appears to be intoxicated or who is behaving disorderly will be given care and consideration in leaving the venue.

24. Text/radio pagers are used within the venue, they are monitored by a responsible member of staff.

25. Toughened glass is used in the venue.

26. Music and dancing will be a prominent feature of trading.

27. For the purpose of clarity the licensable area of the venue shall be restricted to the building only. There shall be no licensable activities undertaken on the footpath directly outside the venue.

The following conditions apply to the outside drinking area:-

28. The boundary of the outside area shall be clearly defined by a barrier at all times the area is being used.

29. Customers shall remain seated when consuming alcohol in the outside smoking area.

30. There shall be no sale of alcohol in the outside area.



31. The outside area shall not be used for the consumption of alcohol after 21:30hrs. For the purpose of clarity, after 21:30hrs the outside area shall only be used by people who wish to smoke

32. The outside area shall be cleared of drinking vessels by 21:45hrs.

#### Public Safety

33. A person trained in first aid will be at the venue who will have received training in any problems associated with alcohol and drug misuse.

34. A qualified first aider shall be present throughout any sporting entertainment involving boxing, wrestling, judo, karate or sport of a similar nature.

35. Where a ring is used it will be constructed by a competent person and shall be inspected by a competent authority before use and any material used to form the skirt of the ring shall be flame retardant.

36. The seating layout shall be agreed with the appropriate authorities.

#### Public Nuisance

37. No amplified music or regulated entertainment shall be provided in the entrance, reception or lobby areas of the premises.

38. The internal lobby doors to the main entrance and the doors from the reception to the main dance floor and the cafe bar shall be kept closed except when being used for entry or exit.

39. Access to the smoking area after 23:00hrs, shall be via the main entrance door only.

40. During provision of live or recorded music, the emergency exit doors in the centre of the Toft Green facade leading from the Beer Keller area shall be kept shut after 23:00hrs and prior to that the doors shall only be opened for ingress or egress.

41. Any patrons waiting outside the premises for entry into the venue, and those using the smoking area shall be managed by premises staff to ensure noise arising from these patrons, such as shouting, singing and chanting is kept to a minimum.

42. Documented patrols shall be carried out by members of staff at no less than hourly intervals during the hours of opening to the public. These patrols shall monitor the noise arising from within the premises and created by patrons within the vicinity of the premises. These checks shall be undertaken outside the building each hour at three locations: to the left hand side of the facade, adjacent to 1 Toft Green; to the right hand side of the building, adjacent to the rear of 92 Micklegate and on Barker Lane, adjacent to Lawrance House. The checks shall be completed and recorded in accordance with a procedure to be agreed with City of York Council within 1 month of issue of the varied licence granted 24 September 2014.

43. The internal double doors between the Beer Keller and the Fibbers club shall be kept closed after 23:00hrs.

44. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.

45. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept for 3 years.

Protection of Children from Harm

46. A person under the age of 18 years will only visit the venue with a responsible adult usually for the purpose of dining unless there is an event especially organised for the youth market. Unaccompanied persons under the age of 18 are not welcome in the venue except at events especially organised for the youth market.

47. The venue intends to have specially organised events for the youth market when the venue will adhere to the following Company Policies:

- a) Admission Policy
- b) General Policies Statement
- c) Code of Conduct for Staff Statement and
- d) Child Protection Policy

48. For Regulated Entertainment consisting of Music and Dancing:

a) The licence holder shall attach a copy of the City Council's Rules for the Management of Places of Public Entertainment to the valid licence. This document shall form part of the licence.

b) The licence holder shall ensure prompt compliance with any written report received from the City Council.

c) The licence holder shall ensure prompt compliance with any written report received from North Yorkshire Fire and Rescue Service.

d) The noise generated from the use of these premises shall not exceed a Noise Rating 25 (ISO.R=1966: 1971) when measured at a distance of one metre from the nearest noise sensitive facade and be of such a level so as not to constitute a nuisance to inhabitants of the neighbourhood.

e) In accordance with Condition 1.11 of the Rules of Management of Places of Public Entertainment licensed by the City of York Council, written consent is hereby given for these premises to be used for entertainment attended wholly or mainly by children subject to the attached conditions being complied with. This consent is limited to Tuesday evenings between the hours of 18:30 - 21:00 when the premises may remain open for disco and dancing from 14 to 17 year olds.

**Schedule of additional conditions to be complied with when entertainments attended wholly or mainly by children are given.**

49. A sufficient number of competent and adequately trained adult attendants shall be on duty during events which are to be attended wholly or mainly by children. The minimum number of attendants on duty must be as follows:

- One attendant for every 100 or part there of accommodated on the ground floor.
- One attendant for every 50 or part there of accommodated on the first floor.

Persons whose normal duties are other than the assistance of persons entering the entertainment area, should not be included in calculating the number of attendants.

50. Attendants must be specifically instructed as to their essential duties and responsibilities in the event of fire or other emergency.

51. Attendants should be easily identifiable by means of some conspicuous clothing or marking system which is visible under all lighting conditions.

52. Training of attendants must include instruction in the following areas:

- a) the action to be taken upon discovering a fire;
- b) the action to be taken upon hearing the fire alarm;
- c) raising the alarm, including the location of the alarm call points and alarm indicator panels;
- d) the correct method of calling the fire brigade;
- e) the location and use of fire fighting equipment;
- f) knowledge of escape routes;
- g) knowledge of the method of operation of any special escape door fastenings;
- h) appreciation of the importance of fire doors and the need to close all doors at the time of a fire and on hearing the fire alarm;
- i) the operating of all escape doors not in regular use, to ensure that they function satisfactorily; and
- j) evacuation of the building to an assembly point at a place of safety (to include reassuring persons attending the entertainment and escorting them out of the premises).

53. Attendants must have attended at least one practice fire drill following completion of training.

54. Notices must be prominently displayed where parents deposit children, saying that in the event of an emergency children will be escorted by a member of staff to a named collection point outside the building.

55. Account should be taken of the additional responsibility caused by the attendance of disabled children. Further attendants will need to be on duty, the number of which will depend on the number of disabled children attending and the nature of their disabilities.

### **Annex 3 – Conditions attached after a hearing by the licensing authority**

1. There shall be no admissions to the premise after 03:00hrs, except for patrons using the smoking terrace.
2. The sale of alcohol shall cease 30 minutes before closing time.
3. The sale of late night refreshment shall cease 15 minutes before closing time.
4. Recorded music shall cease 15 minutes before closing time.
5. All licensable activities, namely; Films, Live Music and Performance of Dance, shall cease 30 minutes before closing time.
6. The licensable activity, Boxing and Wrestling, shall cease by 02:00hrs.
7. A dispersal policy agreed with the Licensing Authority and North Yorkshire Police shall be adhered to at all times.
8. One marshal will control the access and egress from the internal door in the premises leading to the smoking area and the second marshal shall monitor the behaviour of those patrons using the smoking area.

**Annex 4 – Approved Plan**

Plan Number TO/Y0/322/01 & 02

For and on behalf of  
The Director of Communities  
& Neighbourhoods

Date: 15/08/2005  
21/05/2015 (Transfer)

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Phone: 01904 552512  
Fax: 01904 551590  
Email: [licensing.unit@york.gov.uk](mailto:licensing.unit@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)

## Standard Conditions

### Sexual Entertainment Venues

#### General

1. In accordance with Home Office guidance, where a condition conflicts with a condition in a Licensing Act 2003 premises licence, the more onerous applies.
2. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the council.
3. The licence may be revoked by the council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
4. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
5. The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the Council in writing.

#### Exhibition of the licence

6. The licence or a certified copy must be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence must be kept on the premises and be available for inspection by an authorised officer of the Council.

#### Hours of opening

7. Except with the written consent of the council, the premises will only open to the public during the following hours:

Monday	21:00 – 03:30	Friday	21:00 – 04:30
Tuesday	21:00 – 03:30	Saturday	21:00 – 04:30
Wednesday	21:00 – 03:30	Sunday	21:00 – 03:30
Thursday	21:00 – 03:30		

#### Conduct of the premises

8. Relevant entertainment will only be performed by the dancer. There must be no audience participation.
9. Dancers will only perform on the stage area, or in booths/areas for VIPs as identified on the plan attached.

10. There must be no physical contact (touching) by a customer of a dancer while a performance is taking place, except for the placing of gratuities into the hand of the dancer at the beginning or conclusion of the performance. A dancer may have physical contact with the customers while the performance is taking place, this is restricted to touching the customers knees (including sitting on their knee), lower legs, upper chest, arms, face and head. There will be no physical contact of the pubic area or genitals.
11. Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes kissing.
12. Sex toys must not be used and penetration of the genital area by any means must not take place.
13. Dancers shall re-dress at the conclusion of the performance.
14. Customers will not be permitted to throw money at the dancers.
15. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
16. No person shall take any photographs, videos or other similar recordings (including mobile phones and video streaming) of the authorised relevant entertainment.

#### **External appearance**

17. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

**STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE**

This premises operates a Challenge 25 policy.

Persons who appear to be under the age of 25 will be required to show proof of age.

18. The external appearance of the premises must be approved by the council in writing. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council in writing before work is undertaken.
19. Access to the licensed area of the premises should be through a lobby area which is constructed in such a way that the inside of the licensed premises where relevant entertainment takes place is not visible to passing members of the public when the doors of the premises are opened.
20. Windows and opening to the premises, other than entrances, shall be obscured in a manner and with such material approved by the council. Door entrances shall also be obscured by blinds or material approved by the council so as to prevent any member of the public from seeing through to the premises whilst relevant entertainment is taking place.

21. External signage will only be illuminated between 9.00pm and 5.00am, and movable signs placed outside the premises will be removed between 4.30am and 9.00pm.

### **Advertising**

22. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the council in writing.
23. Staff employed or subcontracted by the premises will not verbally or otherwise promote, tout or advertise the premises, except by way of flyers. Staff employed or subcontracted by the premises will not direct potential customers to transport connected with the premises.
24. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Therefore, the distribution of flyers is only permitted between the hours of 9.00pm and 3.30am. The licensee will remove any leaflets/flyers from the highway within a 100 metre radius of the premises by 5.00am. Flyers must not be distributed by and to persons Under the age of 18 years.

### **Layout of the premises**

25. Access to ground floor premises may only be through two 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. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
26. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
27. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the council.
28. Where works necessitate the premises being closed for a long period of time, the premises shall not reopen for the purpose of the licence, until the licensee has been notified in writing by the council of the satisfactory completion of the work.
29. All parts of the premises shall be well maintained and kept in a clean condition to the satisfaction of the council.

### **Management of the premises**

30. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the council within 14 days of such change. Such details as the council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the council.

31. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst relevant entertainment is being performed. Any such nomination will be produced on demand to an authorised officer of the council or the police.
32. The licensee will ensure that any person nominated by him/her under the above:
  - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
  - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
33. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue ("the manager"), is convicted of an offence, they must, as soon as practicable after the conviction, inform the council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
34. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee's control of the premises.
35. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the council.
36. No person under the age of 18 will be admitted to the premises.
37. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
38. The licence holder will not employ any person under the age of 18 in any capacity.
39. The licensee will comply with all statutory provisions and any regulations made hereunder.
40. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of practice for the dancers. This code must be given to all dancers and displayed in staff areas. This code must be made available upon request to both the police and Authorised officers.
41. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of conduct for customers, this must be printed in a manner which is clear and easy to read during normal operation of the premises. This code must be prominently displayed at each entrance to the premises, at the entrance to any private dance areas and in suitable locations within the licensed premises, such locations to be agreed with the council, such as at bars.
42. Price lists for both drinks and sexual entertainment will be clearly displayed at each entrance to the premises, at each bar and at each table.
43. Suitable and sufficient training will be provided to all staff including the nominated responsible person. The training will be recorded and the training records must be made available upon request to both the police and authorised officers.



44. The name of the person responsible for the management of the premises, whether the licensee or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he/she is responsible for its conduct.

### **Safety and security**

45. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
46. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors, stairways, each dance booth and VIP areas (excluding within toilets and changing rooms). The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, beer gardens, smoking areas and car parks.
47. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with North Yorkshire Police and the council.
48. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
49. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
50. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
51. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
52. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
53. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
54. A minimum of two Security Industry Authority registered door staff (numbers to be subject to police and licensing authority approval) will be present on the premises during the performance of relevant entertainment.
55. A refusals/incident/accident register will be maintained and shall record all refusals relating to alcohol, access to the premises and all incidents or accidents.

56. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
57. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

**Staff welfare**

58. Dancers will be aged 18 years or over.
59. Before a dancer is permitted to work on the premises the licensee will ensure that the dancer:
  - a) has not been convicted of theft, drug offences or prostitution
  - b) has the right to work in the UKThe licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer.
60. All premises that provide relevant entertainment will provide dancers with copies of the following documents:
  - a) A copy of the conditions attached to the Sex Establishment Licence;
  - b) Details of any other conditions applied by management of the premises;
  - c) A copy of the code of practice for dancers;
  - d) A copy of the code of conduct for customers;
  - e) Price lists for drinks and sexual entertainment.
61. Dancers will be provided with separate secure dressing rooms, facilities to secure valuables and proper sanitation facilities. No person other than performers and authorised staff will be allowed in or near the dressing rooms, therefore safe and controlled access will be maintained at all times. The documents detailed in condition 60 will be displayed in the dressing rooms.
62. There will be at least one female member of staff authorised to be responsible for the safety and welfare of the dancers. This staff member must be on the premises at all times when licensable activities are taking place.
63. All booths and VIP areas used for private dances must be visible to supervision and must not have closing doors, any curtains used must be approved by the council in writing.
64. All booths and VIP areas used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with a SIA registered door supervisor working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
65. Dancers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
66. Any person on the premises who can be observed from outside the premises will be properly and decently dressed.

67. The practice of fining is prohibited.
68. Customers and staff must not be allowed to interact while using the smoking area, and where possible a separate smoking area should be provided for staff. Dancers must be covered up at all times with knee length robes or coats whilst using the smoking areas.
69. Throughout the lap or table dance customers will remain seated and fully clothed, with their hands clearly visible, either resting on the arms of the chair/sofa or on the seat cushion, or customers must be asked to sit on their hands.
70. If a dancer is invited to have a drink with a customer, the dancer will remain fully clothed during this period. Dancers will not be paid commission on the sale of beverages.
71. On leaving the premises dancers will be escorted to their transport by a SIA registered door supervisor.

### **Vessels, vehicles and stalls**

72. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the council of such intended removal. The council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
73. The requirements of condition 72 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
74. Vehicles must not be used for personal solicitation, touting or advertising.

### **Variation of conditions**

75. The council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
76. The licensee may apply to the council to vary any of the terms of the licence.
77. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

This page is intentionally left blank



Ref :- DAC/ 17072018/01

Licensing manager  
City of York Council  
Hazel Court Eco Depot  
James Street  
York  
YO10 3DS

17<sup>th</sup> July 2018

**Renewal of SEV licence for Black Orchid**  
**3-5 Toft Green, York**

Dear Licensing Services,

On the 4<sup>th</sup> July 2018 North Yorkshire Police received an application to renew the Sexual Entertainment Venue Licence at Black Orchid, 3-5 Toft Green, York.

On the 27<sup>th</sup> April 2017, after public consultation, a new Sexual Entertainment Policy was approved by the City of York Council which included amended Standard Conditions applicable to Sexual Entertainment Venues.

Condition 7 (Standard conditions) specifically relates to the hours of opening and states :-

***Except with the written consent of the council, the premises will only open to the public during the following hours :-***

<b>Monday 21:00-03:30</b>	<b>Friday 21:00-04:30</b>
<b>Tuesday 21:00-03:30</b>	<b>Saturday 21:00-04:30</b>
<b>Wednesday 21:00-03:30</b>	<b>Sunday 21:00-03:30</b>
<b>Thursday 21:00-03:30</b>	

The operating hours requested are Monday to Sunday 21:00hrs until 03:30 hrs and from 18:00hrs until 04:30hrs on York race days.

North Yorkshire Police do not oppose the renewal of the Sexual Entertainment Licence, however they are opposed to the extension of hours on York race days by allowing Sexual Entertainment to begin at 18:00hrs.

The Police are aware that the Licensing Committee recently granted earlier opening hours on race days for another Sexual Entertainment Venue in the city however in the interests of fairness North Yorkshire Police requests that the committee adhere to their policy in not allowing Sexual Entertainment to take place prior to 21:00hrs.

Yours Sincerely

PC 1770 Deborah Chadwick  
Alcohol Licensing Unit  
Scarborough Police Station  
Northway  
Scarborough  
YO12 7AD





This page is intentionally left blank



## Legislation and Policy Considerations

1. The following provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) apply to this application:
  - Paragraph 10 (Grant, renewal and transfer of licences for sex establishments) relates to the process which the applicant must have followed for the application to be considered valid.
  - Paragraph 12 (Refusal of licences) relates to the grounds under which an application shall not be granted and also describes the powers by which the licensing authority has a discretion to refuse the licence.
  - Paragraph 13 (Power to prescribe standard conditions).
  
2. The following provisions of the Home Office Guidance apply to this application:
  - Paragraphs 3.23 – 3.24 (Objections) explain who can object and how this is done and that the applicant must be made aware of the general grounds for the objection before the application is determined.
  - Paragraphs 3.25 – 3.26 (Hearings) explain that the applicant must be given the opportunity to appear and be heard in front of the sub-committee considering the application. Schedule 3 does not make any explicit provision for objectors to be heard, this is left to the discretion of the appropriate authority.
  - Paragraphs 3.27 – 3.31 (Grounds for refusal).
  - Paragraphs 3.32 – 3.38 (Relevant locality) define the meaning of “relevant locality” and the powers of the appropriate authority to decide the maximum number of premises allowed in a particular locality.
  - Paragraphs 3.39 – 3.42 (Licence conditions) explain that once the decision is made to grant, the appropriate authority can attach conditions specific to the individual premises and/or standard conditions for the particular type of establishment. These conditions should not duplicate conditions placed on a premises licence issued under the Licensing Act 2003 and should be appropriate to the activities authorised by the licence.
  - Paragraphs 4.19 – 4.21 (European Convention on Human Rights) explain whilst applications from existing operators can be refused on one or more grounds set out in paragraph 12 of schedule 3 of the 1982 Act, account must be taken of rights existing operators may have under Article 1 of Protocol 1 to the European Convention

which protects the peaceful enjoyment of their possessions (including licences) and article 10 (freedom of expression).

4. City of York Council's Policy for the Licensing of Sex Establishments Licensing Policy and the Standard Conditions for Sexual Entertainment Venues applies to this application.
5. 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.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.
7. The Committee is reminded that it must comply with the Council's Public Sector Equality Duty (as required to do so under s.149 of the Equality Act 2010), and have due regard to the potential impact on gender equality.

## **NOTE FOR MEMBERS**

Extracts from Home Office Guidance for England and Wales relating to Sexual Entertainment Venues.

3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence. 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. Objectors must give notice of their objection in writing, stating the general terms of the objection.

3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant, However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

### **Hearings**

3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.

3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

### **Refusal of a Licence**

3.27 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- a) to a person under the age of 18;

- b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- d) to a body corporate which is not incorporated in an EEA State; or
- e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, 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 refusal has been reversed on appeal.

3.28 A licence may be refused where:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) if the licence were to be granted, renewed or transferred 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, renewal or transfer of such a licence if he made the application himself;
- c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) that the grant or renewal of the licence would be inappropriate, having regard -
  - i. to the character of the relevant locality;
  - ii. to the use to which any premises in the vicinity are put; or
  - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

3.31 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it if one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

## Relevant Locality

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

3.33 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.

3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding two sex establishments 200 miles away from one another were in the same locality. Case law indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

3.37 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the ‘character’ of the relevant locality

and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.

3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

### **Licence Conditions**

3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.

3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another

3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licence or clubs premises certificates and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.



---

**Gambling, Licensing & Regulatory Committee****17 September 2018**

Report of the Assistant Director – Legal and Governance

**Council's Constitution – Licensing Appeals****Summary**

1. This report is brought following the request of Gambling, Licensing and Regulatory Committee members at the meeting held on 21 May 2018. It outlines that York is the only authority in the region with 'two routes of appeal' for licence holders who are dissatisfied with an officer decision.
2. The report seeks a recommendation to Full Council to change the Constitution and allow only one route of appeal.

**Recommendations**

3. That Members approve Option 1 of this report and recommend to Full Council that a new appeals procedure is approved.
4. Reason: To enable applicants/licence holders who are aggrieved by a decision made by an Officer of the Council to appeal that decision in line with the requirements of the relevant legislation. In the process creating a more efficient system (avoiding 'duplication' across the wider public sector) and ensuring our approach is consistent with other Authorities in the region.

**Background**

5. The law enables certain functions to be delegated to officers. These powers are set out in the Council's Constitution and are typically decisions relating to 'day to day' matters, such as making decisions to grant or refuse various licences. The extent of these delegated powers are set out in the Council's 'Delegation Scheme'.

6. Certain taxi<sup>1</sup> 'licensing decisions' are delegated to officers, for example decisions to grant/refuse licences to drivers, their vehicles and operators. Decisions to suspend or revoke these licences are also delegated.
7. Within relevant legislation there is provision for an applicant or licence holder who is aggrieved by a decision made by an officer on behalf of the Council, to appeal that decision to Magistrates Court. However, the Council also offers the applicant/licence holder the right of appeal to a Sub-Committee of the GLRC (from here on referred to as a Sub Committee). Therefore, an aggrieved party has two rights of appeal.
8. For the avoidance of doubt, the importance of a 'right of appeal' for a person aggrieved by an officer decision is not in issue. This report, is simply enabling Members to reflect again on whether it is appropriate to provide two routes of appeal. There is no legal requirement for the council to provide an additional appeal mechanism and our research shows that there are no authorities in the West Yorkshire region (with whom we are working to align our taxi licensing policies) are providing this.
9. Between 24<sup>th</sup> April 2017 - when the last report on this matter was heard and 31 July 2018 (the time of preparation) officers have:-

Officer decision	Total
Refusal to grant a driver licence	1
Suspended driver licence - on medical grounds	7
Revoked driver licence – no longer considered a fit and proper person	5
Revoked driver licence – medical grounds	3
Appeals to sub committee	3 (all upheld officer decision)
Appeals to Magistrates	2 (1 subsequently withdrawn)

---

1. Term 'taxi' is used in its generic sense to include both 'hackney carriage' and 'private hire' licences.



10. In the event that a licence application is refused, or a licence is suspended/revoked the current procedure is to offer the applicant/licence holder both rights of appeal within the decision letter.
11. An appeal to the Magistrates Court must be made in accordance with the requirements of the legislation, which is normally within 21 days of the decision notice being served. The applicant/licence holder can only appeal the Officer decision (not the outcome of the appeal to the Sub Committee – although this may still be subject to judicial review). In practice therefore, appellants often exercise both avenues of appeal at the same time.

### **Consultation**

12. A consultation has not taken place in relation to this report.

### **Options**

13. Option 1 – Recommend to Full Council that the Council's Constitution is changed and a new 'single appeal' procedure for dealing with licensing appeals is approved. In line with the requirements of relevant legislation licence applicants and licence will be able to appeal a decision made by Officers to refuse/suspend/revoke to the Magistrates Court, thereby no longer providing an internal appeals process.
14. Option 2 – Retain the status quo. Licence applicants and licence holders can continue to appeal a decision made by Officers to refuse/suspend/revoke to a Sub-Committee of the Gambling, Licensing and Regulatory Committee. Sub Committees are established from the membership of the Committee (or substitutes) with members being appointed in rotation subject to their availability to attend. In line with the relevant legislation, licence applicants/holders can also to appeal Officers decisions to Magistrates Court.
15. Option 3 – Provide an alternative way forward.

### **Analysis**

16. Option 1 - Applicants/licence holders will still have the right of appeal if they are aggrieved by a decision made by Officers; however this

right of appeal will be in accordance with the requirements of the relevant legislation (and will typically result in an appeal to the Magistrates Court). Removing the internal right of appeal to the Sub-Committee will create a more efficient system (avoiding 'duplication' across the wider public sector) and ensuring our approach is consistent with other Authorities in the region. It also removes any risk of the decision or the process of the Sub-Committee being challenged – perhaps through judicial review.

17. Option 2 – It may be seen that the Sub-Committee appeal route provides a 'cheaper alternative' to statutory mechanisms. However, experience suggests that this is not the case as many appellants – often on legal advice - are using both mechanisms in any event. There current system could also lead to potential confusion in the event that they both reached different conclusions.

18. Option 3 – analysis will depend on the options chosen.

### **Council Priorities**

19. This will support the Council's plan of being more responsive and flexible council that puts residents first and meets its statutory obligations

### **Implications**

20. The direct implications arising from this report are:

(a) **Financial** – There are no financial implications for the council.

(b) **Human Resources (HR)** - There are no HR implications.

(c) **Equalities** – There are no equalities implications.

(d) **Legal** – There is no legal requirement to offer an internal appeal in addition to the statutory rights to bring appeals before the Magistrates.

(e) **Crime and Disorder** – There are no crime and disorder implications.

(f) **Information Technology (IT)** - There are no IT implications.

(g) **Property** - There are no property implications.

(h) **Other** - There are no other implications.

### **Risk Management**

21. Applying the council's Risk Scoring Matrix, the option 1 reduces the 'risk' to the council from a score of '13' - a 'yellow' risk (arising from a 'potential impact' of action in court resulting substantive costs and local media coverage – albeit 'unlikely') to a risk score of '8' – a 'green risk' (arising from a 'potential impact' of 'local restrictions' and 'little or no media coverage' – albeit 'unlikely').

### **Contact Details**

**Author:**

Matt Boxall

Head of Public Protection

Phone: 01904 551528

**Chief Officer Responsible for the report:**

Andrew Docherty,

Assistant Director – Legal and Governance

**Report  
Approved**



**Date** 07.09.2018

**Specialist Officer Implications: None**

**Wards Affected:**

All

**Background Papers:**

None

This page is intentionally left blank